
(2015) 03 KL CK 0301

In the High Court Of Kerala

Case No : Writ Petition (C). No. 22649 of 2014 (E)

George

APPELLANT

Vs

Revenue Divisional Officer and Others

RESPONDENT

Date of Decision : 05-03-2015

Acts Referred:

Citation : (2015) 03 KL CK 0301

Hon'ble Judges : K. Harilal, J

Bench : Single Bench

Advocate : B.N. Shiv Shanker, for the Appellant; P.K. Soyuz, Spl. Govt. Pleader, Advocates for the Respondent

Final Decision : Disposed off

Judgement

K. Harilal, J—The petitioner is the owner in possession of a property covered by Ext. P1 series. In the Thandaper Register the said property is shown as Nilam. On 10/3/2014 the petitioner made Ext. P5 application before the 1st respondent for inclusion of the property as dry land in the data bank and the same was sent to the 2nd respondent for enquiry. The 2nd respondent reported the true facts and status that the respondents 3 and 4 can issue an order for correction in the Basic Tax Register (BTR). According to the petitioner, the prohibition under the Conservation of Paddy Land Act Wet Land Act, 2008 (for short, the "Act") does not apply to the instant case as the same clearly prohibits conversion after the commencement of the Act and it does not apply to land which had already been converted prior to the appointed day, i.e. 12/8/2008. In short, the Act has prospective operation with effect from 12/8/2008 only. The grievance of the petitioner is that the inclusion of the petitioner's property as wet land in the BTR in spite of the fact that more than 50 years back the land in question was filled up and converted to dry land and planted coconut trees, mahagony trees etc.

2. Heard the learned counsel for the petitioner and the learned Government Pleader. The learned counsel for the petitioner submits that though Ext. P6 clearly shows that the petitioner's land had been converted to purayidam more

than 50 years ago, the respondents are not willing to correct the BTR in accordance with the present lie of the land. The learned counsel drew my attention to Ext. P2 report wherein the Village Officer has specifically stated that the petitioner's property had been converted 40 years back and now coconut trees and other trees having more than 30 years old are standing in the said property.

3. Going by the grievance projected in this writ petition it is seen that the issue involved herein is the common issue which was considered by this Court in *Shahanaz Shukkoor Vs. Chelannur Grama Panchayat*, (2009) 3 KLT 899 , *Jafarkhan v. K.A. Kochumakkar and Others* [2012 (1) KLT 491] , *Pareed Salim Vs. State of Kerala*, (2012) 4 KLJ 426 : (2012) 4 KLT 211 and *Aishabeevi Vs. Superintendent of Police*, (2014) 3 KHC 678 : (2014) 4 KLJ 58 : (2014) 3 KLT 1078 . According to the proposition laid down in the above decisions, the suitability of the paddy land is a factual issue, which requires to be decided on the basis of the ground reality existing and no inference can be drawn on the basis of BTR alone, without considering the actual lie of the land. In the instant case, going by Ext. P6, the Village Officer has reported that the land in question was converted 40 years ago and coconut trees having more than 40 years age are standing in the said property. In short, the Village Officer has reported that at present, the property is lying as a garden land. From Ext. P6 no inference can be drawn that the said property was converted after the commencement of the Act. Needless to say, the Act has prospective operation only and no inference could be drawn otherwise.

4. In the above view of the matter, the petitioner is entitled to get the BTR corrected in accordance with the ground reality existing as regards the present lie of the land. Hence, the respondents are directed to make necessary corrections in the BTR in accordance with Ext. P6 report filed by the Village Officer, within a period of two months from today and it is made clear that this order will be subject to the result in S.L.P(C) No. 3172 of 2014 of the Supreme Court.

This writ petition is disposed of accordingly.