IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 28TH DAY OF MAY 2015/7TH JYAISHTA, 1937

WP(C).No. 28594 of 2014 (Y)

PETITIONER(S):

REJI C. KURIAKOSE, AGED 49 YEARS,
S/O. KURIAKOSE AND RESIDING AT 38/539,
CHEMALAYIL HOUSE, S.A.ROAD, KOCHI-16.

BY ADVS.SRI.JAISHANKAR V.NAIR
SMT.ARATHI KARUNAKARAN
SMT.PARVATHY S.KRISHNAN

RESPONDENT(S):
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1. THE DISTRICT COLLECTOR,
COLLECTORATE, ERNAKULAM-682 030.

2. TAHASILDAR,
KANAYANNUR TALUK, ERNAKULAM-682 011.

R BY GOVERNMENT PLEADER SRI. S.JAMAL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 28-05-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

AD

WP(C).No. 28594 of 2014 (Y)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1: TRUE COPY OF THE ORDER DATED 28.8.2014.

RESPONDENT(S)' EXHIBITS NIL

//TRUE COPY//

P.A. TO JUDGE

AD

K.VINOD CHANDRAN, J.

W.P.(C).No.28594 of 2014

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Dated this the 28th day of May, 2015

JUDGMENT

The petitioner has filed the above writ petition for correction of the description of the land in the Basic Tax Register (BTR) of 119 Ares of lands lying together in Survey Nos. 578/14, 578/13, 578/22, 578/15, 579/4, 579/6, 579/16, 579/11, 579/8, 579/7 and 579/5. 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 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 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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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."*

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

K.VINOD CHANDRAN
JUDGE

AD