IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

WEDNESDAY, THE 28TH DAY OF OCTOBER 2015/6TH KARTHIKA, 1937

WP(C).No. 209 of 2015 (A)

PETITIONER(S) :
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1. M.R.SIVASANKARAN NAIR, AGED 68 YEARS,
   S/O.K.KESAVAN NAIR, KARTHIKA NILAYAM, ANIKKAD,
   KOTTAYAM.

2. VIPINACHANDRAN NAIR.K.K., AGED 55 YEARS,
   S/O.KRISHNAN NAIR.K., KOMBARA VADAKKETHIL,
   ANIKKAD(W) P.O., KOTTAYAM.

3. LATHA GOPALAKRISHNAN, AGED 45 YEARS,
   W/O.GOPALAKRISHNAN NAIR N.P., NADAKKAL, ANIKKAD P.O.,
   PALLIKKATHODE, KOTTAYAM.

4. N.HARI, AGED 36 YEARS,
   P.K.NARAYANAN NAIR, THEKKEPARAMBIL, ANIKKAD P.O.,
   KOTTAYAM.

BY ADV. SRI.D.KISHORE

RESPONDENT(S) :
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1. THE PALLIKKATHODE GRAMA PANCHAYATH,
   REPRESENTED BY ITS SECRETARY, PALLIKKATHODE P.O,
   KOTTAYAM DISTRICT - 686 001.

2. THE SECRETARY,
   PALLLIKKATHODE GRAMA PANCHAYAT, PALLIKKATHODE P.O.,
   KOTTAYAM DISTRICT - 686 001.

BY ADVS. SRI.S.MANU
SRI.K.SURESH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 28-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Msd.

WP(C).No. 209 of 2015 (A)

APPENDIX

PETITIONER(S)' EXHIBITS :

EXT.P1: **TRUE COPY OF THE DEMAND NOTICE DATED 17/11/2014 ISSUED BY THE 2ND RESPONDENT TO THE 1ST PETITIONER DEMANDING SERVICE TAX.**

EXT.P1(A): **ENGLISH TRANSLATION OF EXT.P1.**

EXT.P1(B): **TRUE COPY OF THE DEMAND NOTICE DATED 02/12/2014 ISSUED BY THE 2ND RESPONDENT TO THE K.P.SASIDHARAN, KANNUKUZHYIHIL DEMANDING SERVICE TAX.**

EXT.P1(C): **THE ENGLISH TRANSLATION OF EXT.P1(B).**

EXT.P2: **TRUE COPY OF THE INTIMATION DATED 05/01/2015 ISSUED BY THE 2ND RESPONDENT TO THE 2ND PETITIONER.**

EXT.P2(A): **ENGLISH TRANSLATION OF EXT.P1.**

RESPONDENT(S)' EXHIBITS :
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EXHIBIT R1(A): **TRUE COPY OF THE RESOLUTION DATED 09.07.1988.**

EXHIBIT R1B): **TRUE COPY OF THE GOVERNMENT ORDER DATED 27.04.2015.**

//TRUE COPY//

P.A.TO JUDGE.

Msd.

A.M.SHAFFIQUE, J

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W.P.C.No.209 of 2015

Dated this the 28th day of October 2015

J U D G M E N T

Petitioners have approached this Court challenging Ext.P1 to the extent it demands service tax from the 1st petitioner and for a declaration that respondents 1 and 2 cannot impose or demand service tax from the petitioners without taking a decision fixing the rate of service tax as contemplated under Section 200(2) of the Kerala Panchayat Raj Act, 1994 (hereinafter referred to as 'the 1994 Act').

2. The grievance raised by the petitioners is that though the Panchayat has the power to impose service tax in terms with Section 200(2) of the 1994 Act, so far no action has been taken by the Panchayat to fix the rates of service tax as provided under Rule 27 of the Kerala Panchayat Raj (Property Tax, Service Tax and Surcharge) Rules, 2011 (hereinafter referred to as '2011 Rules'). It is contended that though the minimum rate of tax had been fixed in terms of Rule 27 of 2011 Rules, which would come to 10% for all the categories of facilities that are provided in a Panchayat area, like sanitation, water supply, scavenging, street

lighting and drainage, no attempt has been made by the Panchayat to fix the service tax. It is contended that after the new Act came into force, property tax has not been fixed and therefore unless property tax is fixed and service tax is computed in terms of Section 200(2) of the 1994 Act, no action can be taken by the Panchayat to recover any amount. Ext.P1 is the demand notice issued to the 1st petitioner wherein service tax is claimed at Rs.318/- which amounts to 32% of the property tax.

3. Counter affidavit has been filed by the respondents inter alia stating that the writ petition is not maintainable as the 1st petitioner could have preferred an appeal before the appellate authority under the Kerala Panchayat Raj (Taxation, Levy and Appeal) Rules, 1996. It is also contended that petitioners 2 to 4, who are members of the Panchayat committee, are not entitled to invoke the jurisdiction of this Court. In regard to the levy of service tax, it is stated that the 1st respondent Panchayat has levied service tax @ 32% of the building tax from 1988-89 when the calculations were on the basis of the annual rental value of the buildings. The Committee which held on 09/07/1988 adopted

a resolution in this regard which is produced as Ext.R1(a), by which the rate of building tax was fixed at 7% of the annual rental value after deduction of the maintenance cost and the service tax was fixed at 2%. It is also stated that the rates fixed by the Committee for levy of service tax, if calculated on annual basis, after making permissible deductions from the rental value, amounts to 32%. An illustration of the same is also given. It is stated that when the 2011 Rules came into force, the zones and rates were fixed in accordance with it. The rate of service tax was not revised at any time after 1988. The Panchayat has also narrated the expenditure that was being incurred by the Panchayat for various facilities that are being provided for which they are entitled to levy service tax.

4. The Panchayat has also produced a recent Government Order dated 27/04/2015 as Ext.R1(b), wherein instructions have been given to various Panchayats to exclude certain buildings from levying property tax as well as service tax. It is stated by the learned counsel that the procedure for fixation of property tax as well as service tax in respect of various

buildings in the Panchayat in terms with the Government order dated 27/11/2015 is going on and once such a fixation has been done, then alone a finalty could be achieved as far as the collection of property tax and service tax are concerned.

5. Having regard to the aforesaid factual disputes raised in the case, the question to be considered is whether the Panchayat can levy service tax without there being any rate fixed by the Village Panchayat in terms of Section 200(2) of the 1994 Act read with 2011 Rules.

Section 200(2) of the 1994 Act reads as under:

*"**200. Taxes, cess etc., which may be levied by Village Panchayat**.-*

(1) xxx

(2) Service tax shall be levied at the rate fixed by the Village Panchayat, subject to the minimum rate prescribed for sanitation, water supply, scavenging, street lighting and drainage wherever such services are provided by the Village Panchayat."

6. It is not in dispute that the service tax shall be levied at the rate fixed by the Village Panchayat subject to the minimum rate prescribed for sanitation, water supply, scavenging, street

lighting and drainage wherever such services are provided by the Village Panchayat. It is the case of the petitioners that levy of service tax can be made only after fixation of property tax in terms with Section 200(1) of the 1994 Act read with 2011 Rules. In fact, in regard to property tax, it cannot be disputed that even before the 1994 Act came into force, the property tax with reference to the 1st petitioner's building had already been fixed. Therefore, non-fixation of property tax in terms of Section 200(1) of the 1994 Act cannot deprive the right of the Panchayat to levy service tax.

7. Then the only question to be decided is whether there is fixation of service tax by the Village Panchayat. No materials have been produced by the Panchayat to indicate that they have fixed any service tax other than the submission of the Panchayat that they have taken a decision in the matter. It is contended that, in 1988-89, by Ext.R1(a), resolution has been passed to impose 2% of the annual rental value as service tax, which, according to the Panchayat, would come to around 32%, taking into account the property tax. When the Panchayat had adopted

a method based on the 1988-89 resolution, I do not think that the Panchayat is precluded from demanding property tax and service tax. In Ext.P1 also, the demand is for 35%, which according to the learned counsel for the Panchayat, is a mistake whereas actually it is 32%. The Kerala Panchayat Raj Act, 1960 and the Rules had been repealed by virtue of Section 284 of the 1994 Act. Section 284(1) (i) reads as under:

> "***284. Repeal and Savings***.-
>
> *(1) In this section unless the context otherwise requires-*
>
> *(a) xxxxxx*
>
> *xxxxx*
>
> *(i) any appointment notification, notice, tax, fee, order, scheme, licence, permission, rule, bye-law, regulation or form made, issued, imposed or granted in respect of the Panchayat area of existing Panchayat under the Kerala Panchayats Act, 1960 and in force immediately before the appointed day shall, in so far as it is not inconsistent with the provisions of this Act continue to be in force as if made, issued, imposed or granted in respect of the corresponding Panchayat area of a successor Panchayat under this Act until superseded or modified by any appointment,*

notification, notice, tax, fee, order, scheme, licence, permission, rule, bye-law, regulation or form made, issued, imposed, or granted under this Act."

8. In view of the saving clause indicated in Clause (i) of Section 284(1) of the 1994 Act, I am of the view that when a decision has already been taken by the Panchayat to impose property tax at a particular rate and service tax at a particular rate, which alone has been demanded, merely for the reason that tax had not been fixed in terms of Section 200(1) and 200(2) of the 1994 Act, does not preclude the Panchayat from recovering property tax and service tax from the 1st petitioner. No doubt, in terms of Section 200 of the 1994 Act, the Panchayat is also under obligation to refix the property tax as well as service tax, taking into consideration the various parameters provided under the statute. But, that does not mean that the petitioners can contend that until such fixation is made, they are not under any obligation to pay property tax or service tax, which has already been fixed under the earlier legislation.

Under such circumstances, I do not find any merit in the above writ petition and the same is dismissed. However, I make it clear that the liability of the 1st petitioner to pay the tax will depend upon the demand that might be made by the Panchayat after revoking the figures in terms of Ext.R1(b) Government Order dated 27/04/2015. The Panchayat shall also take appropriate decision to comply with the terms of sub Sections (1) and (2) of Section 200 of the 1994 Act, as early as possible.

(sd/-)

(A.M.SHAFFIQUE, JUDGE)

jsr

True Copy PA to Judge