

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

WEDNESDAY, THE 18TH DAY OF MARCH 2015/27TH PHALGUNA, 1936

WP(C).No. 7611 of 2015 (B)

PETITIONER(S):

**PRIYA TOMY,
D/O. GEORGE PUTHUSSERI HOUSE. ELOOR NORTH
UDYOGAMANDAL PO ERNAKULAM-683 501.**

BY ADV. SRI.P.K.BABU

RESPONDENT(S):

- 1. DISTRICT COLLECTOR,
ERNAKULAM-682 030.**
- 2. THE VILLAGE OFFICER,
ELOOR, ERNAKULAM-683 501.**
- 3. THE REVENUE DIVISIONAL OFFICER,
FORTCOCHI-682 001.**
- 4. THE TAHSILDAR,
PARAVUR, ERNAKULAM-683 513.**

R BY GOVERNMENT PLEADER SRI.K.C.VINCENT

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
18-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

AD/

WP(C).No. 7611 of 2015 (B)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1: TRUE COPY OF THE SALE DEED NO.2228/2000 DATE 10.04.2000

**EXHIBIT P2: TRUE COPY OF THE APPLICATION DATED 10.10.2014 SUBMITTED
BEFORE THE TAHSILDAR PARAVUR.**

**EXHIBIT P3: TRUE COPY OF THE REPORT DATED 18.10.2014 WITH PLAN
SUBMITTED BY THE 2ND RESPONDENT OT THE 4TH RESPONDENT.**

**EXHIBIT P4: TRUE COPY OF THE LOCATION SKETCH PREPARED BY THE
2ND RESPONDENT.**

**EXHIBIT P5: TRUE COPY OF THE CERTIFICATE ISSUED BY THE 2ND
RESPONDENT DATED 6.3.2015 TO THE PETITIONER**

**EXHIBIT P6: TRUE COPY OF RECEIPT DATED 24.4.2013 ISSUED BY
THE 2ND RESPONDENT.**

**EXHIBIT P7: TRUE COPY OF THE PHOTOGRAPHS WOULD SHOW THE
NATURE OF THE THE PROPERTY.**

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

P.A. TO JUDGE

AD/

P.R. RAMACHANDRA MENON, J.

.....
W.P.(C)No.7611 OF 2015
.....

Dated this the 18th March, 2015

J U D G M E N T

The petitioner is the owner of 43.21 Ares of land comprised in Survey No.219/IB, 219/IA, 219/9A, 219/9A2 and 219/8- of Eloor Village covered by Ext. P1 document ; which is actually a garden land 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 factual position is discernible from Ext. P3 report and Ext.P4 location sketch of the second respondent//Village Officer. Ext.P5 is the extract of Data Bank Register which shows that the above properties are not included in the draft data Bank either as paddy land or wet land, under the aforesaid Act. The petitioner also relies on Ext.P6 tax receipt and Ext.P7 photograph. The grievance of the petitioner is mainly with regard to the refusal on the part of the fourth respondent/Tahsildar in effecting necessary changes in the 'BTR' as to the physical nature of the property, as sought for vide Ext.P2.

2. Heard the learned Government Pleader as well.

3. The law is now well settled that no correction can be

effected with regard to the nature of the property and classification in the BTR, in view of the verdict passed by the Apex Court in **Revenue Divisional Officer Vs. Jalaja Dileep (2015 (1) KLT 984 (SC)** whereby the decision rendered by a Division Bench of this Court in **RDO vs. Jalaja Dileep [2014 (1) KLT 161]**, has been overruled. In the said circumstances, the parties were set at liberty to approach the competent authority with reference to the provisions of Kerala Land Utilisation Order for appropriate reliefs. Paragraph 21 of the judgment is relevant, which is extracted below for the purpose of convenience:

.... "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 matter requires to be considered by the second respondent/District Collector in the light of the verdict passed by the Apex Court as above and also with reference to the provisions of the KLU. The petitioner is set at liberty to file a proper application before the 2nd respondent in this regard within 'two weeks', upon which the 2nd respondent shall consider the same and pass appropriate orders in accordance with law after affording an opportunity of hearing, at the earliest, at any rate within 'six weeks' thereafter. The 2nd respondent/District Collector shall consider the application, taking note of the fact whether the property is a paddy land or wet land as defined

under Section 2(xii) or 2(xviii) of the Act 28/2008.

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

P.R.RAMACHANDRA MENON
JUDGE

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