

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

FRIDAY, THE 27TH DAY OF MARCH 2015/6TH CHAITHRA, 1937

WP(C).No. 601 of 2015 (A)

PETITIONER:

ABDUL LATHEEF,
S/O.MOOSA HAJI, EDAVALATH, P.O.ATHOLI
(VIA)KOZHIKODE, KOZHIKODE DISTRICT, PIN - 673 315.

BY ADVS.SRI.K.RAKESH ROSHAN
SMT.THUSHARA.V

RESPONDENTS/RESPONDENTS:-:

1. DISTRICT COLLECTOR, KOZHIKODE DISTRICT,
COLECTORATE, KOZHIKODE CIVIL STATION,
KOZHIKODE DISTRICT, PIN 673 001.
2. REVENUE DIVISIONAL OFFICER,
KOZHIKODE, CIVIL STATION,
KOZHIKODE DISTRICT, PIN - 673 001 .
3. VILLAGE OFFICER,
CHEMANJERI VILLAGE, POST ATHOLI, KOZHIKODE DISTRICT
PIN - 673 315.
4. THE SECRETARY,
CHEMANJERI GRAMA PANCHAYATH, POST CHEMANJERI
KOYILANDI VIA, KOZHIKODE DISTRICT, PIN - 673 315.

Addl.5. THE CONVENER
LOCAL LEVEL MONITORING COMMITTEE (UNDER WET LAND ACT)
CHEMANJERY GRAMA PANCHAYAT (AGRICULTURAL OFFICER
KRISHI BHAVAN, CHEMANJERI), KOZHIKODE DISTRICT
PINCODE - 673 315, IS IMPEADED AS PER ORDER DATED 10.03.2015
IN IA 3507/15.

R4 BY ADV. SRI.SANTHARAM.P
R4 BY ADV. SMT.REKHA ARAVIND
R1-3 BY GOVERNMENT PLEADER, SRI.JOSEPH GEORGE

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
27-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

EXHIBIT P1. TRUE COPY OF THE REGISTERED JANMAM ASSIGNMENT DEED WITH NO.444/1/2011 OF S.R.O, CHEMANCHERY, IN THE NAME OF THE PETITIONER.

EXHIBIT P1(a). TRUE COPY OF THE REGISTERED JANMAM ASSIGNMENT DEED WITH NO.1881/2009 OF S.R.O, CHEMANCHERY.

EXHIBIT P1(b). TRUE COPY OF THE REGISTERED JANMAM ASSIGNMENT DEED WITH NO.1615/2007 OF S.R.O, CHEMANCHERY.

EXHIBIT P2. TRUE COPY OF THE PHOTOGRAPH TAKEN FROM THE SCENE.

EXHIBIT P-2(a). TRUE COPY OF THE PHOTOGRAPH TAKEN FROM THE SCENE.

EXHIBIT P-2(b). TRUE COPY OF THE PHOTOGRAPH TAKEN FROM THE SCENE.

EXHIBIT P3. TRUE COPY OF THE BUILDING TAX RECEIPT ISSUED BY 4TH RESPONDENT IN THE NAME OF THE NEIGHBOURING HOUSE OWNER.

EXHIBIT P-3(a). TRUE COPY OF THE BUILDING TAX RECEIPT ISSUED BY 4TH RESPONDENT IN THE NAME OF THE NEIGHBOURING HOUSE OWNER.

EXHIBIT P4. TRUE COPY OF THE REJECTION ORDER ISSUED BY THE 4TH RESPONDENT.

EXHIBIT P5. TRUE COPY OF THE INFORMATION GATHERED UNDER RIGHT TO INFORMATION ACT, WITH RESPECT TO THE APPLICATION FOR RECLASSIFICATION PENDING BEFORE 3RD RESPONDENT.

EXHIBIT P6. TRUE COPY OF THE 3RD RESPONDENT ON ENQUIRY ON THE APPLICATION OF THE PETITIONER FOR RECLASSIFICATION OF LAND.

EXHIBIT P7. TRUE COPY OF THE APPLICATION DT.11.2.2015 PENDING BEFORE THE 5TH RESPONDENT.

EXHIBIT P8. TRUE COPY OF THE RELEVANT PAGES OF THE DATA BANK REGISTER PREPARED FOR CHEMANJERY GRAMA PANCHAYATH.

EXHIBIT P9. TRUE COPY OF THE ANSWER GIVEN BY THE 5TH RESPONDENT FOR THE QUESTION UNDER RIGHT TO INFORMATION ACT.

RESPONDENTS' EXHIBITS : NIL

// TRUE COPY //

PA TO JUDGE

P.R. RAMACHANDRA MENON J.

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Dated, this the 27th day of March, 2015

JUDGMENT

The petitioner has approached this Court with the following prayers :

i) Issue a writ of mandamus and direct the respondents 1 to 3 to effect necessary changes in the records maintained by them correcting the classification of the land covered by Ext. P1 as garden land on the basis of factual assessment that, conversion of the land was done around fifty years prior to the date of wet land Act came into force in 2008, allowing the application pending before 2nd respondent as file No. **H 10165/2014**

ii) Direct the 4th respondent to permit the petitioner for construction of residential house, in the property, covered by Exhibit P1, basis on the actual lie of the land, without considering the entries in the revenue records holding the wet land act is not applicable to the property covered by Exhibit P1.

iii) Declare that, the property covered by Exhibit P1 is not included in the data bank prepared under wet land Act 2008.

iv) Issue such other writ or directions which this Hon'ble Court may be pleased to pass in the circumstances of the case.

2. The case of the petitioner is that the property covered by Ext. P1 series is neither a 'paddy land', nor a 'wet land' as defined under Section 2 (xii) or 2 (xviii) of Act 28 of 2008. The petitioner is enjoying the said property also satisfying tax. The property however stands described as 'nilam' in the revenue records, which was sought to be corrected by filing an application, but the same was rejected. The petitioner obtained information under the RTI Act from the 3rd respondent, vide Ext. P5, whereby it was informed that there was no enabling provision to redress the grievance of the petitioner by effecting correction in the 'BTR'. It is stated that Ext. P6 report of the Village Officer would reveal the actual nature of the property, which is sought to be substantiated with reference to Ext. P2 photographs.

3. Heard the learned Government Pleader as well.

4. A Division Bench of this Court as per the decision reported in **2014 (1) KLT 161 [Revenue Divisional Officer VS. Jalaja Dileep]** held that Revenue Authorities could effect necessary changes in the 'BTR', on the basis of physical nature of the property

concerned. But the State, on approaching the Apex Court, the verdict passed in **2014 (1) KLT 161** (cited supra) came to be set aside as per the decision rendered in **Revenue Divisional Officer Vs. Jalaja Dileep [2015 (1) KLT 984 (SC)]**, holding that 'BTR' cannot be corrected. However, the Apex Court made it clear that , if the property is not included in the Data Bank as "Paddy Land" or "Wetland" as defined under the Act 28 of 2008, it is still governed by the provisions of K.L.U. Order 1967 and that in such circumstances, the grievance is to be considered with reference to the relevant provisions of the KLU Order.

5. In the above circumstances, the petitioner is set at liberty to file an application under the KLU Order before the first respondent. If any such application is filed within two weeks from the date of receipt of a copy of this judgment, the first respondent shall consider the same in accordance with law, in the light of Ext.P6, also after getting a report from the addl. 5th respondent/Local Level Monitoring Committee after conducting a spot inspection with notice to the petitioner. The proceedings as above shall be finalized as expeditiously as possible, at any rate, within three months from the date of receipt of a copy of this

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: 4 :

judgment.

Petitioner shall produce a copy of this judgment along with copy of the writ petition before the concerned respondent for further steps.

The Writ Petition is disposed of.

Sd/-

**P. R. RAMACHANDRA MENON,
(JUDGE)**

kmd