IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 8TH DAY OF JULY 2015/17TH ASHADHA, 1937

W.P.(C).No.19723 of 2015 (M)

PETITIONER(S):-

THANUR ISLAMIC TRUST (REGD.),
PO: THANUR-676 302, MALAPPURAM DISTRICT,
REPRESENTED BY ITS CHAIRMAN, MUSLIARAKATH ASSAINAR,
S/O.KUNHIMOIDEEN, AGED 78 YEARS, PO THANUR,
MALAPPURAM DISTRICT

BY ADVS.SRI.P.CHANDRASEKHAR
SRI.S.PRASANTH
SRI.SOORAJ T.ELENJICKAL
SMT.UMA
SRI.K.NANDAKUMAR
SMT.P.M.MAZNA MANSOOR
SMT.V.A.HARITHA
SRI.P.VIVEK.

RESPONDENT(S):-
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1. THE REVENUE DIVISIONAL OFFICER,
   TIRUR, MALAPPURAM DISTRICT-676 101.

2. AGRICULTURAL OFFICER,
   KRISHI BHAVAN, THANUR-676 302.

3. THE VILLAGE OFFICER, THANUR,
   MALAPPURAM DISTRICT-676 302.

4. THE SECRETARY
   THANUR GRAMA PANCHAYAT, MALAPPURAM DISTRICT-676 302.

R1 TO R3 BY SPECIAL GOVERNMENT PLEADER SRI.P.K.SOYUZ.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 08-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

WP(C).No.19723 of 2015 (M)

APPENDIX

PETITIONER(S)' EXHIBITS:-

EXT P1 : TRUE COPY OF THE REGISTERED SALE DEED DATED 31-7-2006.

EXT P2 : TRUE COPY OF REGISTERED SALE DEED DATED 1-8-2006.

EXT P3 : TRUE COPY OF THE SKETCH OF 86.40 CENTS OF LAND.

EXT P4 : THE TRUE COPY OF THE BASIC TAX RECEIPT DATED 9-9-2003 IN RESPECT OF THE PROPERTY IN RESURVEY NOS.103/2 AND 103/3 CONSISTING OF 86.4 CENTS OF LAND.

EXT P5 : A TRUE COPY OF THE SAID DRAFT DATA BANK OF THANUR VILLAGE.

EXT P6 : A TRUE COPY OF THE PETITION FILED BY THE PETITIONER.

EXT P7 : TRUE COPIES OF THE POSTAL ACKNOWLEDGEMENT RECEIVED FROM RESPONDENTS 1 TO 3.

RESPONDENT(S)' EXHIBITS:-
-- NIL.

Vku/- [true copy]

K. Vinod Chandran, J

W.P.(C).No.19723 of 2015-M

Dated this the 08th day of July, 2015

JUDGMENT

The petitioner, a charitable trust, is the owner of certain land which are said to be 'garden land'; but, however, described in the revenue records as paddy land/wet 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 Kerala Conservation of Paddy Land and Wet Land Act, 2008 (hereinafter referred to as 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 inter alia 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 inter alia 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.”

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 land has been converted long 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 converted prior to the Paddy Land Act and is also not included in the Data Bank prepared for the area, 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 the judgment of this Court in **W.P.(C) No.16683 of 2015** and connected cases, dated 30.06.2015 **[*Puthan Purakkal Joseph v. Sub Collector*].** 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]**.

Writ Petition is disposed of.

Sd/-
K.Vinod Chandran
Judge.

vku/-

[true copy]