(2022) 03 KL CK 0152

In the High Court Of Kerala

Case No : Writ Petition (C) No. 8998 Of 2018

K.K.Zachariah — APPELLANT

Vs

Kollam Municipality Represented By Its Secretary, Kollam District 691001 — RESPONDENT

Date of Decision : 17-03-2022

Acts Referred:
Kerala Conservation of Paddy Land and Wetland Act, 2008 — Section 27A

Citation : (2022) 03 KL CK 0152

Hon'ble Judges : T.R.Ravi, J

Bench : Single Bench

Advocate : T.R.Harikumar, Arjun Raghavan, Adithya Rajeev, T.H.Vishnu, M.K.Chandramohan Das, B.S.Syamanthak

Final Decision : Allowed

Judgement

T.R.Ravi, J

1. An extent of 27.65 Ares of land in Re.Sy.No.836/4 and 836/19 in Block No.15 of Kilikollur Village in Kollam Taluk originally belonged to M/s.Surya Oil Industries Pvt.Ltd. (hereinafter referred to as 'the Company'). In Ext.P3 extract of the Thandapper Register, issued on 26.4.2000, the property has been described as 'purayidam'. That was much before the coming into force of the Kerala Conservation of Paddy Land and Wetland Act, 2008 (hereinafter referred to as the '2008 Act'). The above properties were brought to sale under the Revenue Recovery Act for realisation of sales tax arrears of the Company as per Ext.P1 sale notice dated 21.10.2004. Ext.P1 also shows the property as 'purayidam'. Ext.P1 was followed by Ext.P2 sale deed executed in favour of the petitioner on 3.1.2008 which again refers the property as 'purayidam'.

2. The petitioner had placed a query before the Convener of the 2nd respondent to which he got Ext.P5 reply that the property has not been included as 'nilam' in the draft data bank. The petitioner came to know that the property has been

described as paddy land in the basic tax register. The petitioner therefore requested the Sub Collector, Kollam to change the description as 'purayidam'. It was pointed out that the property was shown as 'purayidam' even before the sale to the petitioner and has been referred to as dry land in the concerned documents. It is also pointed out that adjoining properties in the very same survey number are also shown as 'purayidam'. The 4th respondent conducted a site inspection in the property and was convinced that there are no agricultural activities being carried out in the property or in the nearby properties. The mahazar along with the location sketch dated 2.8.2017 prepared by the Village Officer has been produced as Ext.P7. The 4th respondent addressed the 5th respondent pointing out that in almost all the documents, the property is described as 'purayidam' and copies of the relevant pages of the Thandapper Register, Basic Tax Register, mahazar, location sketch and the application were also forwarded for appropriate action. When no action was being taken, the petitioner approached this Court praying for a direction to respondents 6 to 8 to consider Ext.P6 application and to correct the entry in the Basic Tax Register pertaining to the petitioner's property comprised in Re.Sy.No.836/4 and 836/19 in Kilikollur Village in Kollam Taluk as 'purayidam' instead of 'nilam'.

3. A statement has been filed on behalf of the 6th respondent. It is stated that the description of the land in the title deed cannot be termed as the final word regarding the classification. Annexure R6(a) extract of the Basic Tax Register is produced to show that the property is shown as 'nilam'. It is further stated that the petitioner must take recourse to the provisions of Section 27A of the 2008 Act to change the classification of the land from 'nilam' to 'purayidam'. It is further submitted that Ext.P6 application cannot be entertained by the Sub Collector, since he is not the authority to correct the Basic Tax Register. The statement also says that the petitioner may file an application in Form 9 and satisfy the authorities that the land had been filled up prior to the commencement of the Kerala Land Utilisation Order, 1967.

4. I have heard the learned counsel for the petitioner and respondents.

5. To say the least, the stand taken by the official respondents is uncharitable. The petitioner had participated in a sale initiated at the instance of the State Government under the provisions of the Kerala Revenue Recovery Act for recovery of sales tax arrears of M/s.Surya Oil Industries Pvt. Ltd. The sale was notified showing the property as 'purayidam'. Value of the property has been determined as if it is the value of a 'purayidam'. It is pursuant to the declarations made in Ext.P1 that the petitioner participated in the auction and became the successful bidder. Ext.P2 is the sale deed executed in favour of the petitioner, which shows that more than Rs.1.5 lakhs has also been expended by the petitioner towards stamp duty which again is a payment made to the State Government. The relevant page of the Thandapper Register shows the property as 'purayidam'. It was apparently for this reason that the property had not been included in the data bank as can be seen from Ext.P5 letter from the concerned

Agricultural Officer. The 2008 Act itself came into force four years after the sale in favour of the petitioner and the respondents cannot be heard to say that the petitioner should now prefer an application under Section 27A of the 2008 Act which was brought into force much later, in 2017. It is relevant to note that in Ext.P7 mahazar, it has been specifically noted that the property is refilled land and it has bearing coconut trees, a sandal wood tree of about 15 years age, anjily tree of 15 years age and several other trees of more than 20 years age. The sale itself was for the sales tax arrears of a company which was functioning in the property from 1978 onwards. It cannot be contended that an order for conversion or utilization for other purposes is required under the Kerala Land Utilisation order in such cases where there is no finding that the land was cultivated with any food crops for a continuous period of three years. (See Puthan Purakkal Joseph v. Sub Collector reported in [2015 (3) KLT 182], Shivadasan v. Revenue Divisional Officer reported in [2017 (3) KLT 822]. This is not a case where the petitioner is seeking to change the physical nature of land. In such circumstances, I am inclined to accept the contentions of the writ petitioner and allow the writ petition.

6. In the result, the writ petition is allowed. Respondents 6 to 8 are directed to consider Ext.P6 application submitted by the petitioner and correct the entry in the Basic Tax Register pertaining to the property in Re.Sy.No.836/4 and 836/19 in Kilikollur Village in Kollam Taluk as 'purayidam' instead of 'nilam'. Necessary orders shall be issued within one month from the date of receipt of a certified copy of this judgment. Needless to say, the petitioner shall be entitled to carry out construction activities in the properties after obtaining necessary permits required under law on the basis of the declaration that the property is a 'purayidam' and not 'nilam'.

