

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 3RD DAY OF JUNE 2015/13TH JYAISHTA, 1937

WP(C).No. 35383 of 2014 (W)

PETITIONER(S)/PETITIONER:

**DR.JAIPAL JOHNSON,
S/O. M A JOHNSON, AGED 63 YEARS,
CHRIST NAGAR, MOONJANAT HOUSE
THELLAKAM POST, KOTTAYAM DISTRICT-686 630**

**BY ADVS.SRI.SAJI.P.JOSEPH
SRI.A.JOSEPH GEORGE
SRI.K.T.SAJU**

RESPONDENT(S):

- 1. THE DISTRICT COLLECTOR, COLLECTORATE, CIVIL STATION,
KAKKANAD, ERNAKULAM - 682 030**
- 2. THE REVENUE DIVISIONAL OFFICER, FORT KOCHI,
ERNAKULAM - 682 001**
- 3. THE TAHSILDAR, KANAYANNUR TALUK,
ERNAKULAM - 682 001**
- 4. THE VILLAGE OFFICER, ERNAKULAM VILLAGE,
ERNAKULAM - 682 011**

R BY ADV. GOVERNMENT PLEADER SRI.MANOJ P. KUNJACHAN

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 03-06-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

AD

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1 :- TRUE COPY OF THE RELEASE DEED NO. 3026/1976 OF THE SUB REGISTRAR OFFICE ERNAKULAM DATED 22/7/1976
- EXHIBIT P2 :- TRUE COPY OF THE BASIC LAND TAX RECEIPT ISSUED BY THE VILLAGE OFFICER ERNAKULAM DATED 8/12/2014
- EXHIBIT P3 SERIES:-TRUE COPY OF THE BUILDING TAX RECEIPTS DATED 13/2/2014 AND 21/2/2014 ISSUED BY THE CORPORATION OF COCHIN
- EXHIBIT P4 :- THE TRUE COPY OF THE RELEVANT PAGE OF THE FAIR VALUE REGISTER IN SY NO. 2540/3 OF THE ERNAKULAM VILLAGE
- EXHIBIT P5 :- TRUE COPY OF THE APPLICATION DAETD 26/2/2014 PREFERRED BY THE PETITIONER BEFORE THE FIRST RESOPNDENT
- EXHIBIT P6 :- THE TRUE COPY OF THE REPORT ALONG WITH PROFORMA REPORT, BTR EXTRACT, TPR EXTRACT AND SKETCH OF THE PROPERTY, SUBMITTED BY VILLAGE OFFICER, ERNAKULAM DATED 30/4/2014
- EXHIBIT P7 :- TRUE COPY OF THE REPORT SUBMITTED BY TEH ADDL. TAHSILDAR KANAYANNUR TALUK DATED 3/5/2014
- EXHIBIT P8 :- TRUE COPY OF THE ENQUIRY REPORT SUBMITTED BY THE VILLAGE OFFICER ERNAKULAM DATED 10/6/2014
- EXHIBIT P9 :- TRUE COPY OF THE REPORT SUBMITTED BY THE ADDL. TAHSILDAR KANAYANNUR TALUK DATED 5/7/2014
- EXHIBIT P10 :- TRUE COPY OPF THE ROUGH SKETCH OF THE LOCATION OF THE PROPERTY
- EXHIBIT P11 :- TRUE COPY OF THE NOTIFICATION ISSUED BY THE RDO FORT KOCHI DATED 15/12/2014

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

P.A. TO JUDGE

K.VINOD CHANDRAN, J.

W.P.(C).No.35383 of 2014

Dated this the 3rd day of June, 2015

JUDGMENT

The reliefs sought for by the petitioner in this writ petition is with respect to correction of the Basic Tax Register (BTR) showing the land of the petitioner covered under Ext.P1 documents as a “Pucca land”, more specifically a commercially important land, as against the present categorisation of the same as a “wet land”.

2. The petitioner submits that the 10 cents of property owned by the petitioner was in the possession of the petitioner for long and a multi-storied building was constructed long back in the 1970's. The fixation of fair value of the property is at Rs.17,95,000/- per cent, as is indicated in Ext.P11, but however, the classification by use, is as “wet land”. The petitioner's contention is that, if a land is a commercially important land and could fetch Rs.17,95,000/-per Are, then the same could not at all be a wet land and hence, the classification is sought to be

corrected, the correction sought for by the petitioner is obviously under Section 18 of the Kerala Land Tax Act, 1961.

3. The petitioner's contention though logically correct, it does not behove a legal sanction. Fixation of fair value is to determine the duty payable to the State on conveyance being effected, for which the State is permitted to employ a yard-stick which takes into account the market situations and the ground realities. It is trite that, in fiscal statutes the legislature has more elbow-room in determining the revenue and deciding upon the levy, the subject of taxation as also in enforcing collection. But the conversion and utilisation of lands regulated by other statutes takes into account far reaching consequences and the effect of such acts of conversion and utilisation on the ecology as also the environment.

4. The issue as to whether classification in the BTR can be corrected was considered by the Hon'ble Supreme Court in **RDO V. Jalaja Dileep 2015(2) KHC 109(SC)**. It was held that no such correction can be

sought for. However, the Hon'ble Supreme Court has held so in paragraph 17 and 23:

"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.

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."

5. Going by the above binding precedent, it is to be noticed that, if any wet land; which now comes under the purview of the Paddy Land Act was converted prior to 2008, then, the proper procedure would be to approach the authorities under the KLU order who can properly grant conversion of the land as also permit a different

utilisation of the land. Hence, if the petitioner has converted the land prior to the enforcement of the Paddy Land Act as stated by the petitioner, the petitioner could very well apply for a changed utilisation of the land for commercial purposes under the KLU order and in such circumstances, the petitioner could also apply for fresh assessment under the Kerala Land Tax Act, 1961, wherein the classification could be altered as per the fresh assessment in the BTR as per the decision of ***Kizhakkambalam Grama Panchayath V. Mariumma 2015(2) KLT 516.***

The writ petition is disposed of.

Sd/-
K.VINOD CHANDRAN
JUDGE

AD

