**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN**

**MONDAY, THE 27TH DAY OF JULY 2015/5TH SRAVANA, 1937**

**WP(C).No. 70 of 2014 (G)**

**PETITIONER(S):**

1. **NADIRA K.A.,**
   **W/O.DR. C.K. HYDRU, CHENGAKKATTIL HOUSE,**
   **P.O. KUTTIPPALA, VIA. EDARIKKADA,**
   **MALAPPURAM DISTRICT - 676 501.**

2. **FATHIMA C.K.,**
   **D/O.DR. C.K. HYDRU, CHENGAKKATTIL HOUSE,**
   **P.O. KUTTIPPALA, VIA EDARIKKADA,**
   **MALAPPURAM DISTRICT - 676 501.**

**BY ADV. SMT.M.HEMALATHA.**

**RESPONDENT(S):**

1. **THE AGRICULTURAL OFFICER,**
   **KADANGODE PANCHAYATH, VELLARAKKAD,**
   **THRISSUR DISTRICT - 680 584.**

2. **THE VILLAGE OFFICER,**
   **VILLAGE OFFICE, VELLARAKKAD,**
   **THRISSUR DISTRICT - 680 584.**

3. **THE DISTRICT COLLECTOR, THRISSUR - 680 003.**

4. **THE REVENUE DIVISIONAL OFFICER,**
   **OFFICE OF THE REVENUE DIVISIONAL OFFICER,**
   **THRISSUR - 680 003.**

*** ADDL. R5 IMPLEADED**

5. **ADDITIONAL TAHSILDAR, THALAPPILLY TALUK.**

*** ADDL. R5 IS IMPLEADED AS PER ORDER DATED 01/04/2014 IN IA. NO.5168/2014.**

**BY SPL. GOVT. PLEADER SRI.P.K. SOYUZ.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**rs.**

**WP(C).No. 70 of 2014 (G)**

**APPENDIX**

**PETITIONER'S EXHIBITS:-**

**EXHIBIT-P1- TRUE COPY OF THE JUDGMENT IN O.P 9464/1986 BEFORE THE HON'BLE HIGH COURT OF KERALA DATED 11/10/1990.**

**EXHIBIT-P2- TRUE COPY OF THE JUDGMENT IN WP(C).NO.19947/2013 BEFORE THE HON'BLE HIGH COURT OF KERALA DATED 03/09/2013.**

**EXHIBIT-P3- TRUE COPY OF THE ORDER DATED 02/12/2013 ISSUED BY THE 3RD RESPONDENT.**

**EXHIBIT P4- TRUE COPY OF THE REPRESENTATION DATED 04/09/2013.**

**EXHIBIT P5- TRUE COPY OF THE PHOTOGRAPHS SHOWING THE LOCATION OF THE PETITIONERS LAND.**

**RESPONDENT'S EXHIBITS:-**

**EXT.R3A COPY OF THE COVERING LETTER DATED 25/09/2013.**

**EXT.R3B COPY OF THE LETTER DATED 09/10/2013.**

**//TRUE COPY//**

**P.S. TO JUDGE**

**rs.**

K. Vinod Chandran, J

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W.P.(C).No.70 of 2014-G

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Dated this the 27th day of July, 2015

**JUDGMENT**

The petitioners are aggrieved with the fact that the petitioners' property is shown as “Nilam” in the Basic Tax Register [for brevity “BTR”].

2. The learned Special Government Pleader, on instruction, submits that the petitioners' property, having an extent of One Acre in Survey No.703 and 704 of Vellarakad Village in Thrissur District, is now removed from the Draft Data Bank as per the corrections effected by the Local Level Monitoring Committee [for brevity “LLMC”] on the basis of physical inspection and satisfaction that the same is converted long prior to the coming into force of the Kerala Conservation of Paddy Land and Wetland Act 2008 [for brevity “Paddy Land Act”.

3. The petitioners' prayer for correction of BTR was rejected by Exhibit P3. The law has now been declared by the Hon'ble Supreme Court in ***RDO v. Jalaja Dileep*** **[2015(2) KHC 109 (SC)].** In that decision, the Hon'ble Supreme Court

considered the issue of rectification of description in the Basic Tax Register and held that the same is not permissible. However, with respect to conversion and utilisation of lands which are not covered or were converted prior to bringing into force of the Paddy Land Act it was held so in paragraphs 17 and 23, which are extracted hereunder:

> "17. "Paddy land" and "Wetlands" are defined under Sections 2 (xii) and 2 (xviii) of the Act respectively. As per Section 5(4), the Committee shall interalia 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 Conservation 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 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 KLU Order 1967 has the power to grant permission to utilize the land for other purposes. As stated in clause 2(a) of KLU 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 interalia to ensure that the conversions which are likely to render irrigation investments infructuous and large scale conversion for commercial purpose are not allowed.
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> xxx xxx xxx
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> 23. The respondents in all the appeals are directed to approach the competent authorities constituted under KLU Order 1967/ Kerala Conservation of Paddy Land and Wetland Act 2008 as the case may be for conversion of the land. When

> the respondents approach the concerned authorities constituted under the above statutes, the concerned authorities shall consider the application of the respondents in accordance with the relevant provisions of the statutes and also the notification G.O.(Rt).No.157/2002/Ad dated 5.2.2002 already extracted above in para 11 and in accordance with law keeping in view the factual position that may be brought to the notice of the authorities along with material to substantiate their claim. In the facts and circumstances of the case, we make no order as to costs."

3. In such circumstances, no rectification of the Basic Tax Register could be made. However, in this case, the petitioners' property, having an extent of One Acre in Survey No.703 and 704 of Vellarakad Village in Thrissur district, is now removed from the Draft Data Bank as per the corrections effected by the LLMC on the basis of physical inspection. The petitioners, therefore, have to approach the appropriate authority under the Kerala Land Utilisation Order 1967 for changed utilisation of the land. If the property is found to be utilised for a different purpose prior to the Paddy Land Act, the consideration shall be made, if necessary, after a physical inspection and concluded by a speaking order within two months from the date of production of the certified copy of this judgment, in accordance with ***Puthan Purakkal Joseph v. Sub Collector*** **[2015 (3) KLT 182]**. Subsequent to such a finding

the petitioner could also approach the appropriate authority under the Kerala Land Tax Act for fresh assessment of the land, as directed to be utilised under the KLU order, as has been held in ***Kizhakkambalam Grama Panchayath V. Mariumma*** **[2015 (2) KLT 516]**.

Writ Petition is disposed of.

**Sd/-**
K.Vinod Chandran
Judge.

vku/-

[ true copy ]