IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

THURSDAY, THE 15TH DAY OF OCTOBER 2015/23RD ASWINA, 1937

WP(C).No. 2097 of 2009 (Y)

PETITIONER :

P.T. VAVA, S/O. THEYYATHAN,
PARAKKATTUKUZHIYIL, P.O. MEMURI, MANJOOR,
KOTTAYAM.

BY ADVS.SRI.V.G.ARUN
SRI.T.R.HARIKUMAR

RESPONDENT(S):

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1. KADUTHURUTHY GRAMA PANCHAYAT,
   KADUTHURUTHY.P.O, KOTTAYAM DIST,
   REPRESENTED BY ITS SECRETARY.

2. PRESIDENT,
   KADUTHURUTHY GRAMA PANCHAYAT,
   KADUTHURUTHY.P.O.

3. THE DEPUTY TAHSILDAR,
   (REVENUE RECOVERY), VAIKOM.

4. THE DISTRICT COLLECTOR, KOTTAYAM.

R1 & R2 BY ADVS. SRI.S.SACHITHANANDA PAI
SRI.P.N.MOHANAN
R3 & R4 BY GOVERNMENT PLEADER SRI.SOJAN JAMES

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 15-10-2015, ALONG WITH WPC.NO. 11633 OF 2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

sts

WP(C).NO.2097/2009

APPENDIX

PETITIONER'S EXHIBITS:

P1	**COPY OF THE RESOLUTION NO.1 (9) DATED 27/7/2000**
P2	**COPY OF THE REPORT DATED 2/7/2000**
P3	**COPY OF THE REPORT DATED 4/8/2000**
P4	**COPY OF THE AUDIT OBJECTION DATED 15/11/2007**
P5	**COPY OF THE RESOLUTION NO.III (1) DATED 8/1/2004**
P6	**COPY OF THE LETTER DATED 2/7/2007 ENCLOSING THE RESOLUTION DATED 18/12/2006**
P7	**COPY OF THE NOTICE NO.A1-408/08 DATED 27/9/2008**
P8	**COPY OF THE REPLY DATED 16/10/2008**
P9	**COPY OF THE RESOLUTION NO.II DATED 12/11/2008**
P10	**COPY OF THE LETTER DATED 30/12/2008**
P11	**COPY OF THE DEMAND NOTICE DATED 16/12/2008**

RESPONDENT'S EXHIBITS:

R1(A)	**COPY OF THE FINDINGS OF THE LOCAL FUND ACCOUNTS COMMITTEE DATED 26/5/2012**

/TRUE COPY/

P.S.TO JUDGE

sts

A.V.RAMAKRISHNA PILLAI, J

WPC Nos.2097/2009 &
11633/2014

Dated this the 15th day of October, 2015

JUDGMENT

Under challenge in these writ petitions is the orders directing revenue recovery proceedings against the petitioners who were the Secretary and President of the Kaduthuruthy Grama Panchayat on the basis of an objection raised by the Local Fund Auditor.

2. The petitioner in WPC No.2097/2009 retired from the service of the Panchayath as a Senior Superintendent on 1.1.2005. The petitioner in WPC No.11633/2014 was the President of the said Panchayat from 1995-2000 and she demitted the office in September 2000.

3. During 2000-2001, he was working as the Secretary of the Kaduthuruthy Panchayat. During 2000-2001 as part of the People's Planning Programme under the Scheduled Caste Welfare Scheme an amount of ₹1,10,000/- had been given as financial assistance to the

Vaikom Taluk Pattika Jathi Pattika Varga Motor Transport Co-operative Society Ltd. for buying spare parts for a stage carriage owned and operated by the society. Later in the report of the District Local Fund Auditor, an objection was raised against the above financial assistance and it was directed to get ratification from the Government for the above financial assistance. Alleging that further action is recommended by the committee of the Kerala Legislative Assembly for Local Fund Audit, notices were issued asking the petitioner in WPC No.2097/2009 to remit ₹82,500/- and the petitioner in WPC No.11633/2014 to remit ₹1,10,000/-. Both the petitioners allege that no liability or surcharge has been fixed against the petitioners by any of the authorities with notice to them and the only direction in the Local Fund Audit report is to get ratification from the Government for the above mentioned financial assistance. They would also contend that after the lapse of four years from the date on which the expenditure in question was incurred, no recovery could be effected as per the provisions of the

Kerala Panchayat Raj Act, 1994. It is the definite case that the Panchayat had also requested the Government to ratify the above financial assistance as per the resolution and requested the District Collector not to proceed with the revenue recovery proceedings. However, on the basis of the request from the present Secretary of the Panchayat, the concerned Tahsildar directed the Village Officer concerned to proceed against the petitioners under the Revenue Recovery Act. It is the definite case of the petitioners that financial assistance was granted to the aforesaid society after approving the project prepared by the sub committee of the Panchayat in that behalf and getting approval from the concerned Grama Sabha and Panchayat committee. They would also point out that the Block Level Technical Committee and the District Planning Committee granted technical and administrative sanction to the project. Nobody raised any objection against the disbursement of the financial assistance. It is with this background, the petitioners have come up before this Court.

4. The Panchayat has filed a counter affidavit in WPC No.2097/2009 in which it is contended that while the petitioners were serving as Secretary and President, 92 schemes out of one scheme was to provide an amount of ₹1,10,000/- to Vaikom Taluk Pattika Jathi Pattika Varga Motor Transport Co-operative Society. The society was running stage carriages for the benefit of the public. As the society sustained loss, they were unable to run the stage carriages. Therefore, the society made a request to the Panchayat to get financial assistance to run stage carriages as it is beneficial to the public. Accordingly, it was included in the fund and formulated a scheme among other things and the same was approved by the District Planning Committee. Accordingly, an amount of ₹1,10,000/- was disbursed to the society as financial assistance for the purchase of spare parts. Utilising the fund, the society purchased the spare parts and was running stage carriages for the benefit of the public.

5. The Tahsildar, Vaikom has filed a statement in WPC No.11633/2014 alleging that the petitioners were

defaulters of Panchayat dues and therefore, he justified the revenue recovery action.

6. Arguments have been heard.

7. The learned counsel appearing for both the petitioners made a frontal attack against the recovery action in the light of the proviso to Section 215(9) of the Kerala Panchayat Raj Act which bars surcharge being imposed on the basis of an audit report after a lapse of four years from the date on which the expenditure in question was incurred.

8. No satisfactory explanation is forthcoming from the respondents for the inordinate delay in initiating revenue recovery action.

9. It is crucial to note that the project of giving fund to the society for the purchase of spare parts for the stage carriage was included in the annual plan for 2000-2001 of the respondent Panchayat after obtaining recommendation from all the authorities concerned. None of the authorities had raised any objection against the proposal. The scheme having been approved, it was the

duty of the petitioner in WPC No.2097/2009 to implement the scheme as Section 182(3) of the Panchayat Raj Act mandates the Secretary to carry out the resolutions of the Panchayat. Therefore, the petitioner in WPC No.2097/2009 who was the Secretary cannot be mulcted with the liability.

10. In the petitioners' case, expenditure for the year 2000-2001, surcharge proceedings were not initiated either against the petitioners or any other person though the local fund audit raised an objection. Therefore, based on the audit objection, the Panchayat cannot initiate action for recovery after a period of seven years. Further more, Section 243 of the Panchayat Raj Act provides for an outer period of three years for initiation of any destraint, suit or prosecution in respect of any tax or sum due to a Panchayath under the Act or any Rule or bye-law. Going by the said Section also, the present action initiated by the Panchayat is barred by limitation.

11. It is also crucial to note that the Panchayat itself had decided to withdraw the recovery proceedings and

have made such a request to the District Collector. In fact the amount was released to the society after approving the project prepared by the concerned sub committee of the Panchayat by the Gramasabha and the Panchayat committee. There was a unanimous decision by the Panchayat to grant the above benefit to the society. More over, the project was approved and administrative and technical sanction was granted by the Block Level Technical committee and District Planning Committee. Nobody objected the project. If there was any legal bar in approving the project, the same ought to have been pointed out by the Technical Committee or Planning committee. There were 12 members in the Panchayat committee at the relevant time. However, the President and the Secretary alone are now fastened with the liability.

12. It is crucial to note that nobody has a case that the petitioners have misappropriated the amount of the Panchayat.

Therefore, on a consideration of the entire materials now placed on record, this Court is of the view that the petitioners are entitled to the relief as prayed for.

In the result, the writ petitions are allowed. Exts.P9 and P11 in WPC No.2097/2009 is quashed declaring that the respondent Panchayat is not entitled to initiate revenue recovery proceedings against the petitioner based on the objection of the Local Fund Audit Department.

Exts.P1, P4, P5 and P8 in WPC No.11633/2014 are quashed declaring that the no amount is liable to be recovered from the petitioner in this case.

sd/- A.V.RAMAKRISHNA PILLAI
JUDGE

css/ **true copy** **P.S.TO JUDGE**