



2025:KER:58854

WA NO. 1584 OF 2024

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IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE AMIT RAWAL
&
THE HONOURABLE MR. JUSTICE P. V. BALAKRISHNAN
WEDNESDAY, THE 16TH DAY OF JULY 2025 / 25TH ASHADHA, 1947

WA NO. 1584 OF 2024

AGAINST THE JUDGMENT DATED 07.03.2024 IN WP(C) NO.34265 OF 2014 OF
HIGH COURT OF KERALA

APPELLANT(S)/ADDL. RESPONDENTS 3 TO 6:

- 1 ADDL.R3. SMT. MARIAMMA JOSEPH (WIFE),
THAZHETHUNDIL HOUSE, THODAPARAMBU, KOOVAPPADI P.O, PIN -
683 544.
- 2 ADDL.R4. RENJITH JOSEPH (SON),
THAZHETHUNDIL HOUSE, THODAPARAMBU, KOOVAPPADI P.O, PIN-683
544.
- 3 ADDL.R5.RENJINI SARA JOSEPH (DAUGHTER),
THAZHETHUNDIL HOUSE, THODAPARAMBU, KOOVAPPADI P.O, PIN-683
544.
- 4 ADDL.R6.RAJESH GEORGE JOSEPH (SON),
THAZHETHUNDIL HOUSE, THODAPARAMBU, KOOVAPPADI P.O, PIN-683
544 (THE LEGAL HEIRS OF DECEASED 1ST RESPONDENT ARE
IMPLEADED AS ADDITIONAL RESPONDENTS 3 TO 6 IN THE WRIT
PETITION VIDE ORDER DATED 01.03.2024 IN IA NO.1/2022)

BY ADV SHRI.RAJESH.R

RESPONDENT/S:

- 1 THE DIRECTOR OF LOCAL FUND AUDIT
AGED 55 YEARS
DIRECTOR OF LOCAL FUND AUDIT OFFICE, THIRUVANANTHAPURAM -
695033.
- 2 KOOVAPADI BLOCK PANCHAYATH
KOOVAPADY REPRESENTED BY THE SECRETARY, PIN- 686544.

BY ADV SHRI.N.K.KARNIS

THIS WRIT APPEAL HAVING BEEN HEARD ON 16.07.2025, THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING:



JUDGMENT

Amit Rawal, J.

Present intra court appeal is directed against the judgment of the Single Bench allowing the writ petition preferred against the judgment of the District Court dated 30.11.2013 in O.P(L.F)No.109 of 2012, on behalf of the appellant, who was respondent in the writ petition, against the initiation of the surcharge proceedings under Section 16 of the Kerala Local Fund Audit Act, 1994,whereby certain liability amounting to Rs.1,40,749/- was fastened upon the appellant-respondent in the writ petition.

2. Section 16 of the Kerala Local Fund Audit Act is para materia to Section 68 of the Kerala Co-operative Societies Act, which empowers the auditor to surcharge illegal payments and loss caused by negligence or misconduct. Section 68 of the Act provides for a remedy to the aggrieved party to approach the District Court within a period of one month for setting aside of such surcharge or other liabilities referred to in sub Section 3 of Section 68.

3. In the instant case, the surcharge certificate was



issued by the Director of Local Fund Audit on 21.12.2011. Accordingly, the appellant, since deceased represented by Legal Representatives, preferred an appeal before the District Court, Ernakulam vide O.P (LF) No.109 of 2012.

4. Learned District Court, vide judgment dated 30.11.2013, held that the surcharge proceedings were beyond the period of limitation as per Section 215(9) of the Kerala Panchayat Raj Act. It is pertinent to mention here that the appellant-respondent was the Panchayath Secretary. Section 22 of the Kerala Local Fund Audit Act, 1994 provides an overriding effect on other laws in the case of the audit of accounts. For the sake of brevity, Section 16 and 22 of the 1994 Act are extracted herein below:

22. Act to override other enactment.

- If any provision contained in any other law for the time being in force relating to the audit of accounts of a local authority or a local fund included in the Schedule is repugnant to the provisions of this Act, the latter shall prevail and the former be void to the extent of such repugnancy.

Section 16(1) in The Kerala Local Fund Audit Act, 1994

(1)The auditor may disallow any item which appears to him to be contrary to law and surcharge the same against the person making or person or body of persons



authorising the making of the illegal payment and may charge against any person responsible therefore, the amount of any deficiency or loss caused by the negligence or misconduct of that person or any sum received which ought to have been, but has not been brought into account by that person and shall, in every such case, certify the amount due from such person.

(2) The auditor shall state in writing the reasons for every disallowance, surcharge or charge, and communicate the same by registered post to the person concerned, along with an extract of the relevant audit objection.

(3) Any person aggrieved by a disallowance, surcharge or charge may, within one month of receiving the auditor's decision, apply to the District Court. The court may confirm, modify or remit the decision.

(4) All sums certified due must be paid within one month of intimation—unless an appeal is filed under subsection (3). Any unpaid amount, or the sum declared due by the court, is recoverable under the Kerala Revenue Recovery Act, 1968, as if it were an arrear of public revenue due on land.

5. Section 215 of the Kerala Panchayat Raj Act also provides for an extensive remedy paramateria to certain provisions of the Local Fund Audit Act, 1994. The remedy to approach the District Court against the order of the Director of Audit Fund is common in Acts. However, another remedy is provided under Section 215(13) of the Kerala Panchayat Raj Act, 1994, allowing the aggrieved party to prefer an



appeal against the judgment and decree of the District Court to the High Court, which has to be given a nomenclature of MFA as per the High Court Rules and Regulations.

6. The aggrieved party, against the judgment and decree of the District Court, instead of availing the remedy of appeal as provided under Section 215(13) of the Kerala Panchayat Raj Act, 1994, invoked the extra ordinary writ jurisdiction of this Court under Article 226 / 227 of the Constitution of India by seeking the following prayers:

i) To call for the records leading to Exhibit Pt and set aside the same by the issuance of a writ of certiorari or any other appropriate writ or order or direction.

ii) To declare that the bar of 4 years stipulated under proviso to sub Section (9) of Section 215 of the Kerala Panchayath Raj Act, 1994 or any provision of law in respect of the Acts mentioned in the schedule of Act 14/1994 will not operate against the provisions of the Kerala Local Audit Act, 1994, in view of Section 22, as it is a special law.

7. Learned Single Bench of this Court, vide judgment under challenge dated 7.3.2024, allowed the writ petition by relying upon the judgment of the Division Bench of this Court in ***State of Kerala and another vs. P.D Raveendran and***



another (2020 (4) KHC 201), noticing the fact that almost 11 years have been lapsed in pendency of the writ petition and therefore, it would be a farcical exercise for the court to relegate the affected parties to avail the remedy of appeal. It is in this background, intra court appeal has been preferred.

8. Mr.Santhosh Mathew, learned Senior counsel assisted by Mr.Adeen Nazar was appointed as an Amicus Curie, as per the order of this Court, to assist this Court with regard to the maintainability of the intra court appeal, specifically whether the remedy availed by the State against the judgment of the District Court is to be treated as an exercise of the power provided under Article 227 of the Constitution of India or not.

9. By looking at the prayers (*supra*), it is evident that the prayer of certiorari was sought for quashing the judgment of the District Court dated 30.11.2013. Thus in our considered view, it was not purely a relief sought under Article 227 but, under Article 226. Therefore, any judgment passed while exercising the power under Article 226, as per Section 5 of the High court Rule, is appealable as an intra



court appeal.

10. Mr.Santhosh Mathew, Amicus Curiae, with his ability, eloquence and knowledge, has taken us to various provisions of the Kerala Local Fund Audit Act, 1994, Kerala Panchayat Raj Act, 1994, as well as Article 243(j) of the Constitution of India, much less to various judgments particularly, the judgment of the Single Bench in **Moni Achari C.V v. Director** (2012 (1) KHC 207), which was approved by the Division Bench of this court in **The Director of the Local Funds Audit v. V.C.Joseph** (W.A 461 of 2012).

11. The Single Bench, in Moni Achari case, noticed that the provisions of Section 215 of the Kerala Panchayat Raj Act, 1994, have a synonymity/akin to the provisions of Section 16 of the Kerala Local Fund Audit Act, 1994, except that the Local Fund Audit Act do not envisage any provisions of appeal against the judgment and decree of the District Court but, the same has been provided under sub Section 13 of Section 215 of the Kerala Panchayat Raj Act. For the sake of brevity, Section 215 of the Kerala Panchayat Raj Act, 1994 is extracted herein below:



215. Accounts and audit.

(1)The Panchayat shall maintain such books of accounts and other books in relation to its accounts and prepare an annual statement of accounts in such form as may be prescribed.

(2)Accounts of receipts and expenditure of every Panchayat shall be maintained for every financial year in such form as may be prescribed

(3)the Examiner of Local Fund Accounts and his nominees shall be the auditors of the Panchayat.

(4)The auditors shall conduct a continuous audit of the accounts of the Panchayat and shall after completing the audit for a year or for any shorter period or for any transaction or series of transactions, send a report to the Panchayat concerned and duplicate copies thereof to the officer authorised by the Government in this behalf.

(5)The auditors shall specify in the report under sub-section (4), all cases of irregular, illegal or improper expenditure or of failure to recover moneys or other property due to the Panchayat, or any loss or waste of money or other property thereof caused by neglect or misconduct of the officer and authorities of the Panchayat.

(6)The auditors shall also report on any other matter relating to the accounts of the Panchayats as may be required by the Government, to the officer authorised by the Government in this behalf.

(7)The Panchayat shall forthwith remedy any defect or irregularity pointed out by the auditors and report the action taken to the officer authorised by the Government in this behalf.



(8)The auditors shall in the performance of their functions under this Act have all the powers of the civil court under the Code of Civil Procedure, 1908 (Central Act 5 of 1908) while trying a suit in respect of the following matters, namely: - (a)summoning and enforcing the attendance of any persona and examining him on oath; (b)requiring the discovery and production of any document;(c)receiving evidence on affidavits; (d)requisitioning any public record or copy thereof, from any court of office; and(e)such other matters as may be prescribed.

(9)The auditors shall, after giving a reasonable opportunity to the person concerned to explain his case, disallow every item of expenditure incurred contrary to law and surcharge the same on the person incurring, or authorising the incurring of, such expenditure and may charge against any person responsible therefore the amount of any deficiency, loss or unprofitable outlay occasioned by the negligence or misconduct of that person or of any sum which ought to have been but is not brought into account by that person and shall, in every such case certify the amount due from such person :Provident that no surcharge under this subsection shall be made after a period of four years from the date on which the expenditure in question was incurred.Explanation. - It shall not be open to any person whose negligence or misconduct has caused or contributed to any such deficiency or loss, to contend that notwithstanding his negligence or misconduct the deficiency or loss would not have occurred, but for the negligence or misconduct of some other person.

(10)The auditors shall state in writing, the



reasons for their decision in respect of every disallowance, surcharge or charge and a copy of such decision shall be served on the person against whom it is made in the manner laid down for the service of summons in the Code of Civil Procedure, 1908 (Central Act 5 of 1908).

(11)Any person aggrieved by any disallowance, surcharge or charge may, within fourteen days after the date of service on him of the decision of the auditor, make an application to the district court to set aside such disallowance, surcharge or charge and the court, after taking such evidence as is necessary may confirm, modify or remit such disallowance, surcharge or charge with such orders as to costs as it may think proper in the circumstances.

(12)Where an application is made to the court under sub-section (11) the auditors shall be the sole respondents thereto and the applicant shall not make either the Government or any other person a party to the proceedings.

(13)From the decision of the district court under sub-section (11) an appeal shall lie to the High Court.

(14)Every sum certified by the auditors to be due from a person under this Act shall be paid by such person to the Secretary of the Panchayat concerned within thirty days after the date of service on him of the decision of the auditors unless within that time such person has made an application to the court against the decision; and such sum, if not so paid, or such sum as the court declares to be due shall be recoverable as if it were an arrear of land revenue.

(15)An abstract of every annual report of a



panchayat as certified by the auditor showing its income under each head of receipt, the charges for the establishment, works undertaken, the sum expended on each work the balance, if any, remaining unexpended together with the audit report thereon shall be submitted to the officer authorised by the government in this behalf not later than fifteenth day of the second month of the next financial year.

(16)On receipt of the report referred to in sub-section (15), the Officer shall forthwith consolidate the report and submit it to the Government.

(17)The government shall -(a)cause the accounts of the Panchayat together with the audit report thereon received by it under sub-section (16) to be laid before the Legislative Assembly;and(b)cause the accounts of the Panchayat to be published in such manner as may be prescribed.

12. On plain and simple reading of the provisions of sub Section 13 of Section 215 of the Kerala Panchayat Raj Act r/w Section 22 of the Kerala Local Fund Audit Act, provide an over riding effect and there is no ambiguity in non applicability of the provisions of Section 215(13) of the Kerala Panchayat Raj Act, as, Section 22 of the Kerala Local Fund Audit Act only deals with the audit of accounts whereas Section 215(13) envisages a remedy of appeal against the



judgment of the District Court. This is precisely what has been laid down by the Single Bench of this court in Moni Achari's case, cited as (2012 (1) KHC 207). For the sake of repetition, the aforementioned judgment of the Single Bench in Moni Achari was assailed before the Division Bench of this Court and the Division Bench, while upholding the judgment in Moni Achari, had given liberty to the affected parties to withdraw the writ petition to file an appeal, permitting to exclude the period spent in pursuing the wrong remedy ie., writ, for, filing MFA as per the provisions of High Court Act Rules and Regulations.

13. The reason for relegating the affected parties to avail the remedy of appeal is to prevent miscarriage of justice to either of the parties. In the instant case, the District Court, in the judgment dated 30.11.2013, though had passed a decree in favor of the appellant-respondent in the writ petition, but, had given certain adverse findings against the appellant and the appellant has been prevented from assailing the same in the absence of any decree against him. In case, the State is relegated to avail the remedy of appeal,



the affected party, though against certain findings in the judgment, can always prefer a cross objection as envisaged under Order 41 Rule 22 of the Code of the Civil Procedure. The law with regard to the entertainment of cross objection is no longer res integra, after causing amendment in the Code of the Civil Procedure in the year 1977 and in this regard, relied upon the judgment of the Supreme Court in *Bhargavi Constructions and Anr v. Kothakapu Muthyam Reddy and others (2018(3) SCC 480)*.

14. The instant case is of an identical nature where the appellant is prevented from assailing the adverse findings, in the absence of any decree against him. In this view of the matter, we set aside the judgment of the Single Bench and permit the petitioner in the writ petition to avail the remedy of appeal by ordering that the period spent in the writ petition against the judgment of the District Court dated 30.11.2013, will be excluded. We cannot remain oblivious of the fact that sub Section 13 of Section 215 of the Act do not prescribe any limitation for preference of an appeal against the judgment and decree of the District Court. In such



circumstances, the provisions of Article 137 of the Limitation Act would apply. The affected party ie., the Local Audit Fund, would have a remedy to take the benefit of such provisions, in case of any necessity by preferring an appeal. We record an appreciation to Sri.Santhosh Mathew, Amicus curiae, with regard to the assistance of provided to us in dealing with the controversy as indicated above.

Writ Appeal stands allowed.

Sd/-
AMIT RAWAL
JUDGE

Sd/-
P. V. BALAKRISHNAN
JUDGE

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