



CHAPTER III

Performance Audit

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PERFORMANCE AUDIT

3.1 RECEIPTS OF LOCAL SELF-GOVERNMENT INSTITUTIONS

Highlights

The State Government and Central Government provide financial assistance to the Local Self-Government Institutions (LSGIs) for taking up the various activities in their jurisdictional areas. The Kerala Municipality Act, 1994 and the Kerala Panchayat Raj Act, 1994 empower the LSGIs to levy and collect local taxes like Property tax, Profession tax, Entertainment tax, Advertisement tax, etc. and fees like licence fee on business establishments and permit fee on construction of buildings from individuals and institutions located within their jurisdictional areas.

The important findings of the Performance Audit are mentioned below:

As of March 2014, ₹25.38 crore was pending collection towards tax revenue. Property tax collection efficiency of LSGIs test-checked was not encouraging.

(Paragraph 3.1.7.1)

The LSGIs did not have an appropriate system to identify and list all buildings liable for Property tax assessment.

(Paragraph 3.1.8.1(i))

There was delay in revision of Property tax assessment. Though the new system of assessment based on plinth area was made applicable to existing assesseees from 2013 onwards, the assessment was pending in all the LSGIs test-checked, resulting in short levy of Property tax of ₹8.54 crore.

(Paragraph 3.1.8.1(ii))

The LSGIs were not maintaining complete details in respect of unauthorized constructions. Out of 1622 unauthorized constructions recorded by four LSGIs, complete details were available only in respect of 66 cases, for which Property tax leviable was ₹two crore.

(Paragraph 3.1.8.1(iii))

Though full Property tax was to be realised from BSNL buildings, the same was not realised by nine LSGIs resulting in short levy of Property tax of ₹81.32 lakh.

(Paragraph 3.1.8.1(iv))

Lack of comprehensive database relating to Profession tax has affected tax collection to a great extent. Various categories of assesseees, including professionals and traders, had escaped assessment resulting in leakage of revenue of ₹98.45 lakh.

(Paragraph 3.1.9.1)

Failure of Athirappally GP to assess Entertainment tax under Category B of Entertainment tax slab resulted in short levy of Entertainment tax of ₹32.90 lakh.

(Paragraph 3.1.10.1(i))

Action of Nedumbassery GP in revising the demand for compounding fee in respect of the building constructed by the Cochin International Airport Authority Limited based on Kerala Panchayat Raj Building Rules, 2011 instead of Kerala Municipality Rules resulted in short levy of ₹53.74 lakh.

(Paragraph 3.1.12.1(i))

Loss of revenue on account of non-realisation of rent in respect of 145 shop rooms owned by seven LSGIs amounted to ₹1.29 crore.

(Paragraph 3.1.12.2(i))

Due to relaxation in the terms of contract in favour of the contractor without any genuine reason, Thrissur Corporation suffered a revenue loss of ₹50.09 lakh.

(Paragraph 3.1.12.2(iv))

3.1.1 Introduction

The Local Self-Government Institutions (LSGIs) are entrusted with public resources to deliver the programmes and services to the local people as per their needs. The State Government and Central Government provide financial assistance to the LSGIs for taking up various activities in their jurisdictional areas. As per Section 230 of the Kerala Municipality (KM) Act, 1994 and Section 200 of Kerala Panchayat Raj (KPR) Act, 1994, the LSGIs are empowered to levy and collect local taxes like Property tax, Profession tax, Entertainment tax, Advertisement tax, etc., and fees like licence fee on business establishments and permit fee on construction of buildings from individuals and institutions located within their jurisdictional area. The revenue receipts, which constitute a substantial portion of its resources, are utilised for various developmental and maintenance activities.

3.1.2 Organisational set up

The Secretary is the administrative head of the LSGI. Levy and collection of tax and other revenues is administered by the Secretary through the Revenue Officer (in Corporation)/Revenue Superintendent (in Municipality)/Junior Superintendent or Head Clerk (in Panchayat), who is assisted by Revenue Inspectors/Bill Collectors and other administrative staff. The working of the Revenue Section is supervised by the Deputy Secretary in Corporation.

The Local Self-Government Department (LSGD) exercises overall control of LSGIs through the Director of Panchayats, Commissioner of Rural Development (CRD) and Director of Urban Affairs.

3.1.3 Audit objectives

The audit objectives were to assess whether:

- the system existing in LSGIs was adequate to ensure that the entire revenue realizable has been demanded, collected and accounted for properly; and
- the control mechanism was in place and necessary efforts were made to minimize the risk of tax evasion and revenue leakage.

3.1.4 Audit criteria

The audit criteria were derived from the following sources:

- Kerala Panchayat Raj Act, 1994 and Rules made there under;
- Kerala Municipality Act, 1994 and Rules made there under;
- Kerala Financial Code, 1963;
- Budget Documents, State Finance Commission Reports, Government Orders and Circulars.

3.1.5 Scope and methodology of audit

The performance audit covering the period 2009-10 to 2013-14 commenced with an entry conference (1 August 2014) and completed with an exit conference (25 March 2015) with the State Performance Audit Officer. Audit methodology included scrutiny of basic records, registers and files maintained in the offices selected, collecting information from LSGD, Directorate of Panchayats, Directorate of Urban Affairs, issue of audit enquiries, obtaining replies, interaction with officials, conducting site inspections, etc.

District Panchayats and Block Panchayats were excluded as they do not collect taxes and their own revenue was negligible. Simple Random Sampling was used for the selection of Grama Panchayats (GPs), Municipalities and Corporation. Accordingly, five districts (out of 14), 40 GPs (from the selected districts), 20 Municipalities (out of 60) and one Municipal Corporation (out of five) were selected *vide* **Appendix IV**.

Audit findings

The audit findings are organized into the following sections:

Tax Revenue	Non-tax revenue
<ul style="list-style-type: none"> • Property Tax • Profession Tax • Entertainment Tax • Advertisement Tax 	<ul style="list-style-type: none"> • Permit fee for building construction • Permit fee for laying cables • User fee realised in respect of facilities provided by local bodies • Rental income from properties of LSGIs • Fee for issuing licences • Permit fee for removal of river sand

3.1.6 Trend in revenue collection

Own revenue of the LSGIs constitute both tax and non-tax revenue. Details regarding demand and collection of Own revenues by 61 selected LSGIs (out of 1043¹), for the period 2009-10 to 2013-14 were as follows:

Table 3.1: Own revenue of test-checked LSGIs

(₹ in lakh)

Year	GPs						ULBs					
	Tax		Non-Tax		Total Own fund collected	Growth (Per cent)	Tax		Non-Tax		Total Own fund collected	Growth (Per cent)
	Demand	Collection	Demand	Collection			Demand	Collection	Demand	Collection		
2009-10	1193.97	995.94	901.03	888.83	1884.77	-	5660.23	4573.73	3137.65	2870.45	7444.18	-
2010-11	1413.89	1147.49	993.88	976.77	2124.26	12.71	6853.64	5097.21	4397.05	4075.84	9173.05	23.22
2011-12	1593.13	1389.26	1248.05	1226.10	2615.36	23.12	8177.34	6176.64	4493.02	3981.57	10158.21	10.74
2012-13	1787.04	1534.09	1275.28	1255.26	2789.35	6.65	8797.50	6761.29	5105.44	4357.04	11118.33	9.45
2013-14	2109.03	1767.34	918.17	896.51	2663.85	(-4.50)	9892.18	7695.69	5295.01	4412.40	12108.09	8.90

During the period 2009-10 to 2013-14, the growth in collection of Own revenue was uneven both in the case of GPs and ULBs. In the case of GPs, the growth in collection of Own revenue was highest during 2011-12 when it rose by 23.12 per cent from the previous year's collection, while during 2013-14, the growth was negative. This was mainly due to low collection of Non-tax revenue such as user fee, building permit fee, rent, etc., and decreased income from sale of sand. LSGIs stated that the fall in collection was due to shortage of staff to demand the dues in time and increase in the number of court cases. The reply was not tenable as it is the duty of LSGIs to ensure collection of realizable revenue.

3.1.7 Tax revenue

Tax revenue of LSGIs consists of Property tax, Profession tax, Entertainment tax and Advertisement tax. Details of collection in respect of the above four taxes by the LSGIs test-checked are shown in Table 3.2.

Table 3.2: Collection of taxes in test-checked LSGIs

(₹ in lakh)

Year	Property tax		Profession tax		Entertainment tax		Advertisement tax		Total tax revenue	
	GPs	ULBs	GPs	ULBs	GPs	ULBs	GPs	ULBs	GPs	ULBs
2009-10	554.12	2472.65	414.36	1622.40	19.77	445.99	7.69	32.69	995.94	4573.73
2010-11	647.07	2662.92	474.74	1906.90	20.23	476.53	5.45	50.86	1147.49	5097.21
2011-12	771.91	3116.17	585.99	2425.24	25.40	575.20	5.96	60.03	1389.26	6176.64
2012-13	834.22	3471.55	659.55	2542.20	28.58	695.59	11.74	51.95	1534.09	6761.29
2013-14	956.90	3845.83	752.83	2967.64	30.57	815.31	27.04	66.91	1767.34	7695.69

¹ 978 GPs, 60 Municipalities and 5 Corporations (excluding Block Panchayats and District Panchayats)

3.1.7.1 Tax collection efficiency

Collection efficiency of various taxes during 2013-14 is given in **Table 3.3**.

Table 3.3: Tax collection efficiency of test-checked LSGIs during 2013-14

(₹ in lakh)

Tax Revenue	GPs				ULBs			
	Demand	Collection	Balance	Collection efficiency (per cent)	Demand	Collection	Balance	Collection efficiency (per cent)
Property tax	1293.64	956.90	336.74	73.97	5594.74	3845.84	1748.90	68.74
Profession tax	757.35	752.83	4.52	99.40	3403.93	2967.64	436.29	87.18
Entertainment tax	30.57	30.57	0	100.00	815.48	815.31	0.17	99.98
Advertisement tax	27.48	27.04	0.44	98.40	78.04	66.91	11.13	85.74
Total	2109.04	1767.34	341.70	83.80	9892.19	7695.70	2196.49	77.80

The collection efficiency of Property tax, which was the major constituent in the revenue of the LSGIs, was not encouraging. The average collection efficiency ranged between 50 and 60 *per cent* in six GPs (Parassala, Vallathol Nagar, Keezhmadu, Koovappady, Paipra, Tholicode) and three ULBs (Thrissur, Koothuparamba, Ottappalam), and between 60 and 70 *per cent* in five GPs (Chirayinkeezhu, Kallara, Pothencode, Thirupuram, Feroke) and four ULBs (Nileshwaram, Punalur, Thrikkakkara, Varkala).

As on 31 March 2014, ₹25.38 crore was pending collection towards tax revenue in the test-checked LSGIs. Even though the Acts provide for stringent action like levy of penalty, initiation of revenue recovery procedures, prosecution, etc., for realising arrears, the LSGIs had not resorted to such measures which was a lapse on the part of LSGIs.

3.1.8 Property tax

Property tax is a recurring tax levied by GPs and ULBs on buildings and land attached to it. It constituted 54.14 to 56.39 *per cent* of the total tax revenue of the GPs and 49.97 to 54.06 *per cent* of the total tax revenue of ULBs test-checked.

Up to 6 October 2009, Property tax was leviable based on the Annual Value of buildings (probable rent that the building may fetch, if let out annually). From 14 January 2011² onwards, Property tax was leviable based on plinth area of buildings. The annual tax, once assessed is payable in half yearly instalments as provided in the Act, until it is further revised. Before introducing plinth area based assessment, the revision of Property tax in ULBs was not effected after 1998. In respect of GPs, Property tax was not revised since 1993.

²Though the Act was amended with effect from October 2009 to levy Property tax based on plinth area of building, the amendment was not brought into effect till 13 January 2011 in the absence of rules to levy and collect Property tax based on plinth area.

3.1.8.1 Raising of demand

(i) Absence of database of all assessable public and private properties

Complete and accurate database of all properties such as residential and non-residential properties, Central/State Government properties, properties of autonomous bodies is a pre-requisite for raising demands and collection of Property tax. Audit observed that the test-checked LSGIs did not have comprehensive database of all assessable properties. In this connection, Audit noticed as under:

(a) Kerala Panchayat Raj (Taxation, Levy and Appeal) Rules, 1996 and Kerala Municipality (Property tax and Service tax) Rules, 2011 stipulate that the Secretary of the LSGI is responsible for the proper maintenance of basic records like Building Application Register, Property tax Assessment Register, Demand Register, etc. Audit noticed that Demand Register/Arrear Demand Register maintained by the LSGIs was not up-to-date and complete. Year-wise details of arrears or arrears of individual assesseees were not available. The LSGIs replied that updating of Demand Register/Arrear Demand Register was in progress.

(b) As part of implementing total e-Governance in LSGIs, Government decided (May 2011) to create a database in respect of Property tax, Profession tax, Entertainment tax, D&O licence, rent on land and building, etc. In September 2013, Government accorded sanction for computerizing and digitalizing the revenue database of Property tax and for introducing e-payment/electronic disbursement facilities in LSGIs, in collaboration with Information Kerala Mission (IKM). Digitalization of database and implementation of e-payment/electronic disbursement facilities had not been completed as there was delay in transferring the data by the LSGIs to IKM and delay in processing the data by IKM as well. The LSGIs replied that the preparation of database was in progress.

(c) The Fourth State Finance Commission had recommended (January 2011) creation of database of properties in LSGIs utilising GIS mapping to provide additional information which would help to streamline the assessment procedure. Though Government accepted the recommendation, its implementation was kept in abeyance on the ground that Government of India (GOI) had undertaken a project for Panchayat-wise mapping of properties adopting GIS. Government had instructed the LSGIs not to formulate any project on GIS mapping till the completion of GOI project or till an integrated policy decision was taken by the various departments of the Government. Thus, no progress was made to implement the GIS mapping.

(ii) Delay in revision of Property tax

Both KM Act and KPR Act were amended in October 2009 to levy Property tax based on plinth area of buildings and detailed order specifying the modalities of assessment were issued by the Government in January 2011. The above order was, however, kept in abeyance for more than two years due to public protest and the

modified order was issued in March 2013. As per the modified order, the new system of assessment based on plinth area was made applicable to new assesseees from 14 January 2011 and to existing assesseees from 01 April 2013. The reason for adopting two dates for implementing the new system was not specified by the Government in the relevant order. It was stipulated that minimum 25 per cent hike was to be ensured in the case of existing assesseees. Audit noticed that only 14 LSGIs³ had started assessment of new buildings under the new system. In the case of old buildings, revision of Property tax was pending in all the LSGIs test-checked. Assuming minimum 25 per cent hike in the case of old buildings, the annual Property tax leviable worked out to ₹8.54 crore⁴.

(iii) Non-assessment of Property tax

Unaided Educational Institutions

With the amendment of KPR Act and KM Act in October 2009, unaided recognized educational institutions were not eligible for exemption from payment of Property tax. But in the absence of rules or norms applicable for their assessment, these buildings were not assessed to Property tax. In April 2012, Government issued directions to all local bodies that Property tax needs to be levied on buildings of unaided educational institutions from 14 January 2011 onwards. KPR Act and KM Act were amended again as per Act 23 of 2013 and Act 8 of 2014 respectively, by which buildings relating to recognized educational institutions up to higher secondary level were exempted from payment of Property tax with effect from 25 November 2012.

From the above, it could be seen that buildings of all recognized unaided educational institutions up to higher secondary level were liable to be assessed to Property tax from 14 January 2011 to 24 November 2012. Test check of records by Audit revealed that in 11 LSGIs, Property tax was not assessed in respect of 53 out of 94 recognized unaided schools for the period January 2011 to November 2012 resulting in loss of revenue of ₹31.38 lakh.

Kerala Health Research and Welfare Society Pay Wards

The Kerala Health Research and Welfare Society (KHRWS)⁵ has several pay wards attached to government hospitals in the State. However, LSGIs were not collecting Property tax in respect of these buildings though they were not exempted from payment of Property tax.

³Chittur-Thathamangalam, Kottakkal, Koothuparamba, Neeleshwaram, Adat, Thiruvambadi, Kattur, Koovappady, Thikkodi, Chirayinkeezhu, Pariyaram, Peringalam, Kallara, Thirupuram

⁴The annual demand of Property tax relating to the existing (old) buildings as on 31 March 2011 was ₹34.18 crore in test-checked LSGIs. Considering a minimum increase of 25 per cent in Property tax collection, the loss in Property tax revenue for the period 2013-14 worked out to ₹8.54 crore.

⁵A society registered under the Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act

In Manjeri Municipality, KHRWS has 40 rooms, attached to the government hospital. Though the building was assessed to Property tax during 1996 for ₹18652, no tax was remitted by the assessee so far (January 2015). The Municipality had not taken any action for demanding and collecting the Property tax on the pretext that tax need not be realised in this case since the society was functioning on no profit no loss basis. Total tax due for the period 1996 to 2013-14 worked out to ₹3.35 lakh. As per section 539 of KM Act, demands for tax claims cannot be made three years after it has fallen due. Thus, tax dues beyond 2010-11 amounting ₹2.80 lakh had become time-barred. The Government accepted the observation made by Audit. The LSGIs stated that action would be taken to realise the tax.

Mobile towers

Government directed in March 2014, that Property tax should be levied on mobile towers from 2009 onwards at the rates prevailing before 2009 on annual value basis. Audit noticed that there were 110 mobile towers in nine test-checked LSGIs. Out of these, 25 mobile towers were not assessed to Property tax even as of January 2015, resulting in non-realisation of Property tax amounting to ₹6.39 lakh for the period 2009-10 to 2013-14. LSGIs stated that they did not collect tax as the towers belong to BSNL. Government stated that action would be taken to realise Property tax due on mobile tower owners.

Buildings of Development Authorities

The Government issued orders in April 2007, merging the Development Authorities with the Corporations. Accordingly, Thrissur Urban Development Authority (TUDA) and Calicut Development Authority (CDA) were merged with Thrissur Corporation and Kozhikode Corporation respectively. As per Section 235 of KM Act/Section 207 of KPR Act, buildings and lands belonging to the Municipality/Panchayat are exempted from payment of Property tax. By virtue of this provision, buildings of the two Development Authorities were not assessed to tax. In October 2012, Government reconstituted the Development Authorities. Consequently, the buildings of the Development Authorities ceased to be the properties of the Corporations and the Development Authorities were liable to pay Property tax from October 2012. But Thrissur Corporation and Feroke GP (properties of CDA were situated in Feroke GP) had not demanded Property tax in respect of the buildings of the two Development Authorities from October 2012. The loss of revenue on this account amounted to ₹4.24 lakh⁶ for the period October 2012 to March 2014. Thrissur Corporation stated that action would be taken to collect Property tax from the Development Authorities.

⁶ Plinth area of TUDA: 2926.91 sq. m., Rate: ₹80, Tax for 1½ years: ₹3,51,229
Plinth area of CDA: 803.15 sq. m., Rate: ₹60, Tax for 1½ years: ₹72,284
Total tax: ₹4,23,513, i.e. ₹4.24 lakh

Unauthorized constructions

As per Rules 4 and 20 of the Kerala Municipality Building Rules 1999 (KMBR), and Rule 4 of Kerala Panchayat Raj Building Rules, 2011 (KPBR 2011), no person shall construct any building in the municipal/panchayat area without obtaining permission and the construction shall be done only in accordance with the permission given. Construction made without permission or deviation from the approved plan or in violation of any provision of the Act or Rules shall be treated as unauthorized constructions.

As per Section 242 of KM Act and Section 235 (AA) of KPR Act, in the case of unauthorized constructions, tax shall be assessed from the date of completion or occupation of the building, whichever is earlier, till the date of demolition of that building. The assessee is liable to pay thrice⁷ the amount of normal Property tax for those buildings till regularisation/demolition of the construction/building.

The LSGIs maintain Unauthorized Assessment (UA) Register to record the details of assessments in respect of unauthorized constructions. Audit noticed that out of 1622 unauthorized constructions recorded in the UA register of four ULBs⁸ in 66 cases, the LSGIs failed to levy Property tax as stipulated in the Act, resulting in short levy of ₹two crore. These included two major cases of Thrissur Corporation – one in respect of Metropolitan (Hospital) Health Care (Pvt) Ltd, Thrissur (₹54.54 lakh) and the other related to Thrissur District Co-operative Bank (₹40.58 lakh). Thrissur Corporation stated that these cases had been referred to Government for further action. Audit could not quantify the short levy in respect of the remaining 1556 cases as requisite details were not available in the UA Register. These buildings were neither regularized nor demolished, as per the provisions of the rules.

Buildings of Professional Education Society

Ideal Educational Society (IES), a self-financing professional educational institution, had constructed a number of buildings in Adat Grama Panchayat (Thrissur District). Audit noticed that IES had constructed buildings (residential: 9734 m² and non-residential: 49468 m²) without obtaining permit from the GP. Being unauthorized constructions, three times of the normal Property tax was payable on these buildings as per section 235AA of KPR Act, until they are regularized. The GP had, however, not collected any amount towards Property tax. The Property tax due on these buildings from January 2011 to March 2014 worked out to ₹75.81 lakh. Apart from some minor cases, IES was the only major case which figured in the UA register of Adat GP. The Government stated that the matter will be examined.

⁷ From 7 October 2009 (up to 6 October 2009, only normal Property tax was payable)

⁸ Thrissur, Guruvayur, Karunagappally and Vatakara

Non- levy of Service tax

Kerala Municipality Act, 1994 and Kerala Panchayat Raj Act, 1994 stipulate that the LSGIs can levy Service tax for providing various services such as water supply, drainage, sanitation etc., in addition to Property tax. Government order (January 2011) that the LSGIs may levy Service tax not less than 10 *per cent* of the amount of normal Property tax. Audit noticed that most of the LSGIs were not collecting Service tax since decisions were not taken by the Panchayat Committees in this regard. Loss of revenue sustained by 23 LSGIs in this regard worked out to ₹7.66 crore.

(iv) Irregular exemptions allowed

Government of India buildings

By virtue of Article 285(1) of the Constitution of India, Property tax is not leviable on GOI buildings. As per Rule 30 of KM (Property Tax and Service Tax) Rules, 2011/Section 30 of KPR (Property Tax and Service Tax) Rules 2011, LSGIs can levy Service Charge on sanitation, water supply, street light, drainage etc., provided to GOI buildings by local bodies. GOI had specified Service Charge at 33.33 *per cent*/50 *per cent*/75 *per cent* of normal Property tax on buildings of GOI, depending on the quantum of service availed by them. Orders issued by the Government in January 2011 also specified that Service Charge at the above rates was to be realised from GOI buildings. Since GOI buildings enjoy all facilities provided by the local bodies as in the case of other buildings, Service Charge at 75 *per cent* of normal Property tax was realisable from them. Audit observed that, Service Charge was not realised from GOI buildings. Audit could not quantify the Service Charge due from all the GOI buildings in the test-checked LSGIs for want of requisite data of the GOI buildings. Service Charge based on plinth area of 11 GOI buildings during January 2011 to March 2014 worked out to ₹13.11 lakh. The Government stated that GOI buildings were liable to pay service charge and action would be taken to collect the same.

BSNL buildings

Exemption from payment of Property tax provided to GOI buildings under Article 285(1) of Constitution is not available to buildings of BSNL which started functioning as a company from October 2000. Government issued (December 2004) directions to all local bodies to realise full Property tax in respect of BSNL buildings. As per information furnished by nine test-checked LSGIs, 11 buildings owned by BSNL in five LSGIs were not assessed for Property tax. The Property tax due from BSNL in respect of these buildings for the period January 2011 to March 2014 on plinth area basis worked out to ₹81.32 lakh (The Property tax for the prior period was not calculated for want of requisite details for arriving at the Annual Value). Non-assessment and non-collection of tax is a lapse on the part of the LSGIs. Some of the LSGIs stated that they had issued notices for collection of Property tax.

3.1.9 Profession tax

As per Section 245 of KM Act/Section 204 of KPR Act, local bodies levy Profession tax on institutions, professionals and individuals transacting business, engaged in self employment or performing duty in the municipal/panchayat area for not less than 60 days in aggregate during a half year. As per Kerala Municipality (Profession tax) Rules, 2005, and Kerala Panchayat Raj (Profession tax) Rules, 1996, Profession tax is payable by employees if their half yearly income from salary/wages is not less than ₹12000. Government prescribed slab rates ranging from ₹120 to ₹1250 per half year in respect of the employees based on their half yearly income, and ₹450 to ₹1250 per half year in respect of various categories of traders/professionals/institutions. Every head of office or employer or self drawing officer is bound to recover Profession tax and remit it along with details of income.

3.1.9.1 Raising of demand

Assessees escaping assessment

Section 257 of KM Act/ Section 205 (1) of KPR Act stipulate that the Secretary shall maintain a Ward-wise Demand Register by providing independent pages for each institution. The Secretary was also to maintain a traders list. The Fourth State Finance Commission had recommended (March 2011) enumeration of all professionals and institutions for Profession tax assessment utilizing the data available with commercial tax offices, labour/factories and boilers departments, plantation, business and other industries, and the Government accepted the recommendation. Audit observed that Ward-wise Demand Registers and the traders lists maintained in the LSGIs were incomplete and not being updated periodically.

Test check of records revealed that under the following categories, assessee's name did not figure in the records of the LSGIs and had thus escaped assessment as shown in **Table 3.4**.

Table 3.4: Categories of assessee's escaped assessment of Profession tax

Sl. No	Category	Total no. of persons	No. of persons escaped assessment	Loss of revenue (₹ in lakh)	Period of short levy	Basis for arriving the number of assessee's who escaped assessment
1	Contractors	1971	1971	49.27	2009-10 to 2013-14	By comparing the list of contractors registered in 14 GPs, 12 Municipalities and one Municipal Corporation (Appendix V) with the Profession tax assessment records of those LSGIs.
2	Advocates	819	801	20.02	2013-14	Based on the list of advocates enrolled in the Bar council, as furnished by eight Municipalities and one Municipal Corporation (Appendix V).
3	Traders	1725	1399	23.74	2013-14	By comparing the information collected from Commercial Tax Offices, with the profession

Sl. No	Category	Total no. of persons	No. of persons escaped assessment	Loss of revenue (₹ in lakh)	Period of short levy	Basis for arriving the number of assessees who escaped assessment
						tax assessment records of three Municipalities (Appendix V).
4	Doctors	342	217	5.42	2013-14	By comparing the data available in the web sites of three hospitals in three LSGIs with the returns filed by those hospitals in the LSGIs. (Appendix V).

Thus, due to improper maintenance of records/incomplete database, the LSGIs could not collect the entire tax from the above categories of assessees. The LSGIs stated that action would be taken to collect the dues.

3.1.10 Entertainment tax

As per Kerala Local Authorities Entertainment Tax Act, 1961, local bodies levy Entertainment tax on entertainments including cinemas, exhibitions, amusements, sports, games, etc. In the LSGIs test-checked, Entertainment tax was being collected by 15 GPs and 19 ULBs during 2009-10 to 2013-14. Entertainment tax constituted approximately two *per cent* of the total tax revenue of the GPs and 10 *per cent* of the ULBs.

3.1.10.1 Raising of demand

(i) Short levy of Entertainment tax

As per Section 3B of the Kerala Local Authorities Entertainment tax (Amendment) Act, 2005, amusement parks are classified under five categories (A to E), depending on the investment made and the area utilised for the park, for levying Entertainment tax. As per Explanation 2 under Section 3B, if both the investment and area of land together do not come under any of the above specified categories (A to E), but either the investment or area comes under any of the categories, the park shall be assessed in the category to which the higher rate of tax is applicable.

Silver Storm Amusement Park (the Park) in Athirappally GP is built in an area of 8.14 acres of land (land utilised: 3.77 acres). The GP classified the Park under Category A and levied Entertainment tax at the rate of ₹three lakh per annum (from 2004-05 onwards) with annual increase of 10 *per cent*, based on the statement of the assessee that the total investment was ₹2.61 crore only. However, as per the Balance Sheet and connected Schedules of the Park, the total investment was between ₹7.19 crore and ₹8.77 crore during 2009-10 to 2013-14. As such, the Park was to be classified under Category B since 2009-10. Calculated at the minimum applicable rate under Category B (₹10 lakh per annum), the Entertainment tax due to be collected for the period 2009-10 to 2013-14 was ₹50 lakh against which the GP demanded only ₹17.10 lakh, resulting in short levy of ₹32.90 lakh. Out of ₹17.10 lakh demanded, the party had remitted only ₹10.50 lakh.

The GP stated (December 2014) that necessary action would be initiated for realisation of the amount of tax.

(ii) Entertainments outside tax net

The Forest and Tourism Departments collect Entry fee in many tourist centres like Periyar Tiger Reserve, Periyar Lake, Edakkal caves, Athirappally/Vazhachal Waterfalls, etc. Forest Department was collecting Gate fee (₹30 per adult) in Athirappally/Vazhachal tourist area. Though the GPs/Municipalities provided various facilities such as water supply, lighting, waste disposal etc, in such places, the local bodies were not deriving any income in the form of Entertainment tax from such tourist spots. During 2009-10 to 2013-14, the Forest department had collected ₹16.29 crore from Athirappally and Vazhachal picnic spots. Considering the sums collected from such picnic spots, the Fourth State Finance Commission had recommended (January 2011) that these entertainments may be brought under Entertainment tax Act. Though the Government had accepted this recommendation in March 2012, no further action has been taken in this regard by the Government to include such spots for levy of Entertainment tax. On this being pointed out by Audit, Government agreed to bring these entertainments under the Entertainment Tax Act.

3.1.11 Advertisement tax

Section 271 of KM Act and Section 209 of KPR Act empower LSGIs to levy tax on advertisements displayed over any land, building, wall, hoarding or structure in its area. The rates applicable to various types of advertisements are to be fixed by local bodies subject to the limits prescribed by Government. The share of Advertisement tax in the total tax revenue of test-checked LSGIs was roughly one *per cent*. Out of the 40 GPs test-checked, 26 GPs had not collected Advertisement tax.

Sections 209 and 256 of KPR Act and Section 567 of KM Act provide that each local body shall formulate Bye-laws stipulating the rates of various categories of Advertisement tax and the manner of realizing it. The LSGIs can levy Advertisement tax in accordance with the Bye-laws formulated. Audit noticed that out of the 61 test-checked LSGIs, 30 LSGIs had not formulated any Bye-laws in this regard. Some of the LSGIs replied that they had taken action to formulate the Bye-laws.

3.1.12 Non-tax Revenue

The non-tax revenue of LSGIs consists of rental income from properties of LSGIs, permit fee for building construction, fee for laying cables, revenue from sale of river sand etc., user fee realised in respect of facilities provided by local bodies, *viz.*, markets, toilets, burial grounds, parking lots, etc., fee for issuing licences to traders, private markets, private parking lots, slaughter houses, factories, workshops etc., registration fee realised from tutorial institutions, private hospitals and paramedical institutions, interest on deposits, subsidies, contributions etc., sale

of old vehicles, scrap, tender forms etc., fines, penalties and other miscellaneous receipts, etc.

The fee for issuing various licences, permit fee realised for building construction and other activities, user fee realised from markets, bus stand, etc., and rent realised from buildings constitute the main components of Non-tax revenue of LSGIs. Revenue realised by the selected LSGIs in respect of the above components during the years 2009-10 to 2013-14 is shown in **Table 3.5**.

Table 3.5: Non-tax revenue of the LSGIs test-checked

(₹ in lakh)

Year	Licence fee		Market/Bus stand/User fee etc		Fee for Construction/ Permit		Rent		Others		Total Non-Tax Revenue	
	GPs (40)	ULBs (21)	GPs (40)	ULBs (21)	GPs (40)	ULBs (21)	GPs (40)	ULBs (21)	GPs (40)	ULBs (21)	GPs (40)	ULBs (21)
2009-10	33.14	81.02	42.74	237.63	104.55	707.83	117.19	1124.84	591.21	719.13	888.83	2870.45
2010-11	35.84	126.52	52.22	170.73	138.20	1203.38	121.22	1237.58	629.29	1337.63	976.77	4075.84
2011-12	39.28	148.74	52.83	262.67	98.08	1355.49	138.61	1389.28	897.30	825.39	1226.10	3981.57
2012-13	41.16	195.26	83.20	394.65	65.69	1349.19	159.24	1394.56	905.97	1023.38	1255.26	4357.04
2013-14	49.53	195.82	71.07	408.42	68.15	637.37	173.00	1574.02	534.76	1596.77	896.51	4412.40

Rent of buildings, a major component of Non-tax revenue, constituted 19 *per cent* and 36 *per cent* of Non-tax revenue of GPs and ULBs respectively during 2013-14. Permit fee for building construction was also a main component which constituted 25 *per cent* to 34 *per cent* of Non-tax revenue of ULBs during 2009-10 to 2012-13. However, it declined to 14 *per cent* during 2013-14. The fall in the collection of permit fee was significant in Thrissur Corporation. Due to the restrictions imposed by Government on FAR of buildings, there was decrease in the number of high-rise buildings which was a major cause for decrease in Permit fee. Audit noticed that the LSGIs were neither tapping all potential sources of Non-tax revenue permissible as per KM Act/KPR Act, nor effectively collecting the entire revenue from the sources already identified by them, as stated below:

3.1.12.1 Raising of demand

(i) Short levy of compounding fee

Till February 2011, the provisions of KMBR were applicable to buildings constructed in Panchayat area, *vide* Government order issued in June 2007. Thus, building permits were to be obtained in respect of all constructions in Panchayat area also. The Cochin International Airport Authority Limited (CIAL) constructed a Golf and Country Club in Nedumbassery GP, without obtaining permit from the Panchayat. The CIAL applied for regularization of the construction/land development in August 2009. The GP demanded ₹80.62 lakh as regularisation fee as per provisions of KMBR, against which CIAL remitted (July 2010) only ₹0.54 lakh. In 2011, Kerala Panchayat Building Rules, 2011 (KPBR, 2011) came into force according to which the permit fee realizable for construction/land development was less in Panchayats compared to Municipalities. The GP revised

the demand of CIAL to ₹26.34 lakh in June 2012 based on the provisions of KPBR. The action of the GP in revising its earlier demand was not warranted, as the land conversion and constructions were made in 2009 when the KMBR was in force. The short levy on this account amounted to ₹53.74 lakh. On this being pointed out by Audit, the LSGI stated that CIAL approached the High Court against the levy of permit fee and the case was pending. The action in the case by the GP with respect to court case would be awaited.

(ii) Utility charge from Telecom Companies

As per Sections 368 (3) & 369 of KM Act, the Municipalities may lease the sides of roads vested with it or grant licence for occupying those places for definite purposes. In the orders issued (August 2012) by Government, it was specified that LSGIs shall charge rent/user fee from Telecom operators for laying cables by the side of roads vested with them. The panchayat committees/municipal councils need to fix rates for laying cables and have to enter into agreement with the licensee in this regard. Audit noticed that private telecom operators were utilizing sides of roads vested with local bodies, for erecting poles and laying underground/overhead telecom cables without the permission of the LSGIs. Out of the LSGIs test-checked, in 46 LSGIs, the committees/councils had not fixed any rates and they were not having details about laying of cables. Therefore, these Panchayats/Municipalities were not realising any licence fee on this account.

Of the 61 LSGIs test-checked, Thrissur Corporation and Vadakara Municipality maintained records relating to laying of telecom cables. In Vadakara Municipality, though Reliance Jio Infocom laid underground cables of 8.77 km length on the sides of roads vested with it, the Municipality had neither realised any amount nor raised any demand towards licence fee so far (January 2015). Audit could not quantify the loss as the Council had not fixed any rate for levying the rent/user fee. The Assistant Engineer of the Municipality stated (February 2015) that the matter would be placed before the Council for fixing the rates for the purpose.

(iii) Rent due from Cable Television Operators

Thrissur Corporation allowed Cable Television operators to draw cables through electric poles with effect from 2011 at an annual rent of ₹250 per pole in urban/semi urban areas and ₹125 per pole in rural areas with an annual increase of five *per cent*. As per the Council decision, the Corporation had to execute an agreement with the cable operators and the cable operators were to remit the annual rent in advance. Audit noticed that the above Council decision was not enforced. Though an amount of ₹14.32 lakh pertaining to the period 2005-06 to 2013-14 was due from cable operators, the licences were being renewed periodically without clearing the entire arrears. On this being pointed out by Audit, the Corporation stated (December 2014) that demand notices would be issued to the parties concerned.

(iv) Sanitary charge from Guruvayur Devaswom

As per Section 333 of KM Act, if any religious place situated within a municipal area is used for holding fairs, festivals or similar activities which attract a large number of people, requiring special arrangements for public health, safety or convenience, the Municipality may require the trustee or other person having control over such place to make such recurring or non-recurring contributions to the funds of that Municipality as determined by Government based on the additional expenditure incurred by the Municipality in this regard.

Guruvayur Sree Krishna temple attracts a large number of devotees throughout the year, and the Municipality has to make special arrangements for public health, safety and convenience of the pilgrims. Government directed (January 2012) Guruvayur Devaswom to pay an amount of ₹85 lakh (₹five lakh per year) to Guruvayur Municipality towards centage charges (for waste disposal) for the period 1995-96 to 2011-12, and thereafter the amount was to be determined by mutual discussion between the Municipality and Guruvayur Devaswom. Though Guruvayur Devaswom Commissioner sanctioned (January 2012) the payment of the above amount, the same was not paid till date (November 2014). Audit observed that it was a lapse on the part of the Municipality not to make any efforts to realise the amount, even after three years from the date of sanction. On this being pointed out by Audit, the Municipality stated (November 2014) that action would be taken to realise the amount.

3.1.12.2 Collection and Accounting

(i) Non-receipt of rent from buildings

Most of the LSGIs in the State had constructed shopping complexes and other buildings by availing loans from financial institutions, with the intention of deriving additional income by way of rent. Since the loans were to be repaid with interest, it should be ensured that these buildings were let out or utilised properly by the LSGIs to derive additional revenue. Audit noticed that in seven test-checked LSGIs⁹, 145 shop rooms in the shopping complexes were not let out due to lack of demand for the rooms, resulting in loss of revenue of ₹1.29 crore¹⁰ (**Appendix VI**). It was further observed that in the test-checked LSGIs ₹8.83 crore was pending collection as of March 2014 towards rent of shop rooms and other buildings already let out. In majority of cases, the rooms were remaining idle since the buildings were constructed on locations not having adequate commercial potential. The LSGIs were not rigorously pursuing the realisation of dues.

(ii) Loss of rent due to non-observance of prescribed procedures

Before letting out a property, it was necessary to enter into an agreement with the lessee stipulating the period of lease and modalities of payment of rent. Vaikom Municipality leased out (September 2009) the Town Hall and Rest House owned

⁹ Ottappalam, Vaikom, Manjeri, Koothuparamba, Mukkam, Chalakkudy, Vallathol Nagar

¹⁰ Loss worked out based on the rent fixed by the Panchayat Committee/Council

by it to a private individual for two and a half years. Relevant agreement was not available. As per records, the lease rent was ₹3.50 lakh per annum for the Town Hall and ₹5.35 lakh per annum for the Rest House. Though the lessee did not pay any amount towards rent of the buildings, the lease period was further extended to another period of three years for the same rent even before the expiry of initial period of the lease, as decided by the Municipal Council in June 2010. The lessee did not pay the rent on the contention that rent fixed was for two and a half years and not for one year, and obtained an interim stay from the High Court in March 2012. Later, the Municipality came to a settlement (March 2014) with the party, based on which the party withdrew the case pending in High Court and vacated (March 2014) the building. In return, the Municipality exempted the party from payment of rent.

Audit noticed that the Municipality leased out the above buildings without inviting competitive tenders. The Municipality could not produce the agreement with the lessee before the High Court which made it difficult to defend the case. The settlement arrived at by the Municipality to waive the entire rent from the lessee without defending the case in the High Court with proper documents was against the financial interest of the Municipality. The loss of rent for the period September 2009 to March 2014 worked out to ₹39.62 lakh. The Municipality stated in reply that action would be initiated to recover the amount.

A Munsiff court was functioning in the Town Hall building from August 2014. The Municipality stated that action was being taken to let out the rest house through auction.

(iii) Loss of licence fee

After entering into agreement with contractors for providing services, it is the responsibility of the LSGIs to see that the terms and conditions set forth in the agreement are complied with, and in case of default on the part of the contractors, to ensure that timely action including invoking of penal provisions was taken to safeguard the interest of LSGIs. Vaikom Municipality entrusted the right to conduct a Jhankar Ferry Service for three years from September 2011 to a Contractor for a licence fee of ₹10.30 lakh per annum and executed (September 2011) an agreement after collecting security deposit of ₹3.44 lakh. However, after operating the service for a period of nine months, the Contractor abandoned (June 2012) the ferry service. As per the agreement, the rent was to be remitted in twelve equal monthly instalments. If the rent was not paid consecutively for two months, the licence shall be cancelled and loss sustained by the Municipality was to be adjusted against the security deposit. But the lessee had not paid any rent. Loss sustained to the Municipality after adjusting the security deposit amounted to ₹27.46 lakh. The Municipality initiated Revenue Recovery proceedings in September 2014, i.e., after a delay of two years, against which the contractor obtained a stay order from the High Court. The Municipality had not taken any action for retendering the Jhankar Ferry Service even after lapse of two and a half

years from the date of discontinuance of the Ferry Service. If the Municipality had taken timely action to retender the Ferry Service, the loss could have been avoided. It was stated in reply that the Council referred the case for a detailed study.

(iv) Revenue loss on account of giving undue relaxation in terms of contract

Thrissur Corporation awarded (November 2013) the right to display advertisements on electric posts within its area to M/s Star Communications for an amount of ₹66.78 lakh. The contract was for one year from 15 November 2013 to 14 November 2014. As per the conditions of the contract, the firm had to make full payment on the date of contract. However, based on the request made by the contractor, the Mayor allowed the firm to make initial payment of ₹16.69 lakh and the balance amount in five equal instalments. Reasons for allowing relaxation in the payment schedule were not recorded. Though the firm made the initial payment of ₹16.69 lakh in December 2013, it did not pay the balance amount of ₹50.09 lakh. Corporation stated that Revenue Recovery proceedings had been initiated to collect the arrears. Thus, undue relaxation in the terms of the contract in favour of the contractor resulted in non-realisation of ₹50.09 lakh.

(v) Revenue loss relating to sale of sand

In Kozhikode District, online sale of river sand and collection of sale value are done by the District Collector. After deducting the River Management fund, the District Collector remits the balance amount in the bank account of the concerned local body. On a comparison of the sand sale statement provided by the District Collector with the relevant bank account maintained by Feroke GP, Audit noticed that the GP had not received ₹20.05 lakh relating to sale of sand on certain days during 3 October 2012 to 22 November 2013. There was lapse on the part of the Panchayat in reconciling the amounts credited in bank account with the sand sale statement provided by the District Collector. On this being pointed out, the Secretary stated (October 2014) that the matter would be brought to the notice of the District Collector for further appropriate action.

(vi) Non-realisation of collection charges of Cess

As per Building and Other Construction Worker's Welfare Cess Act, 1996, cess not exceeding two *per cent* of the construction cost was to be collected from the employer and remitted to Kerala State Building and Other Construction Workers Welfare Fund Board, by the LSGIs. The LSGIs are entitled to realise collection charge not exceeding one *per cent* of the amount collected. Audit noticed that though the LSGIs collected cess amount from contractors, and remitted the same to the Welfare Board, they did not realise the collection charges. Non-realisation of collection charges of cess by 32 LSGIs amounted to ₹2.60 lakh.

3.1.13 Conclusion

LSGIs failed to secure its financial interest by ensuring compliance of Government directives and application of relevant rules/Acts for improving collection of taxes

and non-taxes, resulting in short levy/collection of revenue. Property tax assessment based on plinth area was not revised timely. LSGIs were not collecting Service Charges from GOI buildings and Property tax from BSNL buildings. Non-implementation of accepted recommendations of Finance Commissions coupled with non-maintenance of requisite records and laxity in pursuance of recovery of legitimate dues also resulted in loss of Entertainment tax, Profession tax, Advertisement tax, etc.

3.1.14 Recommendations

- LSGIs should maintain a comprehensive database of all properties in their area with the help of GIS mapping to ensure that no properties escape assessment.
- Local Bodies should prepare a database of professionals/institutions for Profession tax assessment utilising the data available with commercial tax offices, Bar Council, Hospitals, Labour/Factories and Boilers Departments, plantation business etc.
- Kerala Local Authorities Entertainment tax Act/Rules need to be amended to bring tourist spots under tax net.

