IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

FRIDAY, THE 27TH DAY OF MARCH 2015/6TH CHAITHRA, 1937

WP(C).No.19790 of 2014 (W)

PETITIONER:

SMT.SUNI P.BABY,AGED 36 YEARS
HOUSEWIFE,W/O.JIMMIS,THOPPIL HOUSE,
KOKKAPPILLY KARA,THIRUVANIYOOR VILLAGE,
ERNAKULAM DISTRICT.

BY ADVS.SRI.P.THOMAS GEEVERGHESE
SRI.TONY THOMAS (INCHIPARAMBIL)

RESPONDENT'S:
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1. STATE OF KERALA,
REPRESENTED BY ITS CHIEF SECRETARY,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM,PIN:695 001.

2. COMMISSIONER OF LAND REVENUE,
SECRETARIAT,STATUE,THIRUVANANTHAPURAM,
PIN:695 001.

3. REVENUE DIVISIONAL OFFICER,
MUVATTUPUZHA,MINI-CIVIL STATION,
PEZHAKKAPILLY,MUVATTUPUZHA,PIN:686 673.

4. TAHASILDAR,KUNNANTHUNADU TALUK,
TALUK OFFICE,PERUMBAVOOR - 683 542.

5. AGRICULTURAL OFFICER,KRISHIBHAVAN,
THIRUVANIYOOR P.O.,ERNAKULAM,682 308.

BY GOVT. PLEADER SRI.P.K.SOYUZ

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 27-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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WP(C).No.19790 of 2014 (W)
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APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1:TRUE COPY OF THANDAPERU ACCOUNT NO.4257 OF THE PETITIONER.

EXT.P2:TRUE COPY OF APPLICATION DATED 30TH MARCH 2013 SUBMITTED BY THE PETITIONER TO RDO.

EXT.P3:TRUE COPY OF REPORT OF VILLAGE OFFICER NO.278/13 DATED 17TH APRIL 2013.

EXT.P4:TRUE COPY OF CERTIFICATE OF AGRICULTURAL OFFICER NO.TVR/XXIV/1/12-13 DATED 16/2/2013.

EXT.P5:TRUE COPY OF LETTER NO.G2-5167/2013 ISSUED BY THE ADDL. THASILDAR,KUNNATHUNADU TO THE ERNAKULAM DISTRICT COLLECTOR DATED 13/8/2013.

EXT.P6:TRUE COPY OF ORDER DTED 29/1/2014 IN G2-5167/2013 OF THE ADDL. TAHSILDAR,KUNNATHUNADU.

RESPONDENT'S EXHIBITS: NIL

//TRUE COPY//

P.S. TO JUDGE

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P.R.RAMACHANDRA MENON, J.
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W.P.(C) No.19790 OF 2014
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Dated this the 27th day of March, 2015

JUDGMENT

The issue involved in this case is whether the prayer made by the petitioner to cause the BTR (Basic Tax Register) to be corrected as 'dry land' or 'converted land' could be entertained or not.

2. The case of the petitioner is that the property concerned is actually a 'dry land' and that the conversion was effected much prior to the commencement of Kerala Conversion of Paddy Land and Wet Land Act 2008 (for short, “the Act”). But the same happened to be described as paddy land in the revenue records. A connected issue with reference to the physical nature of the property had come for consideration before a Full Bench of this Court and as per the decision reported in **Praveen K v Land Revenue Commissioner & Others (2010(2) KLT 617),** the Bench observed that the grievance is not to be considered merely with reference to the entry in the revenue records and the physical nature of the property is also to be looked into. If the

property is not covered by the Act, it has necessarily to be considered with reference to the provisions of the Kerala Land Utilisation Order, 1967 (for short, the “KLU Order”). Subsequently the matter came up for consideration before this Court again and as per the decision reported in **Jafarkhan v K.A Kochumarakkar and Others (2012(1) KLT 491)** it was made clear that, if the conversion was effected prior to the date of commencement of the Act, and if the property was not situated as a paddy land or wet land as on the date of commencement of the Act, the provisions of the Act were not attracted. Thereafter, the position was again made clear by a bench of this Court as per the decision reported in **Sunil v Killimangalam - Panjal 5th Ward, Nellultadaka Samooham (2012(4) KLT 511)** that if the property is not covered by the provisions of the Act, the land can be made use of, even for industrial purposes.

3. While so, a question had come up for consideration before this Court as to whether the Tahsildar could be directed to effect necessary correction in the revenue records. The matter was decided by a learned Single Judge of this Court in **Jalaja Dileep and another v Revenue Divisional Officer,**

Fort Kochi and Others (2014(1) KLT 161) whereby positive directions were given to the Tahsildar to effect the necessary corrections. The said verdict was affirmed by a Division Bench of this Court as per the decision reported in **Revenue Divisional Officer, Fort Kochi and Others v Jalaja Dileep and another (2014(1) KLT 161).** The State took up the matter before the Apex Court. After final hearing, the law has been declared by the Apex Court as per the decision reported in **Revenue Divisional Officer, Fort Kochi and Others v Jalaja Dileep and another (2015(1) KLT 984 (SC))** whereby the verdict passed by the Division Bench of this Court has been set aside and it has been made clear that no correction can be made in the 'BTR' under any circumstances. The scope of Section 18 of the Kerala Land Tax Act was also explained in detail. However, some specific observations were made by the Apex Court in paragraphs 17 and 23 to the effect that if the property had already been converted, the parties are at liberty to move the concerned authority by filing necessary petition under Clause 6(2) of the KLU Order and it is for the competent authority to consider the same and to pass appropriate orders so as to enable the parties to make use of the property for other purposes than agricultural purpose. This being the position, in so far as the properties herein are not included in the Data Bank Register, showing the nature as a paddy land or wet land, as on date of commencement of the Act, the matter requires to be considered by the competent authority under the provisions of KLU Order.

4. The learned Government Pleader submits that, even though some observations have been made with regard to the nature of the land in Ext.P4, in the certificate issued by the Agricultural Officer, nothing is mentioned as to whether the property has been included in the Data Bank Register or not. No counter affidavit is filed in this case. In the said circumstance, the position has to be ascertained, as to whether the property is actually included in the Data Bank Register as a paddy land or wet land as on the date of commencement of the Act. In the said circumstance, if the petitioner files and application before the 3rd respondent under Clause 6(2) of the KLU Order, the same has to be considered after calling for a report from the 5th respondent with specific reference to the fact whether the property is included in the Data Bank Register or not.

5. In the said circumstances, the petitioner in this case is set at liberty to move either the District Collector or the RDO by filing an application under Clause 6(2) of the KLU Order within two weeks from the date of receipt of a copy of this judgment; upon which the same shall be considered and appropriate orders shall be passed after hearing the parties, in the light of the observations made by the Apex Court as per the decision cited supra. This shall be done by at the earliest, at any rate, within two months from the date of receipt of a copy of this judgment.

The writ petition is disposed of accordingly. The petitioner shall produce a copy of the judgment along with a copy of the writ petition before the concerned respondent for further steps.

Sd/-

P.R.RAMACHANDRA MENON, JUDGE

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