

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 11TH DAY OF JUNE 2015/21ST JYAISHTA, 1937

WP(C).NO. 17517 OF 2015 (L)

PETITIONER(S):

**SURESH, S/O. MATHAN,
AGED 55 YEARS, FACT QUARTERS, C-31,
UDYOGAMANDAL P.O, ELOOR VILLAGE,
PARAVOOR TALUK, ERNAKULAM DISTRICT.**

BY ADV. SRI.P.M.ZIRAJ.

RESPONDENT(S):

- 1. THE REVENUE DIVISIONAL OFFICER (R.D.O),
FORTKOCHI, ERNAKULAM DISTRICT-682 001.**
- 2. THE DISTRICT COLLECTOR,
ERNAKULAM DISTRICT-682 030.**

BY GOVT.PLEADER SMT.C.K. SHERIN.

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 11-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

EXHIBIT P1: TRUE COPY OF THE TAX RECEIPT DATED 04.04.2015 ISSUED BY THE ELOOR VILLAGE OFFICER.

EXHIBIT P2: TRUE COPY OF THE CERTIFICATE ISSUED BY THE VILLAGE OFFICER, ELOOR DATED 01.04.2015 CERTIFYING THAT THE PROPERTY OF THE PETITIONER IS NOT INCLUDED IN THE DRAFT DATA BANK.

EXHIBIT P3: TRUE COPY OF THE BUILDING PERMIT DATED 11.12.2014 ISSUED BY THE ELOOR MUNICIPALITY TO THE PETITIONER.

EXHIBIT P4: TRUE COPY OF THE STOP MEMO DATED 24.02.2015 ISSUED BY THE VILLAGE OFFICER, ELOOR VILLAGE.

EXHIBIT P5: TRUE COPY OF THE PROHIBITORY ORDER DATED 23.04.2015 ISSUED BY THE FIRST RESPONDENT.

EXHIBIT P6: TRUE COPY OF THE APPLICATION DATED 11.05.2015 SUBMITTED BY THE PETITIONER BEFORE THE FIRST RESPONDENT WITH COPY TO THE SECOND RESPONDENT UNDER THE PROVISIONS OF THE KERALA LAND UTILIZATION ORDER, 1967.

EXHIBIT P7: TRUE COPY OF THE JUDGMENT OF THIS HONOURABLE COURT DATED 27.05.2015 IN WP(C).NO. 14720 OF 2015.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

PA. TO JUDGE

rs.

K. VINOD CHANDRAN, J.

W.P(C). No.17517 of 2015-L

Dated this the 11th day of June, 2015.

JUDGMENT

The petitioner is the owner of 2.02 Ares of land, which is said to be 'dry land' but however described in the revenue records as 'Nilam'. 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. Such an application is filed at Ext.P6. 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.** Since there is already a stop memo issued, the petitioner shall also maintain status quo till the applications, as directed above, are considered.

Writ Petition is disposed of.

Sd/-
K. VINOD CHANDRAN,
JUDGE

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