(2015) 02 KL CK 0217

In the High Court Of Kerala

Case No : Writ Petition (C). No. 29211 of 2014 (B)

Bindu Sasikumar APPELLANT

Vs

The Tahsildar, Devikulam Taluk and Others RESPONDENT

Date of Decision : 11-02-2015

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

Citation : (2015) 02 KL CK 0217

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

Bench : Single Bench

Advocate : M.H. Hanil Kumar and M.R. Dhanil, for the Appellant; P.K. Soyuz, Spl. Government Pleader, Advocates for the Respondent

Final Decision : Disposed off

Judgement

P.R. Ramachandra Menon, J—The alleged callous inaction on the part of the concerned respondent, in causing Ext.P7 application preferred by the petitioner, for correcting the BTR in the light of Ext.P8 report, submitted by the Village Officer, made the petitioner to approach this Court by filing the writ petition.

2. The property concerned herein, having an extent of 2.50 Acres is situated in Marayoor Village of Devikulam Taluk. In Ext.P1 ''Patta'' issued by the 1st respondent as early as on 14.01.1970, the nature of the property has been shown as ''dry land''. Existence of as many as 21 ''sandal wood'' trees is also discernible from the schedule incorporated in the ''Patta''. The above property was purchased by the father of the petitioner as per Ext.P2 Sale Deed executed on 23.04.1974 before the S.R.O., Devikulam for valuable sale consideration. Pursuant to the demise of the father of the petitioner, the property was subjected to partition vide Ext.P3 dated 28.10.1998 and the same came to the hands of the petitioner, to the extent as the present case is involved. Ext.P4 is a copy of the Encumbrance-Free Certificate of the property, while Ext.P5 is the Ownership/ Residential Certificate issued by the concerned Panchayat and Ext.P6 is the Location Sketch issued by the 2nd respondent. It is stated that, a building is also

situated in the property and quite a lot of improvements are there.

3. Pursuant to the resurvey effected a few decades back, the property came to be shown as ''nilam'' in the BTR, which hence was sought to be corrected by the petitioner by submitting Ext.P7. It is stated that the property concerned is not a ''paddy land'' or ''wet land'' as defined under Section 2(xii) or 2(xviii) of Act 28 of 2008 and that the same is not included in the Data Bank Register. The factual position was sought to be enquired into by the Village Officer, who submitted Ext.P8 report, certifying the colour and characteristics of the property concerned, which fully supports the case of the petitioner, with specific recommendations as contained in the last paragraph. The Agricultural Officer has also certified the nature of the property vide Ext.P9, to the effect that it is not a ''paddy land'' or ''wet land'' and that no cultivation is there. The physical position of the property is further substantiated with reference to Ext.P10 photographs, which reveal that the property is situated on the side of a tarred road, which is stated as the Main Road leading from Marayur to Kanthallur.

4. The first respondent has filed a Counter Affidavit to the effect that the property was converted about ''five years'' prior to the commencement of Act 28 of 2008 and that a building is situated in the property as per the entry in the draft Data Bank Register. It is however pointed out that, the land was converted without obtaining permission of the concerned authority under the Kerala Land Utilisation Order, 1967. The inability of the concerned authorities of the Revenue to effect the correction of the BTR for want of specific provision is also adverted to, simultaneously pointing out that the issue is pending consideration before the Apex Court, by way of S.L.P.(C) No. 3172 of 2014.

5. Heard both the sides in detail.

6. The learned counsel for the petitioner points out that BTR is maintained in terms of Rule 4 of the Kerala Land Tax Rules and that any mistake in the BTR could be corrected by invoking the power and procedure under Section 18 of the Kerala Land Tax Act. The competent authority to effect the correction is the Tahsildar, fixing the position of the Appellate and Revisional Authorities as the District Collector and Commissioner for Land Revenue respectively. The contention of the respondents while challenging the verdict passed by the 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 was that Section 18 of the Kerala Land Tax Act is only having a limited application and that the same does not deal with the power to effect correction in the BTR. The said contention was turned by the 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 , which however is stated as pending consideration before the Apex Court.

7. After hearing both the sides, this Court finds that the petitioner is entitled to succeed. Even if the power to effect correction in the BTR is not actually flowing

from Section 18 of the Kerala Land Tax Act, it has to be effected by the competent authority of the Revenue, based on the declaration effected by the Court in this regard, as per the decision cited supra. It is true that the matter is pending consideration before the Apex Court by way of S.L.P.(C) No. 3172 of 2014, but no interim order of stay is stated as granted.

8. In the said circumstances, there will be a declaration that the property concerned herein is a reclaimed land not covered by Act 28 of 2008. The 1st respondent is directed to cause necessary correction of the physical position of the property in the BTR, as shown in Exts.P1 to P3 title deeds and Exts.P8 and P9 reports submitted by the Village Officer and concerned Agricultural Officer. This shall be done at the earliest, at any rate, within ''one month'' from the date of receipt of a copy of this judgment. It is made clear that, this however shall be subject to the verdict to be passed by the Apex Court in the matter, which is stated as pending consideration, involving similar issue.

Petitioner shall produce a copy of this judgment, along with a copy of the writ petition, before the 1st respondent, for further steps.

The writ petition is disposed of.

