IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

WEDNESDAY, THE 9TH DAY OF SEPTEMBER 2015/18TH BHADRA, 1937

RP.No. 598 of 2015 () IN WP(C).14316/2014

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AGAINST THE JUDGMENT IN WP(C)NO. 14316/2014 of HIGH COURT OF KERALA DATED 07-04-2015

REVIEW PETITIONER/PETITIONER IN WP(C):

BIJU NARAYANAN
S/O.LATE P.A NARAYANAN, BIJU NIVAS, ARAKUZHA ROAD
MUVATTUPUZHA 686 661

BY ADV. SRI.JOSE J.MATHAIKAL

RESPONDENTS/RESPONDENTS:
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1. THE REVENUE DIVISIONAL OFFICER
MUVATTUPUZHA PIN 686 661

2. THE TAHSILDAR
TALUK OFFICE, MUVATTUPUZHA PIN 686 661

3. THE VILLAGE OFFICER
MARADY, MUVATTUPUZHA PIN 686 661

R BY SENIOR GOVERNMENT PLEADER SRI. R. PADMARAJ

THIS REVIEW PETITION HAVING COME UP FOR ADMISSION ON 09-09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.R. RAMACHANDRA MENON J.

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R.P. No. 598 of 2015

in

W.P.(C) No. 14316 of 2014

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Dated, this the 9th day of September, 2015

<u>O R D E R</u>

The review petition is in respect of the verdict already passed by this Court, whereby the course to be pursued with reference to the prayer for effecting change in basic tax register was directed to be considered.

2. The case projected by the petitioner in the writ petition was that the concerned land was only a 'garden land' and not a 'wet land' as described in the Basic Tax Register. Reliance was sought to be placed on the decision rendered by this Court in **Jalaja Dileep Vs. Revenue Divisional Officer [2012 (3) KHC 273],** which was affirmed by a Division Bench of this Court as per the decision reported in **2014 (1) KLT 161 [Revenue Divisional Officer Vs. Jalaja Dileep] .** When the matter was disposed of, it was brought to the notice of this Court that the law laid down by the Division Bench has been set aside by the Apex Court, as per the decision reported in **2015 (1) KLT 984 (SC) [Revenue Divisional Officer Vs. Jalaja**

Dileep], clearly holding that the Basic Tax Register cannot be corrected under any circumstances. It was in the said circumstances, that the prayer of the petitioner to cause correction in 'BTR' was held as not liable to be entertained, however setting the petitioner at liberty to move the concerned authority (Revenue Divisional Officer) by filing a petition under Clause 6(2) of the Kerala Land Utilization Order within the time stipulated therein, vide common judgment dated 07.04.2015 in W.P.(C) No. 12414 of 2014 and connected cases.

3. The learned counsel for the review petitioner submits that in the case of the petitioner herein, an order had already been passed by the Revenue Divisional Officer as per Ext.P6, which could not be pointed out when the common judgment was rendered. As per Ext. P6 passed by the first respondent under Clause 6 (2) of the KLU Order, permission has already been given to the petitioner to use the land for other purposes than agriculture. The learned counsel for the review petitioner points out that, as per the decision rendered by a Division Bench of this Court in **Local Level Monitoring Committee Constituted under Section 5 of the Kerala Conservation of Paddy Land and Wetland Act 2008 in Kizhakkambalam Grama Panchayat Vs. Mariumma [2015**

(2) KLT 516], also with reference to the law laid down by the Apex Court as per the decision reported in **2015 (1) KLT 984 (SC)** (cited supra), where an order passed under the relevant provisions of the KLU Order is in existence, appropriate additions can be made in the Basic Tax Register and as such, the prayer of the writ petitioner to effect correction in the BTR was to be considered favourably. Hence the review petition.

4. The law declared by a Division Bench of this Court as per the decision reported in **2015 (2) KLT 516** (cited supra), particularly paragraph 9 of the verdict (which is sought to be relied on by the petitioner), reads as follows :

> "9. The further issue raised before us by the learned Government Pleader was that in view of the directions of the Apex Court as contained in para 21 extracted above, even if the authorities under the Kerala Land Utilization Order, 1967 pass an order in favour of the respondents, there cannot be any correction of entries in the Basic Tax Register maintained under the Kerala Land Tax Act. This contention was raised in the context of the principles laid down in the judgment that rectification as envisaged by S.18 of the Kerala Land Tax Act can only be in respect of arithmetical or clerical error, that too in the order of determining the

> tax due. Though it is true that in the judgment of the Apex Court, it has been held as above, that principle has been laid down by the Apex Court in the background of S. 18 providing for rectification of mistakes. In our view, if an order is passed by the authority under the Kerala Land Utilization Order or Act 28 of 2008 changing the description of the land, that cannot lead to a situation where S.18 is attracted. On the other hand, such change of the description of the land would render the assessments already made under S.6A of the Kerala Land Tax Act, 1961 redundant and instead what is called for is a fresh assessment in accordance with the said Act. Necessarily, as a consequence of such assessment, it would be open to the authorities also to make appropriate additions to the Basic Tax Register. Such a course, in our view, is not forbidden by any of the principles laid down by the Apex Court, particularly those contained in para 21 of the judgment mentioned above.

What has been ordered is only with regard to the **"assessment"** of tax with reference to the categorization of land and as to the necessity to make additional entries in the Basic Tax Register as to the assessment <u>and not with reference to the change in classification</u>. No such assessment is involved in this case. Ext. P6 is only with reference to the user of land in question, which has no relation to the 'assessment' so as to effect any additional entry in respect of payment of tax in respect of the land in question. There is no merit in the review petition. It stands dismissed accordingly. It is always open for the petitioner to pursue further steps on the basis of the relief obtained as per Ext. P6, in accordance with law.

sd/-

P. R. RAMACHANDRA MENON,
(JUDGE)

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