IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

TUESDAY, THE 1ST DAY OF SEPTEMBER 2015/10TH BHADRA, 1937

WP(C).No. 24147 of 2015 (P)

PETITIONER(S):

C.C.THOMAS, AGED 62 YEARS,
S/O.LATE C.M.CHACKO,
CHEMMALAKUZHY HOUSE, PLOT NO.70, KUMARANASAN NAGAR,
KADAVANTHRA, KOCHI-682 020.

BY ADV. SRI.N.JAMES KOSHY

RESPONDENT(S):
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1. THE DISTRICT COLLECTOR,
COLLECTORATE P.O., KOTTAYAM-682 002.

2. THE REVENUE DIVISIONAL OFFICER,
PALA, KOTTAYAM DISTRICT.

3. THE TAHSILDAR,
VAIKOM, KOTTAYAM DISTRICT.

4. THE VILLAGE OFFICER,
NEEZHOOR-686 612, KOTTAYAM DISTRICT.

5. THE AGRICULTURAL OFFICER,
NEEZHOOR-686 612, KOTTAYAM DISTRICT, (THE CONVENER
LOCAL LEVEL MONITORING COMMITTEE,
NEEZHOOR PANCHAYATH).

6. STATE OF KERALA,
REPRESENTED BY THE COMMISSIONER OF LAND REVENUE
PUBLIC OFFICE BUILDING, NEAR MUSEUM,
THIRUVANANTHAPURAM.

BY SPECIAL GOVERNMENT PLEADER SRI.P.K.SOYUZ

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
01-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

msv/

WP(C).No. 24147 of 2015 (P)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1- PHOTOCOPY OF THE ORDER NO.C5-8492/2011 DATED 31.1.2012 PASSED BY THE ADDL.TAHSILDAR, VAIKOM.

EXT.P2- PHOTOCOPY OF THE ORDER NO.C5-3583/12, 3584/12 DATED 24.12.2012 PASSED BY THE ADDL.TAHSILDAR, VAIKOM.

EXT.P3- PHOTOCOPY OF THE PETITION DATED 10.1.2013 SENT TO THE RESPONDENTS.

EXT.P4- PHOTOCOPY OF THE PARTITION DEED DATED 30.12.2004.

EXT.P5- PHOTOCOPY OF THE SALE DEED DATED 1ST DAY OF 'KANNI' 1125.

EXT.P6- PHOTOCOPY OF THE SALE DEED DATED 5.10.1989 EXECUTED IN FAVOUR OF THE PETITIONER.

EXT.P7-PHOTOCOPY OF THE SALE DEED DATED 17.11.1983.

EXT.P8-PHOTOCOPY OF THE SALE DEED DATED 5.10.1989 EXECUTED IN FAVOUR OF THE PETITIONER.

EXT.P9-PHOTOCOPY OF THE SALE DEED DATED 17.1.1989.

EXT.P10-PHOTOCOPY OF THE SALE DEED DATED 17.2.2007.

EXT.P11-PHOTOCOPY OF THE LETTER DATED 18.2.2013 SENT TO ALL THE RESPONDENTS.

EXT.P12-PHOTOCOPY OF THE LETTER DATED 4.3.2013 ISSED BY THE 3RD RESPONDENT.

EXT.P13-PHOTOCOPY OF THE LETTER DATED 3.10.2013 SENT TO THE 1ST AND 5TH RESPONDENTS.

EXT.P14- PHOTOCOPY OF THE JUDGMENT DATED 4.12.2013 IN WP(C)NO.27037/2013 PASSED BY THIS HON'BLE COURT.

EXT.P15- PHOTOCOPY OF THE ORDER DATED 12.3.2014 PASSED BY THE 2ND RESPONDENT.

EXT.P16- PHOTOCOPY OF THE JUDGMENT DATED 12.1.2015 IN WP(C)NO.14280/2014 PASSED BY THIS HON'BLE COURT.

EXT.P17- PHOTOCOPY OF THE LETTER DATED 27.4.2015 ISSUED BY THE ADDL.TAHSILDAR, VAIKOM.

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EXT.P18- PHOTOCOPY OF THE LETTER DATED 23.5.2015 SENT TO THE ADDL.TAHSILDAR, VAIKOM.

EXT.P19- PHOTOCOPY OF THE LETTER DATED 23.7.2015 SENT TO THE 3RD RESPONDENT.

EXT.P20- PHOTOCOPY OF THE LETTER DATED 26.7.2015 ISSUED BY THE ADDL.TAHSILDAR, VAIKOM.

EXT.P21- PHOTOCOPY OF THE PETITION DTD.19.8.2015 SENT TO THE TAHSILDAR & ADDL. TAHSILDAR, VAIKOM.

RESPONDENT(S)' EXHIBITS:
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NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

A.MUHAMED MUSTAQUE, J.

W.P.(C)No.24147 of 2015

Dated this the 1st day of September, 2015.

J U D G M E N T

The petitioner is the owner of a landed property in re-Survey No.44/7 having an extent of 87.60 Ares in Block No.26 of Neezhoor village. The petitioner approaches this Court challenging Ext.P15 order of Revenue Divisional Officer, Pala.

2. Ext.P15 order has been passed refusing the request of the petitioner to change the BTR. This was considered earlier, pursuant to the direction of this Court.

3. As seen from the impugned order, the property cannot be neither classified as paddy land nor as wet land coming under Act 28 of 2008. It is also cannot be classified as land coming within the Kerala Land Utilisation Order, for the reason that the land was converted at least 50 years ago. Therefore, the only question now remains is whether the classification in the BTR can be changed showing it as a

'purayidom' instead of 'nilam'.

4. In view of the decision of the Honourable Supreme Court in **Revenue Divisional Officer Vs. Jalaja Dileep** (**2015(1)KLT 984(SC)**), the R.D.O. has no power to convert the description of the land in the revenue records. However, taking note of the fact that the judgment of the Honourable Supreme Court was in the context of changing the BTR in respect of the land, which would come under the Kerala Land Utilisation Order, this Court is of the view that, there is no impediment in re-assessing the land in the light of the facts and circumstances of the case, under the Land Tax Act, 1961, as the land in question neither attracts Kerala Land Utilisation Order nor Act 28 of 2008. The Division Bench of this Court in **Panchayat Vs. Mariumma (2015(2)KLT 516)** recently held as follows:

> "The further issue raised before us by the learned Government Pleader was that in view of the directions of the Apex Court as contained in para 21 extracted above, even if the authorities under the Kerala Land Utilisation Order, 1967 pass an order in favour of the respondents, there cannot be

> any correction of entries in the Basic Tax Register maintained under the Kerala Land Tax Act. This contention was raised in the context of the principles laid down in the judgment that rectification as envisaged by S.18 of the Kerala Land Tax Act can only be in respect of arithmetical or clerical error, that too in the order of determining the tax due. Though it is true that in the judgment of the Apex Court, it has been held as above, that principle has been laid down by the Apex Court in the background of S.18 providing for rectification of mistakes. In our view, if an order is passed by the authority under the Kerala Land Utilisation Order or Act 28 of 2008 changing the description of the land, that cannot lead to a situation where S.18 is attracted. On the other hand, such change of the description of the land would render the assessments already made under S.6A of the Kerala Land Tax Act, 1961 redundant and instead what is called for is a fresh assessment in accordance with the said Act. Necessarily, as a consequence of such assessment, it would be open to the authorities also to make appropriate additions to the Basic Tax Register. Such a course, in our view, is not forbidden by any of the principles laid down by the Apex Court, particularly those contained in para 21 of the judgment mentioned above."

In the light of the above, the Tahasildar is directed to take necessary action to re-assess the land as requested by the petitioner in Ext.P21 and take action on Ext.P21 to make a re-assessment under Section 6 A of the Land Tax Act, 1961, within a period of one month of receipt of copy of this judgment. Needless to say that the petitioner is entitled to utilise the land for any purpose under the KLU Order treating it as 'purayidom'.

Sd/-
A.MUHAMED MUSTAQUE,
Judge.

ami/

//True copy//

P.A.to Judge