IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

TUESDAY, THE 17TH DAY OF MARCH 2015/26TH PHALGUNA, 1936

WP(C).No.22802 of 2014 (A)

WRIT PETITIONER:

GEORGE C KAPPAN,S/O.CHERIAN J KAPPEN,
AGED 68 YEARS,KAPPIL HOUSE,PALA,
LALAM VILLAGE,MENACHIL TALUK,KOTTAYAM DISTRICT.

BY ADV. SRI.P.C.HARIDAS

RESPONDENTS:

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1. STATE OF KERALA,
REPRESENTED BY ITS SECRETATY TO
THE DEPARTMENT OF REVENUE,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

2. DISTRICT COLLECTOR,KOTTAYAM-686001.

3. REVENUE DIVISIONAL OFFICER,PALA-686575.

4. TAHSILDAR,MEENACHIL,PALA-686575.

5. VILLAGE OFFICER,LALAM VILLAGE,PALA-686575.

R1-R5 BY SPECIAL GOVT. PLEADER SRI.P.K.SOUZ(REVENUE).

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 17-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

pk

WP(C).No.22802 of 2014 (A)

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1:TRUE COPIES OF SALE DEED NOS.3161/1998.1306/1999 AND 1441/1999 OF MEENACHIL SRO.

EXT.P2:TRUE COPY OF THE TAX RECEIPT DATED 31-08-2013 ISSUED TO THE PETITIONER FROM THE VILLAGE OFFICER,LALAM.

EXT.P3:TRUE COPY OF THE BASIC TAX REGISTER IN RESPECT OF THE PROPERTY OF THE PETITIONER.

EXT.P3(a):TRUE COPY OF THE TANDAPER REGISTER IN RESPECT OF THE PROPERTY OF THE PETITIONER.

EXT.P4:TRUE COPY OF THE CERTIFICATE DATED 25.08.2000 OF THE PALA MUNICIPALITY.

EXT.P5:TRUE COPY OF THE LETTER DATED 14-07-2004 OF THE PRINCIPLE AGRICULTURAL OFFICER,KOTTAYAM.

EXT.P6:TRUE COPY OF THE NOTICE DATED 13-07-2004 OF THE 3RD RESPONDENT.

EXT.P7:TRUE COPY OF THE LETTER NO.A 2679/2004 OF THE 3RD RESPONDENT.

EXT.P8:TRUE COPY OF THE ORDER DATED 01-02-2005 OF THE 2ND RESPONDENT.

EXT.P9:TRUE COPY OF THE RELEVANT PORTIONS OF THE DATA BANK.

EXT.P10:TRUE COPY OF THE APPLICATION DATED 10-03-2014 OF THE PETITIONER.

EXT.P11:TRUE COPY OF THE REPORT DATED 19-06-2014 OF THE VILLAGE OFFICER.

EXT.P12:TRUE COPY OF THE LETTER DATED 02-07-2011 OF THE ADDITIONAL TAHSILDAR.

EXT.P13:TRUE COPY OF THE APPLICATION WITHOUT ENDORSEMENT SUBMITTED BY THE PETITIONER BEFORE THE 3RD RESPONDENT.

RESPONDENT'S EXHIBITS:

EXT.R4(a):TRUE COPY OF THE RELEVANT PAGE OF DRAFT DATA BANK.

//TRUE COPY//

P.S. TO JUDGE

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P.R. RAMACHANDRA MENON J.
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W.P.(C) No. 22802 of 2014
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Dated, this the 17th day of March, 2015

JUDGMENT

The petitioner is the owner of the land having an extent of 28.31 Ares situated in Sy. No. 38/14 of Lalam village of Kanayannur taluk. According to the petitioner the property concerned is neither a 'paddy land' nor a 'wet land' as defined under Section 2 (xii) or 2 (xviii) of Act 28 of 2008, but a 'reclaimed land' having effected reclamation prior to the commencement of the Act 28 of 2008, though it has been described as 'nilam' in the basic tax register.

2. The learned counsel for the petitioner submits that after conducting an inspection, the concerned Agricultural Officer has certified that the property concerned is not suitable for paddy cultivation, vide Ext. P5. As per Ext. P9 Data Bank prepared, the property has been shown as reclaimed land. Though the petitioner has approached the 3rd respondent by filing application for effecting correction in the BTR, nothing transpired till date in the positive. Hence the writ petition.

3. Heard the learned Government Pleader as well.

4. The law has been declared as per the decision rendered in **JafarKhan Vs. K.A. Kochumarakkar & Ors. [2012 (1) KHC 523]** that the provisions of the Conservation of Kerala paddy land and Wet land Act are applicable only in respect of the land which are lying as 'paddy land' or 'wet land' as on the date of commencement of the 'Act'. The position is confirmed as per the recent decision rendered by the Apex Court in **Revenue Divisional Officer Vs. Jalaja Dileep [2015 (1) KLT 984 (SC)].** It is also mentioned in the aforesaid judgment, particularly in paragraph 18, that if the property is not included in the Data Bank as "Paddy Land" or "Wetland" as defined under the Act 28 of 2008, it is still governed by the provisions of K.L.U. Order 1967 and that in such circumstances, the grievance is to be considered with reference to the provisions of the KLU. It has also been held that nature of the land cannot be changed or converted by directing changes in the Basic Tax Register being maintained for the purpose of land tax and that the authorities formed under the Kerala Land Utilization Order or the Kerala Conversion of Paddy Land and Wet Land Act are the competent authorities to deal with the matter. It has been held by a learned Single Judge of this Court in **Archana Varghese Vs. District Collector [2015 (1) KLT 937]** that after the Act 28 of

2008, the Collector has no power to call upon the holder of the land to cultivate paddy in the land which is no longer a paddy land in terms of the Act 28 of 2008.

5. In the said circumstances, the writ petition is disposed of, relegating the petitioner to approach the District Collector/second respondent by filing necessary application under Clause 6 of the Kerala Land Utilization Order, upon which the second respondent shall consider the application filed by the petitioner under Clause of 6 of the KLU and pass appropriate orders thereon, in accordance with law and in the light of the judicial precedents as above, as expeditiously as possible, at any rate, within two months thereafter.

The petitioner shall produce a copy of this judgment along with copy of the writ petition before the second respondent third respondent for further steps.

The Writ Petition is disposed of.

Sd/-

P. R. RAMACHANDRA MENON,
(JUDGE)

kmd