
(2021) 03 KL CK 0377
In the High Court Of Kerala
Case No : Writ Appeal No. 435 Of 2021

State Of Kerala

APPELLANT

Vs

Meena Nair And Ors

RESPONDENT

Date of Decision : 30-03-2021

Acts Referred:

Kerala Conservation Of Paddy And Wetland Act, 2008 — Section 27(A)
Kerala Land Tax Act, 1961 — Section 6(A)

Citation : (2021) 03 KL CK 0377

Hon'ble Judges : S. Manikumar, CJ;Shaji P. Chaly, J

Bench : Division Bench

Advocate : K. Janardhana Shenoy

Final Decision : Dismissed

Judgement

Shaji P. Chaly, J

1. The captioned writ appeal is preferred by the State of Kerala- the first respondent in the writ petition challenging the judgment of the learned single Judge dated 28.10.2019 in W.P.(C) No. 5874 of 2019.

2. The subject matter of consideration in the writ petition was in regard to a property situated within the Giri Nagar Housing Colony, which is a residential colony situated within the heart of the Kochi city and which is described as 'Nilam' in Ext. P2 title deed as well as in the revenue records. As per the provisions of the Kerala Conservation of Paddy and Wetland Act, 2008 ('Act, 2008' for short), especially Section 27A thereto introduced with effect from 30.12.2017, if any property which is included in the Basic Tax Register maintained by the Revenue Department is shown as a paddy field and if it is not notified under the provisions of the Act, 2008 including in the data bank, an owner of a property can apply under the provisions of Section 27A for utilization of the property for other purposes other than paddy cultivation and for other agricultural purposes.

3. The learned single Judge, after considering the issues involved in the matter, has set aside Ext. P4 communication issued by the Kochi Municipal Corporation prohibiting the petitioner from carrying out any construction in the property, since the property is remaining as a paddy field, and directed the Secretary of the Municipal Corporation to consider the building permit application submitted by the petitioner in accordance with law and to take a decision, not later than one month from the date of receipt of a copy of the judgment. The writ petitioner was further directed to file an application under Section 6A of the Kerala Land Tax Act, 1961 before the Competent Tahsildar within a period of one month from the date of receipt of a copy of the judgment so as to facilitate the said authority to take necessary action in the said application and make necessary changes in the BTR and the revenue records as per law. It is, thus, challenging the legality and correctness of the said judgment, this appeal is filed.

4. We have heard the learned Senior Government Pleader Sri. Tek Chand appeared for the State and Sri. Vishak K. Johnson for the writ petitioner/first respondent and Sri.K. Janardhana Shenoy for the Kochi Municipal Corporation, and perused the pleadings and materials on record.

5. In fact, the subject issue was considered by this Court in State of Kerala and others v. Binu Mathew Chacko and others [2020 (6) KHC 717 (DB)], in which it is held as follows: 21. The facts discussed above would make it clear that the property was converted by the authorities under The Town Planning Act, 1108 and sold to the purchasers several decades before the introduction of Act, 2008. It is an admitted fact that in the data bank constituted as per the provisions of Act, 2008 the property in question is shown as "converted dry land". Which thus means the authorities under Act, 2008 have understood properly that the land was already converted as a dry land before the introduction of Act, 2008. Anyhow S.27A was introduced into Act, 2008 on and w.e.f.30/12/2017 only by which certain conditions are introduced in respect of unnotified lands under the Act, 2008, which reads thus:

"27A. Change of nature of unnotified land.

(1) If any owner of an unnotified land desires to utilise such land for residential or commercial or for other purpose, he shall apply to the Revenue Divisional Officer for permission in such manner as may be prescribed.

(2) Notwithstanding anything contained in any judgment, decree or order of any Court or Tribunal or any other authority, the Revenue Divisional Officer may, after considering the reports of the Village Officer concerned, pass such orders as deemed fit and proper on such applications, ensuring that there is no disruption to the free flow of water to the neighbouring paddy lands, if any, through such water conservancy measures as is deemed necessary.

Provided that, if the area of such parcel of land where the application is allowed is more than 20.2 Ares, ten per cent of such land shall be set apart for water conservancy measures.

(3) If the application is allowed, the applicant shall be liable to pay a fee at such rate as may prescribed:

Provided that, no such fee shall be collected if the applicant proves that the land where the application is allowed is, filled up or naturally filled up before the 4th day of July, 1967, the date of commencement of the Kerala Land Utilisation Order, 1967, after completing such procedure, as may be prescribed.

(4) If the application is allowed, the Revenue Divisional Officer shall ensure that the reclamation of the unnotified land shall not adversely affect the cultivation of paddy or any other crops, if any, in the adjoining land and shall specify such water conservancy measures as is necessary to ensure such cultivation:

Provided that in specifying such water conservancy measures, the Revenue Divisional Officer may, if he deems fit, refer to satellite maps of the area maintained by Government agencies.

(5) No permission under this section shall be necessary where the purpose for which the unnotified land is converted or attempted to be converted or utilized or attempted to be utilized is for paddy cultivation.

(6) Notwithstanding anything contained in the Kerala Panchayat Raj Act, 1994 (13 of 1994) or in the Kerala Municipality Act, 1994 (20 of 1994), no permission under this section shall be necessary for constructing a residential building having a maximum area of 120 square meters in a maximum extent of 4.04 ares of land or a commercial building having a maximum area of 40 square meters in a maximum extent of 2.02 ares of land:

Provided that the construction of a housing complex or complexes or flats or multi - storied residential complexes shall not come within the meaning of residential building specified in this sub-section:

Provided further that this exemption shall be granted only once.

(7) The exemption under sub-section (6) shall be applicable only to owners unnotified lands under the Kerala Conservation of Paddy Land and Wetland (Amendment) Act, 2018:

Provided that if the area of the residential building or commercial building exempted under sub-section (6) is subsequently increased by new extension the exemption under sub-section (6) shall cease to have effect and the owner of the land as on the date of detection of the new extension shall be liable to pay fee as sub-section (3).

(8) Where conversion of an unnotified land is required for any public purpose, the Revenue Divisional Officer shall submit a report to Government outlining the measures to be adopted to ensure that the reclamation shall not disrupt the free flow of water to the neighbouring paddy lands, if any, and shall suggest such water conservancy measures as is necessary to ensure this.

(9) The Government may, on receipt of a report under sub-section (8), issue permission to reclaim unnotified land for public purpose:

Provided that where permission is granted, the Government may make necessary modifications to the recommendations of the Revenue Divisional Officer as deemed fit:

Provided further that, if the area of such parcel of land where the application is allowed is more than 20.2 Ares, ten per cent of such land shall be set apart for water conservancy measures.

(10) The order issued under sub-section (2) and (9) shall clearly indicate the survey number of the lands and the extent of the land in each survey number for which sanction has been accorded, the extent of the land in which water conservancy measures are to be adopted by the applicant and a sketch of such land indicating the aforementioned details shall be appended to the order.

(11) The Revenue Divisional Officer may, either suo motu or on the application of any aggrieved party, cancel any order issued under sub-section (2) if the conditions specified in the order issued therein are not complied by the applicant, either fully or partially.

(12) No order of cancellation under sub-section

(11) shall be made by the Revenue Divisional Officer unless the applicant thereof has been given an opportunity of being heard in the matter.

(13) Any application received for the change of nature of unnotified land from the date of commencement of the Kerala Conservation of Paddy Land and Wetland (Amendment) Act, 2018 shall be considered and disposed of only in accordance with the provisions of the Act."

22. That apart S.27C is introduced on and w.e.f.30/12/2017 in order to make changes in the village records, which reads thus:

"27C. Change in records. - (1) Notwithstanding anything contained in any other law for the time being in force or in any judgment, decree or order of any Court, Tribunal or any other Authority, wherever a part of a survey number or subdivision is permitted to be converted under S.8, S.9, S.10 or 27A of this Act, a new subdivision shall be created for the extent for which such orders for conversion are issued.

(2) Where the paddy land or unnotified land is duly converted as per the provisions of this Act, the Tahsildar shall reassess the land tax under S.6A of the Kerala Land Tax Act, 1961 (13 of 1961) and make necessary entries in revenue records relating to such lands.

(3) Where such changes are recorded in revenue records, the number and date of the order and the authority granting sanction, the survey number of the lands for which sanction has been accorded, extent of the land in each survey number

for which sanction has been accorded and the revised land tax shall be clearly recorded ensuring that the old entries are legible.

(4) Tahsildar shall conduct periodical inspection to ensure that changes in revenue records are in accordance with sub-section (3).

(5) No attempt shall be made to alter or change or modify the revenue records relating to the paddy land or wetland or unnotified land otherwise than in accordance with sub-section (3)."

23. In our view these later provisions introduced into Act, 2008 will not in any manner interfere with the building site sold to the purchasers much before the introduction of the said provisions. Moreover, as we have said earlier, R.3A of Kerala Municipality Building Rules, 1999 have an overriding effect on the building rules and therefore, the Kochi Corporation was not competent enough to insist the permit holder to secure necessary orders as per the provisions of Act, 2008 since the plot was allotted in the Elamkulam West Town Planning Scheme.

24. The issue is also no more *res integra* since it was considered by a learned Single Judge of this Court in *Reliance Industries Ltd. and Others v. The Commissioner of Land Revenue and Others* (2007 (2) KHC 346 : ILR 2007 (2) Ker. 193 : 2007 (2) KLT 850) wherein it was held that no permission under the Kerala Land Utilization Order is necessary for any activity of construction or use of any land in the residential use zone or any other zone in the town planning scheme constituted as per the Town Planning Act, 1108. Also, recently in *Shaji Chacko v. State of Kerala and Others* (2020 (6) KHC 420 : 2020 KHC OnLine 843) a learned Single Judge of this Court has held in unequivocal terms that if any Town Planning Scheme does not save the land and area for cultivation of any crops mentioned under the Land Utilisation Order, 1967, it has to be assumed that, through the process of law, power of Collector to command the holder of land to cultivate crops has been taken away. Anyhow while the judgment in *Reliance Industries* was holding the field the Apex Court in *Revenue Divisional Officer, Fort Kochi and others v. Jalaja Dileep and another* (*supra*) taking into account the provisions of the Kerala Conservation of Paddy land and Wetland Act, 2008 and the Kerala Land Utilization Order, 1967 held that the entries made in the BTR cannot be defaced, overruling the Division Bench of this Court in *Revenue Divisional Officer, Fort Kochi and others v. Jalaja Dileep and another* (2014 (1) KHC 96 : 2014 (1) KLT 161 : ILR 2014 (1) Ker. 492 : 2014 (1) KLJ 586). Anyhow later a Division Bench of this Court in *LLMC Kizhakkambalam v. Mariyumma* (2015 (3) KHC 19 : 2015 (2) KLT 516 : 2015 (1) KLD 915 : 2015 (2) KLJ 861) held that without defacing the original entry in the Basic Tax Register additional entry can be made with respect to the present tenure of the land in appropriate cases and in accordance with law, which is governing the field now. We are in respectful agreement with the proposition so laid down in *Mariyumma*, *supra*, in the facts and circumstances of the case at hand.

25. Taking into account all the above aspects, we are of the considered opinion

that the appellants have not made out any case justifying interference with the judgment of the learned Single Judge so far as the basic facts are concerned. However, in view of the judgment of the Division Bench of this Court in Mariyumma supra, an owner of a property has to make an application before the concerned revenue authority to make additional entry in the Basic Tax Register showing the present tenure of land. Therefore, petitioner is permitted to make a suitable application before the appropriate revenue authority to make the additional entry in the BTR and if any such application is filed along with a copy of this judgment, it shall be considered and necessary addition shall be made accordingly, at the earliest and at any rate, within a month thereafter. We further make it clear that thereafter the petitioner is at liberty to make suitable application under S.6A of the Kerala Land Tax Act, 1961 to make appropriate entry and collect tax accordingly. However, we make it clear that the pendency of the said applications shall not stand in the way of Kochi Corporation to consider the pending permit application taking into account the observations made above at the earliest and at any rate within a month from the date of receipt of a copy of this judgment.

Resultantly, the writ appeal is dismissed but with the modifications made as above."

6. Therefore, it can be seen that the issue is squarely covered by the said judgment. However, the learned Senior Government Pleader has pointed out that the property in question was, in fact, handed over to the Giri Nagar Housing Co-operative Society and there was no acquisition proceedings either by the State or the Greater Cochin Development Authority for the purpose of developing the property in question and other properties as a housing colony.

7. We do not find much force in the said contention, because even the additional documents produced by the State Government in the writ appeal along with a memo would make it clear that the land assigned was specifically directed to be used for the purpose of constructing residential building for the members of the society. Therefore, we have no doubt in our mind that the appellant has not made out any case so as to interfere with the judgment of the learned single Judge. We make it clear that the judgment rendered by us in Binu Mathew Chacko (supra) would, in all respects, apply to the facts and circumstances of the case at hand.

Needless to say, writ appeal fails and accordingly, it is dismissed.