

(2025) 06 KL CK 0904

In the High Court Of Kerala

Case No : Writ Petition (C) No.2831 Of 2013

Vadakara Municipality, Vadakara

APPELLANT

Vs

The Muncipal Nikuthi Dayaka Samithi

RESPONDENT

Date of Decision : 24-06-2025

Acts Referred:

Kerala Municipality Act, 1994 — Section 230, 309, 310, 390, 391, 395, 406, 408, 508, 509, 509(7)
Kerala Panchayat Raj Act, 1996 — Section 271S
Kerala Municipality (Property Tax, Service Cess and Surcharge) Rules, 2011 — Rule 16, 16(7)

Citation : (2025) 06 KL CK 0904

Hon'ble Judges : S.Manu, J

Bench : Single Bench

Advocate : S.Shyam Kumar, T.Naveen, R.K.Muraleedharan, Rashmi.K.M., Harishankar K V

Final Decision : Allowed

Judgement

S.Manu, J

1. Local Self-Government Department of the State Government issued G.O.No.2414/2011/LSGD on 20.10.2011 directing all Local Self-Government Institutions to fix the rate of property tax after classifying the areas into three zones, namely, primary, secondary and tertiary. Government further directed the Municipalities to follow the principles enumerated in the Kerala Municipality (Property Tax, Service Cess and Surcharge) Rules, 2011.

2. The petitioner Municipality, for implementing the Government Order, entrusted a team of officers to conduct a comprehensive analysis and obtained a report. The Municipal Council, after a detailed discussion on the report submitted, approved the tentative zonal classification and rate of property tax by resolution dated 29.10.2011. Municipality thereafter published Ext.P3 notification. It was published in two dailies having circulation in the local area. In response to the

notification, 67 complaints were received with regard to the zonal classification and fixation of basic tax. Municipality hosted several meetings and discussions to consider the complaints. Later, the Municipality re-fixed zonal classifications and also the basic tax for properties, taking into account the objections and all other relevant aspects. A notification dated 30.3.2012 was issued by the Municipality, re-fixing the zonal areas and basic property tax. The entire Municipal area was classified into three zones, namely, primary, secondary and tertiary in accordance with the principles enshrined in the Kerala Municipality (Property Tax, Service Cess and Surcharge) Rules, 2011. Boundaries of each zones were stated in the notification.

3. First respondent approached the Tribunal for Local Self-Government Institutions in Appeal No.323 of 2012, challenging the notification dated 30.3.2012. Convener of the 1st respondent was the 2nd appellant and the Convener in his personal capacity was the 3rd appellant. The principal contention raised before the Tribunal was that the notification was improper and illegal for the alleged reason that the classifications of various zones were not in accordance with the principles followed in the Kerala Municipality (Property Tax, Service Cess and Surcharge) Rules, 2011. It was contended that boundaries of each zones were not clearly demarcated and specified. Further, it was contended that when the boundaries are not properly fixed and notified, the same would give rise to confusion and uncertainty. The petitioner Municipality appeared before the Tribunal and filed written statement. Municipality contended that the notification is perfectly in tune with the principles and provisions of the Kerala Municipality (Property Tax, Service Cess and Surcharge) Rules, 2011. It was also pointed out by the Municipality that it received about 67 complaints and all complaints were properly examined, placed before the Council and the Finance Committee to study the matter in the light of the complaints and only after considering the complaints and suggestions, the final decision was taken. Several changes were made in the light of the complaints and also as a result of re-examination of the matter by the Finance Committee and the Council. Municipality therefore, submitted before the Tribunal that there was no merit in the appeal.

4. The Tribunal examined the notifications issued by the Municipality and accepted the contention of the appellants that the boundaries of different zones were not properly fixed. Therefore, the Tribunal concluded that the impugned notification was illegal. The Tribunal allowed the appeal by setting aside the notification and entire proceedings leading to the issuance of the notification. The Secretary and the Municipal Council were directed to reconsider the entire aspects and to proceed properly for assessing the tax in compliance with the provisions of Kerala Municipality (Property Tax, Service Cess and Surcharge) Rules, 2011.

5. Municipality approached this Court in the above writ petition challenging the order passed by the Tribunal and this Court granted interim stay on 30.1.2013.

The order still remains in force. Municipality therefore enforced Ext.P5 and owners of buildings within the area of Municipality have been paying property tax on the basis of it.

6. Learned Standing Counsel for the Municipality submitted that the decision of the Tribunal was improper and illegal for various reasons. The learned Standing Counsel, referring to the provisions of the Kerala Municipality (Property Tax, Service Cess and Surcharge) Rules, 2011, contended that the appeal before the Tribunal was not maintainable. He made reference to the provisions of Rule 16 and submitted that under Rule 1, if the owner of the building has objection against assessment by the Secretary, appeal can be preferred before the Standing Committee for Finance. A revision will lie to the Tribunal, if there is objection against the decision taken by the Standing Committee in the appeal. He submitted that the 1st respondent is an unregistered association and therefore, it was not entitled to maintain any proceedings before the Tribunal. The learned Standing Counsel submitted that the remedies under Rule 16 are available only to individual building owners. He further submitted that the scheme of the provisions of Rule 16 contemplate raising of objections by way of appeal by an aggrieved building owner before the Standing Committee and further challenge by way of revision before the Tribunal. He therefore, contended that the proceeding was not maintainable before the Tribunal at the instance of the respondent, an unregistered association. Further elaborating his contention, the learned Standing Counsel submitted that no individual grievance was pointed out in the appeal filed before the Tribunal and consideration of a general grievance is not contemplated either in the appeal or revision provided under Rule 16.

7. On merits, the learned Standing Counsel submitted that the reasoning of the Tribunal that the boundaries of different zones were not properly fixed was incorrect. He read out the notification and pointed out that, the boundaries of various areas coming within different zones were clearly narrated in the notification. He submitted that there was no room for any confusion in that regard and the very fact that for last more than a decade, owners of buildings within the jurisdiction of the Municipality are remitting tax following the notification shows that the boundaries were properly fixed and notified. He hence submitted that no genuine grievance actually existed with respect to the fixation of boundaries of different zones by Ext.P5 notification. The learned Standing Counsel hence argued that the interference by the Tribunal was totally illegal and improper in any view of the matter.

8. The learned counsel appearing for the 1st respondent argued that the Municipality failed in its duty to fix the zones properly. He pointed out various areas included in different zones and submitted that the boundaries were not properly fixed and notified. He submitted that various parts of different wards were included in different zones and therefore the same gave rise to confusions. Though such categorization was permissible it was incumbent on the Municipality

to fix the boundaries properly and notify the same. He also pointed out the instance of Ward No.18 and submitted that classification or categorization of the said ward into secondary zone was incorrect. He submitted that similar mistakes were committed by the Municipality in the case of many other wards too.

9. Regarding maintainability of the appeal, the learned counsel submitted that under the Municipalities Act, appeal is provided against the decisions of the Municipal Council to the Tribunal and therefore, the appeal was proper and maintainable. Referring to the expression 'any person' in sub-rule (7) of Rule 16 of the Kerala Municipality (Property Tax, Service Cess and Surcharge) Rules, 2011, the learned counsel contended that any person having objection against the decision taken by the Standing Committee can prefer revision petition before the Tribunal. The learned counsel concluded his submissions by asserting that the proceeding before the Tribunal was perfectly maintainable and the reasoning of the Tribunal for setting aside the decision of the Municipality was well justified.

10. As the learned Standing Counsel raised a contention regarding the maintainability of the proceedings before the Tribunal, it is required to consider the said issue first. Perusal of the impugned order passed by the Tribunal shows that the 1st respondent had invoked the appellate jurisdiction of the Tribunal. The proceeding was registered as an appeal. In this regard, it is relevant to refer to Section 509 in Chapter XXIII of the Kerala Municipality Act. The said provision is extracted hereunder for ready reference:-

"509.APPEAL AND REVISION. — (1) An appeal may be preferred to the Council against any notice issued or any order passed or action taken by the Chairperson or the Secretary under any of the provisions of this Act other than Sections 390, 391, 395, 406 and 408 or the rules or bye-laws or regulations made thereunder.

(2) An appeal against any notice or order of the Secretary on the levy of tax, may be preferred to the Standing Committee for Finance in the case of Town Panchayat or Municipal Council and to the Standing Committee for appeals on taxation in the case of Municipal Corporation.

(3) Pending decision on an appeal filed under sub-section (1) the Chairperson may, if an application is made, stay the operation of the notice, order or other proceedings on which the appeal is based.

(4) Every case in which an order has been passed under sub-section (3) shall be reported to the Council at its next ordinary meeting or at its next meeting along with the reasons in full for passing such order by the Chairperson and the Council shall either ratify the said order with or without modification or revoke it failing which it shall lapse.

(5) An appeal under sub-section (1) or sub-section (2) shall be filed within thirty days from the date of receipt of the order and dispose of the same by the Council or the Standing Committee, as the case may be, in the manner as it deems fit, within sixty days from the date of its receipt.

(6) Any person may file an appeal against any notice issued or any order passed by the Secretary under Sections 390, 391, 395, 406 and 408 to the Tribunal Constituted for the Local Self Government Institutions under Section 271S of the Kerala Panchayat Raj Act, 1996 (13 of 1994), within thirty days from the date of passing of such order.

(7) An appeal may be preferred to the Tribunal, against any decision passed by the Council or any order or notice issued by the Chairperson or Secretary on the basis of such decision on any matter provided in Sections 310 to 508 other than Sections 390, 391, 395, 406 and 408 or the rules, bye-laws or regulations made thereunder, within thirty days from the date of passing of such decisions, order or notice.

(8) Any person may prefer a revision petition to the tribunal within thirty days against the decision in an appeal filed before the Council or Standing Committee, as the case may be, under sub-section (1) or subsection (2), or against any order or notice issued by the Chairperson or Secretary on the basis of such decision.

(9) The Tribunal shall, as soon as possible, pass appropriate order on an appeal or revision petition filed before it and the order so passed shall be final.

(10) The Tribunal may, during the pendency of an appeal or revision petition before it, direct the Council or the Secretary to stay all further proceedings on the said subject, if it deems necessary.

(11) No appeal or revision shall be filed against the levy of tax, if the tax shown in the demand notice has not been paid.

(12) Notwithstanding anything contained in this section all appeals and revisions filed and pending before any authority before the date of commencement of the Tribunal shall be handed over by such authority to the Tribunal"

[Emphasis added]

11. Sub-sections (6) and (7) deal with the appellate jurisdiction of the Tribunal. Any person aggrieved by any notice issued or any order passed by the Secretary under Sections 390, 391, 395, 406 and 408 may file an appeal to the Tribunal. Under sub-section (7) an appeal can be filed to the Tribunal against any decision passed by the Council or any order or notice issued by the Chairperson or Secretary on the basis of such decision on any matter provided in Sections 310 to 508 other than Sections 390, 391, 395, 406 and 408 or the Rules, bylaws or Regulations made thereunder. It is to be noted that taxation and finance is dealt with under Chapter XIV of the Municipality Act. Chapter XIV contains Sections 230 to 309. As noted above, appeal under sub-section (7) can be filed with regard to matters provided in Sections 310 to 508, except with respect to the specific provisions mentioned in the Rules, Sections 390, 391, 395, 406 and 408. Therefore, plain reading of sub-section (7) of Section 509 of the Act shows that provisions of Chapter XIV of the Act, dealing with taxation and finance are not

within the ambit of the said sub sub-section. Hence, it must be held that appeal under Section 509(7) of the Municipality Act is not maintainable against a resolution adopted by the Municipal Council with respect to matters included in Chapter XIV of the Act.

12. Next question to be considered is as to whether the 1st respondent's appeal was maintainable under the Kerala Municipality (Property Tax, Service Cess and Surcharge) Rules, 2011. Rule 16 provides for appeal and revision. The said provision reads as under:-

"16. Appeal and Revision. (1) If the Secretary has assessed the property tax of the building as per sub-rule (4) or sub-rule (6) of rule 12 and if the owner of the building has objection against such assessment of property tax, appeal may be preferred within thirty days of receipt of the demand notice of the secretary, in the case of a Town Panchayat or Municipal Council before the Standing Committee for finance and in the case of a Municipal Corporation, before Standing Committee for appeals on taxation.

(2) Along with the appeal submitted before the Standing Committee on the decision of the Secretary, the owner of the building shall remit the property tax (as assessed by the Secretary) till the end of the half-year to which appeal is preferred and proof as to it shall be produced along with the appeal petition. If the tax has not been remitted as such, the Standing Committee shall reject the said appeal.

(3) In the time limit stipulated for submitting appeal to the Standing Committee, the day on which the demand notice subjected to it was received shall not not be included.

(4) If the Secretary has made assessment of property tax not as per the criteria specified in the Act and these rules and without following the procedure, Standing Committee may, in appeal, review the said assessment of property tax and may allow the appeal and may reassess the property tax as specified in the Act and rules. If the Standing Committee is satisfied that the secretary has assessed the property tax as per the criteria specified in the Act and rules and followed the procedure, the appeal shall be rejected. If the appeal is allowed or rejected the reasons for it shall be mentioned in the decision of the Standing Committee.

(5) If the Standing Committee either on complaint or suomoto has satisfied that the Secretary has assessed the property tax of a building in a lower rate contrary to the criteria, the Standing Committee may review the assessment of property tax as in an appeal by serving notice to the owner of the building, considering his objections and may reassess the property tax in accordance with the criteria

(6) If the property tax of a building is being reassessed by the Standing Committee, the Secretary shall make modifications in the property tax assessment register and the property tax demand register accordingly and fresh

demand notice shall be given to the owner of the building.

(7) Any person having objection against the decision taken by the Standing Committee as per sub-rule (4) or sub-rule (5), may, within thirty days, prefer a revision petition before the Tribunal for Local Self Government Institutions as per sub-section (8) of section 509."

13. It is to be noted that under sub rule (1), if the owner of the building has objection against assessment of property tax by the Secretary, appeal may be preferred in the case of a Town Panchayat or Municipal Council before the Standing Committee for finance and in the case of a Municipal Corporation before Standing Committee for appeals on taxation. Under sub rule (4) the Standing Committee may in appeal review the assessment. The Committee has the power to review the assessment and also to reject the appeal, if it is found that the assessment by the Secretary was proper. Sub rule (5) provides that on complaint or suo motu, the Standing Committee can review the assessment of property tax as in appeal. Sub rule (7) provides that any person having objection against the decision taken by the Standing Committee as per sub rule (4) or sub rule (5) may within thirty days prefer a revision petition before the Tribunal for LSGI as per sub-section (8) of Section 509. Hence no appeal to the Tribunal is provided under the rules.

14. 1st respondent is an unregistered association. Going by the scheme of Rule 16 of the Kerala Municipality (Property Tax, Service Cess and Surcharge) Rules, 2011, as explained above, remedies are available only to the owners of buildings who have objection against the assessment made by the Secretary. Even the expression 'any person' in sub rule (7) has to be understood in the context of the scheme of Rule 16. The said expression in sub rule (7) can be considered only with reference to owner of a building having objection against the assessment made by the Secretary. This is for the reason that the remedies under Rule 16 are intended for redressal of grievances of owners of buildings. Revision is not an original proceeding. A revision will lie against a decision taken by the Standing Committee as per sub rule (4) or sub rule (5). Therefore, the necessary corollary is that the revision under sub rule (7) is a remedy provided to a person having objection against the decision taken by the Standing Committee either on an appeal under sub rule (1) or by a decision taken by the Sub Committee either on a complaint or suo motu. Hence, the Scheme of the Rule is very clear and it does not contemplate submitting of appeals to Standing Committee by persons other than aggrieved owners of buildings. The Standing Committee may proceed suo motu also and revise the assessment made by the Secretary after issuing notice to the owner of the building. In such a situation also, the person aggrieved will be the owner of the building. Sub Rule (7) specifically refers to person having objection against the decision taken by the Standing Committee as per Sub Rule (4) or Sub Rule (5). Therefore, the expression 'any person' employed in Sub Rule (7) is obviously with reference to a person having objection regarding the decision taken by the Standing Committee under Sub Rule (4) or Sub Rule (5).

The expression 'any person' employed in the Sub Rule cannot be given a wider interpretation as canvassed by the learned counsel for the 1st respondent. Doing so will be against the Scheme of the provision as explained above. Hence the petitioner Association had no right to approach the Tribunal invoking its revisional jurisdiction also. Even otherwise, it is to be noticed that the 1st respondent filed an appeal and not a revision before the Tribunal. Indisputably, provisions of the Kerala Municipality (Property Tax, Service Cess and Surcharge) Rules, 2011 do not provide any statutory remedy to challenge a resolution adopted by the Municipal Council regarding levy of property tax. Hence in any view of the matter, the Tribunal ought not have entertained the case of the respondent association.

15. Outcome of the above discussion is that the appeal filed by the 1st respondent before the Tribunal was incompetent and the Tribunal went wrong in entertaining it. In view of this finding, remaining contentions need not be addressed.

16. Accordingly, this writ petition is allowed. Order dated 14.11.2012 of the Tribunal for Local Self-Government Institutions in Appeal No.323 of 2012 shall stand set aside.

Writ Petition is disposed of as above.