

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 18TH DAY OF JUNE 2015/28TH JYAISHTA, 1937

WP(C).No.9565 of 2014 (U)

PETITIONER:

**ASHA S.KADAVIL,II/239D,KALLARIKKAL KADAVIL,
UDAYAMPEROOR,ERNAKULAM.**

**BY ADVS.SMT.K.P.SANTHI
SMT.BEENA JOHN
SRI.R.JAYAKRISHNAN (MUTHUKULAM)
SRI.RILGIN V.GEORGE**

RESPONDENT'S:

- 1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
REVENUE DEPARTMENT,SECRETARIAT,
THIRUVANANTHAPURAM-695001.**
- 2. DISTRICT COLLECTOR,ERNAKULAM-682030.**

BY GOVT. PLEADER SRI.MANOJ P.KUNJACHAN.

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 18-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

pk

APPENDIX

PETITIONER'S EXHIBITS:

- P1: TRUE COPY OF THE OWNERSHIP CERTIFICATE DTD.3.8.2012 ISSUED TO THE PETITIONER.
- P2: TRUE COPY OF THE APPLICATION DTD.3.2.2014 SUBMITTED TO THE 2ND RESPONDENT.
- P3: TRUE COPY OF THE PHOTOGRAPH.
- P4: TRUE COPY OF THE APPLICATION DATED 16.2.2015 SUBMITTED TO 2ND RESPONDENT.
- P5: TRUE COPY OF THE APPLICATION DATED 16.2.2015 SUBMITTED TO AGRICULTURAL OFFICER,UDAYAMPEROOR.
- P6: TRUE COPY OF THE RELEVANT PAGE OF THE DRAFT DATA BANK.
- P7: TRUE COPY OF THE SALE DEED NO.1366/2010 OF S.R.O,TRIPUNITHURA.

RESPONDENT'S EXHIBITS:

NIL

//TRUE COPY//

P.S. TO JUDGE

pk

K. VINOD CHANDRAN, J

W.P(C) No. 9565 of 2014

Dated this the 18th day of June, 2015

J U D G M E N T

The petitioner is the owner of certain land which are said to be 'garden land' but however described in the revenue records as paddy land/wet land. The petitioner contends that even in the Draft Data Bank prepared under the Kerala Conservation of Paddy Land and Wet Land Act, 2008 (hereinafter referred to as the 'Paddy Land Act') the property is shown as converted land.

2. The Supreme Court in RDO v. Jalaja Dileep - 2015 (2) KHC 109(SC) considered the issue of rectification of description in the Basic Tax Register and held that the same is not permissible. However, with respect to conversion and utilisation of lands which are not covered or were converted prior to bringing into force of the Paddy Land Act it was held so in paragraphs 17 and 23, which are extracted hereunder:

“17. "Paddy land" and "Wetlands" are defined under Sections 2 (xii) and 2 (xviii) of the Act respectively. As per Section 5(4), the Committee shall interalia prepare a data Bank with details of cultivable paddy land within the jurisdiction of the Committee. If the land is not included in the Data Bank or Draft Data Bank prepared under the Kerala Cultivation of Paddy Land and Wetland Act, 2008 and if it is not a "Paddy Land" or "Wetland" as defined under Act 28 of 2008, at the time of commencement of the Act 12 of 2008 and the classification of land is noted as "Nilam" in the revenue records, the provision of Kerala Land Utilization Order 1967 will be applicable to such land and the Collector as defined in clause 2(a) of KLU Order 1967 has the power to grant permission to utilize the land for other purposes. As stated in clause 2(a) of KLU Order, Collectors shall examine such request for residential purpose, on merits on a case to case basis. However, with a view to prevent indiscriminate filling of Paddy Lands in the State, the Government have also prescribed certain restrictions in the Notification dated 5.2.2002 noted (supra), in which District Collectors have been directed interalia to ensure that the conversions which are likely to render irrigation investments infructuous and large scale conversion for commercial purpose are not allowed.

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23. The respondents in all the appeals are directed to approach the competent authorities constituted under KLU Order 1967/ Kerala Conservation of

Paddy Land and Wetland Act 2008 as the case may be for conversion of the land. When the respondents approach the concerned authorities constituted under the above statutes, the concerned authorities shall consider the application of the respondents in accordance with the relevant provisions of the statutes and also the notification G.O.(Rt).No.157/2002/Ad dated 5.2.2002 already extracted above in para 11 and in accordance with law keeping in view the factual position that may be brought to the notice of the authorities along with material to substantiate their claim. In the facts and circumstances of the case, we make no order as to costs.”

3. In such circumstances, no rectification of the Basic Tax Register could be made. The petitioner has a contention that the land though included in the Data Bank prepared under the Paddy Land Act for the area, the Data Bank itself indicates it to have been converted 10 years back, i.e., prior to the Act of 2008. The petitioner then has to approach the appropriate authority under the Kerala Land Utilisation Order 1967 for changed utilisation of the land. A proper application for the said purpose is to be made. If the property is found to be utilised for a different purpose prior to the Paddy Land Act, the consideration shall be made, if necessary, after a physical inspection and concluded by a speaking order within two months

from the date of production of the certified copy of this judgment, in accordance with Dileep Kumar v. State of Kerala - 2014 (4) KLT 200. Subsequent to such a finding the petitioner could also approach the appropriate authority under the Kerala Land Tax Act for fresh assessment of the land, as directed to be utilised under the KLU order, as has been held in Kizhakkambalam Grama Panchayath V. Mariumma - 2015(2) KLT 516.

Writ Petition is disposed of.

Sd/-

(K. VINOD CHANDRAN, JUDGE)

jma

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P.A to Judge