IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 29TH DAY OF MAY 2015/8TH JYAISHTA, 1937

WP(C).No. 34172 of 2014 (V)

PETITIONER :

P.A.FRANCIS (FRANCIS ALAPPATT),
ALAPPATT PALATHINKAL, KALOOR, KOCHI - 682 017.

BY ADVS.SRI.BENNY ANTONY PAREL
SRI.K.ANAND

RESPONDENTS:-

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1. THE DISTRICT COLLECTOR,
COLLECTORATE, KAKKANAD,
ERNAKULAM DISTRICT - 682 030.

2. THE TAHSILDAR,
KANAYANNUR TALUK, ERNAKULAM DISTRICT - 682 031.

*3. THE VILLAGE OFFICER,
THRIKAKARA VILLAGE OFFICE,
THRIKKAKARA - 682 030.

*ADDRESS OF R3 IS CORRECTED AS

THE VILLAGE OFFICER,
KAKKANAD VILLAGE OFFICE,
KAKKANAD,

*R3 IS CORRECTED AS PER ORDER IN IA.NO. 1562/15 DATED 02.02.2015.

BY GOVERNMENT PLEADER SRI.S.JAMAL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 29-05-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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WP(C).No. 34172 of 2014 (V)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1. **TRUE COPY OF THE SALE DEED NO.2096/95 OF SRO, THRIKKAKARA.**

EXHIBIT P2. **TRUE COPY OF THE SALE DEED NO.2097/95 OF SRO, THRIKKAKAA.**

EXHIBIT P3. **TRUE COPY OF THE CERTIFICATE NO:A4-1/2000 ISSUED BY THRIKAKARA GRAMA PANCHAYAT IN THE YEAR 2005.**

EXHIBIT P4. **TRUE COPY OF THE OWNERSHIP CERTIFICATE NO:A1-1/05 DATED 30.09.2005.**

EXHIBIT P5. **TRUE COPY OF THE TAX RECEIPT NO:29129 DATED 26.02.09.**

EXHIBIT P6. **TRUE COPY OF THE REPRESENTATION DATED 01.12.2014.**

EXHIBIT P7. **TRUE COPY OF THE COMMUNICATION NO.H3.23620/14 DATED 27/12/2014 ISSUED BY THE ADDL.THAHSILDHAR**

RESPONDENT(S)' EXHIBITS

EXHIBIT R3(A). **TRUE COPY OF THE RELEVANT PAGES OF BASIC TAX REGISTER**

EXHIBIT R3(B). **TRUE COPY OF THE RELEVANT PAGES OF DRAFT DATA BANK**

/TRUE COPY/

P.A.TO JUDGE

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K. VINOD CHANDRAN, J.

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W.P.(C) No.34172 of 2014 - V

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Dated this the 29th day of May, 2015

<u>J U D G M E N T</u>

The petitioner is a person, who is the owner of around 82 cents of property comprised in R.S No.452/6 in Block No.9 (old Survey Nos. 261/4B1, 261/5/1, 261/5/3 and 261/5). The petitioner contends that, even as per the Data Bank prepared for the area, what is included as paddy land is only that comprised in old Survey Nos. 261/4B1, 261/5/1, 261/5/3 and 261/5, which as per Exts.P1 and P2 sale deed, would only have an extent of 32.833 Ares. The balance land according to the petitioner is pucca land and is not included in the draft Data bank and hence, no conversion or an order for utilisation is necessary with respect to that land. As for the property comprised in old Survey Nos. 261/4B1, 261/5/1, 261/5/3 and 261/5, it is submitted that the same was converted long prior to 2008 and the petitioner is entitled to seek correction of the building tax assessment in accordance with the subsequent utilisation of the land.

2. The learned Government Pleader however, would submit that essentially, no correction could be sought for in the BTR, going by the binding precedent in **Revenue Divisional Officer** v. **Jalaja Dileep [2015 (1) KLT 984 SC]** . Further it is submitted that, when a property is included in the draft Data Bank and the owner seeks removal of the same, the proper procedure would be to approach the Local Level Monitoring Committee as has been stated in **Adani Infrastructure and Developers Pvt.Ltd. v. State of Kerala [2015 (1) KLT 651]**.

3. According to the petitioner, only 33.18 Ares (82 cents) of property owned, comprised in old Survey Nos. 261/4B1, 261/5/1, 261/5/3 and 261/5 was alone classified as 'Nilam'. The learned Government Pleader relies on Ext.R3(a), extract of the said BTR, which indicates that the entire properties are shown as 'Nilam' in the BTR.

4. In the circumstances as is revealed from the averments on record, if the petitioner has a case that, any land included in the Data Bank is not so includable under the provisions of the Kerala Conservation of Paddy Land and Wet Land Act 2008 (for brevity,'the Act'), then the proper procedure, as prescribed in **Adani Infrastructure and Developers Pvt.Ltd.** (supra), would be to approach the Local Level Monitoring Committee. If the petitioner's contentions as to only one portion of the property being included in the draft Data Bank is correct, then as has been stated in **Jalaja Dileep** (supra) with respect to the balance properties even if it is shown as 'Nilam' in the BTR, the petitioner could approach the authorities under the Kerala Land Utilisation Order, 1967 for utilisation of the converted lands for other purposes. The petitioner then could also approach the appropriate revenue authorities for a fresh assessment as has been held in a Division Bench decision of this Court reported in **Kizhakkambalam Grama Panchayat** v. **Mariumma [2015(2)**

KLT 516].

With the above observations, the writ petition is disposed of, leaving open all contentions of either parties.

Sd/-
K. VINOD CHANDRAN,
JUDGE

SB,

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P.A to Judge.