IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

WEDNESDAY, THE 01ST DAY OF JULY 2020 / 10TH ASHADHA, 1942

WP(C).No.12944 OF 2020(P)

PETITIONER:

SAJIKUMAR.P.,
S/O PRABHAKARAN NAIR,PULIYANGATT HOUSE,
VECHOR VILLAGE,AMBIKA MARKET.P.O,
VAIKOM TALUK,KOTTAYAM DISTRICT-686144.

BY ADVS.
SRI.NIRMAL V NAIR
SRI.M.ANEESH

RESPONDENTS:

1 **THE REVENUE DIVISIONAL OFFICER,**
PALA BYE-PASS ROAD,PALA,
KOTTAYAM DISTRICT-686575.

2 **TAHSILDAR,**
TAIKOM TALUK,FIRST FLOOR,
MINI CIVIL STATION,W GATE RD,VAIKOM,
KOTTAYAM-686141.

3 **THE VILLAGE OFFICER,**
VECHUR VILLAGE,SH 40,EDAYAZHAM,
KOTTAYAM DISTRICT-686144.

4 **THE AGRICULTURAL OFFICER,**
KRISHI BHAVAN,VECHUR,
KOTTAYAM-686144.

BY ADV.
SRI.SAIGI JACOB PALATTY, SR.GOVT.PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 01.07.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ALEXANDER THOMAS, J.

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W.P.(C) No. 12944 of 2020

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Dated this the 1st day of July, 2020

J U D G M E N T

The case set up in this Writ Petition (Civil) is as follows:

The petitioner is aggrieved by the impugned action of the 1st respondent in insisting for compliance of provisions of Section 27A of the Kerala Conservation of Paddy Land and Wet Land Act, 2888 [hereinafter referred to as the Act] for consideration for his application made under Clause 6 of the Kerala Land Utilisation Order, 1967 in spite of the fact that the application was made before 30.12.2017. Furthermore, such an insistence is being made by the 1st respondent despite a binding inter parte judgment dated 27.11.2017 of this Court which stipulated that if the petitioner's property is found to have been converted prior to the promulgation of the Act, the 1st respondent herein shall consider the application made under Clause 6 of the Kerala Land Utilisation Order by adverting to the dictum in ***Puthan Purakkal Joseph v. Sub Collector 2015(3) KLT 182***

It is in the light of the above averments and contentions that the petitioner has filed the instant Writ Petition (Civil) with the following prayers :

"(i) To issue a writ in the nature of certiorari or any other appropriate writ order or direction and to quash Exhibit P3 to the extent it insists that the petitioner has to comply with the provisions of Section 27A of the Kerala Conservation of Paddy Land and Wet Land Act, 2008 to have his Exhibit P1 application made under clause 6(2) of the Kerala Land Utilisation Order, 1967 considered;

(ii) To issue a writ in the nature of mandamus or any other appropriate writ order or direction commanding the first respondent to consider Exhibit P1 in accordance with the directions contained in Exhibit P2 judgment and without insisting on the compliance of any of detrimental provisions of Amendment Act 29 of 2018 and to pass orders allowing the application within 1 month from the date of receipt of copy of the judgment of this Honourable Court;

(iii) To issue a writ in the nature of mandamus or any other appropriate writ order or direction commanding the 2nd and 3rd respondents to re-assess the petitioner's property as per Section 6A of the Kerala Land Tax Act, 1961 and cause to have the entry with respect to the petitioner's property comprised in Sy.Nos. 481/11, 481/2-1, 481/9-1 and 481/9-2 of Vechoor Village, Vaikom Taluk, Kottayam District changed as garden land in the Basic Tax Register within one from the date of submission of such application by the petitioner;

(iv) Grant such other reliefs as may be prayed for and as the Court may deem fit to grant and

(v) Grant the cost of the writ petition.

2. Heard Sri.Nirmal V.Nair, learned counsel appearing for the petitioner and Sri.Saigi Jacob Palatty, the learned Senior Government Pleader appearing for the respondents.

3. According to the petitioner, the subject property though continues to be described as paddy land/nilam in the BTR has been converted as garden land/purayidam much prior to

12.08.2008 (date of coming into force of the Kerala Conservation of Paddy Land and Wet Land Act, 2008). Further that the petitioner has submitted the requisite application under Rule 6(2) of the KLU Order 1967, as per Ext.P1 dated 24.05.2014 before the 1st respondent RDO, seeking permission for change of use of land for any non-agricultural purposes. Since no action was forthcoming thereon, petitioner was constrained to approach this Court by filing W.P.(C).No.35296/2017. This Court as per Ext.P2 judgment dated 27.11.2017 in the W.P.(C) ordered that the respondent RDO will immediate get a report from the Local Level Monitoring Committee as to the ground realities of the subject property, and as to whether it is a paddy land as on date of coming into force of the above said Act, or whether it has been converted prior to the said Act, and thereafter, to take a decision on the said application filed by the petitioner on 24.05.2014 (Ext.P1 therein) within a time limit of one month etc. Further it is also directed that, after petitioner secures orders or permission under Rule 6(2) of the KLU Order, he will be legally entitled to file application before the Tahasildar concerned for re-assessment of the subject property in terms of Section 6A of the Kerala Land Tax Act for securing additional entries in the BTR to

show the change in nature of the land as garden land/purayidam, instead of the earlier BTR entries as paddy land/nilam etc. It appears that, the LLMC has conducted the inspection and the report of the LLMC is in favour of the petitioner that the property had been converted prior to the above said Act etc. Now the 1st respondent-RDO has passed the impugned Ext.P3 order dated 18.05.2019, ordering that the petitioner will have to file fresh application under Section 27A(1) of the amended provisions of the above said Act to get his request concerned and thereby he will have to pay the amounts conceived as per the said amended provisions of the Act and the rules framed thereunder etc., It is this order at Ext.P3 that is under challenge.

4. By now it is well 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.

5. From a reading of Ext.P3, it can be seen that the 1st respondent has not made any reference to the fact the petitioner has in fact filed application under Rule 6(2) of the KLU Order on 24.05.2014, which is referred to as Ext.P6 in Ext.P2 judgment, and it is produced as Ext.P1 in this writ petition (civil). It is not known as to why the 1st respondent-RDO has not disclosed the said crucial aspect, and on the other hand the 2nd respondent Tahasildar has referred to as item no.1 therein request said to have been submitted by the petitioner on 05.01.2019.

6. The learned counsel for the petitioner would point out that, since no effective action was forthcoming from the part of the 1st respondents, he was constrained to send a reminder letter on 05.01.2019, which alone is cited in Ext.P3. Ext.P2 judgment would conclusively show that the petitioner has in fact filed an application on 24.05.2014 seeking permission under Rule 6(2) of KLU Order before the 1st respondent-RDO.

7. Moreover, Ext.P2 judgment is rendered on 27.11.2017,

which is before the cutoff date of 30.12.2017 (date of coming into force of the amended provisions of the above said Act which has been introduced Section 27A thereof). So as, the petitioner has duly filed the requisite Rule 6(2) application before the 1st respondent-RDO before the cutoff date of 30.12.2017, that application has to be considered strictly in terms of provisions contained in Rule 6(2) of the KLU Order, and the petitioner cannot be made to undergo the rigorous procedure and to pay the higher amounts as conceived as the amended provisions of the above said Act, including Section 27A, and amended Rules framed thereunder including Rule 12(17) thereof. The position in that regard it is ordered and declared. Moreover, that aspect of the matter, it is now well settled by this Court in a series of rulings.

8. Accordingly, it is ordered that the impugned decision of the 1st respondent in Ext.P3 that, petitioner will have to file fresh application under Section 27A(1), and that he will have to pay the higher amounts as conceived as per Section 27A and Rules framed thereunder including Rule 12(17) thereof will stand set aside and quashed. This Court has on many occasions seen in very many cases that the Competent Revenue Officials like the

District Collectors, RDOs, Tahasildars etc., have violated the dictum laid down by this Court in the afore cited judgments and thereby compelling parties who have duly filed the requisite Rule 6(2) applications before the cutoff date of 30.12.2017 to adhere to the procedure under Section 27A(1) and to pay the higher amounts as conceived as per the said amended provisions of the Act and the amended Rules including 12(17) thereof, and this Court has held the said practice is illegal and improper and would amount to a highly arbitrate exercise of power of the Revenue Officials concerned **Fr. Jose Uppani v District Collector [2020 (3) KLT 492].** Moreover, the Legislature has explicitly mandated in Section 27A (13) that it is only those applications received for change of nature of land from the date of commencement of the Kerala Conservation of Paddy Land and Wet Land Act (amended) , 2018 viz, 30.12.2017, that will have to be considered and disposed of in accordance with the amended provisions of the above said Act. When the legal position is so crystal clear and it is also explicitly mandated in the Act, and has been abundantly declared and clarified by this Court in a series of rulings, this Court is at a loss to understand as to why a responsible officer like the 1st respondent would pass such a

highly illegal order in the nature of Ext.P3. This is all the more worrisome as the 1st respondent has not properly disclosed in Ext.P3 about the correct fact that the petitioner has in fact filed application dated 24.05.2014 under Rule 6(2) of the KLU Order, which has already referred to in Ext.P6 in Ext.P2 judgment.

9. Accordingly, it is ordered that the impugned directions in Ext.P3 will stand set aside and quashed and Ext.P1 application will stand remitted to the 1st respondent for consideration and decision. The 1st respondent will immediately take up for consideration in the matters raised in Ext.P1 application without any further delay, and should ensure that the copies of the reports dated 02.02.2019 and 26.03.2019 of the Village Officer referred to as item nos.3 and 4 in Ext.P3 as well as the report of the LLMC mentioned in Ext.P3 shall be immediately given to the petitioner in advance. Thereafter, the 1st respondent will afford reasonable opportunity of being heard to the petitioner, and then should pass orders on Ext.P1 application, only on the basis of provisions contained in Rule 6(2) of the KLU Order without any further delay, at any rate within six weeks from the date of production of certified copy of this judgment, and without compelling the petitioner to pay any amounts as

conceived as amended provisions of the above said Act including Section 27A thereof and the amended Rules framed thereunder including Rule 12(17) thereof.

10. After getting orders of permission on Ext.P1 under Rule 6(2) of KLU Order, the petitioner may thereafter, approach the 2nd respondent-Tahsildar, as already directed in Ext.P2 judgment seeking for re-assessment of the subject property so as to secure additional entries in the BTR to correctly show the changed nature of land as garden land/purayidam instead of the earlier BTR entries as paddy land/nilam. The petitioner may file such application before the 2nd respondent along with the copy of the proceedings so issued by the 1st respondent granting permission under Rule 6(2) of KLU Order along with the copy of this judgment. 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 the proceedings issued by the 1st respondent on Ext.P1 application granting permission under Section 6(2) of the KLU Order then, the 2nd respondent after affording reasonable opportunity of being heard to the petitioner should pass orders on re-assessment of the subject property in terms of Section 6A of the Kerala Land Tax Act so as to secure

additional entries in the BTR to correctly show the change in nature of the land as garden land/purayidam instead of early BTR entries as paddy land/nilam, within one month from the date of filing of such application as afore said and strictly in the light of the dictum laid down by the Division Bench of this Court in case as in ***Mariumma's case supra [2015 (2) KLT 516 (DB)] and Renjith's case supra [2020 (1) KHC 865 (DB)]*** and without making the petitioner to pay any amounts as conceived as amended provisions of the above said Act including Section 27A thereof and the amended Rules framed thereunder including Rule 12(17) thereof etc.

The petitioner will produce a certified copies of this judgment along with the copies of the memorandum of W.P.(C) with all the Exhibits before the 1st respondent-RDO, 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

VPK

APPENDIX

PETITIONER'S/S EXHIBITS:

EXHIBIT P1	**A TRUE COPY OF THE APPLICATION DATED 24-5-2014 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.**
EXHIBIT P2	**A TRUE COPY OF THE JUDGMENT DATED 27-11-2017 IN W.P(C)NO.35296/2017 ON THE FILES OF THIS HONOURABLE COURT**
EXHIBIT P3	**A TRUE COPY OF THE ORDER NO.L3-101/2019 DATED 18.5.2019 ISSUED BY THE 1ST RESPONDENT**
EXHIBIT P4	**A TRUE COPY OF THE JUGMENT DATED 24.2.2020 IN W.P(C)NO.5068/2020 ON THE FILES OF THE HONOURABLE COURT.**