

(2015) 06 KL CK 0198

In the High Court Of Kerala

Case No : Writ Petition (C) Nos. 16683, 14949, 17203, 17204, 18305, 18304, 18525 and 19262 of 2015

Beena Johnson

APPELLANT

Vs

Revenue Divisional Officer, Idukki and Others

RESPONDENT

Date of Decision : 30-06-2015

Acts Referred:

Kerala Conservation of Paddy Land and Wetland Act, 2008 — Section 13, 2(xii), 2(xviii), 3, 5(4)

Citation : (2015) 3 KHC 727

Hon'ble Judges : K. Vinod Chandran, J

Bench : Single Bench

Advocate : Saigi Jacob Palatty, Anu S. Nair, V. Rajendran, Binoy Vasudevan, Mahboob Aruveetil, Avaneesh Koyikkara, P.G. Babitha, V.K. Anju, Lindons C. Davis, K. Abdul Jawad and Abdul Majeed N., for the Appellant; C.K. Sherin, Government Pleader, Advocates for the R

Final Decision : Disposed off

Judgement

K. Vinod Chandran, J—All the above writ petitions raise the issue as to how; the land indicated as "Nilam" in the Basic Tax Register (BTR), but however converted long before the commencement of Kerala Conservation of Paddy Land and Wet Land Act, 2008 (for brevity, Act of 2008), has to be dealt with. The issue specifically arises since a Division Bench decision of this Court had been reversed by the Hon'ble Supreme Court in Revenue Divisional Officer Fort and Others Vs. Jalaja Dileep and Others(2015) 3 AD 631 : (2015) 3 SCALE 323 . It is thought fit that WP (C) No. 16683 of 2015 be considered as the leading case, since despite an order directing consideration under Clause (6) of the Kerala Land Utilisation Order, 1967 (for brevity "the KLUO"), the Sub Collector is said to have rejected the claim. The petitioner in WP (C) No. 16683 of 2015 was before the District Collector seeking permission to put to use 40 cents of land for a purpose other than paddy cultivation. The same was rejected by Ext. P2 dated 15/07/2013. The petitioner relied on Ext. P3 report of the Agricultural Officer with respect to the

very same land, wherein, it was categorically stated that the said land was filled up 12 years earlier i.e., prior to the Act of 2008. Hence, the petitioner made an application, at Ext. P4, before the Tahsildar for correction of BTR based on a Division Bench decision of this Court and also approached this Court by a writ petition, the judgment of which is produced at Ext. P5.

2. This Court found that the District Collector/RDO has power under the KLUO to grant permission to utilise such land for any other purposes, especially since, the land was reclaimed prior to the enactment of the Act of 2008 and there being no evidence as to there being any cultivation in the said land, of any food crops, either three years prior to the commencement of KLUO or after such commencement. It was directed that the issue would be considered in the light of a Division Bench decision of this Court in *Praveen K. v. Land Revenue Commissioner, Thiruvananthapuram and Others* 2010 (2) KHC 499 : 2010 (2) KIT 617 . In Ext. P5 it was also noticed that the decision of a Division Bench reported in *Sunil Vs. Killimangalam-Panjali 5th Ward, Nellulpadaka Samootham*, (2012) 4 KLJ 724 : (2012) 4 KLT 511 , found that permission under Clause (6) can be granted for construction of buildings even for industrial purposes. Relying on another learned Single Judge's decision of this Court reported in *Joseph John Vs. Land Revenue Commissioner*, (2014) 1 KLT 706 , the application filed by the petitioner was directed to be considered under Clause (6) of the KLUO. However the Sub Collector by Ext. P6 declined the same.

3. The rejection was on the ground that there is no power conferred on the Collector or the RDO to regularise any conversion made. The learned Government Pleader would in addition, seek to sustain the order on the basis of paragraph 23 of *Jalaja Dileep* (supra) wherein the Hon''ble Supreme Court had directed the party respondents in all the appeals to approach the competent authorities constituted under the KLUO or the Act of 2008. There was also a direction to consider the application under the KLUO in accordance with notification GO (Rt) No. 157/2002/Ad dated 05/02/2002 under the KLUO. Hence consideration under KLUO is regulated by the said notification is the contention.

4. The notification was referred to by the Hon''ble Supreme Court and extracted in paragraph 11 of the judgment. According to the learned Special Government Pleader as per the notification, conversions are permitted only for small areas upto 5 cents, that too for construction of residential houses for individuals. Large scale conversion of land by artificial partition into small plots less than 5 cents was to be detected and disallowed. The notification also specifically speaks of the need for discouraging large scale conversions for commercial purposes. Further the notification specifically interdicts regularisation on the ground of the conversion having already been effected on the ground of a fait accompli. The regulations so laid down by the Government in the notification governs any consideration under KLUO, is the argument.

5. A reading of the judgment of the Hon''ble Supreme Court in *Jalaja Dileep* (supra), cannot at all lead to a conclusion that the terms in the notification

should over ride the provisions of the KLUO. This is especially so going by paragraphs 17 and 18 of the judgment of the Hon''ble Supreme Court, which is extracted hereunder:

"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 inter alia 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 Utilisation 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 utilise 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 05/02/2002 noted (supra), in which District Collectors have been directed inter alia to ensure that the conversions which are likely to render irrigation investments infructuous and large scale conversion for commercial purpose are not allowed.

18. If a property is included in the Data Bank or the Draft Data Bank prepared under the Wet Land Act, 2008 as a "Paddy Land" or "Wetland" and the classification of and is noted as "Nilam" in revenue records, the provisions of the Act 28/2008 would apply. As noticed earlier, there is ample provision within the Act to grant permission for such land for residential purpose or public purpose as defined in the Act. And as elaborated earlier, if the property is not included in the data Bank as "Paddy Land" or "Wetland" as defined under Act 28/2008, it is still governed by the provisions of KLU Order, 1967. Thus, State of Kerala has two Statutes - KLU Order, 1967 and Kerala Cultivation of Paddy Land and Wetland Act, 2008 each dealing with delineated areas with respect to preservation, management and process of reclamation of agricultural and paddy and for any other legitimate use."

6. The Hon''ble Supreme Court specifically found that if a Land does not come under the definition of the Act of 2008, then necessarily the power for deciding conversion or utilisation would rest on the authorities under the KLUO. It was in such circumstance that the Hon''ble Supreme Court also referred to the notification under the KLUO extracted in paragraph 11. For a land to fall under the definition of the Act of 2008, the same should have such description under the BTR and should be included in the draft data bank as prepared by the Local Level Monitoring Committee (LLMC), constituted under the Act of 2008. The preparation of the draft data bank is based not only on the BTR but also on the basis of the independent enquiry conducted by the LLMC as also based on the

satellite pictures as per Rule 4 of the Rules.

7. It cannot at all be found that what the Hon''ble Supreme Court intended was that only conversions as permissible in the notification could be permitted. True the notification speaks of permissions to be granted, for the asking, with respect to residential houses for individuals. It also discourages large scale conversions made for any purpose, including a commercial purpose and prohibits regularisation of conversions made without permission having been taken under the KLUO. What however essentially is to be examined, are the provisions in the KLUO and the notification can only be considered as a guideline issued to facilitate proper consideration of the applications filed under the KLUO. But for laying down broad parameters the notification cannot be found to govern or regulate the consideration under the KLUO.

8. The prohibition insofar as conversion or utilisation other than for cultivation of food crops is as indicated in Clause (6) of the KLUO, which reads as under:

6. Land cultivated with any food crop not to be cultivated with any other food crop.-- (1) No holder of any land, which has been under cultivation with any food crop for a continuous period of three years immediately before the commencement of this Order, shall convert or attempt to convert or utilise or attempt to utilise such land for the cultivation of any other food crop or for any other purpose except under and in accordance with the terms of a written permission given by the Collector.

[Explanation.--For the purpose of this sub-clause and sub-clause (2), removal of tree-growth, whether partial or total on any land cultivated with cardamom shall be deemed to be an attempt to convert or utilise such land for a purpose other than cultivation of cardamom

(2) No holder of any land who cultivates any land with any food crop for a continuous period of three years at any time after the commencement of this Order shall, after the said period of three years, convert or attempt to convert or utilise or attempt to utilise such land for the cultivation of any other food crop or for any other purpose except under and in accordance with the terms of a written permission given by the Collector:

[Provided that except in the case of lands under cardamom cultivation, no permission under sub-clause (1) or sub-clause (2), shall be necessary where the cultivation for which the land is converted or attempted to be converted or attempted to be converted or utilised or attempted to be utilised is paddy cultivation or fish culture:

Provided further that the lands under cultivation of paddy should not be converted or attempted to be converted or utilised or attempted to be utilised for fish culture permanently, but only seasonally].

9. A reading of the provision would indicate that an order for conversion or utilisation is required only if the subject land is found to have been cultivated

with any food crops for a continuous period of three years, immediately prior to the commencement of the KLUO, by sub-clause (i) and under sub-clause (ii); after commencement, for any consecutive period of three years. It cannot at all be said that there would be evidence available at this point of time that there had been a cultivation of food crop in a subject land prior to 1967. In instances where evidence is available, of cultivation for a continuous period of three years after the commencement of the KLUO, the same would have to be relied on by the authority, who asserts such cultivation having been carried out. In the writ petition under consideration admittedly, conversion was effected long prior and the convenor of the LLMC, being the Agricultural Officer, has reported to the District Collector that the property is one filled up prior to the Act of 2008. There is no evidence of any cultivation, in any consecutive period of three years, after the coming into force of KLUO.

10. Now the provisions of the Act of 2008 would also have to be examined. The prohibition on conversion of reclamation as per the Act of 2008, under Section 3, is only from the date of commencement of the Act of 2008. The power conferred on the District Collector to direct resumption under Section 13, of the Act of 2008, is also with respect to any conversions being carried on after the Act came into force. There is no dispute as to the date of enactment of the Act of 2008, which is 12/08/2008.

11. The subject land in WP (C) No. 16683 of 2015 though included in the data bank, is shown as converted land in the data bank and it is so even according to the report of the convenor of the LLMC produced at Ext. P3. In such circumstance, the Act of 2008 would not be applicable and the Collector cannot direct any resumption of the said land. However, in such circumstances, as laid down by the Hon"ble Supreme Court, the authority to order conversion or a different or changed utilisation would be an authority under the KLUO being the District Collector/RDO, acting under the provisions of KLUO.

12. Without any evidence as to any cultivation of food crops being carried on in a land for three consecutive years, if a land is described as "Nilam" in the BTR, but converted long back; is not permitted to be utilised for purpose other than agriculture, then there would be a stalemate, with respect to such land. A converted land, even going by the decision of the Hon"ble Supreme Court, would not be covered under the Act of 2008. Consequently the same has to be found to be one governed by the provisions of KLUO. Under the KLUO there could be no direction for resumption of the land to its original lie and nature. Nor could a direction to cultivate be made, which is permitted under the KLUO, for reason of there being no evidence of cultivation of food crops for three consecutive years.

13. There is no provision in the KLUO to resume the land to its original State. Clause (7) provides for a direction to cultivate such land with those food crops, which was cultivated in it. As was noticed earlier, there is no evidence as of now, to indicate the food crop, which was grown in the said land. More over though the description of the land is paddy land in the BTR, the competent authority as

per the Act of 2008 being the LLMC while preparing the draft data bank found that the same cannot be utilised for paddy cultivation.

14. A Division Bench of this Court in Praveen K. (supra) found that the description in the revenue records as "Nilam" is not conclusive to hold that the land is a paddy land and such question has to be adjudged on the basis of the materials on record and the factual position of the nature of land. A learned Single Judge following the aforesaid decision in Joseph John (supra) found that the RDO under Clause (6) of the KLUO, is enjoined upon to consider whether a land owner could be permitted to put a particular land for purposes other than paddy cultivation. Hence it is not the question of conversion alone that could be considered under the KLUO but the changed utilisation also.

15. The prohibition as is indicated in Clause (6) of the KLUO is insofar as converting or attempting to convert or utilising or attempting to utilise, such land which has been cultivated with a food crop for a continuous period of three years except under and in accordance with the written permission given by the District Collector. The permission is a mandate only if there is evidence of such cultivation. The written permission also could be either of conversion and utilisation or mere conversion or mere utilisation. The Division Bench decision of this Court in Sunil (supra) specifically referred to Clause (6) and found that the conversion or utilisation could even be for industrial purposes. The terms of the notification of 05/02/2002, hence cannot control the provisions of the KLUO.

16. In such circumstance, the authorities under the KLUO, going by the binding precedent of the Hon"ble Supreme Court, could deal with such properties not being paddy lands covered under the Act of 2008 and if they are found to be already converted could also permit a different utilisation of the land from the description as indicated in the BTR.

17. The decision of the Division Bench of this Court reported in Kizhakkambalam Grama Panchayat v. Mariumma 2015 (3) KHC 19 : 2015 (2) KLT 516 : 2015 (1) KLD 915 : 2015 (2) KLJ 861 also assumes significance in this context. Paragraphs 7 and 8 are extracted hereunder:

7. Reading of the above paragraphs of the judgment would show that if on the commencement of Act 28 of 2008, the land to which the Kerala Land Utilisation Order, 1967 applied is not included in the data bank irrespective of the ground realities, conversion of its status can only be based on an order passed by the competent authority under the Kerala Land Utilisation Order, 1967. It is also held that bye-passing the statutory authorities, the nature of the land cannot be changed or converted by directing changes in the Basic Tax Register which is maintained only for the purpose of land tax.

8. Insofar as this case is concerned, the admitted factual position is that though the lands of the respondents also were included in the draft data bank prepared under Section 5(4) of Act (Act 28 of 2008), on a consideration of Ext. P3 representation, the Local Level Monitoring Committee itself resolved to modify

the entries in the draft data bank and the entry has been modified into converted land. This, therefore, means that, as a result of the above development, Act 28 of 2008 is rendered inapplicable to the lands owned by the respondents. In such a situation, in the light of the principles laid down by the Apex Court in the judgment mentioned above, automatically the provisions of the Kerala Land Utilisation Order, 1967 would be applicable. Therefore, if the status of the lands are to be changed in the manner as sought for by the respondents, they will necessarily have to move the authorities under the Kerala Land Utilisation Order, 1967.

18. Hence on an order being issued by the authority under the KLUO for conversion and utilisation or for conversion alone or a different utilisation alone, the land owner could also approach the appropriate authority under the Kerala Land Tax Act, 1961 for reassessment of the land in accordance with the changed utilisation or conversion of the land. In such circumstance, Ext. P6 in WP (C) No. 16683 of 2015 would stand set aside. The 1st respondent is directed to reconsider the issue in accordance with the law declared herein above.

19. WP (C) Nos. 17203 of 2015, 17204 of 2015, 18304 of 2015, 18305 of 2015 and 18525 of 2015 are also with respect to lands which are included in the draft data bank for the respective areas but are shown as converted lands. The conversion indicated is also long prior to the Act of 2008. The petitioners therein have filed applications under Clause (6) of the KLUO which are produced at Ext. P6 in WP (C) Nos. 17203 of 2015, 17204 of 2015 and 18525 of 2015 and Ext. P2 in WP (C) No. 18304 of 2015, 18305 of 2015. The District Collector/RDO shall consider the same in accordance with the law declared herein above.

20. With respect to WP (C) No. 19262 of 2015, though similar to the aforesaid writ petitions, no proper application has been filed under Clause (6) of the KLUO. In the event of the petitioner submitting such an application, the same shall be considered in accordance with law and the observations made herein above.

21. WP (C) No. 14949 of 2015 is with respect to the stop memo issued by the Village Officer, challenged before the District Collector. The petitioner therein would contend that the petitioner was merely levelling the land to provide proper parking space and the land is in the middle of the town, near the bus stand and there is absolutely no possibility of any cultivation being carried on therein. The said land is not included in the draft data bank also. However the fact remains that in the BTR, the land is described as "Nilam". In such circumstance, the petitioner would have to make an application under the KLUO before the Sub Collector and on such application being made, the same shall be considered in accordance with law and in accordance with the observations made herein above. The consideration as directed herein shall be made as expeditiously as possible at any rate within a period of three months from the date of receipt of the certified copy of this judgment, in case where the application under Clause (6) of the KLUO is pending with the authorities, after verifying the nature of the land as noticed in the draft data bank and if necessary after physical inspection.

The writ petitions are disposed of.