

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

THURSDAY, THE 25TH DAY OF JUNE 2015/4TH ASHADHA, 1937

WP(C).No. 28495 of 2014 (J)

PETITIONER :

**TOMY GEORGE, AGED 53,
S/O.LATE GEORGE THOMAS, KAITHACKAL HOUSE, PINDIMANA
KOTHAMANGALAM, ERNAKULAM DISTRICT.**

**BY ADVS.SRI.V.PHILIP MATHEW
SRI.GIBI C.GEORGE**

RESPONDENT(S) :

- 1. STATE OF KERALA
REPRESENTED BY ITS SECRETARY, DEPARTMENT OF REVENUE
KERALA GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM-695001.**
- 2. DISTRICT COLLECTOR,
CIVIL STATION, KAKKANAD, ERNAKULAM-682030.**
- 3. THE DEPUTY TAHSILDAR (REVENUE RECOVERY),
KOTHAMANGALAM, ERNAKULAM DISTRICT-686 666.**
- 4. PINDIMANA GRAMA PANCHAYAT,
PINDIMANA P.O., ERNAKULAM DISTRICT-686692
REPRESENTED BY ITS SECRETARY.**
- 5. THE SECRETARY,
PINDIMANA GRAMA PANCHAYAT, PINDIMANA P.O.
ERNAKULAM DISTRICT-686692.**

**R1 TO R3 BY GOVT. PLEADER SMT. M.T. SHEEBA
R4 & R5 BY ADVS. SRI.ALEXANDER JOSEPH
SRI.T.P.JOSEPH**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 25-06-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

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APPENDIX

PETITIONERS' EXHIBITS :

- EXT. P1: COPY OF THE MINUTES OF THE MEETING OF THE BENEFICIARY COMMITTEE HELD ON 14.3.1999.
- EXT. P2: COPY OF AGREEMENT NO.31/98-99 DATED 17.3.1999.
- EXT. P3: COPY OF SUPPLEMENTAL AGREEMENT DATED 18.3.1999 IN RESPECT OF GRANTING MOBILIZATION ADVANCE.
- EXT. P4: COPY OF THE DEMAND NOTICE DATED 23.07.2008 ISSUED BY THE 5TH RESPONDENT.
- EXT. P5: COPY OF AUDIT REPORT FOR THE YEARS 1999-2000 AND 2000-2001.
- EXT. P6: COPY OF FORM 10 DEMAND NOTICE DATED 04.03.2011 ISSUED BY THE 3RD RESPONENT TO THE PETITIONER.
- EXT. P7: COPY OF FORM 1 DEMAND NOTICE DATED 04.03.2011 ISSUED BY THE 3RD RESPONENT TO THE PETITIONER.
- EXT. P8: COPY OF REPLY LETTER DATED 21.03.2011 SUBMITTED BY THE PETITIONER BEFORE THE 3RD RESPONENT.
- EXT. P9: COPY OF THE JUDGMENT DATED 5.11.2013 PASSED BY THIS HON'BLE COURT IN WPC NO.9509/2011.
- EXT. P10: COPY OF THE ORDER DATED 31.03.2014 PASSED BY THE 5TH RESPONDENT.
- EXT. P11: COPY OF FORM 1 DEMAND NOTICE DATED 23.09.2014 ISSUED BY THE 3RD RESPONENT TO THE PETITIONER.
- EXT. P12: COPY OF FORM 10 DEMAND NOTICE DATED 23.09.2014 ISSUED BY THE 3RD RESPONENT TO THE PETITIONER.

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.S. TO JUDGE

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A.MUHAMED MUSTAQUE, J.

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**W.P.(C).No.28495/2014**  
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Dated this the 25th Day of June, 2015

J U D G M E N T

The petitioner was appointed as the Convener to implement a drinking water project floated by the Panchayat. The work has been completed. The total cost of the project was Rs.1.40 lakhs which was sanctioned and paid by the Panchayat to the Beneficiary Committee. The petitioner submits that the project was completed in the year 1999 to the satisfaction of the Panchayat. Thereafter, the Local Fund Audit found certain irregularities. It noted that the amount was expended in excess of the requirement. It also observed that it should be recovered from the persons who were responsible for the same. It is based on that audit report that the revenue recovery proceedings have been initiated.

2. The earlier demand was challenged by the petitioner before this Court in W.P.(C).No.9509/2011. Therein, this Court directed the Panchayat to give an opportunity to the petitioner to raise an objection based on the audit objection. Thereafter, the Panchayat passed Ext.P10 order. Ext.P10 order states that the petitioner is liable to pay the amount

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based on the audit. It is not discernible from the impugned order, how the petitioner is liable for the excess amount spent. The Panchayat has only calculated the amount and directed the petitioner to remit the balance. The liability under law would arise only when there is a cause against the person to whom liability is attached. In this case, even the Panchayat has not cared to defend their action. If at all any loss is caused to the Panchayat, the Panchayat can initiate action against the petitioner pointing out laches on the part of the petitioner or reasons for which the action is initiated. In this case, an action has been initiated after lapse of many years to recover the amount. If the petitioner has violated any terms of the agreement, necessarily, that must reflect in Ext.P10 order. Nothing is seen from Ext.P10 order as to how this amount has been arrived at. The reliance placed on the audit objection cannot be a reason to fasten a liability on the petitioner unless he is found to be responsible for any excess amount expended. In such circumstances, Ext.P10 is quashed. Consequently, all recovery proceedings are also quashed.

The writ petition is disposed of as above. No costs.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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