(2012) 07 KL CK 0290

In the High Court Of Kerala

Case No : Writ Petition (C) No. 11784 of 2012

Jalaja Dileep APPELLANT

Vs

Revenue Divisional Officer and others RESPONDENT

Date of Decision : 13-07-2012

Acts Referred:
Kerala Land Tax Act, 1961 — Section 18, 6, 6(2)

Citation : (2012) 3 ILR (Ker) 601 : (2012) 3 KLJ 342 : (2012) 3 KLT 333

Hon'ble Judges : T.R. Ramachandran Nair, J

Bench : Single Bench

Advocate : V.P. Seemandini, Sri M.R. Anison, Smt. K.P. Geetha Mani, Smt. P.A. Rinusa and Smt. Annie Jacob, for the Appellant; K.C. Vincent, (Government Pleader) for respondents 1 to 3 and Sri Rajesh S. Subrahmanian, (S.C., Kochi Corporation for 4th respondent, for the Respondent

Final Decision : Allowed

Judgement

Mr. Justice T.R. Ramachandran Nair

1. The Writ Petition is filed by the petitioner mainly seeking for a direction to respondents 1 to 3 to effect necessary correction in the Basic Tax Register based on Exts. P-5 to P-7 certificates showing the property covered by Ext. P-1 title deed, by deleting the words ''Wet Land''. The circumstances under which the writ petition is filed, are the following: The petitioner is the joint owner of an extent of 12.286 cents of land comprised in Survey No. 330/3 of Elamkulam Village in Emakulam District. The petitioner''s mother-in-law, late Smt. Meera Ben purchased the said property as per Ext. P-1 sale deed of the year 1972. She died on 12-3-1994 leaving behind her husband Shri Ramakrishnan, son Shri K.R. Dileep and daughter Smt. Devika. Both Shri Ramakrishnan and Shri Dileep are no more. The petitioner is the legally wedded wife of Shri K.R. Dileep. The property has been mutated in the name of the legal heirs of late Meera Ben including the petitioner and Ext. P-2 is the true copy of the tax receipt showing payment of property tax. Ext. P-3 is the copy of the possession certificate issued

by the Village Officer.

2. The petitioner points out that the property is a dry land situated in a thickly populated residential area. But it is described wrongly as wet land (nilam) in Ext. P-1 title deed. It was never used for any agricultural purposes during the lifetime of late Meera Ben and actually she wanted to construct a house in the property. Ext. P-4 is the relevant page of Basic Tax Register issued by the Village Officer wherein also the property is shown as ''nilam''. On the basis of the application submitted by the petitioner a certificate was issued by the Village Officer as per Ext. P-5 showing the true nature of the property wherein it is reported that it is actually a dry land. Ext. P-6 is the certificate issued by the Agricultural Officer after conducting a local enquiry which also confirmed the same and Ext. P-7 is the further certificate issued by the Village Officer showing that the property is a dry land.

3. In the light of the urgent need to sell the property to meet the demands of the two minor children, the petitioner filed O.P. (Guardian) No. 1083/2011 before the District Court, Ernakulam and by Ext. P-8 order, the petitioner is permitted to sell the property on behalf of the minors. Thereafter, Ext. P-9 agreement for sale has been executed wherein the value has been fixed treating the property as dry land. The proposed buyer is insisting for an order converting the entry in the BTR as dry land before registering the sale deed.

4. Heard learned Senior Counsel for the petitioner and learned Government Pleader.

5. The third respondent has filed a statement as directed by this Court. It is stated therein that the entries in the BTR shows that the property is a paddy land. It is stated that the third respondent has personally inspected the property and seen that the land is presently filled and not fit for paddy cultivation. Though the nearby lands are kept vacant, no paddy cultivation is done there. While inspecting for the preparation of data bank for Conservation of Paddy and Wet Land Act, 2008 it is recorded as filled land but data bank is not yet finally published. It is further stated that since in the BTR it is shown as nilam, the third respondent cannot reclassify it as purayidam or dry land.

6. Learned Senior Counsel for the petitioner submitted that the property was not remaining as a paddy land even at the time of purchase of the same. It is situated within the Corporation area. There is no paddy cultivation in the nearby plots. The provisions of the Conservation of Paddy Land and Wet Land Act will not be applicable as it was converted long prior to the coming into force of the said Act. My attention was invited to the certificates produced and it is submitted that necessary entries in the BTR will have to be corrected.

7. Various provisions of the Land Tax Act as well as the Kerala Village Manual have been referred to. Reliance is also placed on the following decisions of this Court, viz. Shahanaz Shukkoor Vs. Chelannur Grama Panchayat, , Praveen v. Land Revenue Commissioner 2010 (2) KLT 617, Jafarkhan v. Kochumarakkar

2012 (1) KLT 491 and Mohammed Abdul Bahsheer v. State of Kerala 2012 (3) KLT 86.

8. A reading of the certificates produced in the writ petition will show the true nature of the property and evidently it is a dry land itself. In Ext. P-5 certificate issued by the Village Officer, it is shown that the property is classified as ''nilam'' in the BTR, but it now remains as a reclaimed purayidam. In Ext. P-6 it is certified that the land is recorded as converted land in the paddy-wet land survey records in Elamkulam Village, given to the Secretary of the concerned Corporation for gazette notification. The conversion was prior to 2008. Further details are clear from Ext. P-7 certificate of the Village Officer. It is recorded therein that the property remained as reclaimed purayidam prior to the coming into force of the Kerala Conservation of Paddy and Wet Land Act and remains as such even now. The said certificate is issued in terms of Section 12 of the said Act.

9. Therefore, as regards the true nature of the land there cannot be any dispute. The question therefore is whether merely because in the title deed and in the BTR the property is described as ''nilam'', it will deprive the petitioner, of the reliefs sought for in the writ petition.

10. The issue whether mere description of the property as ''nilam'' in the revenue records will be the crucial one, was considered by this Court in Shahanaz Shukkoor Vs. Chelannur Grama Panchayat, . The findings therein are significant as tar as the facts of this case are concerned. Therein, in para 3 this Court held as follows:

Not only that, the mere description of an item of property as ''Nilam'' (paddy field) or wet land, in the revenue records, is insufficient to assume that the land cannot be used for any purpose other than those for which a paddy field or wet land can be used. This is because the Kerala Conservation of Paddy Land and Wet Land Act. 2008. deals with the conversion of lands, which are wet land or paddy fields, on the basis of the actual fact situation and not depending on the description of the property in the revenue records. The definition of the terms ''paddy field'' and ''wet land'' in the said Act is sufficient material to hold that the said statute operates on the basis of the facts as they exist on ground realities and not on any quality or type of land, depending on its description in the title document.

Therefore, the provisions of the said Act will have application on the basis of the actual fact situation and it is not depended on the description of the property in the revenue records.

11. In Praveen''s case 2010 (2) KLT 617, the above dictum was considered. It was held that the application of the Act is confined to paddy land and wet land alone.

12. In a recent decision of a Division Bench of this Court in Jafarkhan''s case

2012 (1) KLT 491, it was held that "whatever be the conversion of paddy land or wet land made prior to the coming into force of the Act, cannot be said to be a violation of the Act". The relevant findings are contained in para 4 which are extracted below:

What is clear from the above is that prohibition is only in respect of conversion or reclamation of paddy land after the commencement of the operation of the Act. The Act admittedly came into force only with effect from 12-S-2008 and so much so, whatever be the conversions of paddy land or wet land made prior to the coming into force of this Act, cannot be said to be a violation of the Act. S. 13 of the Act authorises the District Collector to order reconversion of paddy land and wet land which is converted in violation of the provisions of the Act...

13. All the above decisions were considered in Mohammed Abdul Basheer''s case 2012 (3) KLT 86 and in para 4 the legal position was reiterated as follows:

If the land in question was converted prior to the enactment of the Kerala Conservation of Paddy Land and Wet Land Act, 2008, the property in question cannot be described as ''paddy field'' or ''wet land'' coming within the purview of the said Act. The question regarding grant of building permit need be decided taking into consideration of the ground reality existing.

14. Therefore, it is clear that the description in the title deed or in the revenue records will not be crucial in such cases where the fact situation show that the property is reclaimed already, like the one herein. Hence, the provisions of the Conservation of Paddy Land and Wet Land Act will not come in the way of reclassification of the same as dry land in the revenue records. In fact, in paragraph 20 of the decision in Praveen''s case 2010 (2) KLT 617 the Division Bench considered a similar case where the property was shown as single crop land (even though all the authorities reported that it was remaining as a garden land for more than fifty years and trees of fifty years old are also seen there). The Bench was of the view that Act 28 of 2008 applies only to paddy land and wet land and in the nature of the materials placed on record and after perusing the same, the Bench was satisfied that the land in question is not a land where there is any food crop nor is it a paddy field as defined under Act 28 of 2008. Accordingly, a declaration was granted that the land is not covered either by the provisions of the Kerala Land Utilisation Order or Act 28/2008.

15. Similar is the position here. The various certificates mentioned already will show that the land is remaining as purayidam for a long period. Therefore, it is not a paddy field coming within the purview of Act 28/2008 and it is declared so. There is no other food crop also. Therefore, the Kerala Land Utilisation Order also will not apply.

16. What remains is the plea of the petitioner to direct the authorities to correct the BTR and issue appropriate proceedings to the petitioner. The relevant provisions of the Kerala Land Tax Act will have application here. Section 3(7) of the Act defines the "prescribed authority" which means "the authority appointed

by the Government by notification in the Gazette to perform the functions of the prescribed authority under this Act". Rule 2 (iv) also provides that "prescribed authority" means the authority appointed u/s 3(7) of the Act.

17. Section 6(2) confers power on the Prescribed Authority to fix the liability to pay basic tax in respect of the circumstances pointed out therein. Section 18 is under the heading "Rectification of mistakes" and the said provision reads as follows:

18. Rectification of mistakes.-- At any time within four years from the date of any order passed by it the prescribed authority or the appellate authority or the revisional authority may, on its own motion, rectify any mistake apparent from the record and shall, within a like period, rectify any such mistake which has been brought to the notice of the prescribed authority or the appellate authority or the revisional authority, as the case may be, by a landholder or other person liable to pay tax.

Therefore, the power is conferred on the prescribed authority, the appellate authority or the revisional authority to rectify any mistake on the records. Rules 5(i) and (ii) of the rules are relevant in this context to understand the scheme which are extracted below:

(i) The application for fixation of the rate of basic tax under sub-section (2) of section 6 shall be presented by the landholder or any other person liable to pay basic tax to the prescribed authority having jurisdiction over the Taluk in which the land is situate. If the rate of basic tax is to be fixed for lands in more than one talok held by the same person separate applications shall be presented to the prescribed authorities concerned.

(ii) Application for fixation of the rate of basic tax u/s 6(2) shall be in Form A.

The application therefore will have to be submitted in Form ''A'' and a reference to Form ''A'' clearly shows that the nature of the land will have to be shown as "wet, dry, garden or parambu". Therefore, such details regarding the classification will have to be incorporated therein. Under Rule 6(i), on receipt of an application under Rule 5, the prescribed authority shall cause the application to be verified by the Village Officer. Sub-rules (ii) and (iii) of Rule 6 provides as follows:

(ii) The Village Officer shall verify the details in the application with reference to the revenue records and by local inspection and enquiry and shall submit his report within 30 days of the receipt of the application in the Village Office.

(iii) The prescribed authority shall thereupon cause the verification report submitted by the Village Officer on the application under Rule 5 to be checked by the Firka Revenue Inspector, the Deputy Tahsildar or by himself.

Therefore, the nature of the land plays a crucial role in fixing the basic tax. Therefore, classification of the same, is to be incorporated.

18. The next important Form is Form B, viz. Provisional Notice of Demand. Therein, details of land will have to be entered and item 6 to be shown is "classification of land". Form C relates to Notice of Final Assessment and Demand u/s 6A(4) of the Act and therein also item 6 is "classification of land".

19. As per notifications Nos. 29080/B3/68/RD, dated 28-8-1968 published under SRO No. 65/73 dated 5-1-1973 and 22381/B3/69/RD, dated 16-3-1970 published as SRO No. 119/70, the Government has appointed the Taluk Tahsildars as the authority for performing the functions of the Prescribed Authority under the said Act in his Taluk. These notifications are issued u/s 7(3) of the Act.

20. Therefore, going by Section 6 of the Act read with Rule 5(i) of the Rules and the notifications, it can be seen that the prescribed authority in this case is the Tahsildar who is having jurisdiction of the taluk in which the land is situated. These provisions were heavily relied upon by the learned Senior Counsel for the petitioner to submit that the entry in the BTR with regard to the classification, can be directed to be corrected by the Tahsildar concerned.

21. My attention was also invited to Chapter 13 of the Kerala Village Manual to show that BTR will contain the classification of the land itself. Chapter 13 provides for maintenance of various Village Registers and Accounts and item 277(2) is Basic Tax Register. The same is extracted below:

Therefore, it is clear that the details to be recorded in the BTR include classification of the land, extent and other details.

22. As already noticed, the petitioner has obtained the relevant page of the BTR, Ext. P-4, wherein column 5 shows the classification of the land as ''nilam'' But in the light of the factual situation the property remains as ''reclaimed purayidam'' and therefore the classification will have to be accordingly corrected. It is therefore declared that the property of the petitioner will have to be classified as ''reclaimed purayidam'' (dry land) in the Basic Tax Register. There will be a direction to respondents 2 and 3 to effect appropriate correction in the Basic Tax Register in terms of the above declaration, within a period of two weeks from the date of production of a copy of this judgment by the petitioner and the petitioner will be issued, on application, a corrected copy of the relevant page of the Basic Tax Register. The relevant and corresponding entries in the revenue records will also be accordingly corrected. The petitioner will produce a certified copy of this judgment for compliance.

The writ petition is allowed as above. No costs.

