IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

TUESDAY, THE 7TH DAY OF APRIL 2015/17TH CHAITHRA, 1937

WP(C).No. 12414 of 2014 (B)

PETITIONER :

ALEYAMMA VARGHESE, AGED 78 YEARS,
W/O. GEORGE VARGHESE, VALUKKALAYIL HOUSE,
CRASH ROAD,TRIKKAKKARA, ERNAKULAM-21.

BY ADVS.SRI.JAISHANKAR V.NAIR
SMT.ARATHI KARUNAKARAN
SMT.PARVATHY S.KRISHNAN

RESPONDENT(S):
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1. DISTRICT COLLECTOR,
KAKKANAD, ERNAKULAM-682 030.

2. TAHASILDAR,
KANAYANNUR TALUK, ERNAKULAM-682 011.

3. VILLAGE OFFICER,
KAKKANAD VILLAGE OFFICE, KAKKANAD,
ERNAKULAM-682 030.

BY SR GOVERNMENT PLEADER SRI.M.MUHAMMED SHAFI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 07-04-2015,ALONG WITH WP(C).NO.16053 OF 2014 AND CONNECTED
CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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WP(C).No. 12414 of 2014 (B)
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APPENDIX

PETITIONER(S)' EXHIBITS

P1. **TRUE COPY OF THE TAX RECEIPT.**

P2. **TRUE COPY OF THE PETITIONER'S APPLICATION BEFORE THE DISTRICT COLLECTOR.**

RESPONDENT(S)' EXHIBITS: **NIL**
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/TRUE COPY/

P.A.TO JUDGE

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P.R. RAMACHANDRA MENON, J.

W.P.(C)Nos.12414,13224,14316,14704,14805, 14939,16053,16207,16227,16250,16888,17043,18310, 20858,21025,22308,22615,23334,23509,24242,25465, 25523,26626,26659,29705,30020,30104,30299,31048, 31345,31813,32063,33109,33263,33685,33933,34250, 34680,35426 of 2014, 1002,3424 & 6003 of 2015

Dated this the 7th day of April, 2015

JUDGMENT

The issue involved in all these cases is with regard to the claim for having correction of the Basic Tax Register, as to the nature of properties involved.

2. The petitioners are the owners of different extent of properties comprised in different Survey Numbers situated in different Villages in different Districts. The petitioners contend that, their properties are not 'paddy lands' or 'wet lands' as defined under Sections 2(xii) and 2(xviii) of Act 28 of 2008 and that the properties are either 'garden lands' or 'converted lands' having effected reclamation years prior to the commencement of Act 28 of 2008. But, the fact remains that, the properties have been wrongly included as 'paddy lands' in the Revenue Records,

which requires to be corrected. When the grievance of the similarly situated persons had come up before this Court, a direction was given to the concerned Tahsildar to effect the necessary corrections as per the decision reported in ***2012 (3) KHC 273 (Jalaja Dileep Vs. Revenue Divisional Officer***. The said verdict was sought to be challenged by the Department/State by filing an appeal, wherein interference was declined and the appeal was dismissed, as per the verdict reported in ***(Revenue Divisional Officer Vs. Jalaja Dileep) [2014 (1) KLT 161]***. The matter was further taken up before the Apex Court with reference to the scope of Section 18 of the Kerala Land Tax Act. After considering the matter in detail, the Apex Court set aside the decision passed by the Division Bench of this Court as per the decision reported in ***Revenue Divisional Officer v. Jalaja Dileep (2015(1) KLT 984) (SC)***, holding that 'BTR' cannot be corrected under any circumstances. However, some specific observations have been made by the Apex Court in paragraphs 17 and 23 in the following terms:

> *"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 inter alia 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 (sic Act 28) 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 K.L.U. Order 1967 has the power to grant permission to utilize the land for other purposes. As stated in Clause 2(a) of K.L.U. Order, Collectors shall examine such request for residential purpose, on merits on a case to case basis. However, with a view to prevent indiscriminate filing 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 inter alia to ensure that the conversions which are likely to render irrigation investments infructuous and large scale conversion for commercial purpose are not allowed.

23. The respondents in all the appeals are directed to approach the competent authorities constituted under K.L.U. 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 05.02.2002 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."*

The Apex Court has made it clear, that if the property has already been converted prior to the commencement of Act 28 of 2008, the parties are entitled to have remedy so as to make use of the property for other purposes than agricultural purpose, in view of the enabling provision under the Kerala Land Utilisation Order.

In the said circumstances, the relief sought for by the petitioners, so as to cause the 'BTR' to be corrected, is not liable to the entertained in view of the law declared by the Apex Court. However, since the grievance of the petitioners can be caused to redressed in the manner as pointed out by the Apex Court, the petitioners are set at liberty to move the concerned authorities, either the District Collector or the Revenue Divisional Officer, by filing a petition under Clause 6(2) of the Kerala Land Utilisation Order within 'two weeks' from the date of receipt of a copy of this judgment, upon which, a detailed spot inspection shall be conducted with notice and the matter shall be considered in the light of all the relevant records and after giving an opportunity of hearing to the petitioners. A report from the concerned Local Level Monitoring Committee shall also be called for. The proceedings as above shall be done at the earliest, at any rate, within 'two months' from the date of receipt of the representation as aforesaid.

All these writ petitions are disposed of.

The petitioners shall produce a copy of this judgment, along with a copy of the writ petition, before the concerned respondents, for further steps.

P.R. RAMACHANDRA MENON,
JUDGE

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