IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

MONDAY, THE 5TH DAY OF OCTOBER 2015/13TH ASWINA, 1937

WP(C).No. 30065 of 2015 (G)

PETITIONER:

KUMARI VIJAYAN, AGED 63 YEARS,
W/O. VIJAYAN, AYINIKKAL HOUSE,
MATHILAKAM P.O., THRISSUR DISTRICT.

BY SRI.RENJITH THAMPAN (SENIOR ADVOCATE)
ADV. SMT.P.R.REENA

RESPONDENTS:
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1. THE DISTRICT COLLECTOR,
   COLLECTORATE, AYYANTHOLE,
   THRISSUR, PIN-680003.

2. THE REVENUE DIVISIONAL OFFICER,
   O/O. REVENUE DIVISIONAL OFFICER,
   THRISSUR, PIN - 680 003.

3. TAHSILDAR, TALUK OFFICE, KODUNGALLUR,
   THRISSUR DISTRICT, PIN-680664.

4. LOCAL LEVEL MONITORING COMMITTEE,
   REPRESENTED BY ITS CONVENER,
   AGRICULTURAL OFFICER, KRISHI BHAVAN,
   MATHILAKAM, THRISSUR DISTRICT, PIN-680685.

BY GOVERNMENT PLEADER SMT.C.K.SHERIN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 05-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

mbr/

WP(C).No. 30065 of 2015 (G)

APPENDIX

PETITIONER(S)' EXHIBITS :

EXHIBIT P1- TRUE COPY OF SALED DEED DATED 25-11-1994.

EXHIBIT P2- PHOTOGRAPHS SHOWING THE PETITIONERS PROPERTY.

EXHIBIT P3- TRUE COPY OF THE CERTIFICATE ISSUED BY THE AGRICULTURAL OFFICER DATD 27-06-2015.

EXHIBIT P4- TRUE COPY OF SAID JUDGMENT REPORTED IN 2015(3) KHC 19.

EXHIBIT P5- TRUE COPY OF THE REPRESENTATION FILED BY THE PTITIONER BEFORE THE RESPONDENTS DATED 24-09-2015.

RESPONDENTS' EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

mbr/

A.MUHAMED MUSTAQUE, J.

W.P(C)No. 30065 of 2015

Dated this the 5th day of October, 2015

J U D G M E N T

Petitioner is the owner of 44 cents of land in Sy.No. 214/5 B of Pappinivattom Village. This land is described as 'nilam' in Basic Tax Register. Petitioner's present relief before this Court is that this has to be reassessed under the Land Tax Act, based on the present character of the land.

2. Petitioner relies on Ext.P3 report of the Agricultural Officer wherein it is stated that it is a converted land and it is classified as a converted land in the draft data bank at least 28 years ago. The land also consists of coconuts, arecanuts and other trees.

3. The petitioner submits that even without recourse to the Land Utilisation Order, the authorities are bound to consider the petitioner's request for fresh assessment under Section 6A of the Kerala Land Tax Act. Petitioner relies on the Division Bench judgment of this Court

in **Kizhakkambalam Grama Panchayath and Others** v. **Mariumma and another** [2015(2) KLT 516]. Petitioner particularly points out the paras 8 and 9 of the judgment, which reads as follows:-

> "*8. Insofar as this case is concerned, the admitted factual position is that though the lands of the respondents also were included in the draft data bank prepared under S.5(4) of Act 28 of 2008, on a consideration of Ext.P3 representation, the Local Level Monitoring Committee itself resolved to modify the entries in the draft data bank and the entry has been modified into converted land. This, therefore, means that as a result of the above development, Act 28 of 2008 is rendered inapplicable to the lands owned by the respondents. In such a situation, in the light of the principles laid down by the Apex Court in the judgment mentioned above, automatically the provisions of the Kerala Land Utilisation Order,1967 would be applicable. Therefore, if the status of the lands are to be changed in the manner as sought for by the respondents, they will necessarily have to move the authorities under the Kerala Land Utilisation Order,1967.*
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> *9. 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."

4. On the other hand, the learned Government Pleader submits that the petitioner cannot approach the revenue officials under the

Kerala Land Tax Act without obtaining any order under the Kerala Land Utilisation Order, 1967. It is further submitted that the land is classified as 'nilam' in the revenue records. Therefore, by changing the classification of the land in the Land Tax Act, petitioner cannot bypass the mandate of the Kerala Land Utilisation Order.

5. The learned Senior counsel for the petitioner submitted that the petitioner does not want to utilise the land for any other purposes. The petitioner wants to retain the property as such without any change by utilising for any other purposes. It is further submitted that on account of change of the character of the land, he is entitled for reclassification of the land. It is further pointed out that the report of the Agricultural Officer would show that the character of the land has been changed. It is further pointed out that the report of the Agricultural Officer is in conformity with the power conferred under Section 5(4) of the Act 28 of 2008.

6. As seen from the report of the Agricultural Officer produced

as Ext.P3, this is a converted land. Therefore, in principle, the Kerala Land Utilisation Order, 1967 would apply. Clause 6 of the Kerala Land Utilisation Order provides as follows:-

> "*6. Land cultivated with any food crop not to be cultivated with any other food crop.--(1) No holder of any land, which has been under cultivation with any food crop for a continuous period of three years immediately before the commencement of this Order, shall convert or attempt to convert or utilise or attempt to utilise such land for the cultivation of any other food crop or for any other purpose except under and in accordance with the terms of a written permission given by the Collector.*
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> *[Explanation.--For the purpose of this sub-clause and sub-clause(2), removal of tree growth, whether partial or total, on any land cultivated with cardamom shall be deemed to be an attempt to convert or utilise such land for a purpose other than cultivation of cardamom.]*
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> *(2) No holder of any land who cultivates any land with any food crop for a continuous period of three years at any time after the commencement of this Order shall, after the said period of three years, convert or attempt to convert or utilise or attempt to utilise such land for the cultivation of any other food crop or for any other purpose except under and in accordance with the terms of a written permission given by the Collector.*
>
> *[Provided that except in the case of lands under*

> *cardamom cultivation, no permission under sub-clause (1) or sub-clause(2), shall be necessary where the cultivation for which the land is converted or attempted to be converted or attempted to be converted or utilised or attempted to be utilised is paddy cultivation or fish culture:*
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> *Provided further that the lands under cultivation of paddy should not be converted or attempted to be converted or utilised or attempted to be utilised for fish culture permanently, but only seasonally.]"*

7. The question is whether when the petitioner does not want to utilise the land for any other purposes, is he entitled for reassessment under the Kerala Land Tax Act? Petitioner's claim is essentially based on the declaration now made by the competent authority under the Act 28 of 2008. It is to be noted that the committee constituted under the Act 28 of 2008 found that this land cannot be classified as paddy or wet land or 'nilam' under the Act 28 of 2008. Therefore, they have no jurisdiction to give any declaration as to the status of the land. Thus, the issue falls back within the domain of the Kerala Land Utilisation Order as this land, at a given point of time, was used for

cultivating the food crops as contemplated under the Kerala Land Utilisation Order. The petitioner, in this case, does not want any permission under clause 6 of the Kerala Land Utilisation Order. Petitioner's only request is that in terms of Section 6A of the Land Tax Act, the land shall be reassessed for the purpose of basic tax. It is apposite to refer to Section 6A of the Kerala Land Tax Act,1961. The Kerala Land Tax Act is an enactment to levy basic tax on the lands in the State of Kerala. It does not determine the character of a land. It only provides levy of basic tax depending upon the nature of land. Therefore, to attain the character of a 'purayidam', there must be some declaration elsewhere to enable the petitioner to pay basic tax in terms of Kerala Land Tax Act. There is no any other enabling provision under the Kerala Land Tax Act to change the character or determine the character of the land. Thus, under Rule 6 of the Kerala Land Tax Rules, the Village Officer is incumbent to verify the character of the land to levy the basic tax. Though there is no provision as such, to enable the revenue officials to determine the character of the basic tax, to the limited extent of fixing the rate of basic tax, they cannot bypass the provisions under the Kerala Land Utilisation Order to enable the land owner to pay the basic tax in respect of the land, which was originally classified as 'nilam' and on account of efflux of time, it has been converted as 'purayidam'. In such situation, the petitioner has to obtain necessary permission from the Revenue Divisional Officer or District Collector as the case may be, in terms of clause 6 of the Kerala Land Utilisation Order to utilise the land for other purposes. The Division Bench judgment would clearly indicate that this is only by change of declaration of the character by the order passed either under the Kerala Land Utilisation Order or under the Act 28 of 2008, such recourse could be availed of by the land owner under the Kerala Land Tax Act. In this case, as noted earlier, this would not come under Act 28 of 2008, Ext.P3 produced by the petitioner cannot be taken as an order passed under the Act 28 of 2008 for reclaiming the land.

8. The Apex Court in the decision reported in **Revenue Divisional Officer** v. **Jalaja Dileep** [2015(1) KLT 984 (SC)] held that the 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.

9. Therefore, this Court is of the view that before invoking Section 6A of the Kerala Land Tax Act, the petitioner should be armed with an order under the Kerala Land Utilisation Order for re-assessment.

10. Considering the facts and circumstances of the case, this Court is of the view that the petitioner should be given permission under the Kerala Land Utilisation Order to utilise the land for any other purposes. The petitioner shall approach the second respondent for utilisation of the land for other purposes. If such application is filed within two weeks from the date of receipt of a copy of this

judgment, necessary permission shall be given for the petitioner to utilise the land for any other purposes. Once permission is granted, it is open for the third respondent to reassess the land under Section 6A of the Kerala Land Tax Act. Needful shall be done by the second respondent within a period of two months from the date of receipt of request of the petitioner as per the KLU Order. If the petitioner approaches the third respondent, necessary orders shall be passed in the application for reassessment within a further period of two months from the date of receipt of the application.

This writ petition is disposed of as above.

sd/-
A.MUHAMED MUSTAQUE,
Judge

MBS/