

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE AG.CHIEF JUSTICE MR.ASHOK BHUSHAN

&

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

WEDNESDAY, THE 18TH DAY OF FEBRUARY 2015/29TH MAGHA, 1936

WA.No. 1390 of 2013 () IN WP(C).24301/2012

AGAINST THE ORDER/JUDGMENT IN WP(C) 24301/2012 of HIGH COURT OF KERALA
DATED 04-01-2013

APPELLANTS/APPELLANTS/RESPONDENTS 1 TO 4 IN WPC :

1. STATE OF KERALA
REPRESENTED BY ITS SECRETARY, DEPARTMENT OF REVENUE
SECRETARIAT, THIRUVANANTHAPURAM-695 001.
2. THE REVENUE DIVISIONAL OFFICER
MUVATTUPUZHA, ERNAKULAM DISTRICT-678 701.
3. THE TAHSILDAR
KUNNATHUNADU TALUK, ERNAKULAM DISTRICT, PIN-683 107.
4. THE VILLAGE OFFICER
VAZHAKULAM, ERNAKULAM DISTRICT, PIN-686 670.

BY SR.GOVERNMENT PLEADER SRI.C.S.MANILAL

RESPONDENT(S)/RESPONDENT/PETITIONER IN THE WPC :

K.P.KASIM
S/O. K.K.PAREED, KANIYAMPALA HOUSE
THODUPUZHA EAST P.O., IDUKKI DISTRICT-685 584.

R1 BY ADV. SRI.LAL K.JOSEPH
R1 BY ADV. SRI.A.A.ZIYAD RAHMAN
R1 BY ADV. SRI.V.S.SHIRAZ BAVA

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 18-02-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ASHOK BHUSHAN, Ag.CJ

& A.M.SHAFFIQUE, J.

*** * * * ***

W.A.No.1390 of 2013

Dated this the 18th day of February 2015

J U D G M E N T

Shaffique,J

This appeal is filed by the State challenging the judgment dated 04/01/2013 in W.P.C.No.24301/2012. The writ petition was filed seeking for a direction to effect mutation of the property belonging to the petitioner and for correcting the classification of the land in Basic Tax Register as 'purayidam' in the place of 'nilam'. In Ext.P7 order, the revenue authorities formed an opinion that since the property was reclaimed violating the provisions of the Kerala Land Utilisation Order, 1967, no such change in classification could be made. Mutation also was rejected.

2. The facts involved in this case would disclose that the petitioner acquired certain item of property as per Ext.P1 sale deed dated 10/04/2012. According to the petitioner,

the property was lying as garden land, but the revenue records indicated that the property was classified as 'nilam'. Petitioner applied for mutation, which was rejected, against which he approached this Court. By judgment dated 20/07/2012 in W.P.C.No.16911/2012, this Court directed the revenue authorities to consider the application submitted by the petitioner and dispose of the same within one month. It is, pursuant to the said direction, that Ext.P7 order was enforced. The learned Single Judge, having considered the relevant issues, directed the revenue authorities to mutate the property in favour of the petitioner and make necessary change in classification as well. Ext.P7 order was set aside.

3. While impugning the aforesaid judgment, the learned Government Pleader submits that Ext.P7 order was never under challenge. That apart, initially, petitioner's request was only for effecting mutation and later petitioner submitted Ext.P6 application for change in classification which was rejected in terms of Ext.P7. It is argued that **Jalaja Dileep v. R.D.O** [2012(3) KLT 333] which was relied

upon by the learned Single Judge requires reconsideration as the High Court cannot decide on disputed questions of fact.

4. On the other hand, learned counsel for the respondent/writ petitioner supports the judgment. He has also filed I.A.No.83/2014 to amend the writ petition to incorporate a prayer challenging Ext.P7. Though it was argued by the learned Government Pleader that the amendment application cannot be allowed as there is no provision enabling such amendment at the appellate stage, by a separate order, we have already allowed the amendment.

5. The short question to be considered in this writ petition is whether there is any justification on the part of the revenue authorities in rejecting the mutation as well as request for change in classification in the revenue records. It is not in dispute that as on the date on which the Kerala Conservation of Paddy and Wet Land Act, 2008 came into force, the property was already converted. It is fairly submitted that this property is not included in the data bank

prepared by the Local Level Monitoring Committee. Under such circumstances, it has to be assumed that at least, as on the date of coming into force of Act 2008, the property was not a paddy land. In **Jalaja Dileep**'s case (supra), a Division Bench of this Court had come to the conclusion that if the factual materials available indicate that the property was not paddy land, it shall be open for the revenue authorities to change the classification of the land taking into consideration the actual state of affairs. It is, based on such materials, that the learned Single Judge had formed an opinion that necessary change in classification could be made. Reference has been made to Ext.P4 report submitted by the revenue authorities, wherein it is stated that the property is lying as dry land. It is also indicated that a building bearing No.VI/320 having an area of 1200 sq.feet is situated in the property and there are rubber trees having an age of 20 years in the property. This material itself indicates the nature of property and therefore relying upon the judgment in **Jalaja Dileep**'s case (supra), the learned

Single Judge was justified in allowing the writ petition and directing change in classification as well as change in mutation entries. In fact, as far as mutation is concerned, the revenue authorities are bound to effect mutation after complying with the procedure prescribed under the Transfer of Registry Rules. The request for change of classification cannot stand in the way of change to be made in the mutation entries depending upon the documents produced by the parties concerned.

Under such circumstances, we do not find any ground to interfere with the judgment of the learned Single Judge and accordingly this writ appeal is dismissed.

(sd/-)
**(ASHOK BHUSHAN,
ACTING CHIEF JUSTICE)**

(sd/-)
(A.M.SHAFFIQUE, JUDGE)

jsr

