

(2025) 06 KL CK 0918

In the High Court Of Kerala

Case No : Writ Appeal Nos.986, 987, 988, 989, 990, 992, 1001, 1002, 1003, 1004, 1005, 1006, 1007, 1008, 1009, 1011, 1012, 1013, 1014, 1015, 1016, 1018, 1022, 1024, 1025, 1026, 1027, 1029, 1031, 1032, 1033, 1034, 1035, 1036, 1037, 1038, 1039, 1041, 1044, 1045, 1046, 1047,, 1048, 1049, 1054, 1055, 1056, 1057, 1058, 1059, 1064, 1065, 1066, 1067, 1068, 1069, 1070, 1071, 1072, 1080, 1083, 1084, 1086, 1092, 1105, 1106, 1113, 1115, 1118, 1119, 1120, 1121, 1123, 1127, 1129, 1130, 1131, 1132, 1133, 1134, 1140, 1141, 1142, 1143, 1144, 1145, 1146, 1172, 1173, 1174, 1176, 1177, 1186, 1187, 1188, 1189, 1190, 1192, 1194, 1195, 1197, 1198, 1199, 1200, 1202, 1206, 1210, 1214, 1216, 1219, 1221, 1226, 1229, 1232, 1234, 1236, 1239, 1240, 1244, 1245, 1246, 1247, 1248, 1250, 1251, 1255, 1257, 1259, 1265, 1274, 1278, 1280, 1281, 1282, 1286, 1287, 1288, 1289, 1290, 1291, 1292, 1293, 1294, 1295, 1298, 1299, 1301, 1302, 1303, 1304, 1306, 1309, 1313, 1314, 1315, 1317, 1318, 1319, 1320, 1321, 1322, 1323, 1325, 1328, 1329, 1330, 1332, 1333, 1334, 1335, 1336, 1337, 1338, 1345, 1347, 1349, 1351, 1352, 1353, 1354, 1358, 1359, 1360, 1361, 1362, 1364, 1387, 1389, 1390, 1391, 1397, 1400, 1401, 1421, 1477, 1517, 1519 Of 2025

Thrissur Corporation

APPELLANT

Vs

Sangeetha Hotels

RESPONDENT

Date of Decision : 30-06-2025

Acts Referred:

Kerala Municipality Act, 1994 — Section 233, 233(4), 282, 539

Citation : (2025) 06 KL CK 0918

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

Bench : Division Bench

Advocate : Santhosh P.Poduval, K.R.Deepa, A.R.Nimod, M.A.Augustine

Final Decision : Dismissed

Judgement

Dr. A.K. Jayasankaran Nambiar, J.

1. This batch of writ appeals preferred by the Thrissur Corporation impugns the

common judgment dated 10.04.2025 of a learned Single Judge in W.P. (C).No.12364 of 2024 and connected cases.

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

The writ petitioners had approached this Court through the writ petitions aforementioned, aggrieved by the demand notices issued to them by the appellant Thrissur Corporation for recovery of property tax assessed in respect of their properties for the assessment years from 2016-17 onwards. The challenge to the demands served on them was essentially threefold: (i) it was argued that by virtue of the provisions of Section 539 of the Kerala Municipality Act [hereinafter referred to as the "Act"], there could not have been a demand of property tax beyond the period of three years from the date on which the property tax fell due; (ii) the revision in the rates of property tax by the appellant Corporation could not have resulted in a fixation of a rate of tax that was more than 100% of the existing rate; and (iii) the fixation of the rate of property tax by the appellant Corporation was without complying with the procedural requirements for the same as stipulated under the Kerala Municipality Act and Rules.

3. The learned Single Judge, who considered the writ petitions, framed the following issues for consideration namely;

(i.) What is the mode of assessment contemplated under section 233 of the Act as well as the Rules thereon?

(ii.) What are the requirements under the Act and the Rules that have been complied with by the Thrissur Municipality?

(iii.) Whether there are any non-compliances with the requirements and if so, whether such non-compliance would affect the levy and the consequential demand?

(iv.) Whether the power under section 282 of the Act can be exercised to levy property tax from 2016-17 onwards?

(v.) Whether the demand notices issued in the instant cases are barred by limitation?

(vi.) Whether the rules are unconstitutional since under Article 243X only the Legislature of a State can make a law for levying tax ?

4. After hearing the counsel for the writ petitioners and the learned Standing Counsel for the Corporation, the learned Single Judge proceeded to answer the said issues as follows:

Issue No.(i) was answered by analyzing the scheme of the Act and Rules in relation to the levy, assessment and collection of property tax; Issue No.(ii) was answered by holding that the general requirements under Rule 4(4) of the Kerala Municipality (Property Tax, Service Cess and Surcharge) Rules, 2011 [hereinafter

referred to as the "Rules"] were complied with; Issue No.(iii) was answered by holding that the requirement under Rule 4(4) of the Rules, of publication of the final rates of property tax in two newspapers, was mandatory and that a substantial compliance thereof would not suffice; Issue No.(iv) was answered by holding that a Municipality under the Act cannot assess under Section 282 of the Act, persons who have already been assessed to property tax whether it be from 2016-17 onwards or otherwise; Issue No.(v) was answered by holding that under Section 539 of the Act, the recovery of arrears through the issuance of demand notices could not be resorted to beyond the period of three years from the date of the demand; and lastly, (vi) on the issue of constitutionality of the Rules, it was found that the Rules could not be said to be unconstitutional as alleged by the writ petitioners.

5. Based on the said findings, the learned Single Judge proceeded to dispose the writ petitions with the following directions:

"(1) The basic property tax fixation in respect of Thrissur Corporation has not been carried out in accordance with law as it failed to comply with rule 4(4) of the Rules.

(2) Petitioners cannot hence be made liable to pay the annual property tax demanded in the respective demand notices at the revised rates. All the demand notices impugned in these writ petitions are quashed.

(3) The Thrissur Corporation shall carry out the procedure as prescribed by law from the stage of rule 4(4) of the Rules afresh, without any delay.

(4) After completing the procedure in accordance with law, fresh demand notices can be issued, demanding property tax at the revised rates for the period from three years prior to the date of such demand."

6. As already noticed, the Thrissur Corporation, which was the respondent in the writ petitions, is the appellant before us. Its contentions in the writ appeals are targeted at the legality of the directions issued by the learned Single Judge in the impugned judgment, which require it to publish the final rates fixed by it for property tax in newspapers, and through the other modes prescribed under Rule 4(4) of the Rules and issue demand notices only after completion of the said exercise. The appellant also impugns the direction of the learned Single Judge that mandates that fresh demand notices can be issued demanding property tax at the revised rates only for the period from three years prior to the date of the fresh demands.

7. We have heard Sri.Santhosh P. Poduval, the learned Standing Counsel for the appellant Corporation in all these writ appeals and the various counsel who appeared for the respondents therein.

8. On a consideration of the rival submissions, we find that for the reasons that are to follow, these writ appeals must fail.

9. The primary challenge of Sri.Santhosh P. Poduval, the learned Standing Counsel for the Thrissur Corporation, is against the finding of the learned Single Judge that the provisions of Rule 4(4) of the Rules, requiring the publication of the final rate fixed by the appellant Corporation in the manner specified under the Rules, is mandatory and not directory. It is his submission, based on the judgments in Sharif-ud-din v. Abdul Gani Lone – [(1980) 1 SCC 403] and Raza Buland Sugar Co. Ltd., Rampur, v. Municipal Board, Rampur – [AIR 1965 SC 895] that the provisions of Rule 4(4) have to be seen as merely directory and not mandatory and, in as much as the appellant Corporation had subsequently issued a public notice in the newspapers requiring the owners of properties to submit their returns in Form-2 appended to the Rules, the requirement of informing the public of the rates fixed by the appellant Corporation had to be seen as merely directory, and substantially complied with. It is his further contention that the provisions for limitation under Section 539 of the Act would not be applicable in the instant cases since it was trite that the liability to property tax forms a charge over the property concerned; that since the charge runs with the property, the appellant Corporation can always proceed against the properties for the unrealised arrears of property tax, without confining the recovery steps to a period of three years from the date of the original demand.

10. We have considered the said submissions of the learned Standing Counsel for the appellant Corporation. Rule 4(4) of the 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;
- (ii) used for other purposes;

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. (emphasis supplied)

(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).

11. On an analysis of the said provisions, in the backdrop of Article 265 read with Article 243-X of the Constitution, that offer citizens a constitutional guarantee that there will be no levy or collection of taxes except by authority of law, we would think that the purport of the procedure mandated by the Rules is to bring to the notice of the people within the territorial limits of a local area, the rates of property tax fixed by the local authority in respect of their properties within those territorial limits.

12. In the instant cases, the facts in the writ petitions would reveal that the State Government had fixed the minimum and maximum limits of property tax as early as on 14.01.2011. Taking cue from the said order of the State Government, the appellant Corporation had passed a Resolution and fixed draft rates of property tax that fell within the minimum and maximum rates fixed by the State Government. The areas within the limits of the appellant Corporation were also divided and classified as primary, secondary and tertiary for the purposes of application of the said rates of property tax. The draft rates were then published in newspapers on 24.05.2013, whereby objections were invited from the public to the draft rates. It is the submission of the learned Standing Counsel for the appellant that no objections were received from any person to the draft rates of property tax. Subsequently, by a resolution dated 13.11.2013, the appellant Corporation finalized the rates of property tax. The final rates were published only on the notice board of the appellant Corporation, and the Corporation did not take any steps to publish the final rates through the other modes prescribed in Rule 4(4) above. The appellant Corporation did, however, by

a publication dated 03.03.2014 in newspapers, direct the owners of buildings to submit their returns in Form-2 appended to the Rules. Thereafter, nothing was done for a period of five years owing to contradictory directions issued by the State Government. On 06.03.2019, the State Government issued an order clarifying that the effective date of levy of property tax would be 01.04.2016. Soon thereafter, by another decision that was taken by the appellant Corporation on 16.11.2019, the Municipal Council decided to collect service cess also, in addition to the property tax, from the owners of property. This decision of the Municipal Council was published in newspapers on 04.03.2020, and although objections were called for from the persons in the locality, only one objection was received. Thereafter, on 28.12.2020, the draft notification was confirmed and through separate notices dated 27.01.2021 and 22.02.2021 that were published in the newspapers, the property owners were directed to submit their details in Form-2 appended to the Rules so that the details collected could be uploaded in the Ksmart software. The demand notices that were impugned in the writ petitions were issued only from 2023 onwards.

13. The chronology of events aforementioned would clearly indicate that in January, 2013, when the appellant Corporation passed a resolution finalizing the rates, the procedure for publication of these rates as mandated under Rule 4(4) was not strictly adhered to. This effectively meant that the property owners within the territorial limits of the appellant Corporation were not aware of the final rates of property tax fixed in relation to their property. The mandate of Article 265 read with Article 243-X of the Constitution is clearly that there can be no levy or collection of property tax except by authority of law. The subject matter of levy being a tax, the rate at which such tax would be imposed had to be made known to assesseees well before the assessment in respect of their properties was completed. A breach of the publication requirement under the Rules effectively rendered the statutory exercise of fixing the rate of tax entrusted to the appellant Corporation, incomplete. The consequence that ensued was that there had been no effective finalization of the rates of property tax by the appellant Corporation despite their taking a decision to finalize the rates.

14. Although the learned Standing Counsel for the appellant Corporation relied on the decisions in *Sharif-ud-din* (supra) and *Raza Buland Sugar Co. Ltd.* (supra), we find that the said decisions do not really come to the aid of the appellant on the facts of the instant cases. In the case of *Raza Buland Sugar Co. Ltd.* (supra), the Court was considering the issue of levy of water tax by the Municipal Board of Rampur in terms of the U.P. Municipalities Act 2 of 1916. The procedure for imposition of tax envisaged a publication of proposals and draft rules and thereafter the publication of the final Rules before the imposition of the tax. Dealing with the mandate of the Rules in two stages, the first pertaining to the stage of calling for objections to the draft rules before finalizing the Rules, and the second stage where the finalized Rules would be published for the benefit of the assessee, the Supreme Court found that in as much as the object

of providing for publication of proposals and draft rules was to invite objections from the inhabitants of the Municipality, who had to pay the tax, the purpose of such publication had to be seen as one intended to further the democratic process, and to provide a reasonable opportunity of being heard to those who were likely to be affected by the tax, before it was imposed on them. In that sense, it was held that the procedure of publication was to be seen as mandatory. As regards the second part of the procedure which provided for the manner of publication of the final Rules, it was found that the manner of publication specified in the Rules was not intended to be mandatory in nature. The Court found that so long as there was substantial compliance with the Rule that required a publication, that would suffice for the purposes of the Rule. On the facts of that case, it was found that there was a substantial compliance with the statutory provisions. On the facts of the cases before us, however, we find from a reading of Rule 4(4) that the intention of the Rule making authority was clearly to provide for a wide publication of the rates of property tax finalized by the appellant Corporation. However, of the three modes prescribed for publication, the appellant chose the least effective mode of publication, namely, publishing on the appellant's notice board. It dispensed with the requirement of publication in two newspapers and the requirement of publication through pamphlets, ward level noticeboards etc. This can hardly be said to be a substantial compliance, even if the Rule is interpreted to be merely directory, and not mandatory, in nature. The decision in Sharif-ud-din (supra) is also clearly distinguishable on facts. As observed by the Supreme Court in the said case, in order to find out the true character of legislation, the Court has to ascertain the object which the provision of law in question has to sub-serve and its design and the context in which it is enacted. If the object of a law is to be defeated by non-compliance with it, it has to be regarded as mandatory. But when a provision of law relates to the performance of any public duty and the invalidation of any act done in disregard of that provision causes serious prejudice to those for whose benefit it is enacted and at the same time who have no control over the performance of the duty, such provision should be treated as a directory one. Where, however, a provision of law prescribes that a certain act has to be done in a particular manner by a person in order to acquire a right and it is coupled with another provision which confers an immunity on another when such act was not done in that manner, the former has to be regarded as a mandatory one. On the facts in the instant cases, if the non-compliance of the procedure under Rule 4(4) is seen as violative of the constitutional safeguard envisaged by Articles 265 read with 243-X, then surely one would have to treat the provisions of Rule 4(4) in relation to publication as mandatory and not merely directory.

15. It might be apposite in this context to refer 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.”

Inasmuch as the procedure envisaged under the Rules for publication of the finalized rates of property tax, was not complied with by the appellant Corporation, it cannot be seen as having legitimately exercised its power of taxation in relation to the levy and collection of property tax. On the contrary, their inaction in the matter of publication of the final rates of tax, rendered their subsequent demand notices illegal and unconstitutional.

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. The appellant Corporation shall ensure that the procedure of publication of the final rates is done expeditiously and demand notices served on the assesseees concerned only after completing an assessment thereafter. The demands issued in respect of the re-determined property tax shall be confined to a prior period of three years from the date of service of the fresh demand notices, as directed by the learned Single Judge.