

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

FRIDAY, THE 23RD DAY OF JANUARY 2015/3RD MAGHA, 1936

WP(C).No. 25164 of 2014 (U)

PETITIONERS:

1. REENU PAUL,
WIFE OF PAUL VARGHESE, VELIATH HOUSE, MOOVATTUPUZHA,
THRIKALATHUR P.O.
2. ELSI ISSAC,
WIFE OF ISSAZC V.KORATH, VELIATH HOUSE, MOOVATTUPUZHA,
THRIKALATHUR P.O.
3. SYLVIA KURIAN,
WIFE OF KURIAN VARGHESE, VELIATH HOUSE, MOOVATTUPUZHA,
THRIKALATHUR P.O.
4. SHAIJAMMA THOMAS,
WIFE OF VARGHESE KURIAN, KUNNATHUNAD TALUK,
KIZHILLAM P.O.

**BY ADVS.SMT.K.P.SANTHI
SRI.RILGIN V.GEORGE**

RESPONDENTS:

1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
REVENUE DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM-695 001
2. THE REVENUE DIVISIONAL OFFICER,
FORTKOCHI-682 001.
3. THE TAHSILDAR,
KANAYANNUR-682 011.
4. THE VILLAGE OFFIER,
THIRUVANKULAM VILLAGE-682 306.

BY SPL. GOVERNMENT PLEADER (REVENUE) SRI. P.K.SOUYZ

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 23-01-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONERS' EXHIBITS

- EXT. P1(A) : COPY OF THE APPLICATION DATED 24.3.2014 SUBMITTED BY
1ST PETITIONER.
- EXT. P1(B) : COPY OF THE APPLICATION DATED 24.3.2014 SUBMITTED BY
2ND PETITIONER.
- EXT. P1(C) : COPY OF THE APPLICATION DATED 24.3.2014 SUBMITTED BY
3RD PETITIONER.
- EXT. P1(D) : COPY OF THE APPLICATION DATED 24.3.2014 SUBMITTED BY
4TH PETITIONER.
- EXT. P2 : COPY OF THE RELEVANT PAGE OF THE DRAFT DATA BANK.
- EXT. P3(A) : COPY OF THE REPORT DATED 7.8.2012 OF THE PRINCIPAL
AGRICULTURAL OFFICER, ERNAKULAM.
- EXT. P3(B) : COPY OF THE REPORT DATED 7.8.2012 OF THE PRINCIPAL
AGRICULTURAL OFFICER, ERNAKULAM.
- EXT. P3(C) : COPY OF THE REPORT DATED 7.8.2012 OF THE PRINCIPAL
AGRICULTURAL OFFICER, ERNAKULAM.
- EXT. P3(D) : COPY OF THE REPORT DATED 7.8.2012 OF THE PRINCIPAL
AGRICULTURAL OFFICER, ERNAKULAM.

RESPONDENTS' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

DST

P.R. RAMACHANDRA MENON J.

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W.P.(C) No. 25164 of 2014

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Dated, this the 23rd day of January, 2015

JUDGMENT

The petitioners are owners of the different extents of property situated in Thiruvankulam village of Kanayannur taluk. According to the petitioners the properties concerned are reclaimed lands having effected reclamation years prior to the commencement of Act 28 of 2008.

2. The learned counsel for the petitioners submits that after conducting an inspection, the concerned Agricultural Officer has certified that the properties concerned are not agricultural lands, vide Ext. P3 (a) to Ext. P3 (d). As per Ext. P5 Data Bank Register, the property has been shown as reclaimed land. Though the petitioners have approached the concerned respondents 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 by this Court as per the decision rendered in **Praveen Vs. State of Kerala [2010 (2) KLT 617]** to

the effect that before effecting entry in the BTR physical nature of the property has to be considered. 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'. A learned Single Judge of this Court directed the concerned Tahasildar to effect changes in the BTR on the basis of physical nature of the property concerned. The dispute was raised by the Revenue Department contending that Tahasildar does not have any such power. But the appeal preferred therefrom came to be dismissed as per the decision reported in **2014 (1) KLT 161 [Revenue Divisional Officer VS. Jalaja Dileep]**. The respondents have taken up the matter before the Apex Court by way of SLP No. 3172 of 2014 , but no interim stay has been obtained by the department. After declaring the law by this Court and also by giving direction to the concerned authority enabling him to do the needful, this Court does not find any justification for the concerned respondent in weeping over the absence of power for effecting correction. This Court fails to understand the nature of grievance or question of law

raised before the Apex Court in the pending SLP, however this Court does not intend to express any opinion in this regard. Since the respondents have not obtained any interim stay, the decision rendered by the Division Bench of this Court stands as it is. In so far as there is no dispute as to the fact that properties involved herein were converted years back, prior to Act 28 of 2008, the provisions of the said Act are not applicable to the case in hand. It is declared accordingly. In the said circumstances, there will be a direction to the third respondent/Tahasildar to effect necessary changes in the BTR as to the nature of land, which shall be effected, at the earliest, at any rate, within one month from the date of receipt of a copy of this judgment. This shall be subject to the result of the SLP as aforesaid.

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

The Writ Petition is disposed of.

Sd/-

**P. R. RAMACHANDRA MENON,
(JUDGE)**

kmd