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IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION No.306 OF 2021.

VISHWANATH GUNAJI
AMONKAR, REP. BY ITS
PARTNER, SHIVANAND
GUNAJI AMONKAR

... Petitioner.

VS
THE MAPUSA MUNICIPAL
COUNCIL, THR. ITS CHIEF
OFFICER, MAPUSA
MUNICIPAL COUNCIL,
MAPUSA AND 2 ORS

...Respondents.

Mr. G. Panandiker and Mr. S. Phadte, Advocates for the petitioner.

Mr. S. D. Padiyar and Mr. P. Shirodkar, Advocates for the respondent no.1.

Mr. S. Desai, Advocate for the respondent no.2.

Mr. T. Gawas, Addl. Govt. Advocate for the respondent no.3.

CORAM: MANISH PITALE, J.

DATED: 16th December, 2021.

ORAL ORDER.:

1. This Writ Petition is coming up for the first time for consideration before this Court. But, since the respondents are all represented through counsel, the petition is taken up for consideration and disposal.

2. The petitioner before this Court is a Partnership Firm, which is aggrieved by judgment and order dated 16.7.2021, passed by the Administrative Tribunal, Goa, whereby an appeal filed by the petitioner was partly allowed. At the

outset, Mr. Panandiker learned counsel appearing for the petitioner submits that although the operative portion of the order records that the appeal is partly allowed and the impugned judgment and order is quashed and set aside, the petitioner is confused as to the implication of the impugned judgment and order, in the peculiar facts and circumstances of the present case.

3. The petitioner was aggrieved by an order dated 7.3.2018, passed by the Chief Officer of the respondent no.1 Municipal Council, whereby name of the lessee in respect of two shops was reverted back to the name of the original individual lessee Vishwanath Naique, in place of the petitioner firm.

4. The petitioner approached the respondent no.3 i.e. the Director of Urban Development, under Section 293 of the Goa Municipalities Act, 1968. By judgment and order dated 24.3.2020, the respondent no.3 disposed of the appeal filed by the petitioner by upholding the order dated 7.3.2018 passed by the Chief Officer of the respondent no.1 Municipal Council. It was, *inter alia*, observed that the petitioner could not have filed the appeal invoking jurisdiction of the respondent no.3 under Section 293(1) of the aforesaid Act.

5. Aggrieved by the same, the petitioner filed appeal under Section 293(2) of the said Act before the Administrative Tribunal. By the impugned judgment and order dated 16.7.2021, the Tribunal held that the respondent no.3 could not have entertained the application/appeal filed by the petitioner against the order of the respondent no.1 Municipal Council. It was held that the same was not maintainable on the ground that under Section 293(1) of the aforesaid Act, none of the contingencies were available for the petitioner to invoke the jurisdiction of the respondent no.3.

6. Mr. Panandiker, learned Counsel appearing for the petitioner submits that the view adopted by the Tribunal in the impugned judgment and order is erroneous and it is in the teeth of a Full Bench judgment of this Court in the context of a *pari materia* provision of Maharashtra Municipal Councils, Nagar Panchayats and Industrial Township Act, 1965, rendered in the case of ***Sanjay Govind Sapkal and others Vs Collector of Dhule, 2004(2) Mh.L. J. 874***. It was submitted that the Tribunal has placed reliance on Division Bench Judgment of this Court in the case of ***Chandrashekhar Shankarrao Zade and others Vs. Additional Collector, Nagpur and other, 1984 Mh. L.***

J. 821, which was expressly overruled by the aforesaid Full Bench Judgment. It is submitted that there is no discussion on the merits of the matter in the impugned judgment and order passed by the Tribunal and that therefore, despite the fact that the operative portion of the order records that appeal of the petitioner is partly allowed, the matter needs to be remitted back to the Tribunal for fresh consideration on the merits of the matter.

7. Mr. Padiyar, learned counsel appearing for the respondent no.1, Mr. Desai, learned Counsel appearing for the respondent no. 2 and Mr. T. Gawas, learned Addl. Govt. Advocate appearing for the respondent no.3, all fairly submit that the position as regards interpretation of Section 293 of the aforesaid Act is covered in favour of the petitioner and that therefore, there cannot be any quarrel with the contention that the Tribunal committed an error in holding that the respondent no.3 could not have entertained the challenge raised by the petitioner under Section 293(1) of the aforesaid Act.

8. Additionally Mr. Padiyar has brought to the notice of this Court that a Division Bench at Goa in the case of **Mr. Dhananjay Dattaram Shetye Vs Mhapsa Municipal**

Council and others (judgment and order dated 17.9.2019, in Writ Petition No. 141 of 2019) had relied upon the aforementioned Full Bench Judgment of this Court in context of Section 293 of the aforesaid Act, as it is found to be *pari materia* with Section 308 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Township Act, 1965, in respect of which the Full Bench has clarified the position of law.

9. Perusal of the impugned judgment and order of the Tribunal shows that the view adopted by Tribunal is erroneous for the reason that the impugned judgment and order is passed in ignorance of the position of law as clarified in the aforementioned Full Bench Judgment. The Tribunal appears to have relied upon the judgment of this Court in ***Qazi Kutubuddin Husnuddin Vs Municipal Council, Sindi & others, 2003(2) Bom. C. R. 255***. The said judgment specifically relied upon the aforesaid Division Bench judgment in the case of ***Chandrashekhar Shankarrao Zade and others Vs. Additional Collector, Nagpur and other***(supra), which in turn was expressly overruled in the aforementioned Full Bench judgment in the case of ***Sanjay Govind Sapkal Vs.***

Collector of Dhule(*supra*). Therefore, there cannot be any reason to disagree with the contention raised on behalf of the petitioner that the impugned judgment and order passed by the Tribunal deserves to be set aside. A perusal of the impugned judgment and order shows that there is no discussion at all on the merits of the matter and that therefore, the matter needs to be remitted to the Tribunal for consideration of the appeal on merits.

10. In view of the above, the Writ Petition is partly allowed. The impugned judgment and order passed by the Tribunal is quashed and set aside. The matter is remanded to the Tribunal for fresh consideration of the appeal filed by the petitioner. The Tribunal shall consider the appeal on merits and decide the same after giving appropriate opportunity to the parties to place their contentions before the Tribunal on merits.

11. Parties shall appear before the Tribunal on 5.1.2022. Needless to say, all questions on merits are kept open.

MANISH PITALE, J.