IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

TUESDAY, THE 20TH DAY OF JANUARY 2015/30TH POUSHA, 1936

WP(C).No. 31207 of 2014 (A)

PETITIONER(S):
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1. R.BINDU, AGED 47 YEARS,
   D/O.RADHAMMA, GEETHAM, ETHIKARA MURI,
   MYLAKKADU P.O.,ADICHANELLOOR VILLAGE, KOLLAM.

2. K.NANDAKUMAR, AGED 45 YEARS,
   S/O.N.K.MENON, VADAKKE KODIYATTU HOUSE, KIZHAKKEKARA,
   PULAMON P.O., KOTTARAKKARA, KOLLAM.

3. K.UNNIKRISHNAN, AGED 43 YEARS,
   S/O.N.K.MENON, BINDU NIKETHAN, KIZHAKKEKKARA,
   KOTTARAKKARA VILLAGE, KOTTARAKKARA TALUK.

   BY ADVS.SRI.K.S.HARIHARAPUTHRAN
   SRI.GEORGE MATHEW
   SRI.SUNIL KUMAR A.G

RESPONDENT(S):
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1. STATE OF KERALA,
   REPRESENTED BY ITS SECRETARY TO REVENUE DEPARTMENT,
   SECRETARIAT, THIRUVANANTHAPURAMPIN - 695 001.

2. THE REVENUE DIVISIONAL OFFICER,
   KOLLAM PIN - 691 001.

3. TAHSILDAR,
   KOTTARAKKARA, PIN - 691 506.

   BY GOVERNMENT PLEADER SRI.JOSEPH GEORGE

   THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
   20-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

msv/

WP(C).No. 31207 of 2014 (A)

<u>APPENDIX</u>

PETITIONER(S)' EXHIBITS

EXT.P-1: TRUE COPY OF BASIC TAX RECEIPT DATED 28.6.2014 ISSUED BY VILLAGE OFFICER, KOTTARAKKARA TO 2ND IST PETITIONER.

EXT.P-2: TRUE COPY OF BASIC TAX RECEIPT DATED 28.6.2014 ISSUED BY VILLAGE OFFICER, KOTTARAKKARA TO THE 2ND PETITIONER.

EXT.P-3: TRUE COPY OF BASIC TAX RECEIPT DATED 28.6.2014 ISSUED BY VILLAGE OFFICER, KOTTARAKKARA TO THE 3RD PETITIONER.

EXT.P-4: TRUE COPY OF ORDER DATED 26.12.2006.

EXT.P-5: TRUE COPY OF DATA BANK SHOWING THE DETAILS.

EXT.P-6: TRUE COPY OF APPLICATION DATED 31.7.2014 SUBMITTED BY IST PETITIONER BEFORE 2ND RESPONDENT.

EXT.P-7: TRUE COPY OF APPLICATION DATED 31.7.2014 SUBMITTED BY 2ND PETITIONER BEFORE 2ND RESPONDENT.

EXT.P-8: TRUE COPY OF APPLICATION DATED 31.7.2014 SUBMITTED BY 3RD PETITIONER BEFORE 2ND RESPONDENT.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

P.R. RAMACHANDRA MENON J.

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W.P.(C) No. 31207 of 2015

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Dated, this the 20th day of January, 2015

JUDGMENT

The petitioners are owners of the property covered by Exts. P1 to P3, which is a reclaimed land having effected reclamation years prior to the commencement of Act 28 of 2008. Reference is made to Exts. P3 and P5, which are orders passed by the competent authority under the Kerala Land Utilization Order and the extract of the Data Bank Register respectively. As per Ext. P3 considering the nature of the property, permission was granted by the second respondent herein, under Clause 6 (2) of the Kerala Land Utilization Order, enabling the petitioner to make use of the property for other purpose, subject to some conditions mentioned therein. As per Ext. P5 Data Bank Register, the property has been shown as reclaimed land having effected reclamation prior to 2005. It is in the said circumstances, that the petitioner has approached the second respondent for causing the BTR to be corrected by submitting Exts. P6 to P8, since the property is still been shown as paddy land in the BTR. The callous inaction on the part of the respondents made the petitioner to approach this Court by filing present writ petition.

2. A statement has been filed on behalf of the second respondent virtually conceding the basic nature of the property which is a reclaimed land and the properties were coverted prior to 2008, as disclosed from the entries in the Data Bank Register prepared as per the Act 28 of 2008. But the contention appears to be that the respondents do not have any power or authority in making changes in the description of the property in the basic tax register. It is also pointed out that as per Ext. P4 order, the second respondent has granted permission to utilize the land for cultivating other food crops. The stand taken by the respondents, as disclosed from paragraph 4, is in the following terms :

> "4. The respondents have no power or authority to change the description of the property in the Basic Tax Register and in the Revenue Records. There is no statutory provisions to change in the Basic Tax Register and in the Revenue Records. Challenging the Division Bench decision of this Honourable Court in RDO Vs. Jalaja Dileep an SLP was filed by the State vide **SLP (Civil) No. 3172 of 2014** and the Honourable Supreme

> Court has admitted the above case and issued notice to the respondents."

3. Heard both the sides in detail.

4. The law has been declared by this Court as per the decision rendered in **Praveen Vs. State of Kerala [2010 (2) KLT 617]** to the effect that before effecting entry in the BTR physical nature of the property has to be considered. The law has been declared as per the decision rendered in **JafarKhan Vs. K.A. Kochumarakkar & Ors. [2012 (1) KHC 523]** that the provisions of the Conservation of Kerala paddy land and Wet land Act are applicable only in respect of the land which are lying as 'paddy land' or 'wet land' as on the date of commencement of the 'Act'. A learned Single Judge of this Court directed the concerned Tahasildar to effect changes in the BTR on the basis of physical nature of the property concerned. The dispute was raised by the Revenue Department contending that Tahasildar does not have any such power and the appeal preferred therefrom came to be dismissed as per the decision reported in **2014 (1) KLT 161 [Revenue Divisional Officer VS. Jalaja Dileep].** The respondents have taken up the matter before the Apex Court by

way of SLP No. 3172 of 2014 (as mentioned in paragraph 4 of the statement), but no interim stay has been obtained by the department. The nature of contention raised in the statement is to the effect that the respondents do not have any power under the Statute for effecting changes in the BTR. After declaring the law by this Court and also by giving direction to the concerned authority enabling him to do the needful, this Court does not find any justification for the concerned respondent in weeping over the absence of power for effecting correction. This Court fails to understand the nature of grievance or question of law raised before the Apex Court in the pending SLP, however this Court does not intend to express any opinion in this regard. Since the respondents have not obtained any interim stay, the decision rendered by the Division Bench of this Court stands as it is. So far there is no dispute as to the fact that property involved herein was converted years back, prior to Act 28 of 2008, the provisions of the said Act are not applicable to the case in hand. It is declared accordingly. In the said circumstances, there will be a direction to the second respondent to effect necessary changes in the BTR as to the nature of land, which shall be effected, at the earliest, at any rate, within one month from the date of receipt of a copy of this judgment.

The petitioner shall produce a copy of this judgment along with copy of the writ petition before the second respondent for further steps.

The Writ Petition stands allowed. No cost.

Sd/-

P. R. RAMACHANDRA MENON,
(JUDGE)

kmd