IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

WEDNESDAY, THE 17TH DAY OF JUNE 2020 / 27TH JYAISHTA, 1942

WP(C).No.11792 OF 2020(Y)

PETITIONER:

MANOHARAN M.C., AGED 49 YEARS,
S/O. CHANDRAN, PARASSERIL (H),
IRUMPANAM P.O, TRIPUNITHURA.

BY ADV. SRI.L.RAJESH NARAYAN

RESPONDENTS:

1 **STATE OF KERALA,**
REPRESENTED BY SECRETARY AND AGRICULTURAL
PRODUCTION COMMISSIONER, DEPARTMENT OF AGRICULTURE,
SECRETARIAT, THIRUVANANTHAPURAM 695 001.

2 **DISTRICT COLLECTOR,**
COLLECTORATE, KAKKANAD, ERNAKULAM 682 030.

3 **VILLAGE OFFICER,**
THIRUVANKULAM VILLAGE, ERNAKULAM 682 305.

4 **TAHSILDAR,**
KANAYANNUR TALUK, KANAYANNUR TALUK OFFICE,
ERNAKULAM 682 011.

5 **AGRICULTURAL OFFICER,**
KRISHI BHAVAN, THIRUVANKULAM, ERNAKULAM 682 305.

6 **REVENUE DIVISIONAL OFFICER, FORTKOCHI,**
FIRST FLOOR, KB JACOB RD, FORT KOCHI,
KERALA 682 001.

SRI.SAIGI JACOB PALATTY, SR.GOVT.PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 17.06.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ALEXANDER THOMAS, J.

W.P. © No. 11792 of 2020

Dated this the 17th day of June, 2020

J U D G M E N T

The case set up in this Writ Petition (Civil) is as follows: The petitioner is the absolute owner in possession of 31 Ares of property comprised in Block No.10, Re-Sy No. 278/6 of Thiruvankulam Village. The petitioner has been remitting basic tax with respect to the property .In fact there is no doubt whatsoever that the land had ever been used for any sort of cultivation as there were standing trees at the time of purchase by the petitioner. It was lying as dry land even when the same was purchased by the petitioner. The property is a pucca dry land and the same is wrongly described as Nilam in village records. It is included as converted land in the Data Bank as evidenced by Ext.P1. Since the property was low lying and prone to water logging and the petitioner wanted to plant coconut trees, plantains etc in the property, it was necessary that the level of the property be raised so that there could be effective cultivation. The petitioner therefore filed Ext.P2 application dated 4.4.13 before the 4th respondent. After taking into account the fact that the property was included in the Data Bank as converted land and that the same could not be utilised for cultivation

nor was there any cultivation in the adjoining properties, the 2nd respondent was pleased to grant permission to the petitioner to convert the property for the purpose of cultivating coconut tress, plaintains etc, by Ext.P4 order. It is urged that pursuant to Ext.P4, the petitioner proceeded to level the property using piling waste which mainly included clay. The same was necessitated since there was shortage of sand and expensive too which forced the petitioner to use piling waste. In fact the same is only for raising the level of the land and inspected by the 3rd respondent and there was nothing to be found fault with as there was no violation of Ext.P4. But to the surprise of the petitioner, the 3rd respondent proceeded to issue Ext.P5 stop memo stating that the property was being illegally converted. The 5th respondent has also without any basis proceeded to report that the use of piling waste will affect the environment. The petitioner by Ext.P8 pointed out the fact that he had only proceeded to level the property for the purpose of carrying out cultivation of coconut trees and plantains etc and that on account of the property being low lying it was necessary to raise the level of the property by filling, which was only done by the petitioner. Further that it was necessary to raise the level by 1.5 M for which he will have to incur an expense of almost Rupees Thirty Lakhs for using sand

therefore piling waste was used. Since the intended cultivation of coconut trees and plantains are of fibrous root system, the same would not penetrate more than a metre into the ground and for the present only half a metre was filled using piling waste and the rest 1 metre would be filled using sand. Therefore it was requested that the stop memo may be recalled. Ext.P5 has been issued without taking into consideration the fact that the property of the petitioner is not coming within the purview of the Act and that the same was a dry land even before the coming into force of the Wet Land Act. A perusal of Ext.P1 would fortify the said contention of the petitioner. It is urged that the land in question is neither a wet land nor a paddy land for the purposes of inclusion in the data bank under the Paddy Land Act. Hence, any conversion for other purposes has to be sanctioned by the RDO under Rule 6(2) of the KLU Order and there cannot be any restriction regarding the user, once it is found that the land is not fit to be included in the Data Bank. Neither the provisions of the KLU Order or even the Order of 2002 restricted the consideration under Clause 6 of the KLU Order only to those applications for conversion of residential purposes. It is in the light of the abovesaid averments and contentions that the petitioner has filed the instant Writ Petition (Civil) with the following prayers:

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i. *issue a writ in the nature of certiorari or any other appropriate order or direction calling for the records leading up to Ext.P4 and set aside the same to the extent it restricts the user of the land and Ext.P5 stop memo;*

ii. *issue a writ in the nature of mandamus or any other appropriate order or direction commanding the respondents to forthwith permit the petitioner to utilize the property for other purposes;*

iii. *issue a writ in the nature of mandamus or any such other writ, direction or orders commanding the respondents 3 and 4 to forthwith initiate steps to alter the nature of land in the basic tax register from nilam to garden land;*

iv. *issue a writ in the nature of mandamus or any such other writ, direction or orders commanding the 4th respondent to initiate steps for fresh assessment of the land as garden land as per the provisions of the Kerala Land Tax Act, 1961;*

v. *Issue any such other writ, appropriate order or direction as this Hon'ble Court may deems fit and proper considering the facts and circumstances of the case."*

2. Heard Sri.L.Rajesh Narayan Iyer, learned counsel appearing for the petitioner and Sri.K.J.Manu Raj, learned Government Pleader appearing for the respondents.

3. In the instant case it is beyond any dispute that the subject property though continues to be described as nilam/paddy land in the Basic Tax Register (BTR), have been converted as garden land/purayidam much prior to 12.8.2008 (date of coming into force of the 2008 Act). The petitioner has also filed the requisite application under Rule 6(2) of the Kerala Land Utilization Order, 1967, seeking statutory permission from the notified Collector/RDO for change of user of land. By Ext.P-3

judgment dated 19.5.2017 rendered in WP(C).No.15016/2017, this Court had directed the notified statutory officer under Rule 6(2) of the Kerala Land Utilization Order (KLU Order), to consider and pass order on the said application treating it as a request under the said statutory provision. There is no dispute that, as a matter of fact the 2nd respondent District Collector has thereafter passed Ext.P-4 order dated 12.3.2018 granting statutory permission under Rule 6(2) of the KLU Order for change of user of land, but, in the said process the 4th respondent has also placed some conditions therein that the subject property can be used only for the purpose of cultivation of plantains and coconut trees. Thereafter, it appears that the petitioner has not approached the 4th respondent Tahsildar for seeking for re-assessment of subject property covered by Ext.P-4 in terms of Section 6A of the Kerala Land Tax Act, 1961, for securing additional entries in the BTR to show the changed nature of land as garden land/purayidam. Since the subject property is lying at a level lower than the road level, the petitioner had thereafter taken steps to level the said property, and there upon the 3rd respondent Village Officer has issued Ext.P-5 stop memo directing that the petitioner to stop the said activity presumably on the ground that, the said act would amount to contravention of the provisions of the KLU Order. It is in

the light of these aspects that the petitioner has filed the instant Writ Petition (Civil) with the aforementioned prayers.

4. It is by now well settled by a series of judgments of this Court as in ***Shivadasan v. Revenue Divisional Officer [2017 (3) KLT 822], Beena Johnson v. Revenue Divisional Officer, Idukki & Another [2015 (3) KHC 727], Shahul Hameed v. Principal Secretary, Local Self Government [2018 (1) KLT 1008 (DB)]*** that, once the statutory officer exercises discretion under Rule 6(2) of the KLU Order so as to grant permission for change of user of land, then discretion under said Rule cannot be used to restrict the right of the land owner to use the property in the manner he deems fit and proper, and that in such cases the land owner could use the said property not only for any non agricultural purposes other than paddy cultivation, but even for any non agricultural purposes including for construction of residential or commercial building and even for industrial purposes, provided such use of land is in compliance with the other applicable laws governing the field. Hence, it is only to be ordered and declared that the restrictive condition imposed by the 4th respondent in Ext.P-4 order dated 12.3.2018 ordering that though statutory permission under Rule 6(2) is granted, the petitioner shall use the said property only

for agricultural purpose of cultivating plantains or coconut trees etc is illegal and ultra vires, and such restrictive conditions will stand set aside and rescinded. It is made clear that the statutory permission granted by the 4th respondent under Rule 6(2) of the KLU Order as per Ext.P-4 will stand confirmed, and only the restrictive conditions therein alone stands rescinded.

5. Further it is also ordered that, the impugned Ext.P-5 order dated 16.11.2018 issued by the 3rd respondent Village Officer will also stand set aside and quashed. Also, in order to avoid any further controversy in the matter, it is ordered that it is for the petitioner to ensure that adequate necessary steps are taken to alter the entries in the BTR, so that unnecessary controversies in these nature are avoided.

6. The counsel for the petitioner submits that, the petitioner will immediately file the requisite application before the 4th respondent Tahsildar under Section 6A of the Kerala Land Tax Act seeking for re-assessment of the subject property, under that statutory provision so as to secure additional entries in the BTR to show the changed nature of land as garden land/purayidam instead of the earlier BTR entries as nilam/paddy land.

7. It is by now settled by a series of rulings of this Court as in ***Geo Peter v. Revenue Divisional Officer [2019 (3) KLT 838], Renji K.Paul v. Revenue Divisional Officer [2019 (2) KLT 262], Salim v State of Kerala [2019 (3) KLT 604 (DB)], LLMC, Kizhakkambalam Grama Panchayat v. Mariumma [2015 (2) KLT 516 (DB)]*** that in a case where the subject property has been converted as 'garden land' or 'purayidam' prior to 12.8.2008 (date of coming into force of the 2008 Act) and where the party concerned has filed the requisite application under Rule 6(2) of the Kerala Land Utilization Order, 1967, for conversion of the property and for its use for any non-agricultural purposes before 30.12.2017 (which is the date of coming into force of the amended provisions of the 2008 Act, which has introduced Sec. 27A thereof), then the statutory revenue authorities are obliged the duty to treat such a case strictly within the purview of Rule 6(2) of the KLU Order, 1967, and in such a case, the party cannot be mulcted to pay the higher amounts conceived as per the amended provisions of the Act including Sec. 27A thereof, which has come into force on 30.12.2017 and the amended Rules framed thereunder. Further, it has also been categorically held by the judgments of the Division Bench of this Court as in ***Mariumma's case supra [2015 (2) KLT 516 (DB)]***

and Renjith's case supra [2020 (1) KHC 865 (DB)] that in such a case where the property holder has filed application under Rule 6(2) of the KLU order before 30.12.2017, then the party is also equally entitled to maintain an application under Sec.6A of the Kerala Land Tax Act, 1961, for securing additional entries in the BTR to show the property as 'garden land' or 'purayidam' instead of the earlier BTR entries as 'nilam' or 'paddy land', and without having to pay the higher amounts conceived as per the amended provisions of the 2008 Act including Sec. 27A thereof and the amended Rules framed thereunder.

8. In the instant case there is no dispute that the petitioner has indeed filed the requisite Rule 6(2) application much before the cut-off date of 30.12.2017 (date of coming into force of the amended provisions of the 2008 Act, which has introduced Sec. 27A thereof) and this is clear from a reading of Ext.P-3 judgment and Ext.P-4 order. Hence it is ordered and declared that the petitioner is entitled for re-assessment of subject property under Section 6A of the Kerala Land Tax Act, in the light of the dictum laid down by the Division Bench of this Court in the case in ***Mariumma's case supra [2015 (2) KLT 516 (DB)] and Renjith's case supra [2020 (1) KHC 865 (DB)],*** and without having to pay any amounts as conceived as

per the amended provisions of the 2008 Act including, Section 27A thereof, and the amended Rules framed thereunder.

9. The petitioner may file such application under Section 6A of the Kerala Land Tax Act before the 4th respondent Tahsildar along with a certified copy of this judgment without any further delay. On receipt of such application the 4th respondent will afford a reasonable opportunity of being heard to the petitioner, and in case the subject property covered in the said application under Section 6A is the same as the one covered by Ext.P-4 order passed under Rule 6(2) of the KLU Order, then necessary orders should be passed by the 4th respondent for re-assessment of subject property, so as to secure additional entries in the BTR to show the changed nature of land as garden land/purayidam instead of the earlier BTR entries as nilam/paddy land, without much delay preferably within a period of one month from the date of receipt of the said application along with a certified copy of this judgment.

10. Needless to say, in this process in case the subject property covered by the said application filed under Section 6A of the Kerala Land Tax Act, is the same as the one covered by Ext.P-4 statutory order dated 12.3.2018 issued by the 4th respondent, then the petitioner cannot be mulcted to pay any amounts as conceived as per

the amended provisions of the 2008 Act including Section 27A thereof, and the amended provisions of the Rules framed thereunder.

11. The petitioner will produce a certified copy of this judgment along with memorandum of this WP(C) with all exhibits before the 4th respondent Tahsildar for necessary information and further action.

With these observations and directions, the above Writ Petition (Civil) will stand finally disposed of.

Sd/-

ALEXANDER THOMAS,
JUDGE

MMG

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT P1	**TRUE COPY OF THE CERTIFICATE NO. KBT 11/17-18 DATED 3-1-18**
EXHIBIT P2	**TRUE COPY OF THE APPLICATION DATED 4-4-13 BEFORE THE 4TH RESPONDENT**
EXHIBIT P3	**TRUE COPY OF THE JUDGMENT DATED 19-05-2017 IN WP(C) NO. 15016/2017**
EXHIBIT P4	**TRUE COPY OF THE ORDER DATED 12-3-2018 BEARING NO. K.DIS-34278/13/L10**
EXHIBIT P5	**TRUE COPY OF THE STOP MEMO DATED 16-11-18 NO. 5/18**
EXHIBIT P6	**TRUE COPY OF THE REPORT DATED 3-12-18 NO KBT 11/18-19**
EXHIBIT P7	**TRUE COPY OF THE REPORT OF THE 3RD RESPONDENT DATED 5-1-19**
EXHIBIT P8	**TRUE COPY OF THE REPLY DATED 7-1-2019**
EXHIBIT P9	**TRUE COPY OF THE REQUEST DATED 23-2-2019**
EXHIBIT P10	**TRUE COPY OF THE REPLY DATED 15-3-2019**
EXHIBIT P11	**TRUE COPY OF THE REQUEST DATED 19-03-2019**
EXHIBIT P12	**TRUE COPY OF THE REPLY DATED 29-3-2019**
EXHIBIT P13	**TRUE COPY OF THE REQUEST DATED 24-1-2020**
EXHIBIT P14	**TRUE COPY OF THE REPLY DATED 13-2-2020**
EXHIBIT P15	**TRUE COPY OF THE INTERIM ORDER DATED 29-05-2020**
EXHIBIT P16	**TRUE COPY OF THE JUDGMENT DATED 8-6-2020 IN WPC NO. 10640/2020**