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. 18512 of 2014 (L)

PETITIONER(S):
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1. SEBASTIAN JOSEPH, AGED 49 YEARS,
   S/O.JOSEPH, DEPUTY GENERAL MANAGER (HUMAN RESOURCES),
   NATIONAL THERMAL POWER CORPORATION LTD, MUMBAI,
   FLAT NO.402, 20-D, A S ROAD, BOMBAY - 400 076,
   REPRESENTED BY ITS POWER OF ATTORNEY HOLDER
   T.J.RAJAN, S/O.LATE JOSEPH, RESIDING AT 32/1608,
   THODATHUSSERY HOUSE, PALLISSERY ROAD,
   PALARIVATTOM P.O., ERNAKULAM, COCHIN - 682 025.

2. SON XAVIER, AGED 42 YEARS,
   S/O.P.M.XAVIER, PALIYIL PUTHEN PURAYIL HOUSE,
   MANJOOR P.O., PINCODE - 686 693, KOTHANELLOOR VILLAGE,
   VAIKOM TALUK, KOTTAYAM DISTRICT,
   REPRESENTED BY ITS POWER OF ATTORNEY HOLDER,
   T.J.RAJAN, AGED 51 YEARS, S/O.LATE JOSEPH,
   RESIDING AT 32/1608, THODATHUSSERY HOUSE,
   PALLISSERY ROAD, PALARIVATTOM P.O.,
   ERNAKULAM, COCHIN - 682 025.

   BY ADV. SRI.PEEYUS A.KOTTAM.

RESPONDENT(S):
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1. STATE OF KERALA,
   REPRESENTED BY ITS SECRETARY,
   DEPARTMENT OF AGRICULTURE,
   GOVERNMENT SECRETARIAT,
   ANNEX, TRIVANDRUM - 695 001.

2. DISTRICT COLLECTOR,
   ERNAKULAM, COLLECTORATE, CIVIL STATION,
   KAKKANAD, COCHIN - 682 030.

3. VILLAGE OFFICER,
   VILLAGE OFFICE, CHERANELLUR P.O.,
   ERNAKULAM, COCHIN - 682 034.

4. LOCAL LEVEL MONITORING COMMITTEE,
REPRESENTED BY ITS CONVENOR,
AGRICULTURAL OFFICER, CHERANELLUR KRISHI BHAWAN,
CHERANELLUR P.O., ERNAKULAM, COCHIN - 682 034.

BY GOVT. PLEADER SRI.S. JAMAL.

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

rs.

WP(C).No. 18512 of 2014 (L)

APPENDIX

PETITIONER'S EXHIBITS:-

EXT.P-1:	THE TRUE COPY OF THE CERTIFICATE NO.4835/PL2/2013/GCDA DATED 21.06.2013 ISSUED BY THE GREATER COCHIN DEVELOPMENT AUTHORITY TO THE PETITIONER.
EXT.P-2:	THE TRUE PHOTOGRAPHS SHOWING THE LIE AND NATURE OF PETITIONERS' PROPERTIES (FOUR IN NUMBERS).
EXT.P-3:	THE TRUE COPY OF THE COMMON ORDER NO.L 10-9391/13 DATED 27.05.2013 ISSUED BY THE DISTRICT COLLECTOR TO THE PETITIONERS.
EXT.P-4:	THE TRUE COPY OF THE JUDGEMENT DATED 05.09.2013 OF THIS HONOURABLE COURT IN WP(C).NO. 16751/2013-(T).
EXT.P-5:	THE TRUE COPY OF THE ORDER BEARING NO.L-10/9391/2013 DATED 26.06.2014 ISSUED BY THE DISTRICT COLLECTOR, ERNAKULAM TO THE PETITIONERS.
EXT.P-6:	THE TRUE COPY OF THE SALE DEED NO.3085/2012 DATED 26.07.2012 OF ERNAKULAM SUB REGISTRAR OFFICE OF THE 2ND PETITIONER.
EXT.P-7:	THE TRUE COPY OF THE REPRESENTATION DATED 10.06.2014 SUBMITTED BY THE IST PETITIONER BEFORE THE 4TH RESPONDENT.
EXT.P-7(A):	THE TRUE COPY OF THE REPRESENTATION 10.06.2014 SUBMITTED BY 2ND PETITIONER BEFORE RESPONDENT.
EXT.P8	TRUE COPY OF THE PROCEEDINGS NO.K.BC 5(1)/2014-15 DATED 28/08/2014 ISSUED BY THE LOCAL LEVEL MONITORING COMMITTEE.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.A. TO JUDGE

rs.

K. VINOD CHANDRAN, J

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W.P(C) No. 18512 of 2014

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Dated this the 18th day of June, 2015

JUDGMENT

The 1st petitioner and his wife are the owners in possession of 3.23 Ares of property comprised in re-survey No.308/20 of Cheranellur Village, which was purchased as per Sale Deed No. 3084/2012 of Ernakulam Sub Registrar Office. The 2nd petitioner and his wife are the owners in possession of 3.49 Ares of property comprised in re-survey No.308/20 Block No.4 of Cheranellur Village. The petitioners intend to construct residential buildings thereon.

2. The petitioners were issued with an order under Section 13 of the Kerala Conservation of Paddy Land and Wetland Act 2008, for resumption of the property so as to facilitate cultivation of paddy. The petitioners challenged Ext.P5 order before this Court in a writ petition wherein at the stage of admission itself there was a direction to the Local Level

monitoring Committee to consider the applications of the petitioners, for removal of the said lands from the draft data bank. The committee however, considered the same and rejected the request as per Ext.P8.

3. Ext.P8 merely finds that the subject property is one converted after 2008. The learned Government Pleader also submits that a portion of the property is included in the Data Bank. What is indicated from the submission of the learned Government Pleader, and after looking at Ext.P8, is that a portion of the property comprised in the resurvey is included in the Draft Data Bank. The petitioners' properties, in any event, are small extents having an extent of 8 cents each and it cannot be said that any portion of that property is included in the Draft Data Bank and the balance property excluded. Aggrieved with Ext.P8, the petitioners sought for appointment of an Advocate Commissioner. The Advocate commissioner has also filed a report on 1.12.2014.

4. The Advocate Commissioner inspected the properties in the presence of the authorised representatives of the petitioners, the Village Officer, Cheranellur, Agricultural Officer, Cheranellur and Assistant Director of Agriculture, Kalamassery.

5. The opinion of the Assistant Director of Agriculture as is reflected from the Commission report was that the property could be used for upland paddy cultivation; a new scheme intended to be introduced by the Government. The Assistant Director is also of the opinion that the subject property could be cultivated with vegetables, banana, tubers etc. which definitely is not the purpose in mandating resumption under the Paddy Land Act. The Assistant Director had also informed the Commissioner that the customary cultivation in the area is of "Pokkali" strain paddy and the same is not possible since the adjacent properties are converted. The Advocate Commissioner categorically found that the property is situated in the midst of a residential colony and the colony is situated 50 meters away from the Ernakulam-Cheranellur road. The resumption of the 16 cents alone for cultivation of paddy is not practical nor would such cultivation be possible. In such circumstance, the LLMC shall make necessary modification in the Data Bank showing the properties to be converted land. 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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> xxx xxx xxx
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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."

6. In such circumstances, no rectification of the Basic Tax Register could be made. The petitioners hence have to approach the appropriate authority under the Kerala Land Utilisation Order 1967 for changed utilisation of the land. 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.

In such circumstance, Ext.P5 is set aside.

Writ Petition is disposed of.

Sd/-
(K. VINOD CHANDRAN, JUDGE)

jma //true copy//

P.A to Judge