

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SHAJI P. CHALY

FRIDAY, THE 30TH DAY OF OCTOBER 2015/8TH KARTHIKA, 1937

W.P.(C).No. 13888 of 2009 (E)

PETITIONER(S):

K.V. VIDYAN,
KOZHIPARAMBIL HOUSE,
P.O.PULLAZHY, THRISSUR-680 012.

BY ADV. SRI.SAIBY JOSE KIDANGOOR

RESPONDENT(S):

1. STATE OF KERALA,
REPRESENTED BY SECRETARY,
DEPARTMENT OF LOCAL ADMINISTRATION,
THIRUVANANTHAPURAM.
2. THE DIRECTOR,
LOCAL FUND AUDIT DEPARTMENT,
THIRUVANANTHAPURAM.
3. DEPUTY DIRECTOR,
MALAPPURAM LOCAL FUND AUDIT OFFICE,
MALAPPURAM.
4. NANNAMMUKKU GRAMA PANCHAYATH,
REPRESENTED BY ITS SECRETARY, NANNAMMUKKU.
5. THE TAHSILDAR,
(REVENUE RECOVERY), THRISSUR.

R1 TO R3 & R5 BY SENIOR GOVERNMENT PLEADER, SRI. R.PADMARAJ.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 30-10-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.T.O.

W.P.(C).No. 13888 of 2009 (E)

APPENDIX

PETITIONER'S EXHIBITS:

- EXHIBIT P1: TRUE COPY OF THE ORDER NO.LF.6068/SPL.CELL(SC5)/05 DATED 25.09.2006 ISSUED BY 2ND RESPONDENT TO THE PETITIONER.
- EXHIBIT P2: TRUE COPY OF THE CHARGE CERTIFICATE NO.LF.6068/SPL.CELL(SC5)/05 DATED 16.10.2008.
- EXHIBIT P3: TRUE COPY OF THE CHARGE CERTIFICATE NO.LF.6068/SPL.CELL(SC5)/05 DATED 16.10.2008.
- EXHIBIT P4: TRUE COPY OF THE REPRESENTATION PREFERRED BY THE PETITIONER TO THE 2ND RESPONDENT DATED 11.11.2008.
- EXHIBIT P5: TRUE COPY OF THE LETTER NO.A1-1292/08 DATED 01.12.2008.
- EXHIBIT P6: TRUE COPY OF THE JUDGMENT IN W.P.(C) NO.988/09 DATED 14.01.2009.
- EXHIBIT P7: TRUE COPY OF THE NOTICE NO.RR3-1039/09 DATED 28.03.2009.

RESPONDENTS' EXHIBITS: NIL

//TRUE COPY//

P.S. TO JUDGE

St/-

SHAJI P. CHALY, J.

W.P.(C) No.13888 of 2009

Dated this the 30th day of October, 2015

JUDGMENT

This writ petition is filed by the petitioner seeking to quash Ext.P7 demand notice issued as per Sec.7 of Kerala Revenue Recovery Act, demanding an amount of Rs.1,77,239/- and for other related reliefs.

2. Brief facts for the disposal of the writ petition are as follows:

3. Petitioner is a retired Secretary from a Local Self Government Institution. A special audit was conducted by Local Fund Audit Department and based on such enquiry, a surcharge certificate for an amount of Rs.9,71,415/- was issued. The surcharge certificate so issued by the Local Fund Audit Department was for the year 1997-1998 to 2001-2002. As per the audit report, petitioner was fastened with a liability which was taken in appeal by the petitioner before the 2nd Respondent. 2nd Respondent, it is contended, without considering any of the contentions raised by the petitioner,

disposed of the same by Ext.P1 order dated 16.10.2008 and consequent to which a charge certificate was also issued, imposing the petitioner with a liability of Rs.1,14,240/-. Matters being so, petitioner challenged the actions of the Respondents before this Court and this Court by Ext.P6 judgment dated 14.01.2009 directed the 2nd Respondent to re-consider the matter in accordance with the objections raised by the petitioner and till such time a decision was taken, recovery proceedings were directed to be kept in abeyance.

4. Now the grievance raised by the petitioner in this writ petition is that, ignoring the direction of this Court in Ext.P6 judgment, Respondents have taken recovery proceedings under the Revenue Recovery Act. Learned counsel for the petitioner contended that the action pursuant to Ext.P7 is in absolute violation of the direction contained in Ext.P6 judgment, since the said action is taken even before taking a decision as directed by this Court.

5. 2nd Respondent has filed a statement contending that as per the direction of this Court, the petitioner was heard in detail on 13.07.2009 by the 2nd Respondent and the liability is fixed against him after scrutinizing the factual situations and

circumstances of the case.

6. Heard learned counsel for the petitioner, Sri. Saiby Jose Kidangoor and the learned Senior Government Pleader, Sri. R. Padmaraj.

7. Having concerned the rival submissions, I am of the view that, the subject matter of the issue raised in this writ petition is with regard to Ext.P7 demand notice issued by 5th Respondent in absolute violation of the direction contained in Ext.P6 judgment. Admittedly, Ext.P7 demand is dated 28.03.2009 and the 2nd Respondent has passed the order in compliance with the direction in Ext.P6 after hearing the petitioner only on 13.07.2009. This writ petition was filed on 21.05.2009, challenging Ext.P7. Taking into account the said fact scenario, it is very evident and clear that the Respondents have violated the directions of this Court issued in Ext.P6 judgment. In that view of the matter, Ext.P7 cannot be sustained under law. Therefore, I have no hesitation to set aside Ext.P7 demand notice issued by the 5th Respondent bearing No.RR3-1039/2009 dated 28.03.2009.

8. Taking into account the present factual situation, there will be a direction to the 2nd Respondent to re-consider

the entire issue raised by the petitioner in the application filed before the 2nd Respondent. To enable the 2nd Respondent to proceed afresh, the order passed by the 2nd Respondent on 13.07.2009 is hereby quashed. Consequently, there will be a direction to the 2nd Respondent to take a decision afresh and take necessary orders from the competent authority to proceed further in the matter. The entire proceedings shall be completed by the 2nd Respondent after affording reasonable opportunity to the petitioner to put forth his case within a period of two months from the date of receipt of a copy of this judgment.

Accordingly, this writ petition is allowed.

Sd/-
SHAJI P. CHALY
JUDGE

//true copy//

P.S. to Judge

St/-
30.10.2015