IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

TUESDAY, THE 15TH DAY OF SEPTEMBER 2015/24TH BHADRA, 1937

WP(C).No. 15945 of 2014 (P)

PETITIONER(S) :

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1. ANTONY K.VARGHESE, AGED 40 YEARS
   S/O. K.A.VARGHESE, KOLLAMPARAMBIL, REMYA HOUSE
   THAIKKATTUKARA P.O., ALUVA-683 108.

2. RENIL K.JOSE, AGED 33 YEARS
   S/O. K.P.JOSE, KOMBARAKKARAN HOUSE, II/435
   IRINJALAKUDA P.O., TRICHUR DISTRICT-680 121.

   BY ADVS.SRI.M.R.ANISON
   SMT.K.P.GEETHA MANI
   SMT.V.BHARGAVI (PANANGAD)
   SMT.P.A.RINUSA
   SMT.ANNIE JACOB

RESPONDENT(S) :

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1. THE TAHSILDAR
   TALUK OFFICE, PARAVUR, NORTH PARAVUR P.O.
   ERNAKULAM-683 513.

2. THE VILLAGE OFFICER
   VILLAGE OFFICE, KADUNGALLUR, MUPPATHADOM P.O.
   ERNAKULAM-683 110.

   R1 & R2 BY GOVT. PLEADER SRI.P.K. SOYUZ
   BY ADVOCATE COMMISSIONER SMT.KAVERI S.THAMPI

   THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 15-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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WP(C).No. 15945 of 2014 (P)

APPENDIX

PETITIONERS' EXHIBITS :

EXT. P1 : **COPY OF THE BASIC TAX REGISTER ISSUED BY THE 2ND RESPONDENT TO THE PETITIONERS.**

EXT. P2 : **COPY OF THE APPLICATION SUBMITTED BY THE 1ST PETITIONER BEFORE THE 1ST RESPONDENT ON 14.3.2014.**

EXT. P3 : **COPY OF THE REPORT DTD.17.3.2012 ISSUED BY THE 2ND RESPONDENT.**

EXT. P4 : **COPY OF THE CERTIFICATE DTD.18.3.2014 ISSUED BY THE 1ST RESPONDENT STATING THAT THE ENTIRE PROPERTIES (INCLUDING AN EXTENT OF 04.86 ARES IN SURVEY NO.325/1AIN KADUNGALLUR VILLAGE) BELONGING TO THE PETITIONERS IS A DRY LAND AND THAT PROPERTY IS NOT INCLUDED IN THE DRAFT DATA BANK.**

RESPONDENT(S)' EXHIBITS : NIL

ADVOCATE COMMISSIONERS' ANNEXURES :

ANNEXURE C1 **COPY OF THE NOTICE ISSUED TO THE PARTIES TO THE WRIT PETITION.**

ANNEXURE C2 **COPY OF THE ROUGH SKETCH.**

ANNEXURE C3 **COPY OF THE MEMO.**

ANNEXURE C4 **PHOTOGRAPH SHOWING THE PROPERTY OF THE PETITIONER.**

ANNEXURE C5 **PHOTOGRAPH SHOWING THE LIE OF PROPERTY OF UMMER.**

ANNEXURE C6 **PHOTOGRAPH SHOWING THE LIE OF PROPERTY OF MOHAMMED KASIM AND JAMEELA, W/O. MOHAMMED KASIM**

ANNEXURE C7 **PHOTOGRAPH TO SUBSTANTIATE AS TO THE AGE OF THE TREES STANDING IN THE PETITIONERS PROPERTY.**

//TRUE COPY//

P.A. TO JUDGE

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A.MUHAMED MUSTAQUE, J.

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W.P.(C).No. 15945 of 2014

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Dated this the 15th day of September, 2015

J U D G M E N T

The petitioners are in joint ownership and possession of the property having an extent of 03.85 Ares in Sy. No.325/6, 04.86 Ares in Sy.No.325/1A, 0.81 Ares in Sy. No.325/1B and 02.18 Ares in Sy.No.325/6 in Kadungallur Village.

2. The petitioners case is that the above land is a converted land 50 years ago and in the data bank prepared under the Act 28 of 2008, the property is not included. Therefore the petitioners seek a direction to the respondent to effect necessary corrections in the basic tax register. The petitioners also seek a direction to treat the property having extent of 04.86 Ares in survey No.325/1A in Kadungallur Village as a dry land.

3. The petitioners rely on the Ext.P3 report of the Village Officer and Ext.P4 certificate issued by the Additional Thasildar. The petitioners also have taken out an Advocate Commissioner for local inspection. Commissioner's report is also filed before this

Court.

4. In the counter affidavit on behalf of the first respondent, it is stated that during resettlement the land is recorded as 'Nilam'. It is further submitted that as per the BTR, the land is shown as Nilam. The BTR was prepared in the year 1970.

5. It is further submitted that without obtaining necessary permission from the authorities under the Kerala Land Utilization Order (KLU), the petitioners cannot utilize the land for other purposes.

6. The learned counsel for the petitioners would argue since the land is converted land, the petitioners do not require any permission under the Land Utilization Order. It is further submitted that in that view of the nature of the land the BTR is liable to be corrected showing the land as a 'Purayidam'.

7. The learned counsel also relied on the judgment of this Court in Puthen Purakkal Joseph vs Sub Collector [2015 (3) KLT 182], this Court held that KLU order for conversion or utilisation is required only if the subject land is found to have been cultivated with any food crops for a continuous period of three years, immediately prior to the commencement of the KLUO, or after

commencement for any consecutive period of three years. Therefore it is submitted that there is nothing to show that the land in question have been used for cultivation for food crops under the KLU, the petitioners do not require permission.

8. Necessarily, the question raised by the petitioners that they do not require permission would depend upon factual finding when the conversion has been made. The materials placed before this Court through the Commission report and also the report of the Village Officer would indicate that the land in question was converted long ago. It is to be noted that there are several parcels of land held by the petitioners. No doubt this shows that the land is converted land before the Act 28 of 2008. However, utilizing the land for other purposes the petitioners require permission. This Court cannot come to the conclusion now that the land in question was converted prior the year prior to Kerala Land Utilization Order 1967. But certainly the nature of land as seen from the Commission report clearly would show that it cannot be used for any of the cultivation of the food crops under the KLU.

9. In that view of the matter, this Court is of the view that permission shall be granted to the petitioners to utilise the land for

any purpose under the law. The petitioners are also free to approach the Tahsildar for reassessment under the Land Tax Act, once they obtain permission under clause 6 of the Land Utilisation Order.

10. In view of the discussion as above, the following directions are issued:

If the petitioners approach Revenue Divisional officer, Ernakulam within two weeks from the date of receipt of the copy of this judgment, necessary orders shall be passed by the Revenue Divisional Officer to grant permission to the petitioner to utilize the land for any other purposes under the law within a period of one from the date of receipt of the application.

If the above order is issued, the petitioners are free to approach the first respondent for reassessment of land under the Land Tax Act. If such application is filed, it shall be considered by the first respondent in accordance with the provisions under the Land Tax Act without any delay.

The writ petition is disposed of, as above.

sd/-

sab A.MUHAMED MUSTAQUE, JUDGE