

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

MONDAY, THE 9TH DAY OF MARCH 2015/18TH PHALGUNA, 1936

WP(C).No. 3429 of 2015 (C)

PETITIONER(S):

- 1. M.K.MUHAMMED, AGED 53 YEARS,
S/O.KOCHUMEETHIAN, MATHASSERIYIL HOUSE,
MADATHUMAPADY, PANAIKULAM, ERNAKULAM-683 511.**
- 2. AMEENA MUHAMMED,AGED 47 YEARS,W/O.M.K.MUHAMMED,
MATHASSERIYIL HOUSE, MADATHUMAPADY,
PANAYIKULAM, ERNAKULAM-683 511.**

**BY ADVS.SRI.K.A.SHAMSUDEEN
SRI.K.J.MOHAMMED ANZAR**

RESPONDENT(S):

- 1. THE DISTRICT COLLECTOR,COLLECTORATE,
KAKKAND, ERNAKULAM DISTRICT-682 030.**
- 2. THE TAHSILDAR, TALUK OFFICE,
PARAVUR, ERNAKULAM DISTRICT-683 513.**
- 3. THE VILLAGE OFFICER, OFFICE ALANGAD VILLAGE,
ERNAKULAM DISTRICT-683 511.**

R1 TO R3 BY GOVERNMENT PLEADER SMT. ANITHA RAVINDRAN

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 09-03-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

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APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1. TRUE COPY OF THE PARTITIONED DEED NO.5645/2005 DATED 10/10/2005 OF ALANGAD SUB REGISTRY.
- EXT.P2. TRUE COPY OF THE SALE DEED NO.2513/2002 DATED 13/5/2002 OF ALANGAD SUB REGISTRY.
- EXT.P3. TRUE COPY OF THE SALE DEED NO.2788/2005 DATED 4/5/2005 OF ALANGAD SUB REGISTRY.
- EXT.P4. TRUE COPY OF THE LAND TAX RECEIPT DATED 29/6/2013 ISSUED BY 3RD RESPONDENT FOR THE PROPERTY COVERED BY EXT.P1.
- EXT.P5. TRUE COPY OF THE LAND TAX RECEIPT DATED 2/6/2009 ISSUED BY 3RD RESPONDENT FOR THE PROPERTY COVERED BY EXT.P2.
- EXT.P6. TRUE COPY OF THE LAND TAX RECEIPT DATED 29/6/2013 ISSUED BY 3RD RESPONDENT FOR THE PROPERTY COVERED BY EXT.P3.
- EXT.P7. TRUE COPY OF THE REPORT DATED NIL SUBMITTED TO THE 3RD RESPONDENT BY THE 3RD RESPONDENT
- EXT.P8. TRUE COPY OF THE REPORT DATED NIL SUBMITTED TO THE 3RD RESPONDENT BY THE 3RD RESPONDENT
- EXT.P9. TRUE COPY OF THE LETTER DATED 15/7/2013 ISSUED BY THE 2ND RESPONDENT TO THE 1ST PETITIONER
- EXT.P10. TRUE COPY OF THE LETTER DATED 27/6/2013 ISSUED BY THE 2ND RESPONDENT TO THE 1ST PETITIONER.
- EXT.P11. TRUE COPY OF THE LETTER DATED 15/07/2013 ISSUED BY THE 2ND RESPONDENT TO THE 2ND PETITIONER.
- EXT.P12. TRUE COPY OF THE JUDGMENT DATED 27/03/2014 IN WP(C). NO.5341/2014 OF THE HON'BLE HIGH COURT OF KERALA.

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

P.S.TO JUDGE

P.R. RAMACHANDRA MENON, J.

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Dated this the 9th March, 2015

J U D G M E N T

The grievance of the petitioners is mainly with regard to the refusal on the part of the revenue authorities in effecting necessary changes in the BTR as to the physical nature of the property stating that corrections could be made only at the time of comprehensive resurvey. The petitioners are owners of various extents of properties in Alangad Village covered by Exts. P1 to P3 documents ; which are actually dry lands and not paddy land or wet land as defined under section 2(xii) or 2 (xviii) of the Kerala Conservation of paddy land and Wet Land Act, 2008. It is also stated that the said properties are planted with coconut, arecanut, nutmeg trees etc. The factual position is discernible from Exts. P7 and P8 reports of the third respondent/Village Officer which show that the above properties are not included in the draft data Bank as paddy land or wet land, under the aforesaid Act.

2. A counter affidavit has been filed on behalf of the respondent/Tahsildar; paragraph '2' of which reads as follows:

"4. The respondents have no power or authority to make changes in the description

*of the property in the Basis Tax Register. The land owner had converted the paddy land without obtaining permission from the authority concerned, by violating the provisions of Kerala Land Utilisation order, 1967. The petitioner has not obtained any permission to utilize the land for other purposes as per Clause 6 of the Kerala Land Utilisation Order. This Hon'ble Court in Jayakrishnan vs. District Collector and others [2008 (4) KHC 514, Joseph John vs. Land Revenue Commissioner [2014(1)KLT 706, Ruby Soney vs. State of Kerala [2014(1) KLT 198 and Praveen vs. Land Revenue Commissioner [2010 (2)KLT 617] held that permission should be obtained from the 'Collector' for utilizing the land for other purposes than agricultural purpose. The illegal reclamation cannot be regularised by correcting the entry in the Basic Tax Register or revenue records. Moreover, challenging the Division Bench decision of this Honourable Court in **RDO vs. Jalaja Dileep** an SLP was filed by the State vide **S.L.P** (Civil No.**3172 of 2014**) and the Honourable Supreme Court has admitted the above case and issued notice to the respondents. It is evident from the records that the above said properties were paddy lands. Even if the Basic Tax*

Register is corrected the permission under Clause 6(2) of the Kerala Land Utilisation Order is mandatory for utilizing land for other purposes. But if permission is obtained under clause 6(2) of the Kerala Land Utilization Order, there is no need of correcting Basic Tax Register or revenue records."

3. Heard the learned Government Pleader as well.

4. After hearing both the sides, this Court finds that the materials produced before this Court clearly reveal that the properties were never lying as paddy land or wet land as on the date of commencement of the Act 28 of 2008. The physical nature of the properties show that the properties are pucca dry lands planted with coconut, arecanut, nutmeg trees etc.

5. In the said circumstance, a declaration is given in favour of the petitioners to the above effect. The respondents are directed to take further steps to redress the grievance, which shall be done at the earliest, at any rate, within one month from the date of receipt of a copy of this judgment. However, it is made clear that, this will be subject to the result of the verdict to be passed by the Apex Court, where the issue is pending by way of SLP.3172 of 2014, which arises from **RDO vs. Jalaja**

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Dileep [2014 (1) KLT 161].

The writ petition stands disposed of. Petitioners shall produce a copy of the judgment along with a copy of the writ petition before the concerned respondent for further steps.

**P.R.RAMACHANDRA MENON
JUDGE**

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