IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

THURSDAY, THE 19TH DAY OF FEBRUARY 2015/30TH MAGHA, 1936

MFA.No. 15 of 2012 ( )

AGAINST THE ORDER IN OP.(LF).No.19/2009 of DISTRICT COURT, THODUPUZHA, DATED 08-08-2011.

APPELLANT(S)/PETITIONER:-

C.V.MONI ACHARI
S/O. VELAYUDHAN ACHARI,
CHOKKANAVEETTIL HOUSE
MUTHALAKODAM KARA,
THODUPUZHA VILLAGE.

BY ADVS.SRI.GRASHIOUS KURIAKOSE (SR.)
SRI.GEORGE MATHEWS.

RESPONDENT(S)/RESPONDENT NO.4:-

DIRECTOR,
LOCAL FUND AUDIT,
VIKAS BHAVAN,
THIRUVANANTHAPURAM.

BY ADV.GOVERNMENT PLEADER.

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 19-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.B.SURESH KUMAR, J.

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M.F.A.No.15 of 2012.
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Dated this the 19th day of February, 2015.

JUDGMENT

The decision in O.P.(L.F.) No.19 of 2009 on the file of the Court of the District Judge, Thodupuzha is under challenge in this appeal. The appellant is the petitioner in the said proceedings.

2. The appellant was the Secretary of Vannappuram Grama Panchayat for the period from 23.12.1997 to 30.4.1999 and he retired from service on 30.4.1999. While the appellant was in office, the committee of the Grama Panchayat decided to purchase ten television sets for distribution among the various clubs and institutions under the Peoples Planning Scheme. Pursuant to the said decision, the appellant purchased ten television sets on 4.7.1998 incurring an expenditure of Rs.1,70,000/-. Out of the ten television sets, six television sets were distributed by the appellant during his tenure to the eligible beneficiaries

and the remaining television sets were entrusted by him with his successor in office when relieved from duty on retirement. According to the appellant, the audit party attached to the Local Fund Audit Department reported during 2002 that out of the four television sets retained in the Panchayat, two television sets were found missing and two sets were not in working condition. It is stated that thereupon, the expenditure incurred by the appellant for the purchase of the said television sets was surcharged on him, invoking the provision in Section 215(9) of the Kerala Panchayat Raj Act. The surcharge certificates issued by the respondent were challenged by the appellant in the Original Petition.

3. The Director of Local Fund Audit Department filed objections to the proceedings contending *inter alia* that the appellant was responsible for the non utilisation of the television sets and therefore the said expenditure is liable to be surcharged on him.

4. The court below upheld the decision of the respondent to surcharge the appellant for the disputed expenditure and dismissed the Original Petition. The appellant is aggrieved by the said decision of the court below and hence this appeal.

5. Heard Sri.Grashious Kuriakose, the learned Senior counsel for the appellant and the learned Government Pleader for the respondent.

6. The proviso to sub section (9) of Section 215 of the Kerala Panchayat Raj Act provides that no surcharge under sub section(9) of Section 215 of the Act shall be made after a period of four years from the date on which the expenditure in question was incurred. It is not in dispute that the purchase of television sets was made by the appellant on 4.7.1998. The proceedings against the appellant were commenced only as per Exts.R6 and R7 notices issued to him on 21.1.2003. It is thus evident that the surcharge proceedings initiated against the appellant is

barred by the proviso to Section 215(9) of the Act.

7. That apart, Ext.R1 is the relevant portion of the audit report on the basis of which surcharge proceedings were initiated against the appellant. Ext.R1 only recites that the Panchayat has not distributed all the television sets purchased by them. There is no allegation against the appellant in Ext.R1. Exts.R6 and R7 are the notices claimed to have been issued to the appellant directing him to show cause why the disputed amounts shall not be surcharged on him. Exts.R6 and R7 do not contain any allegation against the appellant, except the statement that the appellant is responsible for the loss referred to in the audit report. There is nothing on record to show that the appellant has caused any loss to the Panchayat. The allegations in the report, it seems, are only against the Panchayat. True, the appellant is the person who has incurred expenditure, but the same was only at the instance of the Panchayat. The surcharge proceedings against the appellant is therefore,

arbitrary too.

In the result, the appeal is allowed and Exts.R9 and R10 surcharge certificates issued against the appellant by the respondent are set aside.

Sd/-
P.B.SURESH KUMAR,
(Judge)

Kvs/-

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PA TO JUDGE.