IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

MONDAY, THE 6TH DAY OF JULY 2015/15TH ASHADHA, 1937

MFA.No. 85 of 2014 ()

I.A.2598 OF 2012 IN O.P.(LF) NO.433 OF 2012 ON THE FILE OF THE VI ADDL. DISTRICT JUDGE, ERNAKULAM.

APPELLANT/PETITIONER:

ALOYSIUS MATHEW, S/O.LATE K.A.MATHEWS, AGED 64 YEARS
KURISINKAL HOUSE
MUNDAMVELI.P.O., COCHIN-682507.

BY ADVS.SRI.P.MARTIN JOSE
SRI.P.PRIJITH
SRI.THOMAS P.KURUVILLA

RESPONDENT/RESPONDENT :

DIRECTOR OF LOCAL FUND AUDIT
OFFICE OF THE DIRECTOR OF LOCAL FUND AUDIT
THIRUVANANTHAPURAM-695 033.

BY GOVERNMENT PLEADER SRI.EGGY N.ELIAS.

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 06-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.B.SURESH KUMAR, J.

M.F.A. No.85 of 2014

Dated 6th July, 2015

J U D G M E N T

This is an appeal preferred under Section 295(13) of the Kerala Municipality Act, challenging the decision in an original petition filed by the appellant under Section 16(3) of the Kerala Local Fund Audit Act, 1994 ('the Act' for short).

2. The appellant is a retired Municipal Secretary. He was working as the Secretary of Kodungallur Municipality from 11.6.1997 to 19.5.2000. According to the appellant, after his retirement, he was served with a demand notice by Kodungallur Municipality directing him to pay a sum of Rs.14,299/-, alleging that he was surcharged for the said amount under the Act. The case of the appellant is that when he applied for a certified copy of the surcharge certificate issued against him, he was issued a surcharge certificate dated 30.12.2008. According to the appellant, the said surcharge certificate was issued to him on 11.4.2012. The case of the appellant is that the surcharge certificate issued to him revealed that he was surcharged for an

amount of Rs.1,44,196/- on 30.12.2008. The appellant challenged the said surcharge certificate in O.P.(LF).No.433 of 2012 before the District Court, Ernakulam, invoking Section 16 (3) of Act. As there was long delay in filing the original petition, the appellant filed an application as I.A.No.2598 of 2012 also seeking orders to condone the delay of 2047 days in filing the original petition. The court below dismissed I.A.No.2598 of 2012 and consequently dismissed the original petition also. The appellant challenges the said decision of the court below in this appeal.

3. Heard the learned counsel for the appellant as also the learned Government Pleader for the respondent.

4. A copy of I.A.No.2598 of 2012 was made available to me at the time of hearing. It is stated by him in the affidavit that the copy of the surcharge certificate applied for by him was issued to him only on 11.4.2012. It is also stated by the appellant in the affidavit that since the copy of the surcharge certificate could be obtained by him only during vacation, the original petition could be filed by him only on the

reopening day. The averments made by the appellant in the affidavit filed in support of I.A.No.2598 of 2012 are not seen contradicted. Nevertheless, the court below dismissed the said application holding that the pleadings and evidence produced of the appellant are contrary to each other.

5. As noticed above, the original petition was filed by the appellant with an application to condone the delay. It is evident from the affidavit filed in support of the application that the appellant was not issued any surcharge certificate and that he came to know of the surcharge proceedings against him only when he received the demand notice for Rs.14,299/- from the Kodungallur Municipality. It is seen that he has immediately applied for a copy of the surcharge certificate issued against him as provided for under Section 16(1) of the Act and he was issued a surcharge certificate on 11.4.2012. True, the surcharge certificate issued to him was for a sum of Rs.1,44,196/-. According to him, in so far as the said certificate was also one issued against him, he had to challenge the same and the original petition was filed for the said purpose. There is

nothing on record to show that there was another surcharge proceedings against the appellant for a sum of Rs.14,299/-. At any rate, the appellant has challenged only the surcharge certificate issued to him on 11.4.2012 for the sum of Rs.1,44,196/-. Merely for the reason that the said surcharge certificate does not tally with the demand notice issued to him by Kodungallur Municipality, it cannot be said that the appellant is not entitled to challenge the same. It was for the respondent to point out the disparity in the demand notice as also in the surcharge certificate. The respondent has not offered any explanation. The only issue arose before the appellate court was as to whether the delay in filing the original petition against the surcharge certificate issued to him on 11.4.2012 was explained by him in the affidavit or not. I am satisfied that sufficient cause has been shown by the appellant for the delay in filing the appeal against the surcharge certificate issued to him on 11.4.2012.

6. In the result, I.A.No.2598 of 2012 in O.P.(LF) No.433 of 2012 on the file of the VI Additional District Court,

Ernakulam is allowed and O.P.(LF).No.433 of 2012 is remitted to the court below for fresh decision. The parties are directed to appear before the court below on 7.8.2015.

M.F.A. is allowed as above.

Sd/-

P.B.SURESH KUMAR, JUDGE.

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(true copy)