(2015) 03 KL CK 0288

In the High Court Of Kerala

Case No : Writ Petition (C) Nos. 28653 of 2014 (F), 18767/2014, 30568/2014, 30966/2014, 30584/2014, 30585/2014, 32390/2014, 28361/2014, 34961/2014, 20176/2014, 23758/2014, 22951/2014, 23351/2014, 28154/2014, 26752/2014, 30755/2014, 16996/2014, 15395/2014, 23375/201

Abdul Khadir and Others APPELLANT

Vs

The District Collector, Kakkanad and Others RESPONDENT

Date of Decision : 27-03-2015

Acts Referred:
Kerala Land Tax Act, 1961 — Section 18

Citation : (2015) 03 KL CK 0288

Hon'ble Judges : P.R. Ramachandra Menon, J

Bench : Single Bench

Advocate : Jaishankar V. Nair, Arathi Karunakaran and Parvathy S. Krishnan, for the Appellant; P.K. Soyuz, Govt. Pleader, Advocates for the Respondent

Final Decision : Disposed off

Judgement

P.R. Ramachandra Menon, J—The issue involved in all these cases is whether the prayer made by the petitioners to cause the BTR (Basic Tax Register) to be corrected as ''dry land'' or ''converted land'' could be entertained or not.

2. The case of the petitioners is that the property concerned is actually ''dry land'' and that the conversion was effected much prior to the commencement of Kerala Conversion of Paddy Land and Wet Land Act 2008 (for short, "the Act"). But the same happened to be described as paddy land in the revenue records. A connected issue with reference to the physical nature of the property had already come for consideration before the Full Bench of this Court and as per the decision reported in Praveen K v. Land Revenue Commissioner & Others (2010(2) KLT 617) , the Bench observed that the grievance is not to be considered merely with reference to the entry in the revenue records and the physical nature of the property is also to be looked into. If the property is not covered by the Act, it has

necessarily to be considered with reference to the provisions of the Kerala Land Utilisation Order, 1967 (for short, the "KLU Order"). Subsequently the matter came up for consideration before this Court again and as per the decision reported in Jafarkhan Vs. Kochumakkar and others, (2012) 1 ILR (Ker) 535 : (2012) 1 KLJ 607 it was made clear that, if the conversion was effected prior to the date of commencement of the Act, and if the property was not situated as a paddy land or wet land as on the date of commencement of the Act, the provisions of the Act were not attracted. Thereafter, the position was again made clear by a bench of this Court as per the decision reported in Sunil Vs. Killimangalam-Panjal 5th Ward, Nellulpadaka Samooham, (2012) 4 KLJ 724 : (2012) 4 KLT 511 that if the property is not covered by the provisions of the Act, the land can be made use of, even for industrial purposes.

3. While so, a question had come up for consideration before this Court as to whether the Tahsildar could be directed to effect necessary correction in the revenue records. The matter was decided by a learned Single Judge of this Court in Jalaja Dileep Vs. Revenue Divisional Officer and others, (2012) 3 ILR (Ker) 601 : (2012) 3 KLJ 342 : (2012) 3 KLT 333 , whereby positive directions were given to the Tahsildar to effect the necessary corrections. The said verdict was affirmed by a Division Bench of this Court as per the decision reported in Revenue Divisional Officer Vs. Jalaja Dileep, (2014) 1 ILR (Ker) 492 : (2014) 1 KHC 96 : (2014) 1 KLJ 586 : (2014) 1 KLT 161 . The State took up the matter before the Apex Court. After final hearing, the law has been declared by the Apex Court as per the decision reported in Revenue Divisional Officer Fort and Others Vs. Jalaja Dileep and Others(2015) 3 AD 631 : (2015) 3 SCALE 323 whereby the verdict passed by the Division Bench of this Court has been set aside and it has been made clear that no correction can be made in the BTR under any circumstances. The scope of Section 18 of the Kerala Land Tax Act was also explained in detail. However, some specific observations were made by the Apex Court in paragraphs 17 and 23 to the effect that if the property had already been converted, the parties are at liberty to move the competent authority by filing necessary petition under Clause 6(2) of the KLU Order and it is for the competent authority to consider the same and to pass appropriate orders so as to enable the parties to make use of the property for other purposes than agricultural purpose. This being the position, in so far as the properties herein are not included in the Data Bank Register, showing the nature as a paddy land or wet land, as on date of commencement of the Act, the matter requires to be considered by the competent authority under the provisions of KLU Order.

4. In the said circumstances, the petitioners in these cases are set at liberty to move either the District Collector or the RDO by filing an application under Clause 6(2) of the KLU Order within two weeks from the date of receipt of a copy of this judgment; upon which the same shall be considered and appropriate orders shall be passed after hearing the parties in the light of the observations made by the Apex Court as per the decision cited supra. This shall be done by at the earliest, at any rate, within two months from the date of receipt of a copy of

this judgment.

The writ petitions disposed of accordingly. The petitioners shall produce a copy of the judgment along with a copy of the writ petition before the concerned respondent for further steps.

