

(2025) 07 KL CK 1187

In the High Court Of Kerala

Case No : Writ Appeal Nos.1090, 1102, 1120, 1123, 1129, 1148, 1150, 1161, 1176, 1177, 1183, 1313, 1319, 1320, 1360, 1363, 1364 & 1373 Of 2024

Perinthalmanna Municipality, Represented By Its Secretary

APPELLANT

Vs

Abdul Kareem

RESPONDENT

Date of Decision : 09-07-2025

Acts Referred:

Constitution of India, 1950 — Article 243X, 265
Kerala Municipality Act, 1994 — Section 233, 233(2), 539
Kerala Municipality (Property Tax, Service Cess and Surcharge) Rules, 2011 — Rule 4, 4(2), 4(4), 10, 10(2), 16(4)

Citation : (2025) 07 KL CK 1187

Hon'ble Judges : Dr. A.K.Jayasankaran Nambiar, J;P.M.Manoj, J

Bench : Division Bench

Advocate : P.C.Sasidharan, Peeyus A. Kottam

Final Decision : Dismissed

Judgement

Dr. A.K. Jayasankaran Nambiar, J

1. The Perinthalmanna Municipality is the appellant before us in all these writ appeals that impugn a common judgment dated 01.03.2024 of a learned Single Judge in writ petitions preferred by persons aggrieved by the demand notices for arrears of property tax served on them by the Municipality.

2. The brief facts necessary for disposal of these writ appeals are as follows:

The challenge in the writ petitions against the demand for arrears of property tax by the appellant Municipality was essentially twofold, namely, (i) that the demand notices were issued without assessing the basic property tax and annual property tax as per the mandatory procedure prescribed under Section 233 of the Kerala Municipality Act read with the Kerala Municipality (Property Tax, Service Cess and Surcharge) Rules, 2011 [hereinafter referred to as the "2011 Rules"] and in particular, Rules 4 and 10 of the 2011 Rules; and (ii) that the

demand notices were barred by limitation in view of the provisions of Section 539 of the Kerala Municipality Act.

3. The learned Single Judge, who considered the writ petitions, found as follows at paragraphs 16 to 20 of the impugned judgment:

"16. A reading of the Rules 2011 would show that, it is a complete code as far as the property tax assessment is concerned. The main point raised in these writ petitions is that the procedure prescribed in the Rules 2011 is not followed before issuing the demand notices. Most of the cases are filed against the assessment made by Perinthalmanna Municipality. Therefore, I will consider the counter and statement filed in W.P.(C). No.24090/2018 by the Perinthalmanna Municipality. In the counter affidavit filed by the Municipality, it is stated that, the demand notices are issued, strictly following the Rules 2011. It is submitted that for the purpose of levying the property tax, the Government of Kerala issued Ext.R1(a) notification fixing the maximum limit of rates of basic property tax applicable to one square metre plinth area of those categories mentioned in Section 233(2) of Act 1994. Ext.R1(a) is the Malayalam translation of the Rules 2011. It is stated in the counter affidavit filed by the respondent in W.P.(C).No.24090/2018 that in terms of the statutory provisions, the Municipality is to fix the rate of basic tax applicable to the area of Municipality and notification classifying the area into different zones.

17. Ext.R1(b) deals about the guideline for collecting the property tax. Even though, it is stated in paragraph 6 of the counter that the Municipality has issued the notification in terms of Rule 10, the same is not seen produced in the counter. On the other hand, the petitioners seriously dispute the publication of such a notification as per Rule 10. Ext.R1(b) is not a notification issued under Rule 10 of the Rules 2011. It is true that in paragraph 8 of the counter, it is stated that, the contention of the petitioners that Rule 10 has not been followed by the Municipality is incorrect. But, that notification is not produced. This Court directed the Municipality to produce the notification, if any, issued under the relevant provisions of the Rules 2011.

18. Accordingly, a statement was filed by the counsel on 20.02.2024. Two notifications are produced along with the statement as Exts.R1(d) and R1(e). Ext.R1(d) is admittedly a notification issued under Rule 4(2) of the Rules 2011. Ext.R1(e) is the notification specifying the final rates of basic property tax fixed by the Municipality, the dates of its commencement and the period during which it will be in force. It is not clear in the counter affidavit or in the statement that whether the notification under Rule 4(2) is published in the notice board of the office of the Municipality or any newspapers having wide circulation in the area of Municipality. Similarly, it is not clear whether Ext.R1(e) is published in two newspapers having circulation in the area of Municipality as per Rule 4(4) of Rule 2011. Therefore, there is no evidence before this Court to conclude that Rules 4(2) and 4(4) are complied in letter and spirit based on Ext.R1(d) and R1(e).

19. After the notification under Rules 4(2) and 4(4) of the Rules 2011, as per Rule 10, a publication of public notice as to assessment of property tax is necessary. It is the duty of the Secretary to publish a public notice containing the details helpful to the owners of building to assess the basic property tax and annual property tax of the building by themselves. In public notice published under Rule 10(1), the Secretary shall demand all owners of the building to submit a tax return containing all particulars as to the building before the Secretary or the Officer authorised by the Secretary within 30 days of the publication of notice. It is also the bounden duty of the Secretary to give necessary publicity to the public notice and in summary shall be published at least in two newspapers having circulation in the area of Municipality. The public notice published by the Secretary shall be in Form-1 appended to these Rules. Even though in the counter filed in W.P.(C). No.24090/2018, it is vaguely stated that Rule 10 is complied, notice in Form-1 is not seen produced. Therefore I am of the considered opinion that Perinthalmanna Municipality has not followed the procedure prescribed in the Rules 2011 and hence the Municipality has to be directed to redo the formalities as per the Rules 2011 and thereafter assess the tax in accordance with law. The petitioners who are challenging the assessment of Perinthalmanna Municipality can raise their contentions at the appropriate stage in accordance with law.

20. In W.P.(C).No.3190/2019, the assessment of building tax of Malappuram Municipality is challenged. In the counter filed by Malappuram Municipality in W.P. (C). No.3190/2019, Ext.R1(a) is produced. Ext.R1(a) is only a notification under Rule 4(2) of the Rules 2011. Then Ext.R1(c) is produced and that also is the final notification under Rule 4(4) of the Rules 2011. It is stated in the affidavit that subsequently to assess the tax by the assessors themselves, Form-2 was made available and notice was published informing the said fact on 04.12.2013. But there is no case to Malappuram Municipality that there is any publication as mandated in Rule 10(2) demanding all owners of the building to submit a tax return containing all particulars as to the building before the Secretary or the officer authorized by the Secretary in Form-1. Similar is the situation as far as Alapuzha Municipality is concerned."

The writ petitions were thereafter disposed with the following directions:

- "1. The impugned demand notices in these writ petitions are quashed.
2. The respondent Municipalities shall comply the mandatory provisions in the Kerala Municipality (Property Tax, Service Cess and Surcharge) Rules, 2011, which is discussed in detail in this judgment, within an outer limit of six months from the date of receipt of a copy of this judgment.
3. On completion of the assessment, the Municipalities can issue assessment notice or the demand for any differential tax, if any, from the petitioners, in accordance with law.
4. We have heard Sri.P.C. Sasidharan, the learned Standing Counsel for the

appellant Municipality as also Sri.Peeyus A. Kottam, the learned counsel for the respondents in all these writ appeals.

5. The arguments of Sri.P.C. Sasidharan, the learned Standing Counsel for the appellant Municipality are essentially against the finding of the learned Single Judge that there was no compliance with the mandatory provisions under the 2011 Rules. He points out that in the light of the documents produced before the learned Single Judge, that clearly showed compliance with the procedure contemplated under Rule 4(2) of the 2011 Rules, the appellant Municipality had to be seen as having substantially complied with the requirements under Section 233 of the Kerala Municipality Act and Rules. It is his further contention that, at any rate, Rule 16(4) of the 2011 Rules provides for an alternate remedy by way of appeal to the Municipal Council, against any assessment made contrary to the criteria specified under the Act and Rules, and hence, the writ petitions were not maintainable in the first instance. It is also his contention that, since what the writ petitioners were denied through the non-compliance with the procedure under Rule 10, was only the opportunity to file a voluntary return of property tax, affording them a fresh opportunity now would have sufficed to regularize the irregularity in issuing the demand notices for the arrears of property tax; that there was therefore no necessity to set aside the assessments and demand notices and the direction to the appellant to re-do the assessments afresh after complying with the procedure contemplated under the 2011 Rules. He points out in this connection that the petitioners had not specifically challenged the assessment orders in their writ petitions.

6. Per contra, it is the submission of Sri.Peeyus A. Kottam, the learned counsel appearing for the respondents/writ petitioners, that the findings of the learned Single Judge require no modification. It is his contention that, in as much as there was no compliance with the statutory procedure prescribed for bringing into effect the levy of property tax itself, the assessment orders passed, and the demand notices served on them, were non est and void.

7. We have carefully considered the rival submissions and gone through the pleadings on record and the statutory provisions and precedents relied upon by the learned counsel.

8. Before we embark upon an analysis of the submissions made on either side, we might observe that the idea of a tax being a compulsory exaction of money by the State from a citizen is one that has instilled a sense of disgruntlement in the citizenry whenever they are called upon to pay a tax. This resentment was best captured in the words of Benjamin Franklin who famously, and with more than a tinge of exasperation, observed that "there are only two certainties in life – death and taxes". However, there has been a paradigm shift in the perception of a levy and collection of tax over the years, and in modern times it has become firmly established that taxes are "necessary evils" in the sense that they are required to be paid and collected for the effective discharge of those governmental functions that are designed to advance the welfare of the people.

We believe, this changed perception came about largely on account of the safeguards guaranteed against arbitrary taxation through the shift in our constitutional jurisprudence that now tests State action for legitimacy by asking not merely whether the State had the power to act but further, as to whether such State action was justified under the circumstances? The said shift from a 'culture of authority' to a 'culture of justification' has been responsible for the advance of the Rule of Law in our country.

9. Axiomatically, while the levy and collection of a tax must be shown as satisfying the mandate of Article 265 that there can be no levy or collection of tax save by 'authority' of law, the law that authorizes such levy and collection must also satisfy the 'justification' criteria of being certain, fair, reasonable and non-arbitrary. The said concepts are inbuilt in Part III of the Indian Constitution and must inform the imposition of a tax at each stage of its levy and collection as mandated by Article 265 thereof.

10. In a recent judgment dated 30.06.2025 in W.A.No.986 of 2025 and connected cases, that disposed a batch of writ appeals filed by the Thrissur Corporation, we had found that the requirement of publication of rates of property tax during the various states of their finalization, as envisaged under Rule 4 was mandatory and not merely directory. We had, in that connection, also referred to the decision of the Supreme Court in *Messrs Govind Saran Ganga Saran v. Commissioner of Sales Tax & Ors.* – [1985 (Supp) SCC 205] where the Court emphasized on the salient features that clothe a levy of tax with legal validity, in the following words:

“The components which enter into the concept of a tax are well known. The first is the character of the imposition known by its nature which prescribes the taxable event attracting the levy, the second is a clear indication of the person on whom the levy is imposed and who is obliged to pay the tax, the third is the rate at which the tax is imposed, and the fourth is the measure or value to which the rate will be applied for computing the tax liability. If those components are not clearly and definitely ascertainable, it is difficult to say that the levy exists in point of law. Any uncertainty or vagueness in the legislative scheme defining any of those components of the levy will be fatal to its validity.”

11. The procedures contemplated under Section 233 of the Kerala Municipality Act, read with Rules 4 and 10 of the 2011 Rules, are designed to confer legal validity on the levy that comes into existence thereafter. The requirement of following the statutory procedure has to be seen as flowing from Article 265 read with Article 243-X of the Constitution and therefore mandatory in nature. In these cases, there was admittedly no compliance with the provisions of Rule 4(4) of the 2011 Rules, in that, a notification specifying the final rates of basic property tax fixed by the counsel was not published in the manner contemplated therein. The only publication that was produced by the appellants was of the notice manifesting the intention to finalize the draft rates of property tax through a resolution of the Municipal Council as required under Rule 4(2) of the 2011

Rules. Rule 4 of the 2011 Rules reads as follows:

"4. Fixing of rates of basic property tax.- (1) The Municipality shall, by resolution, fix the rates of basic property tax in whole number to be levied in the area of the Municipality to a square meter of plinth area for each category of building, mentioned below in accordance with the use, if the Government have fixed their sub categories, for it also, subject to the minimum and maximum limits of basic tax rates fixed by the Government as per sub-section (2) of section 233, for each category of building, namely,:

- (i) used for residential purpose;
- (ii) used for industrial purpose;
- (iii) used for schools or hospitals;
- (iv) used for amusement parks, mobile telephone tower;
- (v) used for commercial purpose;
- (vi) used for other purposes;
- (vii) Any other category of buildings as notified by the Government:

(2) The Council shall, initially consider preliminary proposals to fix rates of basic property tax or revision of existing rates and before passing a resolution for fixing rates finally, notice as to the intention of that resolution shall be published in the notice board of the office of the municipality and in a newspaper having wide circulation in the area of the Municipality and in the places directed by the Council and publicity shall be given to the notice through pamphlets, noticeboards etc. and a period of not less than thirty days shall be allowed to submit objections and if any objections are received within the time stipulated that shall be considered by the council.

(3) The rates of basic property tax for all buildings of same category or its subcategories, as the case may be, shall be the same throughout the area of the Municipality in accordance with use.

(4) The Secretary shall publish a notification specifying the final rates of basic property tax fixed by the Council and the date of its commencement and the period during which it will be in force, the notification shall be published in the noticeboard of the office of Municipality and in two newspapers having circulation in the area of the Municipality. Publicity shall be given to the said notification through pamphlets, ward level noticeboards etc.

(5) The rates of basic property tax fixed by the Council shall have effect for a period of five years from the date of its commencement and the Council shall revise the rates to be in force for the next each five year period by making addition at the rate of twenty five percentage of the existing rates as per sub-section (4) of section 233 in due course and those shall be published as per sub-rule (4).

Similarly, there was admittedly no compliance with the procedure under Rule 10 of the 2011 Rules that requires the publication of a notice calling for returns from the owners of buildings. Rule 10 of the 2011 Rules reads as follows:

"10. Publication of public notice as to assessment of property tax:- (1) After fixing and publishing rates of the basic property tax, classification of zones and classification of roads applicable to the area of Municipality, as provided in rules 4, 7 and 8 respectively by the Council, as per sub-section (10) of section 33, the secretary shall publish a public notice containing the details helpful to the owners of building to assess the basic property tax and annual property tax of the building by themselves.

(2) In public notice, the secretary shall demand all owners of the building to submit a tax return containing all particulars as to the building before the Secretary or the officer authorised by the Secretary within thirty days of the publication of notice. The Secretary shall give necessary publicity to the public notice and its summary shall be published at least in two newspapers having circulation in the area of Municipality.

(3) The public notice published by the Secretary shall be in Form-1 appended to these rules. (emphasis supplied)

Form 1 appended to the 2011 Rules reads as follows:

Form 1

[See rule 10 (3)]

..... Municipality/Corporation

Number

Date:

PUBLIC NOTICE DEMANDING SUBMISSION OF PROPERTY TAX RETURN

The basic property tax rate with effect from fixed by the council for each category of building for the purpose of conducting assessment/reassessment of property tax of buildings and details of classification of municipal area into zones and details of classification of roads in the municipal area has been published by the Municipality in dates respectively as per the Kerala Municipality (Property tax, Service cess and Surcharge) Rules, 2011.

As per rule 4(2) of the above said rules, amount arrived by multiplying the plinth area of a building with rate of basic property tax applicable to such category of building (rounded to its next higher whole number) shall be the basic property tax of the building and amount (in whole number) after effecting deductions and additions on it as directed in the tables under rule 6 shall be the annual property tax of the building. Deductions in all items shall not be allowable in excess of 75

percentage of basic property tax. Moreover, when the annual property tax of buildings for residential purpose and commercial purpose are assessed initially on the basis of plinth area, and if there is addition of more than 60 percentage and 150 percentage respectively in the property tax, such addition may be limited to 60 percentage and 150 percentage respectively. Moreover, an addition of minimum 25 percentage shall be made in the existing annual property tax due to the assessment of property tax of existing buildings for residential purpose or commercial purpose. Provided, after conducting the last assessment or reassessment of property tax, if any addition or structural improvement or any change in use, if any, has been made to the building, it shall not be entitled to the above said benefit. In case of a multistoreyed building used for commercial purpose or office purpose, when the property tax is fixed initially on the basis of the plinth area, deduction in the annual property tax at the rate of 5 percentage of the annual property tax reckoned for the first floor above the ground floor, for the second floor – 10 percentage of the annual property tax reckoned, for the third floor – 15 percentage of the annual property tax reckoned, for the fourth floor – 20 percentage of the annual property tax reckoned, for the fifth floor – 25 percentage of the annual property tax reckoned, for each floor above the sixth floor – 25 percentage of the annual property tax reckoned shall be permitted.

Every owners of the building in a municipal area shall make a self assessment of the annual property tax of the building in their ownership and submit within 30 days of publication of this notice, i.e. within date, a property tax return in Form No.2 of the above said rules to the municipal secretary. Form of property tax return shall available free of cost from the said office. Guidelines to fill up the return is appended with the form. In the case of residential buildings having plinth area up to 30 square meter for own residence of those who are below poverty line are entitled to exemption of property tax and owners of the building shall submit property tax return in Form 2a within the above said time limit.

For more instructions as to the assessment of property tax, concerned sections in the Kerala Municipality Act, 1994 and concerned rules in the Kerala Municipality (Property tax, Service cess, and Surcharge) Rules, 2011 shall also be seen.

Secretary

12. It is clear from the above statutory provisions that the procedure for assessment of property tax can begin only with the filing of a return pursuant to the publication of a notice under Rule 10, which contains details helpful to the owners of buildings to assess the basic property tax and annual property tax of the buildings by themselves. It is only if the owners of the buildings fail to file their returns within 30 days of that notice that the Municipality can proceed to unilaterally collect the details necessary for an assessment and complete the assessment against the owners of buildings. In other words, without complying with the procedural formalities required to bring the rate of tax and the measure of tax to the knowledge of the prospective assesseees, the levy of property tax cannot be seen as having come into existence vis-a-vis those assesseees. It is

therefore that we concur with the findings of the learned Single Judge that set aside the demand notices served on the respondents. In the absence of a valid levy, there could not have been an assessment to tax, or a collection of the said tax, since the mandate of Article 265 of the Constitution requires both the levy and collection of tax to be backed by the authority of law.

13. Since there was no effective levy of tax in the instant cases, the contention of the appellant Municipality that the respondents had an effective alternate remedy by way of an appeal against the assessment orders, pales into insignificance. The appellate remedy being against assessments irregularly completed, and not against non-est assessments, cannot be seen as an efficacious alternate remedy on the facts and circumstances arising in these appeals. It is also to be noted that the challenge in the writ petitions was against the action of the appellant Municipality in issuing demand notices for arrears of property tax, without following the statutorily mandated procedure for imposing and collecting the tax. The said challenge essentially called into question those actions of the Municipality that were in breach of its statutory obligations and hence the writ petitions were rightly found to be maintainable by the learned Single Judge.

The upshot of the above discussion is that we see no reason to interfere with the findings of the learned Single Judge in the impugned judgment. The Writ Appeals therefore fail, and are accordingly dismissed.