IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

WEDNESDAY, THE 11TH DAY OF MARCH 2015/20TH PHALGUNA, 1936

WP(C).No. 29015 of 2014 (B)

PETITIONER(S):
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1. HAJIRA IBRAHIM, AGED 41 YEARS,
W/O. IBRAHIM, RESIDING AT THEKKATU HOUSE,
THIRUVANGOOR, KOZHIKODE-673 318,
REPRESENTED BY POWER OF ATTORNEY HOLDER
ABDURAHIMAN, AGED 61 YEARS, S/O. ABDULLA KUTTY HAJI,
RESIDING AT THEKKATT HOUSE,
THIRUVANGOOR, KOZHIKODE.

2. AMINA BEEGUM, AGED 49 YEARS,
W/O. MOHAMMED ISMAIL, RESIDING AT 2/437,
TANCHAVOOR, TAMILNADU-612 001.
REPRESENTED BY POWER OF ATTORNEY HOLDER
ABDURAHIMAN, AGED 61 YEARS,
S/O. ABDULLA KUTTY HAJI, RESIDING AT
THEKKATT HOUSE, THIRUVANGOOR, KOZHIKODE.

BY ADVS.SRI.V.V.SURENDRAN,
SRI.P.A.HARISH.

RESPONDENT(S):
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1. THE REVENUE DIVISIONAL OFFICER,
CIVIL STATION, KOZHIKODE-673 020.

2. THE VILLAGE OFFICER,
KASABA VILLAGE, KOZHIKODE-673 002.

BY SPL. GOVT. PLEADER SRI.P.K. SOYUZ.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 11-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rs.

WP(C).No. 29015 of 2014 (B)

APPENDIX

PETITIONER'S EXHIBITS:-

P1 : COPY OF THE ASSIGNMENT DEED DOCUMENT NO.1017/2004 DATED 07.09.2004 OF SRO, KOZHIKODE.

P2 : COPY OF THE ASSIGNMENT DEED DOCUMENT NO.1016/2004 DATED 09.09.2004 OF SRO, KOZHIKODE.

P3 : COPY OF THE REGISTERED KANOM DEED REGISTERED AS DOCUMENT NO.141/27 DATED 23.02.1927.

P4 : COPY OF THE ASSIGNMENT DEED REGISTERED AS DOCUMENT NO.608/1947 DATED 18.04.1947.

P5 : COPY OF THE APPLICATION SUBMITTED BY THE PETITIONERS BEFORE THE 1ST RESPONDENT.

P6 : COPY OF THE REPORT AND SKETCH SUBMITTED BY THE 2ND RESPONDENT TO THE 1ST RESPONDENT.

P7 : COPY OF THE CERTIFICATE OF THE 2ND RESPONDENT.

P8 : COPY OF THE COMMUNICATION DATED 31.10.2014 ISSUED BY THE 1ST RESPONDENT.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.A. TO JUDGE

rs.

P.R. RAMACHANDRA MENON, J.
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W.P(C). No. 29015 of 2014

Dated this the 11th day of March, 2015

J U D G M E N T

The petitioners are the co-owners of the property having an extent of 98 cents of land comprised in Re-Sy. No.17.14.567 in Kasaba Village of Kozhikode Taluk covered by Exts.P1 and P2 'Assignment Deeds' dated 07.09.2004 of SRO, Kozhikode. The flow of title is discernible from the other relevant documents, which have been produced as Exts.P3 and P4. With intent to construct a building in the property, the petitioners approached the local authority, when the petitioners were given to understand that, since the property was described as 'Nilam' in the BTR, necessary corrections had to be obtained, so as to consider the application. It was accordingly, that Ext.P5 application was filed before the 1st respondent for effecting the correction. After considering the same, helplessness was conveyed to the petitioners by the 1st respondent as per Ext.P8, which made the petitioners to approach this Court by filing the writ petition.

2. Heard the learned counsel for the petitioners and the learned Government Pleader appearing for the respondents.

3. The writ petition was admitted way back on 05.11.2014. But no counter affidavit has been filed so far. The prayers are in the following terms:

> *"i] Issue a writ of certiorari or other appropriate writ order or direction declaring that the property covered under Exts.P1 and P2 documents is a garden land.*
>
> *ii] Issue a writ of certiorari or any other appropriate writ order or direction setting aside Ext.P8 communication issued by the 1st respondent*
>
> *iii] Issue writ of mandamus or any other appropriate writ order or direction directing the respondents to take necessary steps to make requisite changes in the Revenue Records with respect to the land of the petitioners having an extend of 97.85 cents situated in Re-Survey No.17.14.567 of Kasaba amsom, Karyakunnu desom of Kozhikode Taluk taking note of Exts.P6 report of the 2nd respondent and Ext.P7 certificate of the Agricultural Officer within a time frame prescribed by this Honourable Court.*
>
> *iv] Issue any other appropriate writ or order which this Honourable court may deem just, fit and proper in the facts and circumstances of the case and sufficient for the redressal of the grievances of the petitioner"*

4. The basic question to be considered is whether the BTR could be directed to be corrected, so as to change the nature of the land concerned. The issue had considered by a learned Single Judge of this Court as per the decision in **Jalaja Dileep V. Revenue Divisional Officer (2012 (3) KLT 333)** which was

affirmed by the Division Bench of this Court in **(RDO vs. Jalaja Dileep [2014(1) KLT 161]**. The State took up the matter before the Apex Court contending that the BTR is prepared in tune with the relevant provisions of the Kerala Land Tax Act and that the power vested with the concerned authority under Section 18 of the Act is only to effect corrections or mistakes, if any, with regard to the taxation and incidental circumstances. The nature or classification of the land is not intended or envisaged to be corrected under the said provision and hence interference was sought for with regard to the course directed to be pursued by the Bench of this Court. It is brought to the notice of this Court that the said Civil Appeal No.2749 of 2015 & connected cases, was finally considered by the Apex Court and the judgment was passed yesterday (10.03.2015), whereby it has been made clear that the power envisaged under Section 18 cannot be made use for the purpose of effecting correction in the BTR. The verdict passed by the Division Bench of this Court has been set aside and the course of action to be pursued in the case of lands which has undergone substantial change in the course of time has been discussed in detail. It is made clear that, Act 28/2008 will govern the issue in respect of paddy land or wet land which was remaining as such as on the date of commencement of the Act and in respect of lands which were already converted prior to the commencement of the said Act, they will continue to be governed by the provisions of the KLU and it is open for the parties concerned to approach the concerned authorities for appropriate relief in terms of the KLU. The observations made by the Apex Court in paragraph 21 are relevant which is extracted below:

> *"21. Statutory enquiry to ascertain whether the land is a "Paddy Land" or "Wetland" and conversion of the land for residential purpose or for any public purpose is governed by K.L.U. Order or the Kerala Wetland Act, 2008 for conversion of the land from "Nilam" (Wetland) to 'Purayidam' (Dry Land). The concerned authorities constituted under K.L.U. Order or Kerala Wetland Act 2008 are the competent authority. Nature of the land cannot be changed or converted by directing changes in the Basic Tax Register which is maintained only for the purpose of land tax. The rectification envisaged by Section 18 of Kerala Land Tax Act can only be in respect of arithmetical or clerical error, that too in the order of determining the tax due. Section 18 cannot be made use or the same cannot be taken as a means to effect conversion of the nature of the land bye-passing the competent authority and the procedure stipulated under the K.L.U. Order, 1967 and the Kerala Wetland Act, 2008 and the impugned judgment is liable to be set aside."*

The crux of the decision is that, the nature of the property will depend upon the circumstance which was prevailing as on the date of commencement of the Act 28/2008 and so as to enable the parties concerned to enjoy the property in a befitting manner depending upon the physical nature of the property.

6. Coming to the instant case, the case of the petitioner is that, the property was lying as a reclaimed/garden land for the past several decades with quite a lot of improvements as disclosed from Ext.P6 report dated 25.07.2014 of the Village Officer. The Village Officer reported that the property was not included in the Draft Data Bank Register. Lie and location of the property is also mentioned therein. It is stated that no cultivation is being done in the property, nor is it available anywhere in the nearby properties. Existence of various improvements such as trees, commercial buildings, residential buildings and such other structures in the nearby properties and existence of a road on one side of the property is also made a mention in Ext.P6. The Village Officer is quite categoric to the effect that, for the past 40 years no cultivation was being effected in the said property or nearby properties and as such, the Village Officer recommended to effect correction of the BTR. Ext.P7 is the certificate issued by the Agricultural Field Officer confirming that the property is not

included in the Draft Data Bank Register.

7. In the above circumstances, this Court finds that the above property does not come within the purview of the Act 28/2008 and as such, the matter requires to be reconsidered by the 1st respondent with reference to the verdict passed by the Apex Court as above and also with reference to the provisions of the KLU. The petitioners are set at liberty to file a proper application before the 1st respondent in this regard within 'two weeks', upon which the 1st respondent shall consider the same and pass appropriate orders in accordance with law, at the earliest, at any rate within 'six weeks' thereafter. The 1st respondent shall consider the application, taking note of the fact that the property is not a paddy land or wet land under Act 28/2008.

The writ petition stands disposed of.

Sd/-

P.R. RAMACHANDRA MENON, JUDGE.

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