IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 21ST DAY OF JULY 2015/30TH ASHADHA, 1937

WP(C).No. 21116 of 2015 (L)

PETITIONER(S):
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1. HAJERA IBRAHIM,
   AGED 41 YEARS,
   W/O.IBRAHIM, RESIDING AT THEKKATU HOUSE, THIRUVANGOOR
   KOZHIKODE-673318,
   REPRESENTED BY POWER OF ATTORNEY HOLDER, ABDURAHIMAN,
   AGED 61 YEARS, S/O.ABDULLA KUTTY HAJI
   RESIDING AT THEKKATT HOUSE, THIRUVANGOOR, KOZHIKODE.

2. AMINA BEEGUM,
   AGED 49 YEARS,
   W/O.MOHAMMED ISMAIL, RESIDING AT 2/437, TANCHAVOOR
   TAMILNADU-612001. REPRESENTED BY POWER OF ATTORNEY HOLDER
   ABDURAHIMAN, AGED 61 YEARS, S/O.ABDULLA KUTTY HAJI
   RESIDING AT THEKKATT HOUSE, THIRUVANGOOR, KOZHIKODE.

   BY ADVS.SRI.V.V.SURENDRAN
   SRI.P.A.HARISH

RESPONDENT(S):
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1. THE REVENUE DIVISIONAL OFFICER,
   CIVIL STATION, KOZHIKODE-673020.

2. THE VILLAGE OFFICER,
   KASABA VILLAGE, KOZHIKODE-673002.

   BY SPECIAL GOVERNMENT PLEADER SRI.P.K.SOYUZ.

   THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
   ON 21-07-2015, THE COURT ON THE SAME DAY DELIVERED THE
   FOLLOWING:

vmr.

WP(C).No. 21116 of 2015 (L)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT-P1: A TRUE COPY OF THE ASSIGNMENT DEED DOCUMENT NO.1016/2004 DATED 7.9.2004 OF SRO KOZHIKODE.

EXHIBIT-P2: A TRUE COPY OF THE ASSIGNMENT DEED DOCUMENT NO.1017/2004 DATED 9.9.2004 OF SRO KOZHIKODE.

EXHIBIT-P3: A TRUE COPY OF THE REGISTERED KANOM DEED REGISTERED AS DOCUMENT NO.141/27 DATED 23.2.1927.

EXHIBIT-P4: A TRUE COPY OF THE ASSIGNMENT DEED REGISTERED AS DOCUMENT NO.608/1947 DATED 18.4.1947.

EXHIBIT-P5: A TRUE COPY OF THE APPLICATIOIN SUBMITTED BY THE PETITIONERS BEFORE THE 1ST RESPONDENT.

EXHIBIT-P6: A TRUE COPY OF THE REPORT SUBMITTED BY THE 2ND RESPONDENT TO THE 1ST RESPONDENT.

EXHIBIT-P7: A TRUE COPY OF THE CERTIFICATE OF THE 2ND RESPONDENT.

EXHIBIT-P8: A TRUE COPY OF THE COMMUNICATION DATED 31.10.14 ISSUED BY THE 1ST RESPONDENT.

EXHIBIT-P9: A TRUE COPY OF THE JUDGMENT OF THIS HONOURABLE COURT IN W.P.(C) 29015/14.

EXHIBIT-P10: A TRUE COPY OF THE FRESH APPLICATION UNDER CLAUSE 6(1) OF THE KERALA LAND UTILISATION ORDER OF THE PETITIONER.

EXHIBIT-P11: A TRUE COPY OF THE ORDER OF THE 1ST RESPONDENT.

RESPONDENT(S)' EXHIBITS : NIL.

/TRUE COPY/

P.S.TO JUDGE

vmr.

K. VINOD CHANDRAN, J

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W.P(C) No. 21116 of 2015

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Dated this the 21st day of July, 2015

J U D G M E N T

The petitioners are the owners of 98 cents of land in Kasaba village of Kozhikode Taluk, which is said to be 'purayidam' 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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> xxx xxx xxx

> 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 several years back, i.e., prior to the Act of 2008. The petitioner then has to approach the appropriate authority with a proper application, under the Kerala Land

Utilisation Order 1967 for changed utilisation of the land. 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 Puthan Purakkal Joseph v. Sub Collector [2015 (3) KLT 182]. 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)

jma

//true copy//

P.A to Judge