

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS**

WEDNESDAY, THE 8TH DAY OF APRIL 2015/18TH CHAITHRA, 1937

WA.No. 1294 of 2013 () IN WP(C).24116/2012

**AGAINST THE ORDER/JUDGMENT IN WP(C) 24116/2012 of HIGH COURT OF KERALA
DATED 03-04-2013**

APPELLANT(S)/RESPONDENTS IN WPC:

- 1. THE LOCAL LEVEL MONITORING COMMITTEE
CONSTITUTED UNDER SECTION 5 OF THE KERALA CONSERVATION
OF PADDY LAND AND WETLAND ACT
2008 IN KIZHAKKAMBALAM GRAMA PANCHAYATH
REPRESENTED BY THE PRESIDENT
KIZHAKKUMBALAM GRAMA PANCHAYATH-683562.**
- 2. THE AGRICULTURAL OFFICER,
KRISHIBHAVAN, KIZHAKKAMBALAM PIN 683 562**
- 3. THE VILLAGE OFFICER,
KIZHAKKAMBALAM PIN 683 562**
- 4. THE TAHSILDAR,
KUNNATHUNADU, ERNAKULAM DISTRICT PIN 682 316**

**BY ADV. SPL.GOVERNMENT PLEADER SRI.RINNIE STEPHEN
CHAMAPARAMBIL**

RESPONDENT(S)/PETITIONERS IN WPC:

- 1. MARIUMMA
W/O.KUNJAHAMMED, MAROTTICKAL, AMBUNADU
KIZHAKKAMBALAM-683562**
- 2. KHADIJA KUTTY
W/O.NADIR, RESIDING AT S.R.M ROAD, ERNAKULAM-682001**

**R1 BY ADV. SRI.T.A.UNNIKRISHNAN
R2 BY ADV. SRI.A.A.ABUL HASSAN
BY SRI.G.G.MANOJ**

**THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 08-04-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

ANTONY DOMINIC & ALEXANDER THOMAS, JJ.
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Writ Appeal No.1294 of 2013
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Dated this the 8th day of April, 2015

J U D G M E N T

Antony Dominic, J.

This appeal is filed by the respondents in WP(C) No.24116/12. Respondents herein, who are the owners of 12.87 ares of land situated in Sy.No.76/15 and 28.33 ares in Sy.No.76/16 of Kizhakkambalam village filed the writ petition contending that their land has been converted into a garden land about more than 30 to 35 years ago and is cultivated with coconut trees. It is stated that despite that, in the Basic Tax Register, the property has been described as a paddy land. They say that, therefore, they made Ext.P3 representation to the Local Level Monitoring Committee constituted under Section 5 of the Kerala Conservation of Paddy Land and Wet Land Act, 2008 (Act 28 of 2008), which had published a data bank including the lands in question, requesting to exclude their properties. With these averments, they filed the writ petition seeking a prayer directing the respondents therein to exclude the land from the data bank prepared under Section 5(4)(i) of Act 28 of 2008 and also to require the 3rd respondent therein to correct the

entry regarding the description of the land contained in the Basic Tax Register and to note the same as garden land.

2. Pursuant to the interim order dated 18/10/12 passed in IA No.14166/12 directing the 1st appellant to consider and pass orders on Ext.P3 mentioned above, lands were inspected. On inspection, the property was found converted approximately 20 years prior to the inspection and to be unsuitable for paddy cultivation. In the statement filed by the 2nd appellant, it was also stated that the Local Level Monitoring Committee in its meeting held on 30/11/12 took note of the inspection report and decided to change the entry of the respondents' property in the draft data bank and the entry was corrected as "converted land".

3. When the writ petition came up for consideration, taking note of the above development resulting in modification of the entry in the draft data bank and also taking note of the principles laid down by this Court in **Jalaja Dileep v. Revenue Divisional Officer** (2012 (3) KLT 333), this Court directed the 4th appellant herein to consider the grievance of the respondents to make necessary correction in the Basic Tax Register at the earliest. It is this judgment which is under challenge before us.

4. Though the factual aspects leading to the change in the draft data bank are not disputed by the learned Government Pleader, what he contends is that in view of the principles laid down by the Apex Court in the judgment in **Revenue Divisional Officer v. Jalaja Dileep** (2015 (1) KLT 984) reversing the judgment in **Jalaja Dileep's case** (supra), the judgment of the learned single Judge is untenable. Learned counsel appearing for the respondents however contended that having regard to the fact that Local Level Monitoring Committee itself has modified the draft data bank, respondents are entitled to have the Basic Tax Register corrected in terms of Section 18 of the Kerala Land Tax Act.

5. We have considered the submissions made.

6. It is true as contended by the learned Government Pleader that the judgment in **Jalaja Dileep's case** (supra) was reversed by the Apex Court in the judgment mentioned above. In the said judgment, after referring to the provisions of the Kerala Land Utilisation Order, 1967 and Act 28 of 2008, law has been laid down by the Apex Court by holding thus;

"17. "Paddy land" and "Wetlands" are defined

under Section 2(xii) and 2(xviii) of the Act respectively. As per Section 5(4), the Committee shall inter alia prepare a Data Bank with details of cultivable paddy land within the jurisdiction of the Committee. If the land is not included in the Data Bank or Draft Data Bank prepared under the Kerala Cultivation of Paddy Land and Wetland Act 2008 and if it is not a "Paddy Land" or "Wetland" as defined under Act 28 of 2008, at the time of commencement of the Act 12 (sic Act 28) of 2008 and the classification of land is noted as "Nilam" in the revenue records, the provision of Kerala Land Utilization Order 1967 will be applicable to such land and the Collector as defined in Clause 2(a) of K.L.U. Order 1967 has the power to grant permission to utilize the land for other purposes. As stated in Clause 2(a) of K.L.U. Order, Collectors shall examine such request for residential purpose, on merits on a case to case basis. However, with a view to prevent indiscriminate filling of Paddy Lands in the State, the Government have also prescribed certain restrictions in the Notification dated 5.2.2002 noted (supra), in which District Collectors have been directed inter alia to ensure that the conversions which are likely to render irrigation investments infructuous and

large scale conversion for commercial purpose are not allowed.

18. If a property is included in the Data Bank or the Draft Data Bank prepared under the Wet Land Act 2008 as a "Paddy Land" or "Wetland" and the classification of land is noted as "Nilam" in revenue records, the provisions of the Act 28/2008 would apply. As noticed earlier, there is ample provision within the Act to grant permission for such land for residential purpose or public purpose as defined in the Act. And as elaborated earlier, if the property is not included in the Data Bank as "Paddy Land" or "Wetland" as defined under Act 28/2008, it is still governed by the provisions of K.L.U. Order 1967. Thus, State of Kerala has two statutes- K.L.U. Order 1967 and Kerala Cultivation of Paddy Land and Wetland Act 2008 each dealing with delineated areas with respect to preservation, management and process of reclamation of agricultural and paddy land for any other legitimate use.

19. Kerala Land Tax Act 1961 is an Act to provide for levy of basic tax of land in the State of Kerala. High Court directed correction of Basic Tax Register (B.T.R.) under Section 18 of Kerala Land Tax Act to order change of nature of land. The change of nature of the

land with the passage of time cannot be regarded as a conversion which can be rectified under Section 18 of K.L.T.Act. Section 18 of K.L.T.Act provides for rectification of mistakes. Section 18 reads as follows:-

“18. Rectification of mistakes. At any time within four years from the date of any order passed by it the prescribed authority or the appellate authority or the revisional authority may, on its own motion, rectify any mistake apparent from the record and shall, within a like period, rectify any such mistake which has not been brought to the notice of the prescribed authority or the appellate authority or the revisional authority, as the case may be, by a land-holder or other person liable to pay tax:

Provided that no such rectification shall be made which has the effect of enhancing the tax payable unless the landholder and any other person liable to pay tax have been given a reasonable opportunity of being heard in the matter.”

20. By the perusal of the above provision, it is evident that the rectification of mistake narrated in Section 18 relates to the apparent mistake on the face of the record in relation to any order passed by the prescribed authority, appellate authority or the revisional authority under the Act. Therefore, the rectification of mistake can only be in respect of proceedings or orders passed by the original authority,

appellate authority or the revisional authority.

21. Statutory enquiry to ascertain whether the land is a "Paddy Land" or "Wetland" and conversion of the land for residential purpose or for any public purpose is governed by K.L.U. Order or the Kerala Wetland Act, 2008 for conversion of the land from "Nilam" (Wetland) to 'Purayidam' (Dry Land). The concerned authorities constituted under K.L.U. Order or Kerala Wetland Act 2008 are the competent authority. Nature of the land cannot be changed or converted by directing changes in the Basic Tax Register which is maintained only for the purpose of land tax. The rectification envisaged by Section 18 of Kerala Land Tax Act can only be in respect of arithmetical or clerical error, that too in the order of determining the tax due. Section 18 cannot be made use or the same cannot be taken as a means to effect conversion of the nature of the land by-passing the competent authority and the procedure stipulated under the K.L.U. Order, 1967 and the Kerala Wetland Act, 2008 and the impugned judgment is liable to be set aside."

7. Reading of the above paragraphs of the judgment would show that if on the commencement of Act 28 of 2008, the

land to which the Kerala Land Utilisation Order, 1967 applied is not included in the data bank irrespective of the ground realities, conversion of its status can only be based on an order passed by the competent authority under the Kerala Land Utilisation Order, 1967. It is also held that bye-passing the statutory authorities, the nature of the land cannot be changed or converted by directing changes in the Basic Tax Register which is maintained only for the purpose of land tax.

8. In so far as this case is concerned, the admitted factual position is that though the lands of the respondents also were included in the draft data bank prepared under Section 5(4) of Act 28 of 2008, on a consideration of Ext.P3 representation, the Local Level Monitoring Committee itself resolved to modify the entries in the draft data bank and the entry has been modified into converted land. This, therefore, means that, as a result of the above development, Act 28 of 2008 is rendered inapplicable to the lands owned by the respondents. In such a situation, in the light of the principles laid down by the Apex Court in the judgment mentioned above, automatically the provisions of the Kerala Land Utilisation Order, 1967 would be applicable.

Therefore, if the status of the lands are to be changed in the manner as sought for by the respondents, they will necessarily have to move the authorities under the Kerala Land Utilisation Order, 1967.

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 Utilisation 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 Section 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 Section 18 providing for rectification of mistakes. In our view, if an order is passed by the authority under the Kerala Land Utilisation Order or Act 28 of 2008 changing the description of the land, that cannot

lead to a situation where Section 18 is attracted. On the other hand, such change of the description of the land would render the assessments already made under Section 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.

The judgment of the learned single Judge will stand modified and the writ appeal is accordingly disposed of.

Sd/-
**ANTONY DOMINIC
JUDGE**

Sd/-
**ALEXANDER THOMAS
JUDGE**

Rp

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PA to Judge