IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

WEDNESDAY, THE 21ST DAY OF JANUARY 2015/1ST MAGHA, 1936

WP(C).No. 20106 of 2009 (G)
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PETITIONER(S):

A.K.APPUKUTTAN, AGED 64 YEARS,
S/O.LATE MR.KRISHNAN, ALLOOKKARAN HOUSE,
MADAKKARA P.O., THRISSUR.

BY ADVS.SRI.JACOB ABRAHAM
SMT.KOCHUMOL KODUVATH

RESPONDENT(S):
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1. **KONTAZHY GRAMA PANCHAYATH,**
   REPRESENTED BY ITS SCRETARY, THRISSUR.

2. **THE DIRECTOR OF LOCAL FUND AUDIT,**
   THIRUVANANTHAPURAM - 695 033.

3. **DEPUTY TAHSILDAR (RR),**
   THRISSUR - 20.

R1 BY ADVS. SRI.SANTHEEP ANKARATH (SR)
SMT.P.JAYALAKSHMI
R2 BY SENIOR GOVERNMENT PLEADER SRI.SOJAN JAMES

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 21-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

msv/

WP(C).No. 20106 of 2009 (G)

APPENDIX

PETITIONER(S)' EXHIBITS:

EXT. P1: TRUE PHOTOSTAT COPY OF THE NOTICE DTD.27.5.2009 BEARING NUMBER RR3-1581/09 ISSUED BY THE THIRD RESPONDENT TO THE PETITIONER.

EXT.P2: TRUE PHOTOSTAT COPY OF THE CHARGE CERTIFICATE DTD.25.8.2005 AND BEARING NUMBER LF.10817/SPL.CELL (SC4)/03 ISSUED BY THE SECOND RESPONDENT TO THE PETITIONER.

EXT.P3: TRUE PHOTOSTAT COPY OF THE SURCHARGE CERTIFICATE DTD.28.8.2005 AND BEARING NUMBER LF.10817/SPL.CELL (SC4)/03 ISSUED BY THE SECOND RESPONDENT TO THE PETITIONER.

EXT.P4: TRUE PHOTOSTAT COPY OF THE CHARGE NOTICE DTD.1.11.2003 AND BEARING NUMBER LF.10817/SPL.CELL (SC4)/03 ISSUED BY THE SECOND RESPONDENT TO THE PETITIONER.

EXT.P5: TRUE PHOTOSTAT COPY OF THE SURCHARGE NOTICE DTD.1.11.2003 AND BEARING NUMBER LF.10817/SPL.CELL (SC4)/03 ISSUED BY THE SECOND RESPONDENT TO THE PETITIONER.

EXT.P6: TRUE PHOTOSTAT COPY OF THE PETITIONER'S OBJECTION DTD.15.1.2004 SUBMITTED TO THE 2ND RESPONDENT.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

C.K.ABDUL REHIM,J.

WP(C).NO. 20106 of 2009

Dated this the 21st day of January, 2015

JUDGMENT

The petitioner is the former Secretary of the 1st respondent Panchayat. He retired from service on 31.8.2000. While in service he was officiating as Secretary of the 1st respondent till 28.4.1999. In this writ petition the petitioner is challenging Exts.P2 and P3 charge certificate and surcharge certificate issued by the 2nd respondent in exercise of power vested under section 16 of the Kerala Local Fund Audit Act 1994, read with Rule 20(7) of the Kerala Local Fund Audit Rules 1996 (hereinafter referred to as the Act and Rule respectively.) The petitioner is also challenging the revenue recovery steps initiated against him pursuant to Ext.P1 series notices for realisation of amounts covered under Exts.P2 and P3 certificates.

2. The charge/surcharge proceedings were initiated based on the observations contained in the audit report, with respect to the audit conducted by authorities of the Local Fund Audit

Department in the 1st respondent Panchayat. The extract of the audit objection was appended along with Ext.P3 certificate. It is evident that, before passing Ext.P2 and P3 charge/surcharge certificates the 2nd respondent had issued notices as contemplated under sub Rule (2) of Rule 20 in Form No.IX to the petitioner, as evidenced from Exts.P4 and P5. In the said notices the petitioner was requested to remit the amount of charge/surcharge or to state why the amount should not be charged on him in exercise of power conferred under sub section (1) of section 16 of the Act. Pursuant to receipt of the said notices, the petitioner had submitted Ext.P6 explanations, dt. 15.1.2004, objecting the proposal to impose charge/surcharge. Exts.P2 and P3 certificates were issued stating that the objections submitted by the petitioner were found to be not acceptable. Based on Exts.P2 and P3 certificates the Secretary of the 1st respondent Panchayat made a requisition under the Revenue Recovery Act for realisation of a total amount of Rs.4,22,436/- from the petitioner. Based on the revenue recovery requisition the 3rd respondent had initiated steps and Ext.P1 series notices under section 7 and 34 of the Revenue Recovery Act were issued against the petitioner. It is challenging fixation of charge/surcharge through Exts.P2 and P3 certificates and aggrieved by the revenue recovery steps initiated for realisation of the amount, this writ petition is filed.

3. Petitioner is challenging the impugned proceedings on various grounds. First of all it is contended that the charge/ surcharge fixed against the petitioner through Exts.P2 and P3 certificates are not sustainable because the certificates were not issued within a period of 4 months from the date of receipt of Exts.P4 and P5 charge/surcharge notices served on the petitioner, as required under Rule 20(11) of the Rules. It is also contended that the charge/surcharge made against the petitioner is beyond the period of limitation prescribed under section 215(9) of the Kerala Panchayat Raj Act 1994. It is pointed out that the proviso to section (9) of section 215 stipulates that no surcharge under sub section (9) shall be made after a period of 4 years from the date on which the expenditure in question is incurred. Referring to the extract of the audit objection appended to Ext.P3 notice, learned counsel for the petitioner pointed out that the expenditure with respect to which the charge/surcharge is fixed pertains to a period of more than 4 years prior to the date of fixation of the charge/surcharge. It is

further contended that fixation of charge/surcharge against the petitioner is totally unsustainable because the audit objection had categorically specified that the loss was created by certain other persons and not because of any delay or laches on the part of the petitioner. Specific reference was made in this regard to paragraph 32(part) of the Audit objection in relation to Ext.P2 certificate and paragraphs 24,25,28 (part),29(1), 29(2) and 36 of the audit objection in relation to Ext. P3 certificate. Learned counsel for the petitioner had pointed out that, in the relevant paragraphs of the audit objectionss except in few cases, it is categorically mentioned that the loss was sustained because of acts done by other persons and it had categorically reiterated that those persons alone are responsible. That being the position, notices issued against the petitioner and the charge/surcharge fixed against him without considering the objections under Ext.P6 is totally illegal and unsustainable is the contention.

4. Learned Government Pleader appearing on behalf of respondents 2 and 3 as well as Standing Counsel appearing for the 1^{st} respondent had raised a preliminary objection that the challenge raised against the charge/surcharge certificates

impugned in this writ petition cannot be entertained. It is stated that the petitioner had failed to invoke the effective alternate remedy of appeal provided under the relevant statutes. It is pointed out that under section 16(3) of the Act there is a remedy provided with respect to fixation of charge or surcharge to approach the District Court to set aside such orders, within a period of one month. It is also pointed out that under section 215(11) of the Kerala Panchayuart Raj Act and Rules it is provided that any person aggrieved by the charge or surcharge can make application to set aside the same within 14 days after the date of service of such decision. The petitioner having failed to avail the alternate remedy as provided under the above said statute, cannot challenge imposition of charge/surcharge in this writ petition, is the contention.

5. It is true that an effective and alternate statutory remedy is available to the petitioner to challenge Exts.P2 and P3 certificates. But availability of such a remedy is not an absolute bar for this court to entertain this writ petition, invoking the discretionary/extra ordinary jurisdiction vested under article 226 . If the petitioner is able to prove that the impugned proceedings are issued in a totally illegal manner and that the impugned

proceedings are violative of the relevant statutory provisions, definitely this court is justified in examining such contention and in taking a decision, despite availability of alternate statutory remedy. In the case at hand the specific contention is that the audit objection had categorically fixed the liability on other persons and there is no mention to the effect that the petitioner is responsible for causing loss in many of the items contained in the extract of the audit objection. Despite such findings in the audit objection, the charge/surcharge was initiated against the petitioner and notice under section 20 was issued. It is further pointed out that the petitioner had submitted detailed explanation as to why he is not liable for payment of the amount of surcharge noticed to him. But the 2nd respondent had failed in adverting to such explanations and in considering the objections raised against imposition of the charge/surcharge. It is pertinent to note that in Exts.P2 and P3 certificates the 2nd respondent had admitted about receipt of Ext. P6 explanation. But in a cryptic manner it is mentioned that, the explanation submitted were considered in detail and found to be not acceptable. Sub section (2) of section 16 provides that the auditor shall state, in writing the reasons for his decision in respect of every disallowance, surcharge or charge and shall communicate the same by registered post to the person against whom it is made together with an extract of the relevant objection in the audit report. The proceedings for issuance of charge/surcharge certificates as contemplated under Rule 20(2) prescribe that the Director shall on receipt of the proposals from the auditor shall issue charge/surcharge notices to the officer held responsible for the losses detected by the auditors. Sub Rule (3) provides that the charge/surcharge notices shall be in Form IX and IX(A) appended to these rules. Further sub Rule (4) provides that such notices along with extracts of the relevant objections of the audit report should be communicated to the person against whom it is made by registered post with acknowledgment due. Evidently Exts. P4 and P5 are notices issued in compliance of the sub Rule (2) to (4) of Rule 20. Sub Rule (7) of Rule 20 provides that unless the person served with a charge/surcharge notice remit to the executive authority concerned the amount involved in the notice and furnish the details thereon to the Director within two months from the date of receipt of the notice, or furnish satisfactory explanations, such person shall be served with charge/surcharge certificate in For X and X(A) appended to the Rules. Therefore it is evident that on receipt of notices the person against whom such notices were issued has to furnish satisfactory explanation. In the case at hand on receipt of Exts.P4 and P5 notices the petitioner had submitted Ext.P6 explanations. The receipt of Ext.P6 explanation is admitted in Exts.P2 and P3 certificates. But the 2nd respondent has not considered any of the objections raised in the said explanations. Evidently the petitioner had pointed out that the responsibility is fixed on somebodyelse and that he cannot be charged/surcharged. The 2nd respondent ought to have considered such objections and had taken an appropriate decision adverting to the merits of such contention. On the contrary it is evident that the 2nd respondent had issued the certificates in a mechanical manner without application of mind. The above factor will definitely vitiate the impugned certificates of charge/surcharge. Hence, despite availability of statutory remedy of appeal, this court is of the considered opinion that there is total erroneous exercise of power vested on the 2nd respondent in an illegal and unsustainable manner .

6. Hence this court is inclined to set aside the charge/surcharge certificates issued under Exts.P2 and P3 and to

direct the 2nd respondent to pass fresh orders after considering Ext.P6 objections.

7. Learned counsel for the petitioner had raised further contention that the amounts requisitioned by the 1st respondent Panchayat and the consequential steps of recovery initiated for realisation of such amount is not true and correct. It is pointed out that the amount mentioned in the revenue recovery proceedings is excessive than the amount due under Exts.P2 and P3 certificates. Since this court is inclined to quash Exts.P2 and P3 certificates the above dispute need not be considered in this writ petition .

8. Under the above mentioned circumstances the writ petition is allowed and Exts.P2 and P3 charge/surcharge certificates are hereby quashed. The 2nd respondent is directed to consider the matter afresh in the light of Ext.P6 objections and to take a decision after affording opportunity of personal hearing to the petitioner. It is made clear that it will be open to the petitioner to take all contentions before the 2nd respondent including the plea of limitation . The 2nd respondent shall take a fresh decision with respect to issuance of charge/surcharge certificate taking into consideration of all such objections.

Needful steps in this regard shall be completed by the 2nd respondent at the earliest possible, at any rate within a period of two months from the date of receipt of a copy of this judgment.

9. Based on the fact that Exts.P2 and P3 are quashed in this writ petition, the revenue recovery steps initiated pursuant to Ext.P1 series notices are not sustainable. It will be left open to the 1st respondent to initiate fresh steps for recovery if any charge/surcharge is refixed against the petitioner, based on the directions contained hereinabove.

C.K.ABDUL REHIM, JUDGE

Pmn/