IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 3RD DAY OF JULY 2015/12TH ASHADHA, 1937

WP(C).No. 33067 of 2014 (G)

PETITIONER(S):

DR. B. SREEKUMAR, S/O.N. BHASKARAN NAIR, AGED 60,
AMMANCHEYIL SHANMUGHA VILASOM NO.2, PERUNNA P.O.,
CHANGANACHERRY, REPRESENTED BY HIS POWER OF
ATTORNEY HOLDER JAYASREE NAIR, W/O.DR.B. SREEKUMAR,
RESIDING AT AMMANCHEYIL SHANMUGHA VILASOM NO.2,
PERUNNA P.O., CHANGANACHERRY.

BY SRI.K.GOPALAKRISHNA KURUP, SENIOR ADVOCATE.
ADVS. SMT.DEEPTHI S.MENON,
SRI.ABHISHEK KURIAN.

RESPONDENT(S):
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1. THE DISTRICT COLLECTOR, KOTTAYAM,
   COLLECTORATE, KOTTAYAM-686 001.

2. THE REVENUE DIVISIONAL OFFICER,
   KOTTAYAM, OFFICE OF THE R.D.O.,
   COLLECTORATE, KOTTAYAM-686 001.

3. THE TAHSILDAR, TALUK OFFICE,
   CHANGANACHERRY-686 102.

4. THE VILLAGE OFFICER,
   VILLAGE OFFICE, CHANGANACHERRY-686 102.

5. THE LOCAL LEVEL MONITORING COMMITTEE,
   REPRESENTED BY ITS CHAIRMAN,
   CHANGANACHERRY MUNICIPALITY, MUNICIPAL OFFICE,
   CHANGANACHERRY-686 102.

6. THE AGRICULTURAL OFFICER,
   (CONVENER, LOCAL LEVEL MONITORING COMMITTEE),
   KRISHI BHAVAN, VAZHAPPALLI WEST,
   CHANGANACHERRY-686 103.

R1 TO R4 & R6 BY GOVT. PLEADER SRI.MANOJ P.KUNJACHAN.
R5 BY ADV. SRI.M.P.ASHOK KUMAR.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 03-07-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

rs.

WP(C).No. 33067 of 2014 (G)

APPENDIX

PETITIONER'S EXHIBITS:-

P1: COPY OF THE POWER OF ATTORNEY EXECUTED BY THE PETITIONER DATED 10.01.2013.

P2: COPY OF THE JUDGMENT IN A.S.NO.243/2009 AND THE JOINT STATEMENT FILED BY THE PETITIONER AND THE OTHER PARTIES TO THE SUIT.

P3: COPY OF THE SALE DEED NO.1342/2011 EXECUTED IN FAVOUR OF THE PETITIONER.

P4: COPY OF THE COMMUNICATION DATED 19.02.2004 ISSUED FROM THE OFFICE OF THE TAHSILDAR, CHANGANACHERRY.

P5: COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER BEFORE THE REVENUE DIVISIONAL OFFICER, KOTTAYAM.

P6: COPY OF THE REPORT OF THE VILLAGE OFFICER ALONG WITH THE MAHAZAR PREPARED AT THE TIME OF INSPECTION AND THE COVERING LETTER DATED 26.09.2013.

P7: COPY OF THE COMMUNICATION DATED 15.11.2014 FROM THE OFFICE OF THE AGRICULTURAL OFFICER, CHANGANACHERRY.

P8: COPY OF THE THANDAPER ACCOUNT NO.3975 OF THE CHANGANACHERRY VILLAGE.

P9: COPY OF THE EXTRACT OF THE BASIC TAX REGISTER IN RESPECT OF THE PETITIONER'S PROPERTY.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.A. TO JUDGE

rs.

K. VINOD CHANDRAN, J.

W.P(C). No.33067 of 2014

Dated this the 03rd day of July, 2015.

JUDGMENT

The petitioner is aggrieved with the fact that the petitioner's property, which was converted long back, is shown as 'nilam' in the Basic Tax Register and the Data Bank notified for the area also shows it as 'nilam'. The petitioner's contention is that the said land having an extent of 35 Ares 25 sq. meter equivalent to 1 Acre 1 cent in Block No.200 in Re-Survey No.5/4 (old Survey No.36/5) of Changanacherry Village was the subject matter of a suit between the petitioner and his relatives. The suit was decreed against the petitioner and the petitioner was in appeal, which appeal had been settled on the basis of a compromise evident from Ext.P2. The other parties to the suit had executed a Settlement Deed in favour of the petitioner, which is indicated at Ext.P3, in pursuance to the compromise entered into in the suit.

The petitioner contends that as early as in 1997, the petitioner's property was converted, after obtaining permission from the authority under the Kerala Land Utilisation Order. But the same still remains to be nilam in the BTR and has been now indicated as paddy land in the Data Bank notified.

2. The learned Senior Counsel appearing for the petitioner also points to Ext.P4 to contend that when the suit was filed, the petitioner had made an application before the Tahsildar, Taluk Office, Changanacherry for a certified copy of the permission granted under the Kerala Land Utilisation Order. However, the Tahsildar had replied to such application vide Ext.P4, that the said certificate has to be obtained from the Office of the Revenue Divisional Officer.

3. This Court had specifically directed the learned Government Pleader to get instructions in the matter. The learned Government Pleader submits that there is no such order available in the Office of the Revenue Divisional Officer. In any event, the order claimed by the petitioner is of the year 1997. Despite the submission made by the learned Government Pleader

on verification, it is also indicated in Ext.P4 that the petitioner had in fact made an application in the year 1997 and the same was recommended by a communication No.E2/5577/ 1997/K.Dis. dated 15.07.1997. The petitioner asserts the fact that the entire land has been converted long back. The same is evident also from Ext.P6 report of the Village Officer, Changanachery. A statement is also seen to have been filed by the 6th respondent, the Convener of the Local Level Monitoring Committee, pursuant to the direction of this Court, after inspection of the property, which reads as under:

> *"3. As directed by this Honourable Court vide interim order dated 09.12.2014, the Agricultural Officer who is the Convener of the Local Level Monitoring Committee, inspected the property owned by the petitioner. On inspection it is found that the above said property is converted Paddy Land. There is compound wall on three sides of the above said property. On inspection it is found that around 8 Teak trees and other trees are found in the property. On inspection and enquiry, it is understood that the above said property was converted before the commencement of Act 28 of 2008 and the above said land was not suitable for paddy cultivation at the time of commencement of the Act. The property is mistakenly shown as paddy land in the draft data bank. S per Rule 4(2)(b) of the Kerala*

> *Conservation of Paddy Land and Wet Land Rules only the Local Level Monitoring Committee has power to correct the entry in the draft data bank. Petitioners/land owners have not submitted any application before Local Level Monitoring Committee to correct the description of the property in the draft data bank."*

4. In such circumstances, the inclusion of the petitioner's property in the Data Bank is found to be not proper. The subject property is not a land, which could be included under the Kerala Conservation of Paddy Lands and Wet Lands Act, 2008, since the same was converted long prior to 2008.

5. In such circumstances, there shall be a direction to the Local Level Monitoring Committee to issue notification to remove the same from the Data Bank.

6. As far as correction in BTR is concerned, the Supreme Court in ***RDO v. Jalaja Dileep - 2015(2) KHC 109(SC)*** considered the issue of rectification of description in the Basic Tax Register and held that the same is not permissible. However, with respect to conversion and utilisation of lands which are not covered or were converted prior to bringing into force of the

Paddy Land Act it was held so in paragraphs 17 and 23, which are extracted hereunder:

> *"17. ''Paddy land" and "Wetlands" are defined under Sections 2 (xii) and 2 (xviii) of the Act respectively. As per Section 5(4), the Committee shall interalia prepare a data Bank with details of cultivable paddy land within the jurisdiction of the Committee. If the land is not included in the Data Bank or Draft Data Bank prepared under the Kerala Cultivation of Paddy Land and Wetland Act, 2008 and if it is not a "Paddy Land" or "Wetland" as defined under Act 28 of 2008, at the time of commencement of the Act 12 of 2008 and the classification of land is noted as "Nilam" in the revenue records, the provision of Kerala Land Utilization Order 1967 will be applicable to such land and the Collector as defined in clause 2(a) of KLU Order 1967 has the power to grant permission to utilize the land for other purposes. As stated in clause 2(a) of KLU Order, Collectors shall examine such request for residential purpose, on merits on a case to case basis. However, with a view to prevent indiscriminate filling of Paddy Lands in the State, the Government have also prescribed certain restrictions in the Notification dated 5.2.2002 noted (supra), in which District Collectors have been directed interalia to ensure that the conversions which are likely to render irrigation investments infructuous and large scale conversion for commercial purpose are not allowed.*
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> *xxx xxx xxx*
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> *23. The respondents in all the appeals are directed to approach the competent authorities constituted*

> *under KLU Order 1967/ Kerala Conservation of Paddy Land and Wetland Act 2008 as the case may be for conversion of the land. When the respondents approach the concerned authorities constituted under the above statutes, the concerned authorities shall consider the application of the respondents in accordance with the relevant provisions of the statutes and also the notification G.O.(Rt).No.157/2002/Ad dated 5.2.2002 already extracted above in para 11 and in accordance with law keeping in view the factual position that may be brought to the notice of the authorities along with material to substantiate their claim. In the facts and circumstances of the case, we make no order as to costs."*

7. In such circumstances, no rectification of the Basic Tax Register could be made. The petitioner's contention is that the land was converted long back. The statement of the Convener of the Local Level Monitoring Committee indicates that necessary changes could be made in the Data Bank, but only on a proper application being filed by the petitioner. The petitioner hence has to approach the appropriate authority under the Act of 2008, for removing the same from the Data Bank as had been laid down in ***Adani Infrastructure and Developers Pvt. Ltd. v. State of Kerala [2015 (1) KLT 651]*****.**

2. The petitioner then has to approach the appropriate

authority under the Kerala Land Utilisation Order 1967 for changed utilisation of the land. If the property is found to be utilised for a different purpose prior to the Paddy Land Act, the consideration shall be made, if necessary, after a physical inspection and concluded by a speaking order within two months from the date of production of the certified copy of this judgment, in accordance with ***Dileep Kumar v. State of Kerala - 2014 (4) KLT 200***. Subsequent to such a finding the petitioner could also approach the appropriate authority under the Kerala Land Tax Act for fresh assessment of the land, as directed to be utilised under the KLU order, as has been held in ***Kizhakkambalam Grama Panchayath V. Mariumma - 2015 (2) KLT 516***.

Writ Petition is disposed of.

K. VINOD CHANDRAN,
JUDGE

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