

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

THURSDAY, THE 12TH DAY OF MARCH 2015/21ST PHALGUNA, 1936

WP(C).No. 1502 of 2015 (K)

PETITIONER(S):

1. **SAJU BABY,**
AGED 41 YEARS, S/O.Y.BABY, RESIDING AT VADAVATTU VEEDU,
MAHATMA NAGAR, COLLEGE JUNCTION, KIZHAKKEKARA MURI,
KOTTARAKKARA PANCHAYAT, PULAMON P.O., PIN NO.691 531,
REPRESENTED BY THE POWER OF ATTORNEY HOLDER
SRI.JOHNKUTTY, AGED 60 YEARS, S/O.BABY,
RESIDING AT VADAVOTTU PUTHEN VEEDU, NEDUMONCAVU,
UMMANNOOR VILLAGE, KOTTARAKKARA TALUK,
KOLLAM DISTRICT, KERALA STATE.
2. **SINDHU SAJU @ SINDHU K.MATHEW,**
AGED 39 YEARS, W/O.SAJU BABY,
RESIDING AT VADAVATTU VEEDU, MAHATMA NAGAR,
COLLEGE JUNCTION, KIZHAKKEKARA MURI,
KOTTARAKKARA PANCHAYAT, PULAMON P.O., PIN NO.691 531,
REPRESENTED BY THE POWER OF ATTORNEY HOLDER
SRI.JOHNKUTTY, AGED 60 YEARS, S/O.BABY,
RESIDING AT VADAVOTTU PUTHEN VEEDU, NEDUMONCAVU,
UMMANNOOR VILLAGE, KOTTARAKKARA TALUK,
KOLLAM DISTRICT, KERALA STATE.

BY ADVS.SRI.JOHNSON GOMEZ
SRI.S.BIJU (KIZHAKKANELA)

RESPONDENT(S):

1. **THE REVENUE DIVISIONAL OFFICER,**
OFFICE OF THE RDO, COLLECTORATE, KOLLAM-691 013.
2. **THE KOTTARAKKARA GRAMA PANCHAYAT,**
OFFICE OF THE KOTTARAKKARA GRAMA PANCHAYAT
KOTTARAKKARA, PIN-691 533, REPRESENTED BY ITS SECRETARY.
3. **THE VILLAGE OFFICER,**
VILLAGE OFFICE, KOTTARAKKARA, KOLLAM-691 533.
4. **THE AGRICULTURAL OFFICER,**
KRISHI BHAVAN, KOTTARAKKARA-691 533.

R1, R3 & R4 BY GOVERNMENT PLEADER SMT.M.J.RAJASREE

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
12-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

msv/

WP(C).No. 1502 of 2015 (K)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT P1: A TRUE COPY OF THE POSSESSION CERTIFICATE DATED 21-10-2014 ISSUED BY THE THIRD RESPONDENT.

EXT P2: A TRUE COPY OF THE CERTIFICATE DATED 21-10-2014 ISSUED BY THE THIRD RESPONDENT.

EXT P3: A TRUE COPY OF THE NOTICE NO.E2.10879/14 DATED 31-10-2014 ISSUED BY THE KOTTARAKKARA GRAMA PANCHAYAT.

EXT P4: A TRUE COPY OF THE REPRESENTATION DATED 10-01-2015 SUBMITTED BY THE PETITIONERS BEFORE THE FIRST RESPONDENT.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv**/**

P.R. RAMACHANDRA MENON, J.

W.P(C). No. 1502 of 2015

Dated this the 12th day of March, 2015

J U D G M E N T

The petitioners have approached this Court with the following prayers:

- “a. To declare that the property of the petitioners is not covered by the provisions of Kerala Conservation of Paddy Land and Wetland Act, 2008, as the same is not included the draft data bank published, as can be seen from Exhibit P2 certificate issued by the third respondent*
- b. To issue a writ of mandamus or any other appropriate directions compelling and commanding the first and third respondent to make necessary modification in the basic tax receipt, describing the petitioner's property as a dry land.*
- c. To call for the records leading to Exhibit P3 notice issued by the second respondent and to quash the same.*
- d. To issue a writ of mandamus or any other appropriate directions compelling and commanding the second respondent to issue necessary building permit for making construction in the property covered by Exhibit P1 possession certificate, notwithstanding the classification of the land as wet land in the basic tax register.*
- e. To issue a writ of mandamus or any other appropriate directions compelling and commanding the first*

respondent to consider Exhibit P4 representation in accordance with law and to take an appropriate decision, within a time frame that this Hon'ble Court may consider reasonable.

f. Issue such other Writ, Order or Direction that this Honourable Court may deem fit and proper in the nature and circumstances of the case."

2. Heard the learned counsel for the petitioners as well as the learned counsel appearing for the respondents.

3. On going through the pleading and proceedings, the main grievance of the petitioners appears to be with regard to the nature and description of the land in the Revenue records and the relief sought for is to have it corrected. The question whether the 'BTR' could be corrected or not came to be considered by the Apex Court and as per the recent judgment in **Revenue Divisional Officer V. Jalaja Dileep (2015 (1) KLT 984 (SC))**. The Apex Court has made it clear that no such correction is possible in the 'BTR'. The verdict passed by the Division Bench of this Court in **RDO vs. Jalaja Dileep [2014(1) KLT 161]** has been set aside. Paragraph 21 of the said verdict reads as follows:

"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."

4. In the above circumstances, this Court finds that, the petitioners can pursue the matter as to the claim that the property is lying as a dry land and the same was converted much prior to commencement of the Act 28/2008, by pursuing Ext.P4 representation pending before the 1st respondent, who is the competent authority to consider the same and pass appropriate orders, with reference to the provisions of the KLU.

5. Accordingly, there will be a direction to the 1st respondent to consider and pass appropriate orders on Ext.P4, after hearing, at the earliest, at any rate, within two months from

the date of receipt of a copy of the judgment.

The petitioners shall produce a copy of the judgment along with a copy of the writ petition before the 1st respondent for further steps.

Sd/-

P.R. RAMACHANDRA MENON, JUDGE.

Pn