

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

FRIDAY, THE 23RD DAY OF JANUARY 2015/3RD MAGHA, 1936

WP(C).No. 3325 of 2014 (M)

PETITIONER:

**GEORGE,
S/O. ANTONY, CHAKIATH, KARUKUTTY,
ERNAKULAM DISTRICT.**

**BY ADVS.SRI.C.P.WILSON
SRI.V.TEKCHAND**

RESPONDENTS:

- 1. DISTRICT COLLECTOR,
ERNAKULAM-682 030.**
- 2. THE TAHSILDAR,
TALUK OFFICE, ALUVA-683 101.**
- 3. THE COMMISSIONER OF LAND REVENUE,
PUBLIC OFFICE, THIRUVANANTHAPURAM-695 001.**

R1 BY SPL. GOVERNMENT PLEADER (REVENUE) SRI. P.K.SOUYZ

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 23-01-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

WP(C).No. 3325 of 2014 (M)

APPENDIX

PETITIONER(S)' EXHIBITS

**EXT. P1 : COPY OF THE REPORT OF THE AGRICULTURAL OFFICER,
KALADY.**

EXT. P2 : COPY OF THE REPORT OF THE VILLAGE OFFICER, MATTOOR.

EXT. P3 : COPY OF THE REPORT OF THE 2ND RESPONDENT.

**EXT. P4 : COPY OF THE COMMUNICATION ISSUED BY THE 1ST
RESPONDENT.**

RESPONDENTS' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

DST

P.R. RAMACHANDRA MENON J.

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W.P.(C) No. 3325 of 2014

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Dated, this the 23rd day of January, 2015

JUDGMENT

The petitioner is the owner of the property having an extent of 41.20 ares of land comprised in survey number 63/5 of Mattoor Village. According to the petitioner, the said land is neither a 'paddy land', nor a 'wet land' as defined under Section 2 (xii) or 2 (xviii) of Act 28 of 2008, though it has been described as 'Nilam' in the revenue records. Eventhough the petitioner had approached the Revenue Authorities for effecting correction in the BTR, it did not turn to be fruitful. Hence this writ petition.

2. The learned counsel for the petitioner submits that after conducting an inspection, the concerned Agricultural Officer has certified that the property concerned is not an agricultural land vide Ext. P1. Ext. P2 is the report of the Village Officer, while Ext. P5 is the communication dated 30.05.2013 issued by the Sub Collector to the District Collector recommending the case of the petitioner. But

nothing has transpired in the positive till date. Hence the writ petition.

3. Heard the learned Government Pleader as well.

4. The law has been declared by this Court as per the decision rendered in **Praveen Vs. State of Kerala [2010 (2) KLT 617]** to the effect that before effecting entry in the BTR physical nature of the property has to be considered. The law has been declared as per the decision rendered in **JafarKhan Vs. K.A. Kochumarakkur & Ors. [2012 (1) KHC 523]** that the provisions of the Conservation of Kerala paddy land and Wet land Act are applicable only in respect of the land which are lying as 'paddy land' or 'wet land' as on the date of commencement of the 'Act'. A learned Single Judge of this Court directed the concerned Tahasildar to effect changes in the BTR on the basis of physical nature of the property concerned. The dispute was raised by the Revenue Department contending that Tahasildar does not have any such power. But the appeal preferred therefrom came to be dismissed as per the decision reported in **2014 (1) KLT 161 [Revenue Divisional Officer VS. Jalaja Dileep]**.

5. The respondents have taken up the matter before the Apex Court by way of SLP No. 3172 of 2014, but no interim stay has been obtained by the department. After declaring the law by this Court and also by giving direction to the concerned authority enabling him to do the needful, this Court does not find any justification for the concerned respondent in weeping over the absence of power for effecting correction. This Court fails to understand the nature of grievance or question of law raised before the Apex Court in pending SLP, however this Court does not intend to express any opinion in this regard. Since the respondents have not obtained any interim stay, the decision rendered by the Division Bench of this Court stands as it is. In so far as there is no dispute as to the fact that property involved herein was converted years back, prior to Act 28 of 2008, the provisions of the said Act are not applicable to the case in hand. It is declared accordingly.

6. In the said circumstances, there will be a direction to the second respondent/Thahasildar to effect necessary changes in the BTR as to the nature of land, which shall be effected, at the earliest, at any rate, within one month from the date of receipt of a

W.P.(C) No. 3325 of 2014

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copy of this judgment. It shall be subject to the result of the SLP as aforesaid.

The petitioner shall produce a copy of this judgment along with copy of the writ petition before the second respondent for further steps.

The Writ Petition is disposed of.

Sd/-

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

kmd