

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 18TH DAY OF MARCH 2015/27TH PHALGUNA, 1936

WP(C).NO. 29929 OF 2014 (M)

PETITIONER:

**H.V.RAJAN
SWARALAYAM, THOPPIL, HOUSE NO.4/994
CLUB JUNCTION, PUTHUPALLIPRAM, VAZHAKKALA
KAKKANAD.**

**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-695001.**
- 2. THE AGRICULTURAL OFFICER AND CONVENER,
LOCAL LEVEL MONITORING COMMITTEE, KRISHIBHAVAN
KEEZHUMAD-683101**

R2 BY GOVERNMENT PLEADER SRI.P.KSOYUZ

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18-03-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

WP(C).NO. 29929 OF 2014 (M)

APPENDIX

PETITIONER(S)' EXHIBITS :

**EXHIBIT P1- TRUE COPY OF THE APPLICATION DATED 01.10.2014 SUBMITTED BY THE
PETITIONERS TO THE 2ND RESPONDENT.**

RESPONDENT(S)' EXHIBITS : NIL

OKB

TRUE COPY

PA. TO JUDGE

K.HARILAL, J.

W.P(C). No.29929 of 2014

Dated this the 18th day of March, 2015.

JUDGMENT

1. The petitioner is the title holder in possession of 4.62 Ares and 2.87 Ares of land in Sy.Nos.56/11 and 56/9 of Block No.33 in Aluva East Village in Aluva Taluk of Ernakulam District. According to the petitioner, in the sale deed No.4194/13 the land is stated to be 'purayidam', considering the present status of the land. But in the revenue settlement of the year 1904, the same was classified as 'Nilam' and that entry was carried in all other subsequent revenue records. In fact, there had been no paddy cultivation in the said land for the past more than 30 years. There is no paddy cultivation in the adjacent properties as well. The properties mentioned above are of the same nature, lying contiguously. Consequently, in the draft Data Bank also the land is happened to be classified as wet land instead of dry land. In fact, the land is neither a wet land nor a land suitable for cultivation. The petitioner submitted Ext.P1 application to the 2nd respondent to reclassify the land as dry

land in conformity with the existing ground reality. But the 2nd respondent has not taken any action on Ext.P1 and the petitioner is facing undue hardship. This is the grievance projected in this writ petition.

2. The 2nd respondent filed a counter statement stating that the 2nd respondent inspected the property and the said property is found lying as a garden land. On inspection, it is also found that there are 13 coconut trees in the property. The land is situated at the southern side of the Thottumugham Keezhmad Road as lying in the same level of the road. The said property cannot be classified as paddy land or wet land as defined in Act 28 of 2008. Since the Data Bank is notified in the gazette as early as on 24.3.2012, the Local Level Monitoring Committee has no power to correct the entry in the final Data Bank after the gazette notification.

3. Heard the learned counsel for the petitioner and the learned Government Pleader.

4. Going by the counter statement filed by the 2nd respondent,

obviously, it is admitted that at present the property is lying as a garden land and the said property cannot be classified as paddy land or wet land as defined in Act 28 of 2008. It is also stated that, on inspection, it was found that the property was converted prior to the commencement of Act 28 of 2008. Thus, virtually, the 2nd respondent himself admitted that the present classification was made erroneously and the property is lying as a dry land. It is also submitted that since there is no provision for re-classification after the gazette notification, the 2nd respondent is powerless and unable to make correction in accordance with the present lie of the land as found on inspection.

5. In view of the rival contentions, it is seen that the 2nd respondent himself admitted that the classification was made erroneously at the time of preparing the Data Bank. Going by the definition of "paddy land", it means, all types of land situated in the State where paddy is cultivated at least once in a year or suitable for paddy cultivation, but uncultivated and left fallow, and includes its allied constructions like bunds, drainage channels, ponds and canals. In the counter statement, it is

stated that 13 coconut trees are standing in the said property and on inspection it was found that the property was converted prior to the commencement of Act 28 of 2008 only. It is to be borne in mind that Act 28 of 2008 has prospective operation only. If that be so, I am of the opinion that the petitioner is entitled to get corrected the erroneous classification in the Data Bank.

6. Consequently, the 2nd respondent is directed to reclassify the petitioner's land in the Data Bank, in accordance with the present lie of the land found on inspection, at any rate, within a period of two months from today and inform the petitioner accordingly. This order is subject to the decision of the Apex Court in pending SLP pertaining to identical matters in issue.

This writ petition is disposed of accordingly.

Sd/—
(K.HARILAL, JUDGE)

okb.