
(2015) 04 KL CK 0100

In the High Court Of Kerala

Case No : Writ Petition (C). No. 12014 of 2015 (B)

Jameela

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 09-04-2015

Acts Referred:

Kerala Land Tax Act, 1961 — Section 18

Citation : (2015) 04 KL CK 0100

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

Bench : Single Bench

Advocate : Renjith Thampan, Senior Advocate and P.R. Reena, for the Appellant; K.C. Vincent, Sr. Government Pleader, Advocates for the Respondent

Final Decision : Allowed

Judgement

P.R. Ramachandra Menon, J—Petitioner is the co-owner of the properties having an extent of 9 Ares 31 square metre in Re.Sy. No. 7/19, old Sy. No. 165/5 and 170 of Eranellur Village and 1 Are 42 square metre in Re.Sy. No. 7/11, old Sy. No. 169/1 and 18 Are 17 square metre in Re.Sy. No. 7/12 old Sy. No. 170 totaling to 29 Ares 43 square metre 73 cents covered by Ext. P1 title deed. It is not a paddy land or wet land coming within the purview of Act 28/2008. The said factum is sought to be established with reference to Ext. P2 series photographs and Ext. P3 final Data Bank Register, wherein the petitioner's property is not included as "paddy land". It was in the said circumstance, that the petitioner had approached this Court by filing WP(C) No. 16547/2013 seeking for correction in the "BTR", which was disposed of as per Ext. P4 judgment dated 14.08.2013.

2. Without considering the grievance in a proper manner, the petitioner's request was rejected as per Ext. P5 order dated 11.11.2013 by the 3rd respondent. This made the petitioner to approach this Court again, by filing WP(C) No. 30447/2013. The said case was disposed of as per Ext. P6 judgment dated 17.12.2013 after settling aside the impugned order and directing the District Collector to reconsider the matter in the light of the law declared by this Court in

Praveen Vs. Land Revenue Commissioner, (2010) 2 KLJ 617 giving other appropriate directions ie, to have the application preferred by the petitioner for considering the prayer of the petitioner to permit him to make use of the property for other purpose than agricultural purpose, in terms of Clause 6 of the KLU Order. Pursuant to the said verdict, Ext. P7 order was passed by the District Collector on 06.06.2014 declining to grant the relief. This in turn was subjected to challenge by filing WP(C) No. 28537/2014. A specific observation was made by this Court in paragraph 2 of the verdict that, it was a fit case for granting permission under Clause 6 of the KLU Order and accordingly, the District Collector was directed to finalise the proceedings within the specified time. The impugned order passed by the District Collector was set aside, so as to facilitate such exercise. A fresh application was filed by the petitioner, as borne by Ext. P9, before the District Collector under Clause 6(2) of the KLU as directed in Ext. P8 judgment. The same was considered and the District Collector rejected the same again, as per Ext. P10 order dated 07.01.2015. Correctness and sustainability of the said order is under challenge in this writ petition, placing reliance on the verdicts already passed by this Court at different points of time, including Exts. P11 & P12.

3. Heard the learned Government Pleader as well.

4. There is no dispute with regard to the physical nature of the property concerned; particularly that it is not a paddy land or wetland as defined under Section 2(xii) or 2(xviii) of the Act 28/2008 and that the same is not included in the Data Bank Register. The rights and liberties of the parties, to have correction in the BTR, has now become final by virtue of the declaration of the law as per the decision of the Apex Court in Revenue Divisional Officer Fort and Others Vs. Jalaja Dileep and Others(2015) 3 AD 631 : (2015) 3 SCALE 323 to the effect that, classification cannot be changed in the BTR. But some specific observations have been made by the Apex Court as to the rights and liberties of the parties concerned in respect of the properties which were converted prior to the commencement of the Act. The observations as contained in paragraph 17 & 21 are in the following terms.

"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(sic Act 28) of 2008 and the classification of land is noted as "Nilam" in the revenue records, the provision of Kerala Land Utilization Order 1967 will be applicable to such land and the Collector as defined in Clause 2(a) of K.L.U. Order 1967 has the power to grant permission to utilize the land for other purposes. As stated in Clause 2(a) of K.L.U. Order, Collectors shall examine such request for residential purpose, on merits on a case to case

basis. However, with a view to prevent indiscriminate filing of Paddy Lands in the State, the Government have also prescribed certain restrictions in the Notification dated 5.2.2002 noted (supra), in which District Collectors have been directed inter alia to ensure that conversions which are likely to render irrigation investments infructuous and large scale conversion for commercial purpose are not allowed.

21. Statutory enquiry to ascertain whether the land is a "Paddy Land" or "Wetland" and conversion of the land for residential purpose or for any public purpose is governed by K.L.U. Order or the Kerala Wetland Act, 2008 for conversion of the land from "Nilam" (Wetland) to "Purayidam" (Dry Land). The concerned authorities constituted under K.L.U. Order or Kerala Wetland Act 2008 are the competent authority. 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. The rectification envisaged by Section 18 of the Kerala Land Tax Act can only be in respect of arithmetical or clerical error, that too in the order of determining the tax due. Section 18 cannot be made use or the same cannot be taken as a means to effect conversion of the nature of the land by-passing the competent authority and the procedure stipulated under the K.L.U. Order, 1967 and the Kerala Wetland Act, 2008 and the impugned judgment is liable to be set aside."

The Apex Court has made it clear that, in the case of such persons, relief can be given under Clause 6(2) of the KLU Order and that such persons can make use of the same and utilise the property for other appropriate purpose.

5. It is seen that the petitioner has been submitting applications under Clause 6(2) of the KLU Order at different points of time and it has been repeatedly dismissed by the District Collector, in spite of the specific observation given by this Court vide Ext. P8 judgment, that was a fit case to have granted the relief under Clause 6(2) of the KLU Order. The course and proceedings pursued by the District Collector cannot but be deprecated in the strongest possible words. This Court does not intend to express anything further, in so far as the District Collector has not been impleaded in the personal capacity.

6. After hearing both the sides, this Court holds that the petitioner is entitled to have the benefit of Clause 6(2) of the KLU Order, with reference to the nature of the property, which is not a paddy land or wet land and that the petitioner must be permitted to make use of the land for other purpose than agricultural purpose. The matter has not been dealt with by the District Collector with proper application of mind. The course pursued by the District Collector is totally alien to the scheme of the statute, which cannot be supported by this Court. As such, the order is set aside. Although it is a fit case where exemplary cost is to be ordered, for the time being, this Court reluctantly refrains from mulcting any liability in this regard, based on the persuasive submissions made by the learned Senior Government Pleader.

7. The writ petition stands allowed. The District Collector is directed to cause necessary changes in the relevant records as to the sanction given to the petitioner to make use of the property for other purpose than agricultural purpose in terms of Clause 6(2) of the KLU Order. It 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 brought to the notice of this Court that in the fair value register, nature of the land is shown as wet land and only a nominal land value has been shown therein. By virtue of the change in circumstance, it is necessary to effect appropriate corrections in the fair value register as well, showing appropriate value in accordance with law. The concerned respondent is permitted to effect necessary corrections in this regard.