

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 4TH DAY OF JUNE 2015/14TH JYASHTA, 1937

WP(C).No. 25826 of 2013 (C)

PETITIONER :

**JACOB CHERIAN, AGED 80 YEARS,
S/O.C.C.CHACKO, SANKARAMANGALAM,
PARAVUR ROAD, UC COLLEGE P.O., ALUVA - 683 102.**

**BY ADVS.SRI.DINESH R.SHENOY
SMT.N.M.SHEENA DAS
SMT.DRISYA SURENDRAN**

RESPONDENTS :

- 1. STATE OF KERALA
REPRESENTED BY DISTRICT COLLECTOR, ERNAKULAM
CIVIL STATION, COCHIN - 682 030.**
- 2. THE REVENUE DIVISIONAL OFFICER,FORT COCHIN
OFFICE OF THE REVENUE DIVISIONAL OFFICER
COCHIN - 682 001.**
- 3. THE ADDITIONAL TAHSILDAR,
ALUVA TALUK, TALUK OFFICE, ALUVA - 683 101.**

R1 TO R3 BY GOVERNMENT PLEADE SRI.S. JAMAL

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 04-06-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

bp

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1: TRUE PHOTOCOPY OF LETTER OF ADMINISTRATION NO.9/1995 DATED 22/06/1995 ADDITIONAL DISTRICT JUDGE, NORTH PARAVUR.
- EXT.P2: TRUE PHOTOCOPY OF APPLICATION DATED 22/08/2012 SUBMITTED BY THE PETITIONER.
- EXT.P3: TRUE PHOTOCOPY OF REPORT DATED 01/09/2012 SUBMITTED BY THE VILLAGE OFFICER, TOGETHER WITH ANNEXURES.
- EXT.P4: TRUE PHOTOCOPY OF TAX RECEIPT DATED 9/8/2011.
- EXT.P5: TRUE PHOTOCOPY OF BASIC TAX RECEIPT DATED 9/8/2011.
- EXT.P6: TRUE PHOTOCOPY OF LETTER DATED 25/10/2012 ISSUED BY 2ND RESPONDENT TO 3RD RESPONDENT.
- EXT.P7: TRUE PHOTOCOPY OF REPORT DATED 09/11/2012 SUBMITTED BY THE 3RD RESPONDENT TO 2ND RESPONDENT.
- EXT.P8: TRUE PHOTOCOPY OF THE JUDGMENT DATED 13/07/2012 SUBMITTED BY THE 3RD RESPONDENT TO 2ND RESPONDENT.
- EXT.P9: TRUE PHOTOCOPY OF LETTER DATED 03/01/2013 (WRONGLY SHOWN AS 03/01/2012) ISSUED BY THE 2ND RESPONDENT.
- EXT.P10: TRUE PHOTOCOPY OF THE JUDGMENT DATED 30/1/2013 IN WPC NO.1449/2013.
- EXT.P11: TRUE PHOTOCOPY OF THE ORDER NO.K-1789/13/K-DIS DATED 15/5/2013 ISSUED BY THE 2ND RESPONDENT.
- EXT.P12 SERIES: PHOTOGRAPHS OF THE PETITIONER'S PROPERTY SHOWING THE COCONUT TREES AND OTHER TREES, THE PLANTAINS AND TAPIOCA.

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

K.VINOD CHANDRAN, J.

W.P.(C).No.25826 of 2013

Dated this the 04th day of June, 2015

J U D G M E N T

The petitioner has filed the above writ petition for correction of the description of the land in the Basic Tax Register (BTR) of 38.18 Ares of land in Re Survey No6/32 of Aluva West Village. The petitioner's grievance is that the petitioners property which is remaining as garden lands for the last 40 years is still shown in the basis tax register as nilam. It is also submitted that the said land is not included in the data bank prepared for the area under the Kerala Conservation of Paddy land and Wetland Act, 2008.

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.

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However, with respect to conversion and utilisation of lands which were converted prior to bringing into force of the Kerala Cultivation of paddy land and Wet Land Act, 2008 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,

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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.

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

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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, Ext.P11 is to be upheld. No rectification of the Basic Tax Register could be made. The petitioner if has a contention that the lands were filled up prior to 2008, then he has to approach the appropriate authority under the Kerala Land Utilisation Order 1967 for utilisation of the converted land. If the property is found to be filled up prior to the Act of 2008, 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. Subsequent to such a finding the petitioner could also approach the appropriate authority under the Kerala Land Tax Act for fresh assessment of the

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land, as directed to be utilised under the KLU order, as has been held
in Kizhakkambalam Grama Panchayath V. Mariumma 2015(2) KLT
516.

Sd/-
K.VINOD CHANDRAN
JUDGE

jma

//true copy//

P.A to Judge