

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

THURSDAY, THE 6TH DAY OF AUGUST 2015/15TH SRAVANA, 1937

WA.No. 952 of 2012 () IN WP(C).5385/2012

AGAINST THE JUDGMENT IN WP(C) 5385/2012 of HIGH COURT OF
KERALA DATED 05-03-2012

APPELLANT/PETITIONER:

THE KOTTAYAM WHOLESALE CO-OPERATIVE
CONSUMER'S STORES LTD NO K.162,
KOTTAYAM-686001
REP.BY ITS MANAGIGN DIRECTOR

BY ADV. SRI.J.ABHILASH

RESPONDENTS/RESPONDENTS 1 & 2:

1. KOTTAYAM MUNICIPALITY
POST BOX NO.200, KOTTAYAM - 1
REP.BY ITS SECRETARY-686001

2. THE DEPUTY DIRETOR, GOVT LOCAL FUND AUDIT
GOVT OF KERALA, TRIVANDRUM-695001

R1 BY ADV. SRI.SIBY MATHEW
SRI.PHILIP J.VETTICKATTU, SC FOR UNIVERSITY
SRI.B.PREMNATH (E)
R2 BY SENIOR GOVERNMENT PLEADER P.P. FAZIL

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON
06-08-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

smv

**ANTONY DOMINIC
&
SHAJI P. CHALY, JJ.**

W.A. No.952 of 2012

Dated this the 6th day of August, 2015

JUDGMENT

Antony Dominic,J.

Appellant filed Writ Petition No.5385 of 2012 challenging Exts.P4 to P8 notices issued by the 1st respondent Municipality demanding payment of arrears of licence fee with respect to the two shops taken by the appellant on lease from the Municipality. The ground on which the notices were impugned are that the demands are barred in view of Section 539 of the Kerala Municipality Act, 1994. By the judgment under appeal, the learned Single Judge held that the provisions of Section 539 of the Municipality Act are not applicable to the impugned notices issued by the Municipality. Accordingly, leaving it open to the appellant to seek its remedies before the appropriate appellate authority, the writ petition was disposed of.

2. In this appeal filed against the said judgment, the contention urged is also that the demand was time barred in view of Section 539 of the Municipality Act. Section 539

providing for limitation for recovery of dues contained in the Kerala Municipality Act reads thus:

“539. Limitation for recovery of dues;- (1) No distraint shall be made, no suit shall be instituted and no prosecution shall be commenced in respect of any sum due to a Municipality under this Act after the expiration of a period of three years from the date on which distraint might first have been made, suit might first have been instituted, or prosecution might first have been commenced, as the case may be, in respect of such sum:

Provided that in the case of assessments made under Section 282 the said period of three years shall be computed from the date on which distraint might have been made, suit instituted, or prosecution commenced, after the assessment under the said section shall have been made.

(2) Where any amount due to the Municipality has been barred by limitation under sub-section (1) due to the default of not taking steps at the appropriate time, and it is found in a lawful enquiry that it was lost due to the default of any officer or officers, the amount so lost to the Municipality shall be realised with twelve per cent interest thereon from such officer or officers.”

3. A reading of this section shows that the recovery of the

amounts due to the Municipality is prohibited after the expiration of a period of 3 years from the date on which the distraint might first have been made, suit might first have been instituted or prosecution might first have been commenced. The date on which distraint, suit or prosecution might first have been made, instituted or commenced is the date on which amounts fell due to the Municipality. That view has already been taken by this Court in the judgment in **Krishna Das v. Pathanamthitta Municipality** [1983 KLT 656]. If that be so, the time limit of 3 years prescribed is from the date on which amounts fell due to the Municipality. Thereafter recovery proceedings are barred.

4. In so far as this case is concerned, Exts.P4 to P8 are the demand notices that are impugned before this Court. From the pleadings it is seen that the period in relation to which the demands are made in respect of the ground floor and the first floor are from 01.04.2000 to 31.03.2007 and from 07.08.2002 to 31.03.2007 respectively. The Municipality does not have a case that these notices were issued within 3 years from the date on which the amounts fell due. In fact, the Municipality has not

even chosen to file a counter affidavit before this Court contradicting the averments in the writ petition.

In such circumstances, we are satisfied that the notices impugned were issued after the expiry of the period of limitation prescribed in Section 539 of the Kerala Municipality Act and therefore, the notices are illegal. We, therefore, set aside the judgment under appeal and quashing Exts.P4 to P8 notices, the writ appeal is disposed of allowing the same.

Sd/-

**ANTONY DOMINIC
JUDGE**

Sd/-

**SHAJI P. CHALY
JUDGE**

//true copy//

P.A. To Judge

smv