IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

MONDAY, THE 03RD DAY OF AUGUST 2020 / 12TH SRAVANA, 1942

WP(C).No.14810 OF 2020(A)

PETITIONER:

BHARATHI SUNDHARESHA PODUVAL
AGED 74 YEARS
W/O. A.N.S.PODUVAL, HOUSE NO.29, 1ST FLOOR,
3RD CROSS ROAD, GIRINAGAR, KADAVANTHRA P.O.,
ERNAKULAM-682 020.

BY ADV. SRI.GIKKU JACOB

RESPONDENTS:

1 **REVENUE DIVISIONAL OFFICER**
REVENUE DIVISIONAL OFFICE, FORT KOCHI,
FORT KOCHI P.O., ERNAKULAM-682 001.

2 **THAHASILDAR**
KANAYANNOOR TALUK OFFICE, NEAR SUBHASH PARK,
SHANMUGHAM ROAD P.O., ERNAKULAM DISTRICT-683 011.

3 **LOCAL LEVEL MONITORING COMMITTEE**
THRIPPUNITHURA MUNICIPALITY, REPRESENTED BY ITS
CONVENER, AGRICULTURE OFFICER, KRISHI BHAVAN,
THRIPPUNITHURA P.O., ERNAKULAM-682 301.

4 **THRIPPUNITHURA MUNICIPALITY**
REPRESENTED BY SECRETARY, THRIPPUNITHURA MUNICIPAL
OFFICE, THRIPPUNITHURA P.O., ERNAKULAM-682 301.

R4 BY ADV. SRI.C.V.MANUVILSAN

SRI.K.J.MANU RAJ, GOVT.PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 03.08.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ALEXANDER THOMAS, J.

==========

W.P(C) No.14810 of 2020

==========

Dated this the 03rd day of August, 2020

JUDGMENT

The prayers in the above Writ Petition (Civil) are as follows :

"i) To issue a writ of mandamus or any other appropriate writ, order or direction, directing the 3rd respondent to dispose Exhibit-P7 in accordance with law;

ii) That a writ of mandamus or other appropriate writ, direction or order, directing the 1st respondent to dispose Exhibit-P8 in accordance with law;

iii) To declare that property having an extent of 3.58 Ares of land in Survey No.147 (Re-Survey No.2) in Block No.366 of Thekkumbhagom Village, Kanayannoor Taluk owned by the petitioner is dry land/purayidom;

And

iv) Issue such other writ or order or direction as this Honourable Court may deem fit and necessary, in the circumstances of the case, in the interest of justice."

2. Heard Sri.Gikku Jacob, learned counsel appearing for the petitioner, Sri.K.J.Manuraj, learned Government Pleader appearing for respondent Nos.1 to 3 and Sri.C.V.Manu Vilson, learned Standing Counsel for the Tripunithura Municipality appearing for the 4th respondent.

3. The case of the petitioner is that the subject property though continues to be described as 'Nilam/Paddy Land' in the Basic Tax Register (BTR) maintained as per the revenue records, the same has been converted

as 'garden land or purayidom', after obtaining statutory permission from the statutorily notified Collector (1st respondent-Revenue Divisional Officer) as per Exts.P-3 & P-4 proceedings dated 22.01.1996 under Rule 6(2) of the Kerala Land Utilization Order, 1967. That thereafter, the petitioner had also duly obtained development permits as per Exts.P-5 & P-6 for developing the land issued by the 4th respondent-Tripunithura Municipality for development of the properties covered by Exts.P-3 & P-4. That the subject property has thus been duly converted as 'garden land or purayidom' long prior to 12.08.2008 (date of coming into force of the Paddy Land & Wetland Act, 2008). Further that, without affording any opportunity to the petitioner, the 3rd respondent-Local Level Monitoring Committee had wrongly included the subject properties covered by Exts.P-3 & P-4 in the land data bank prepared as per the 2008 Act showing it as 'Nilam/paddy land', presumably, on the basis of the entries in the unaltered BTR. That the petitioner has thus been constrained to file Ext.P-7 application as early as on 28.03.2017 before the 3rd respondent-LLMC for orders for formal exclusion of the subject properties from the land data bank, as the properties have been duly converted and that too on the basis of the statutory permission as per Exts.P-3 & P-4 issued by the 1st respondent-RDO. Since no effective action is coming on Ext.P-7 application though it has been filed as early as on 28.03.2017 before the

3rd respondent-LLMC, which has constrained the petitioner to file Ext.P8 representation dated 17.10.2019 before the 1st respondent-RDO seeking for directions of that authority to the 3rd respondent-LLMC to pass orders on Ext.P-7 application, without any further delay, that no action is also forthcoming on Ext.P-8. It is in the light of these aspects, that the petitioner has filed the instant Writ Petition (Civil) with the aforementioned prayers.

4. If as a matter of fact, the petitioner's predecessor had already secured Exts.P-3 & P-4 proceedings dated 22.01.1996 issued by the 1st respondent-RDO securing permission for change of user of the land under Rule 6(2) of the Kerala Land Utilization Order, 1967 and the petitioner has also converted the land as 'garden land or purayidom', then the very inclusion of the property in the land data bank as 'Nilam/paddy land' appears to be a mistake or error and the mere fact that the entries in the unaltered BTR would show the property as 'Nilam/paddy land' is no justification for the 3rd respondent-LLMC to include the property in the land data bank, so long as the property is the same or part of the properties covered by Exts.P-3 & P-4 permission granted under Rule 6(2) of the KLU Order. The factum relating to the issuance of Exts.P-3 & P-4 permission under Rule 6(2) of the KLU Order has also been recited in Ext.P-1 sale deed, which the subject property that was conveyed by the predecessor to the

petitioner.

5. It is by now well settled by a series of rulings of this Court that where the subject property has been converted as Garden Land or Purayidam prior to 12.08.2008 (date of coming into force of the Kerala Conservation of Paddy Land and Wetland Act, 2008) and where the property holder has filed the requisite application under Rule 6(2) of the Kerala Land Utilization Order for change of user of the land, before 30.12.2017 (date of coming into force of the amended provisions of the 2008 Act, which has introduced Sec.27A thereof, then in such a case, the property holder is entitled to get his request is considered in terms of Rule 6(2) of the KLU Order and in such a case none of the adverse provisions contained in the amended provisions of the 2008 Act, including Sec.27A thereof and the amended Rule framed thereunder cannot be enforced as against such a property holder. In other words, the application under Rule 6(2) of the KLU Order has to be considered strictly in terms of that provision and without insisting for the amounts conceived as per the amended provisions of the 2008 Act including Sec.27A thereof and the amended provisions of the Rules (refer ***Geo Peter v. Revenue Divisional Officer*** [2019 (3) KLT 838], ***Renjith K.Paul v. Revenue Divisional Officer*** [2019 (2) KLT 262], ***Tahsildar, Thodupuzha Taluk and another v. Renjth George*** [2020 (1) KHC 865 (DB)]

LLMC, Kizhakkambalam Grama Panchayath and others v. Mariumma and another [2015 (2) KLT 516 (DB), etc.].

6. Further, in the aforesaid judgments of the Division Bench of this Court in **Mariyumma's case** (supra) and ***Renjth George's case*** (supra), it has also been held that in such a case where the property holder has filed the application under Rule 6(2) before 30.12.2017 and after securing such orders under Rule 6(2), the party concerned is also entitled to get the subject property assessed/re-assessed under Sec.6A of the Kerala Land Tax Act, so as to secure additional entries in the BTR to show the change nature of the land as garden land or purayidam instead of the earlier BTR entries as paddy land or Nilam.

7. Since thus the legal position is that even if, the requisite application under Rule 6(2) of the KLU Order has been filed before 30.12.2017 and even if orders thereon has not been secured before the cut-off date of 30.12.2017, still the authorities concerned are obliged to consider such request strictly in terms of Rule 6(2) of the KLU Order and without making the party to pay the amounts as conceived as per the amended provisions of the 2008 Act, which has been introduced Sec.27A thereof and the amended Rules framed thereunder, including Rule 12(17) thereof, etc. Therefore, in a case, where the party has already secured permission under Rule 6(2) of the KLU Order and that too well before the

cut-off date of 30.12.2017, then there is no question of compelling such parties to secure another round of formal permission under Sec.27A and the Rules framed thereunder. In such a case, based on the statutory permission obtained under Rule 6(2) of the KLU Order, the party is then legally entitled to maintain an application under Sec.6A of the Kerala Land Tax Act for fresh assessment of the subject property under that Section, so as to secure additional entries in the BTR to show correctly the changed nature of the land as 'garden land or purayidom' instead of the earlier BTR entries as 'Nilam/paddy land' and without having to pay the higher amounts as per the amended provisions of the 2008 Act, including Sec.27A thereof and the amended Rules, including Rule 12(17) thereof. So long as, the application under Rule 6(2) of the KLU Order has been filed before the cut-off date of 30.12.2017. So in a case, where the party has already secured permission under Rule 6(2) of the KLU Order even before 30.12.2017, then such a party is equally entitled to maintain application under Sec.6A of the Kerala Land Tax Act for alteration in the BTR and that too without payment of any amounts as conceived as per the amended provisions of the 2008 Act and the amended Rules, including Rule 12(17) thereof. The position in that regard is ordered and declared.

8. The relevant fact, which should be ascertained, is as to whether the subject property covered by Ext.P-7 application is the same or part of

the properties covered by Exts.P-3 & P-4. That is a question of fact which is to be determined by the 1st respondent-RDO. Now the petitioner has already preferred Ext.P-8 representation dated 17.10.2019 before the 1st respondent-RDO. The 1st respondent-RDO will immediately afford opportunity of being heard through authorized representative/counsel, if any, and then may ascertain as to whether the property covered by Ext.P-7 application is the same or part of the properties covered by Exts.P-3 & P-4 proceedings dated 22.01.1996 issued under Rule 6(2) of the KLU Order by the 1st respondent-RDO. The 1st respondent-RDO will after ascertaining records and after affording opportunity of being heard to the petitioner, should issue a communication addressed to the ex-officio convener of the 3rd respondent-LLMC stating as to whether the property covered by Ext.P-7 application is the same or part of the property covered by Exts.P-3 & P-4 proceedings dated 22.01.1996 issued under Rule 6(2) of the KLU Order, as aforesaid. This process should be duly completed by the 1st respondent-RDO, within three weeks from the date of receipt of a certified copy of this judgment and a copy of the said letter so issued by the 1st respondent addressed to the convener of the 3rd respondent-LLMC should also be given to the petitioner in advance and after following the requisite procedure and after affording reasonable opportunity of being heard to the petitioner through authorized representative/counsel, if any, should pass orders on

the request made in Ext.P-7 application for exclusion of the subject property from the land data bank, without much delay, preferably within a period of one month from the date on which the clarificatory communication is received from the 1st respondent-RDO, as aforedirected and in the light of the abovesaid findings and observations made by this Court hereinabove.

9. The petitioner will produce certified copies of this judgment along with copies of the Memorandum of this W.P(C) with all the exhibits before the 1st respondent-RDO and the 3rd respondent-LLMC through its convener, 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

vgd

APPENDIX

PETITIONER'S/S EXHIBITS:

EXHIBIT P1	**TRUE COPY OF THE SALE DEED NO.2369 OF 1996 OF THRIPPUNITHURA S.R.O. DATED 5.7.1996.**
EXHIBIT P2	**TRUE COPY OF THE LAND TAX RECEIPT DATED 1.1.2019.**
EXHIBIT P3	**TRUE COPY OF THE ORDER DATED 22.1.1996 UNDER CLAUSE 6(2) OF KERALA LAND UTILIZATION ORDER, 1967 FROM THE IST RESPONDENT REVENUE DIVISIONAL OFFICER TO ARAVIND KUMAR.**
EXHIBIT P4	**TRUE COPY OF THE ORDER DATED 22.1.1996 UNDER CLAUSE 6(2) OF KERALA LAND UTILIZATION ORDER, 1967 FROM THE IST RESPONDENT REVENUE DIVISIONAL OFFICER TO T.P.TOMY.**
EXHIBIT P5	**TRUE COPY OF THE LAND DEVELOPMENT PERMIT DATED 4.6.1996 ISSUED BY 4TH RESPONDENT MUNICIPALITY TO ARAVIND KUMAR.**
EXHIBIT P6	**TRUE COY OF THE LAND DEVELOPMENT PERMIT DATED 11.6.1996 ISSUED BY THE 4TH RESPONDENT MUNICIPALITY TO T.P.TOMY.**
EXHIBIT P7	**TRUE COPY OF THE APPLICATION FILED ON 23.8.2017 BEFORE THE 3RD RESPONDENT LOCAL LEVEL MONITORING COMMITTEE.**
EXHIBIT P8	**TRUE COPY OF THE REPRESENTATION DATED 17.10.2019.**