

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

THURSDAY, THE 22ND DAY OF JANUARY 2015/2ND MAGHA, 1936

WP(C).No. 30451 of 2014 (F)

PETITIONER(S):

- 1. K.P.ABDUL KHADER, AGED 66 YEARS,
S/O. ABDU, FAHAD MAHAL, MATOOL CENTRAL,
KANNUR - 670 302.**
- 2. MOHAMMED SHAFI,
S/O. ABDUL KHADER, FAHAD MAHAL, MATOOL CENTRAL,
KANNUR - 670 302.**
- 3. SUMMAYA SINAN,
D/O. ABDUL KHADER, FAHAD MAHAL, MATOOL CENTRAL,
KANNUR - 670 302.**

**BY ADVS.SRI.A.K.ABDUL AZEEZ
SRI.T.K.SASINDRAN**

RESPONDENT(S):

- 1. THE DISTRICT COLLECTOR,
KANNUR DISTRICT - 670 002.**
- 2. THE LOCAL LEVEL MONITORING COMMITTEE,
EZHOME REPRESENTED BY ITS COVERNER,
AGRICULTRUAL OFFICER, KRISHI BHAVAN, MATTOOL,
KANNUR - 670 302.**
- 3. THE DISTRICT LEVEL AUTHORIZED COMMITTEE,
REPRESENTED BY ITS CHAIRMAN,
REVENUE DIVSIONAL OFFICER (RDO), KANNUR - 670 001.**
- 4. THE TAHSILDAR,
TALUK OFFICE, THALIPARAMBA, KANNUR -670 141.**

BY SPECIAL GOVERNMENT PLEADER SRI.P.K.SOYUZ

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 22-01-2015, ALONG WITH WPC. 34078/2014, THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

WP(C).No. 30451 of 2014 (F)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1 - TRUE COPY OF THE AGE CERTIFICATE DT. 21.10.14 FOR THE PETITIONERS' BUILDING ISSUED BY THE SECRETARY, MATTOOL GRAMA PANCHAYATH.

EXT.P2 - TRUE COPY OF THE TAX RECEIPTS FOR THE PETITIONERS' PROPERTY IN RS NOS. 219/1 AND 291/4A.

EXT.P3 - TRUE COPY OF THE PHOTOGRAPHS OF THE PETITIONERS' BUILDING IN RS NOS. 219/1 AND 219/4 A.

EXT.P4 - TRUE COPY OF THE KERALA GAZETTE NOTIFICATION DT. 24.3.12 WITH THE LIST OF PROPERTIES INCLUDED IN THE DATE BANK.

EXT.P5 - TRUE COPY OF THE JUDGMENTS OF THIS HON'BLE COURT IN WPC NO. 17342/14 AND WPC 27528/14 DT. 04.8.14 AND 23.10.14.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

P.R.RAMACHANDRA MENON, J.

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W.P.(C) Nos.30451 & 34078 of 2014

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Dated this the 22nd day of January, 2015

JUDGMENT

The issues involved in these cases are closely interlinked and hence they are considered together. The petitioner in W.P. (C) No.34078/2014 is the 3rd petitioner in W.P.(C) No.30451 of 2014 which has been filed along with her father and brother. The prayers raised in W.P.(C) No.30451 of 2014 are in the following terms:-

"i) Issue a Writ of Mandamus or any other appropriate writ, order or direction directing 2nd respondent to remove the petitioners' property in RS Nos.219/1 and 219/4A (Building Nos.M.P.XI-461 & 462 and M.P.IX-94 & 95) in Mattool village, Kannur taluk from the list in Ext.P4 relevant pages of Data Bank and to effect necessary correction in the data bank after conducting site inspection in the light of Ext.P1 age certificate and Ext.P3 photographs.

ii) Declare that the act of the respondents of including the petitioner's property in the Final Data Bank as evidence in Ext.P4 list is a clear violation of the provisions of Act 28 of 2008 of the Kerala Conservation of Paddy Land and Wetland Act,2008."

2. The prayer in the other case i.e. W.P.(C) No.34078/2014 is for causing the mutation of the property effected in terms of the Transfer of Registry Rules which is refused to be acceded to by the concerned respondents stating that the property is a paddy land. Pleadings and prayers referred to are given in W.P. (C) No.34078/2014 which is treated as the lead case.

3. The case of the petitioner is that, the property concerned is not a paddy land or wet land and was not remaining so as on the date of commencement of the Act in 2008. The property is a dry land or at least a reclaimed land and was lying so for more than decades, wherein various improvements have been effected, residential buildings are put up and several age old trees are in existence. Ext.P1 is the certificate dated 21.10.2014 issued by the Secretary of the concerned local authority certifying the existence of buildings which have already been assessed and included in the Panchayat register in the year 1993-94. Ext.P3 series photographs reveal the factual position as to the nature of the property, existence of various trees and residential buildings.

4. Despite the factual position as above, it came to be wrongly included in the Data Bank Register notified as Ext.P4 dated 24.03.2012. By virtue of the wrong inclusion of the property, the petitioner though met the concerned respondent, they simply expressed helplessness, since the Draft Data Bank has already been finalised leading to Ext.P2 notification. Hence they have challenged the same by way of W.P.(C) No.30451/2014. When the matter came up for consideration before this Court on 17.11.2014, considering the specific nature of the contentions the 2nd respondent was directed to file a report about the status of the land as on the date of commencement of the Act 8 of 2008.

5. Pursuant to this, an inspection has been conducted and detailed statement has been filed by the 2nd respondent, paragraphs 2 and 3 of which read as follows:-

2. This Hon'ble Court as per Interim Order dated 17.11.2014 directed the 2nd respondent to conduct an inspection and file a report regarding the nature of the land comprised in Survey Nos.219/4A and 219/1 of Mattool Village, Kannur Taluk before this Hon'ble Court. As directed by this Hon'ble Court, the

Agricultural Officer, Mattool, who is the convener of the 2nd respondent Local Level Monitoring Committee inspected the property comprised in Survey Nos.219/4A and 219/1 on 01.12.2014. On inspection, it is found that there are 47 coconut trees of about 35 years of age, 97 Arecanut Trees, 4 Mango Trees of about 12 years of age, 1 Jackfruit Tree and a house in plot No.219/4A. There are 54 coconut trees of about 20 years of age and 47 Arecanut Trees of about 18 years of age and other trees and a house under construction in Survey No.219/1.

3. It is submitted that in the Draft Data Bank, the property of the petitioners comprised in Survey Nos.219/4A and 219/1 were recorded as 'paddy land'. The land owners have not submitted any application to correct the entry in the Data Bank. Hence, the Data Bank was finally notified in 11.07.2011. The entry with respect to the properties comprised in Survey Nos.219/4A and 219/1 of Mattool Village, Kannur Taluk is wrongly recorded as 'paddy land' in the Data Bank. On enquiry, it is understood that the above paddy lands were converted before 20 years."

6. The learned Special Government Pleader points out that the difficulty felt by the concerned respondent is only because of the absence of any enabling provision to cause the correction, once the final notification is issued showing the

position as per the Data Bank Register. It is also pointed out that the matter was not brought to the notice of the concerned authority then and there, when the Draft Data Bank Register was published and no objection was filed by the petitioners at any point of time.

7. After hearing both the sides, this Court finds that the factual position has been ascertained by the competent authority who has certified and reported that the property concerned was not remaining as a 'paddy land' or 'wetland' as defined under Sections 2(xii) and 2(xviii) of the Act 8 of 2008 on the date of commencement of the Act. Existence of trees and buildings in the concerned property is also reported. The factual position that the property was wrongly included in the Data Bank is conceded by the 2nd respondent. In the said circumstances, this Court does not require a second thought to hold that the property is not a 'paddy land' or 'wetland' as defined under the Act and it is declared accordingly.

8. In the above circumstances, the entry in Ext.P4 Data Bank Register, in so far as it relates to the property concerned

herein, showing the same as 'paddy land' will stand struck off making necessary endorsement in this regard with reference to the judgment passed by this Court in this writ petition.

9. In view of the fact that the property concerned herein has been declared as a 'purayidom' and not a 'paddy land' or 'wetland', necessary corrections have to be effected in the Basic Tax Register as well in view of the law declared by Division Bench of this Court **Revenue Divisional Officer v. Jalaja Dileep** (2014(1) KLT 161). There will be a direction to the concerned Revenue authority to cause necessary corrections in the BTR as well, which shall be subject to the direction of the Apex Court, where an SLP is stated as pending in this regard (SLP No.3172/14)

10. In view of the turn of events, declaring the property concerned as not a 'paddy land' or 'wetland', this Court finds that there cannot be any further hurdle or objection on the part of the respondents in causing the mutation of the property effected in so far as the right of the petitioner in W.P.(C) No.34078/2014 over the concerned extent of land. In the said circumstances,

the application, if any, preferred by the petitioner (in W.P.(C) No.34078/2014) shall be considered and appropriate orders shall be passed for effecting the mutation in terms of the Transfer of Registry Rules on production of relevant documents and also on satisfying the requirements in law so as to enable the petitioner to enjoy the property also satisfying the tax under the Kerala Land Tax Act. Necessary steps in this regard shall be taken and finalised at the earliest, at any rate, within a period of one month from the date of production of a copy of the judgment.

These writ petitions stand allowed. No costs. The petitioners shall produce a copy of the judgment along with a copy of the writ petition before the concerned respondent for further steps.

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