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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.52 OF 2020

Mr. Neelesh V. Gaonkar
R/o House No. 16
Panvel
Ribandar – Goa

... Petitioner.

Versus

1. State of Goa
Through Chief Secretary
Porvorim Goa

2. The Commissioner,
The Corporation of the City of Panaji,
Panaji – Goa

... Respondents.

Mr Sahish Mahambrey, Advocate for the Petitioner.

Mr Manish Salkar, Government Advocate for Respondent No.1.

Mr Pranay Kamat, Advocate for Respondent No.2.

CORAM: BHARAT P. DESHPANDE, J.

DATED: 12 October, 2023

ORAL JUDGMENT:

1. Heard Mr Mahambrey appearing for the Petitioner, Mr Salkar for Respondent No.1 and Mr Kamat for Respondent No.2.
2. Rule. Rule is made returnable forthwith. With consent of the parties, matter is taken up for final disposal.
3. Mr Mahambrey appearing for the Petitioner submits that Municipal

Appeal filed by the Petitioner challenging the final notice dated 06.02.2014 issued by Deputy Commissioner of Corporation of City of Panaji for demolition was pending before the Principal Secretary, Urban development, Government of Goa. The said appeal came up for hearing on 30.12.2019. However, an order was passed dismissing the appeal in default and vacating the stay on the ground that the Appellant failed to remain present.

4. Mr Mahambrey submits that the appeal was pending from 2014 and even written submissions on behalf of Petitioner were filed on 07.08.2018. A copy of such written submissions is placed at 'Annexure E' from page 31 onwards.

5. Mr Mahambrey would submit that when the written submissions are already on record, the concerned authority ought to have decided the matter on merit by considering the written submissions instead of dismissing the appeal in default.

6. The submissions of Mr Mahambrey in this regard are fully justified. The statutory appeal under Section 358 of CCP Act preferred by the Petitioner ought to have been decided on merit, specifically when written submissions of the Petitioner were filed in the year 2018 itself. No doubt the Petitioner failed to appear on the date of hearing. However, authority could have taken judicial note of written submissions filed on record. The said authority is a quasi-judicial authority and therefore, principles of natural justice demand that the matter could have been disposed of on merit though the Petitioner remained absent and specifically when written submissions were already filed on record.

7. Considering the above issue, it is not necessary to go into the merit of the contentions raised in the petition as I am satisfied that the impugned order needs to be quashed and set aside and the matter needs to be remanded to the concerned authority to decide it afresh, in a time-bound manner.

8. The petition stands allowed. The impugned order (without any date) in Municipal Appeal No. MIN/UD/15/2014 is hereby quashed and set aside. The said appeal is restored on the file of the Principal Secretary (UD). The said authority is directed to decide the said appeal on merit by hearing the parties afresh and on its merit, within a period of one month from today. Mr Mahambrey undertakes to inform the concerned authority by placing an authenticated copy of this order.

9. The Petitioner shall appear before the concerned authority on 17.10.2023 at 3:30 p.m. and hand over an authenticated copy of this order. The authority shall, thereafter, fix a suitable date and decide the matter within a period of one month thereafter. Needless to say that any decision in the matter shall be communicated to the parties.

10. Rule is made absolute in above terms.

BHARAT P. DESHPANDE, J.

JOSE
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DSOUZA

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