

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

TUESDAY, THE 17TH DAY OF MARCH 2015/26TH PHALGUNA, 1936

WP(C).No. 17285 of 2014 (I)

PETITIONER :

**FR.JOPPAN CHETHIKUNNEL,
PROCURATOR, SACRED HEART MONASTERY,
SH MOUNT P.O.,KOTTAYAM.**

**BY ADVS.SRI.ROY CHACKO
SRI.P.S.GEORGE**

RESPONDENT(S):

- 1. STATE OF KERALA,
REPRESENTED BY SECRETARY, DEPARTMENT OF REVENUE,
SECRETARIAT, THIRUVANNTHAPURAM -695 001**
- 2. THE DISTRICT COLLECTOR, KOTTAYAM -686 081**
- 3. THE REVENUE DIVISIONAL OFFICER,
KOTTAYAM -686 001**
- 4. THE VILLAGE OFFICER,
PERUMBAIKADU VILLAGE, KOTTAYAM -686 001**
- 5. THE AGRICULTURAL OFFICER,
KRISHNIBHAVABN, KUMARANELLOOR- 686 020**

R1 TO R5 BY SR GOVERNMENT PLEADER SRI.JOSEPH GEORGE

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 17-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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P.R. RAMACHANDRA MENON J.

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W.P.(C) No. 17285 of 2014

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Dated, this the 17th day of March, 2015

JUDGMENT

The petitioner is the procurator of Sacred Heart Monastery, which manages Sacred Heart Public School situated in the land having an extent of 92.67 Ares covered by Exts. P1 and P2 sale deeds. The said property was being enjoyed by the institution, also satisfying the tax as borne by Ext. P3. The property concerned is shown as the 'converted land' in Ext. P4 data bank register. As such, the said land is neither a 'paddy land', nor a 'wet land' as defined under Section 2 (xii) or 2 (xviii) of Act 28 of 2008. It is without any regard to the facts and figures, the petitioner was served with Ext. P8 notice dated 13.06.2014 issued by the second respondent, invoking the relevant provision of the Act 28 of 2008. The petitioner has already moved the third respondent/Revenue Divisional Officer by submitting Ext. P9 under Clause 6 (2) of the Kerala Land Utilization Order. The prayer is to cause the same to be considered within a reasonable time.

2. Heard the learned counsel for the petitioner as well as the learned Government Pleader appearing for the respondents.

3. The learned counsel for the petitioner submits that in spite of preferring Ext. P9, the third respondent has not taken any effective steps stating that there is clear instructions from the second respondent not to act upon any proceedings with reference to the relevant provisions of Kerala Land Utilization Order, when the issue is connected to the Act 28 of 2008.

4. The law has been declared as per the decision rendered in **JafarKhan Vs. K.A. Kochumarakkar & Ors. [2012 (1) KHC 523]** that the provisions of the Conservation of Kerala paddy land and Wet land Act are applicable only in respect of the land which were lying as 'paddy land' or 'wet land' as on the date of commencement of the 'Act'. The position is confirmed as per the recent decision rendered by the Apex Court in **Revenue Divisional Officer Vs. Jalaja Dileep [2015 (1) KLT 984 (SC)]**. It is also mentioned in the aforesaid judgment, particularly in paragraph 18, that if the property is not included in the Data Bank as "Paddy Land" or "Wetland" as defined under the Act 28 of 2008, it is still governed by the provisions of K.L.U. Order 1967 and that in such circumstances, the grievance is to be considered with reference to the provisions of the KLU. It has been held by a learned Single

Judge of this Court in **Archana Varghese Vs. District Collector [2015 (1) KLT 937]** that after the Act 28 of 2008, the Collector has no power to call upon the holder of the land to cultivate paddy in the land which is no longer a paddy land in terms of the Act 28 of 2008.

5. In the above circumstances, there will be a direction to the 3rd respondent to consider and pass appropriate orders on Ext. P9 application preferred by the petitioner in accordance with law and in the light of the decisions cited supra, after giving an opportunity of hearing to the petitioner, at the earliest, at any rate, within two months from the date of receipt of a copy of this judgment.

The petitioner shall produce a copy of this judgment along with copy of the writ petition before the third respondent for further steps.

The Writ Petition is disposed of.

Sd/-

**P. R. RAMACHANDRA MENON,
(JUDGE)**