



W.A. 1391/2022

-:1:-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

THURSDAY, THE 13TH DAY OF OCTOBER 2022 / 21ST ASWINA, 1944

WA NO. 1391 OF 2022

[AGAINST THE JUDGMENT DATED 5.4.2022 IN WP(C) NO.28181/2021]

APPELLANTS/RESPONDENTS 1 TO 5 IN WP(C):

- 1 STATE OF KERALA
REPRESENTED BY ITS SECRETARY TO GOVERNMENT
REVENUE DEPARTMENT, THIRUVANANTHAPURAM., PIN - 695001.
- 2 COMMISSIONER OF LAND REVENUE
OFFICE OF THE COMMISSIONER OF LAND REVENUE, PUBLIC OFFICE
BUILDING, MUSEUM ROAD, OPPOSITE ZOO, VIKHAS BHAVAN P.O.,
THIRUVANANTHAPURAM., PIN - 695033.
- 3 THE REVENUE DIVISIONAL OFFICER
GROUND FLOOR, PATTIMATTOM - MUVATTUPUZHA ROAD,
MUVATTUPUZHA., PIN - 686673.
- 4 THE TAHSILDAR (LR)
TALUK OFFICE, MUVATTUPUZHA., PIN - 686673.
- 5 SUB 'TREASURY OFFICER.
VAZHAPPILLI, .MUDAVOOR P.O, MOOVATTUPUZHA., PIN - 686669.

BY SPECIAL GOVERNMENT PLEADER SRI. S. RANJITH

RESPONDENT/PETITIONER IN WP(C):

JOY JOHN, S/O. JOHN P. J, POOVAN HOUSE, MARKET P.O.,
MUVATTUPUZHA, ERNAKULAM DISTRICT., PIN - 686673.

BY ADV. MS. A.R.PRAVITHA

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 13.10.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**JUDGMENT****S. Manikumar, CJ**

Instant writ appeal is filed by the State of Kerala and its officials challenging the judgment dated 5.4.2022 in W.P.(C) No.28181/2021, by which, relying on the decision in **Baby M.K. and others v. District Collector, Ernakulam and others** [2021 (6) KHC 318], a learned single Judge directed the Revenue Divisional Officer, Muvattupuzha, 3rd respondent therein, to refund the amount of Rs.8,83,500/- which the writ petitioner has remitted on 26.10.2021, within two months from the date of receipt of a copy of the said judgment.

2. W.P.(C) No.28181/2022 is filed by the respondent herein seeking to issue a writ of mandamus directing the appellants to refund the amount paid as per Exhibit-P2, challan issued by the Sub Treasury Officer, Muvattupuzha, respondent No.5 therein, with interest to the writ petitioner, within a time frame to be fixed by this Court.

3. Brief facts leading to the filing of the writ petition are as under:
The respondent/writ petitioner is in possession of 6.07 Ares of property of Velloorkunnam Village. Since the property is shown as 'nilam' in the Basic Tax Register (BTR), he has applied for conversion of the same under the provisions of Kerala Conservation of Paddy and Wetland Act, 2008.



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According to the writ petitioner, the said property was not included in the data bank. However, in Form 6 application filed by the writ petitioner, the 3rd respondent – RDO has granted permission to change the nature of land in the BTR, but insisted for payment of fees, as contemplated under Section 27A of the Conservation of Paddy and Wetland Act. Accordingly, the writ petitioner has remitted a sum of Rs.8,83,500/- before the Sub Treasury Officer, Muvattupuzha, on 26.10.2021, as evident from Exhibit-P2 challan.

3.1. On 03.11.2021, the Revenue Divisional Officer, respondent No.3 therein, issued Exhibit-P3 proceedings on the basis of G.O.(P) No.47/2020/ Taxes dated 31-03-2020, which deals with fair value in the area. Writ petitioner has further stated that it is a fact that the requirement of payment of fees as per the amendment was introduced on 25-02-2021 as per GO(MS) No.1166/2021/Rev. dated 25-02-2021 (Exhibit-P5)

4. Before the writ court, respondent/writ petitioner contended that as per the amended schedule to Rule 12(9) of the Kerala Conservation of Paddy Land and Wetland Rules, 2008, reclamation of any paddy land upto 25 Cents is not liable to be imposed with any fee, with effect from 25.02.2021, whereas, the properties exceeding 25 Cents and upto 1 Acre



are liable to be imposed with 10% of the fair value, and the properties exceeding 1 Acre are liable to be imposed with 20% of the fair value.

5. It is also his contention that the schedule was introduced, by virtue of the powers conferred under Section 27A(3) r/w Rule 12(9) of the Kerala Conservation of Paddy Land and Wetland Rules, 2008. That apart, placing reliance on the decision of a Hon'ble Division Bench of this Court in **Baby M.K.** (cited supra), respondent contended that the circular dated 23.07.2021 issued by the State Government restricting the benefit of exemption upto 25 Cents for application submitted after the cut off date of 25.02.2021, has been held as unconstitutional.

6. The further contention of the respondent before the writ court is that in view of the abovesaid decision, sum of Rs.8,83,500/- remitted by the respondent vide Exhibit-P2 is liable to be refunded, as the extent of land held by him is less than 25 cents.

7. Appellants have objected to the relief sought for by the writ petitioner/respondent herein.

8. After considering the rival submissions and taking note of the judgment in **Baby M.K.** (cited supra), writ court, vide judgment in W.P. (C) No.28181/2021 dated 5.4.2022 ordered as under:



“4. The Special Government Pleader appearing for the State defended the action stating that at the time when the amounts were paid, the Circular had not been declared as unconstitutional and it was valid for all purposes at that point of time. It is hence submitted that the collection of the amounts or the payment of the amount which was made voluntarily cannot hence be held as an illegal levy liable to be refunded.

5. The issue whether the claim for refund of amounts which have been collected based on the unconstitutional levy either in the form of fee or in the form of tax or in the form of duty is no longer res integra. In a series of decisions, the Hon'ble Supreme Court has held that the person from whom such amount is collected is entitled to refund of the amount whether the claim is made in a suit or whether it is made in an application under Article 226 of the Constitution of India. [See Mahabir Kishore & Ors. v. State of Madhya Pradesh [(1989) 4 SCC 1], Hmm Limited & Anr. v. Administrator, Bangalore City Corporation [(1989) 4 SCC 640], Salonah Tea Company Ltd. v. Superintendent of Taxes Nowgong & Ors. [(1988) 1 SCC 401] and U.P. Pollution Control Board & Ors. v. Kanoria Industrial Ltd. & Anr. [(2001) 2 SCC 549]].

6. In the light of the declaration of law made by the Hon'ble Supreme Court, the petitioners are entitled to succeed in these writ petitions. The writ petitions are allowed. The following directions are hence issued;

XXXXXXXXXXXXXXXXXX

11. In W.P.(C)No.28181 of 2021, the petitioner has remitted a sum of Rs.8,83,500/- on 26.10.2021 as per Ext.P2 challan. The 3rd respondent is directed to refund the said amount within two months from the date of receipt of a copy of this judgment.”

Being aggrieved, the instant appeal is filed by the respondents.

9. Based on the grounds raised, Mr. S. Ranjith, learned Special



Government Pleader for the appellants, submitted that the subject writ petition was heard along with batch of other writ petitions, and allowed, finding that the amount collected based on the unconstitutional levy, either in the form of fee or in the form of tax or duty, has to be refunded. Hence, a direction was issued to the Revenue Divisional Officer, to refund the amount collected.

10. Learned Special Government Pleader further contended that when the respondent has remitted the amount without raising any objection, he cannot ask for refund of the amount which he has already remitted. That apart, in **Baby M.K.** (cited supra), though the Hon'ble Division Bench has set aside the circular dated 25.07.2021 finding that the same is illegal, the court has not directed to refund the amount or has not negated the actions taken on the basis of the said circular.

11. Learned Special Government Pleader further contended that though the appellants have filed a counter affidavit before the writ court, it was noted defective and was not made as part of records in the writ petition. Hence, they have produced the counter affidavit in this appeal, along with an adoption memo, as Annexure-I, wherein it was contended that the claim of the respondent for making necessary changes in the



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revenue records, without insisting for any fee, and to refund the fee collected, is not maintainable and, therefore, cannot be entertained, as the executive is responsible to act, in accordance with the provisions of the Act and rules, in force.

12. It was also contended that the learned single Judge has set aside the circular dated 23.07.2021 fixing the cut off date only on 22.10.2021, and therefore, those persons who remitted the amount prior to 22.10.2021 are liable to remit the fees since they have not remitted the same under protest. That apart, the fees remitted by the respondent and other persons are under Section 27D of the Kerala Conservation of Paddy Land and Wetland Act. As per Section 27D, there shall be an Establishment of Agricultural Promotion Fund, so as to provide financial assistance to the paddy cultivators. According to the appellants, if the amount has to be refunded, paddy cultivators will be affected.

13. Heard learned counsel for the parties and perused the material available on record.

14. Proceedings of the Revenue Divisional Officer, Muvattupuzha dated 03.11.2021 is reproduced:

“Proceedings of the Revenue Divisional Officer,
Muvattupuzha



(Present: Ani P.N.)

No. A3-4249/2021/R.Dis.

Date: 03-11-2021

Sub: Kerala Conservation of Paddy Land and Wetland (Amendment) Act, 2018 – Orders to be issued with respect to the category change of the land which is entered as Nilam in the BTR.

Ref:- (1) Application submitted by Sri. Joy Johny P., Poovan Veedu, Kavunkar, 18.08.2020.

(2) Report No.70/20 dated 10.02.2020 issued by the Village Officer, Velloorkunnam.

(3) Report No.F.1 8514/2020 dated 21.5.2021 submitted by Tahsildar (Survey).

(4) Kerala Conservation of Paddy and Wetland (Amendment) Act, 2018.

(5) G.O.(P) No.47/2021/Taxes dated 31.3.2020.

An application (as per Reference No.1) was submitted by Sri. Joy John P. for the purpose of category change of the land having an extent of 08.07 in possession of him comprised in Survey Nos.841/4-7, 841/4-2-2 which is shown as Nilam in the BTR Register for carrying out construction of a building. As per reference cited as (4) above, the applicant has remitted the required fee in view of Rule 12(1).

The Village Officer, Velloorkunnam has reported as per Reference No.(2) above that the property covered under the application is entered in the BTR as Nilam with Thandaper No.15682 and in absolute possession of the applicant and taxes are duly paid. The report of the Village Officer is clear to the effect that the property which is required to carry out category change is similar to dry land and does not obstruct free flow of water.

In view of Reference Cited as item 3, it can be seen that, the Tahsildar (Surveys) Muvattupuzha has reported that the property covered under the application is categorized as Commercially Important Plot and the fair value of per Are is fixed as Rs. 3,75,000/- in the Fair Value Register. Fair



value is fixed as per Reference cited as No (6). The Taluk Surveyor has confirmed and submitted that the said property is comprised in Survey No. 841/4 having an extent of 05.89 Are and the sketch of the property which is proposed to change its category is prepared and submitted. The Tahsildar (Survey), Muvattupuzha has submitted a report reference cited as Item No.(3), that all the above facts has been confirmed.

It is convinced that the property sought to be changed by its category does not come under the definition of paddy land/wetland, in view of Kerala Conservation of Paddy & Wetland Act, 2008 and the said property was reclaimed much before the month of August, 2008.

In the above matter, the applicant has remitted the required fee as per the order in Item No.(5) wherein the fair value was fixed in the application referred as Item No. 1. On the basis of the same, the following order is hereby passed.

ORDER

Since the property mentioned in the application is not notified as Paddy Land (Nilam) in the BTR and as Paddy Land/Wet Land in the Data Bank, the application submitted by the applicant for change of category of the property described in the below given schedule is hereby allowed, in view of the conditions stipulated in Section 27A and Rule 12(9) of Kerala Conservation of Paddy & Wet Land Act (Amendment) Act, 2018

The Sketch relating to the measurements, Survey Number, Extent along with marks are enclosed herewith.

1.	Taluk	Muvattupuzha
2.	Village	Velloorkunnam
3.	Thandaper No.	15882
4.	Survey Number	841/4
5.	Total Extent	06.07 Are
6.	Extent of property changed by its category	05.09 Are
7.	Fair Value/Are (including	Rs.7,50,000/-



	enhancement)	
8.	Total Fair Value	Rs.44,17,500/-
9.	Amount remitted (20%). Challan Number, Date, Treasury	Rs.8,83,500/- KLO.14529871202122M Dated 26.10.2021
10.	Municipality	Muvattupuzha

CONDITIONS

- 1) The Tahsildar concerned shall pass orders after assessing land tax in proportionate with the extent of property as per Section 27 C (2), (3), (4) of the Act referred in Item No.(4) and as per Rules 12(10), 13 with respect to the property to which category change was allowed. The Village Officer concerned shall in tune with the same carry out changes in the Revenue Records.
- 2) If the applicant constructs residential house having more than 3000 Square Feet of Plinth Area, then he will have to remit additional fee in accordance with Rule 12(9).
- 3) No alteration shall be made with the nearby water streams or wetland.
- 4) If later it is found that there is anomaly in the fair value reported, the applicant shall be bound to pay the correct fee.

Revenue Divisional Officer”

15. Admittedly, vide proceedings dated 03.11.2021 of the Revenue Divisional Officer, Muvattupuzha, change of category has been ordered.

16. G.O.(P) No.47/2020/TAXES dated 31.03.2020 is reproduced:

“GOVERNMENT OF KERALA

Taxes (J) Department

NOTIFICATION

G.O(P) No.47/2020/TAXES

Dated, Thiruvananthapuram, 31st March, 2020

S.R.O. No.266/2020



In exercise of the powers conferred under sub-section (1B) of section 28A of the Kerala Stamp Act, 1959 (17 of 1959), and in supersession of notifications issued under G.O.(P) No. 188/2014/TD dated 14th November, 2014 and published as S.R.O. No. 698/2014 in Kerala Gazette Extraordinary No. 2734 dated 14th November, 2014 and G.O.(P) No. 43/2018/TD, dated 31st March, 2018 and published as S.R.O. No. 186/2018 in Kerala Gazette Extraordinary No. 828 dated 31st March, 2018 and G.O.(P) No. 70/2019/TD dated 30th April, 2019 and published as S.R.O. No. 311/2019 in Kerala Gazette Extraordinary No. 1053 dated 30th April, 2019, the Government of Kerala, hereby increase the fair value of land in Kerala, fixed as per sub-section (1) of section 28A by hundred percent.

This notification shall come into force on the 15th day of May, 2020.

By order of the Governor,

RAJESH KUMAR SINGH IAS,
Additional Chief Secretary

Explanatory Note

(This does not form part of the notification, but is intended to indicate its general purport)

The fair value of land came into force in the State in the year 2010. Then the fair value of land was increased by 50 percent in November, 2014, As a result, the fair value became 150 percent of that fixed in 2010. Later, in April, 2018 the then existing, fair value was further increased by 10 percent and the fair value became 165. Further in April, 2019 then existing fair value was again increased by 10 percent and the fair value of that land became 181.5 percent, in para 244 of the Budget Speech 2020-21, it is declared to enhance the existing fair value of land in the State by ten percent. By such increase the fair value will become 199.65 percent of that in 2010. For the numerical rounding and to simplify the calculation, it is decided to round off the hike to 200 percent from 199.65 percent. The Government have decided to issue notification accordingly.



The notification is intended to achieve the above object.”

17. G.O.(Rt.) No.1166/2021/Rev. Dated 25.02.2021 is reproduced:

“GOVERNMENT OF KERALA

Abstract

Revenue Department – Issuance of revised rate of Conversion Charges for change of nature of lands which are not notified under Section 27 (A) of the Kerala Conservation of Paddy & Wet Land Act & Rules, 2008-orders issued-reg.

Revenue (P) Department

GO (Rt.) No. 1166/2021/Rev

Thiruvananthapuram, Dated 25.02.2021

Ref:- Interim order of the Hon'ble High Court of Kerala dated 08.01.2021 in WP (C) 14312/2019 & Connected cases.

ORDER

Directions are hereby issued in consonance with the observations made by the Hon'ble High Court of Kerala in the matter referred above and based on the needs of the public in general, the Conversion fees for change of nature of land, those lands, which are not notified under Section 27 (A) of the Kerala Conservation of Paddy & Wet Land Act. & Rules, 2008, the following rate of Conversion Charges are imposed and unifying the rate for change of nature of land in Panchayat, Municipality and Corporation.

1) Lands, which are having an extent up to 25 Cents can be considered for category change without any fee. Only to those lands not exceeding an extent of 25 cents as on 30 December 2017 can avail the above benefit.

2) Properties, which were lying as a single unit up to 30.12.2017 and was divided into several plots having 25 cents or below that will not get the above benefit In such cases, the entire land has to be considered as a single unit and calculate the fee.



3) Those properties having more than 25 cents in extent, shall impose the fee at the rate of 10% of the fair value, irrespective of the fact, whether it is situated in Municipality, Corporation or Panchayat.

4) Those properties having more than One Acre in extent, the rate of fee to be imposed is 20% of the fair value irrespective of the fact whether it is situated in Municipality, Corporation or Panchayat.

5) Rate of fee with respect to the construction carried out in the land wherein category change is carried out, will remain as the current rate.

By order of the Governor
Dr. A. Jayathilak IAS
Principal Secretary”

18. Circular dated 23.07.2021 issued by the Additional Chief Secretary, Revenue (P) Department, Thiruvananthapuram, is reproduced:

“GOVERNMENT OF KERALA

No. Rev P1/117/2021 Rev.
Thiruvananthapuram,
Revenue (P) Dept.
Date: 23.7.2021

CIRCULAR

Sub: Regarding issuance of Clarification with respect to the implementation of the conditions stipulated in SRO 369/2021 by which the amendment in Kerala Conservation of Paddy & Wetland Act of 2008 were carried out.

Ref: (1). Report No LR(A) 4 16068/2019 dated 28.04.21 of the Land Revenue Commissioner.

(2). Meeting convened on 1/7/2021 under the president ship of Hon Minister for Revenue & Housing.

As per order G.O(Gen.) No.1166/2021/Rev. dated 25/2/2021 SRO.369/2021 was notified wherein the



conditions were stipulated. To implement the same clarification was sought through reference cited as item No (1) above and a meeting was convened as per Item No (2) referred above and the following clarifications are hereby issued.

- Only in those applications which were submitted on or after 25.02.2021, the amended rate of waiver of fees should be made applicable.
- The applicants should not be permitted to withdraw the earlier application submitted before 25.02.2021 and submitted new one.
- It is the extent of property that is available with the Village records relating to the property covered by the application that has to be considered.
- The fee exemption for category change in view of SRO 369/2021 shall be permitted with respect to those properties which do not exceed 25 cents in its extent as on 30.12.2017.
- Applications received are in the name of the same person as on 30.12.2017 for the properties which are either in the same survey number without the same survey number lying as a single unit covered by different documents can be considered as single application or separate applications. Since, the total extent exceeds 25 cents, the exempted benefit cannot be allowed. An affidavit has to be submitted along with the application submitted by the applicant swearing that the property which is sought to be changed by its category is less than 25 cents in its extent.
- As per the conditions currently stipulated in rules, the applications received for category change the extent of property which comes up to 50 cents applications can be received in Form 6 and property which exceeds 50 cents can be received in Form 7 which is appended to the rules.



1. Land Revenue Commissioner,
Thiruvananthapuram.
2. District Collectors
3. Revenue Divisional Officers
4. Local Self Government Department
5. Agricultural Department
6. Law Department
7. Information and Public Relations Department
(for maximum circulation)
8. Stock file/Office Copy.

As per order
Sd/-
Section Officer

Dr. A. Jayathilak, IAS
Additional Chief Secretary.”

19. On the facts and circumstances of the instant case, one should consider under what circumstances, the landowners were constrained to pay the fees, in the case on hand, Rs..8,83,500/-. It cannot be disputed that payment of fees was introduced on 25.02.2021 as per G.O.(MS) No.1166/2021/REV. (Exhibit-P5). As per the amended schedule to Rule 12(9) of the Kerala Conservation of Paddy Land and Wetland Rules, reclamation of any paddy land upto 25 Cents is not liable to be imposed with any fee, with effect from 25.02.2021, whereas, the properties exceeding 25 Cents and upto 1 Acre are liable to be imposed with 10% of the fair value, and the properties exceeding 1 Acre are liable to be imposed with 20% of the fair value.



20. Circular dated 23.07.2021 issued by the Additional Chief Secretary, Revenue (P) Department, Thiruvananthapuram (Exhibit-P6), with respect to the implementation of the conditions stipulated in SRO No.369/21 by which the amendment in Kerala Conservation of Paddy Land and Wetland Act, 2008, to be carried out, has been quashed by this Court in **Baby M.K. v. District Collector, Ernakulam** (cited supra). Basic facts considered in the said decision are reproduced:

“2. In fact hundreds and hundreds of Writ Petitions filed by owners of unnotified paddy lands, challenging the constitutional validity of aforesaid provisions, are pending before this Court. It is important to note that the Act, 2008 was amended and introduced various provisions so as to tackle various situations including the aspect of the reclamation and conversion of the paddy lands which are not included in the data bank prepared as per the provisions of the Act, 2008. Sections 27A to 27D were introduced on and w.e.f. 30.12.2017 along with the definition of unnotified land as per S. 2(XVIIA), and incorporating other amendments. Section 27A was introduced into the statute in order to enable the owner of any unnotified land who desires to utilise such land for residential or commercial or other purposes, to apply to the Revenue Divisional Officer for permission, in such manner as may be prescribed. Unnotified land is defined to mean, "the land within the area of jurisdiction of the committee which have been included as paddy land or wetland in the Basic Tax Register maintained in Village Offices, but are not notified by the land or wetland under sub-s. (4) of S. 5 or where data bank has not been published under the provisions of clause (i) of sub-s.(4) of S. 5, the lands which have already been filled up on the date of commencement of this Act and are not paddy land



according to the report of the Kerala State Remote Sensing Centre and the Local Level Monitoring Committee or where the report of the Kerala State Remote Sensing Centre is not available, lands which are not paddy land according to the report of the Local Level Monitoring Committee". Prior to the aforementioned amendments, such aspects were dealt with under the provisions of the Land Utilisation Order, 1967, a State legislation prepared by virtue of the powers conferred by the Essential Commodities Act, 1955, a Central enactment. We are informed that some public interest Writ Petitions are also pending challenging the Constitutionality of the very same provisions on the ground that the State was not right in introducing such amendments relaxing the imperative conditions of the act quite contrary to the legislative intentions and purpose of the Act.”

21. After considering the statutory provisions and the material on record, this Court in **Baby M.K.** (cited supra) held as under:

“13. Taking into account the well settled proposition discussed above, we have no hesitation to hold that the Circular issued by the State Government dated 23.7.2021, fixing the cut off date of 25.2.2021 is not binding on this Court. However, learned Senior Government Pleader has addressed an argument that the cut off date fixed is a reasonable classification made but we are unable to agree with the said contention for the reason that, even an application filed prior to the cut off date of 25.2.2021 and subsequent to the said cut off date would be considered by the statutory authority even at a later point of time and in that process two different set of orders would be passed on similar or rather typical matters. When the issue is considered from that angle, according to us, there is no object sought to be achieved by making such a cut off date. When the State Government intended to classify and exclude farmers holding up to 25 cents of unnotified paddy land from the payment of fee/charge for



reclamation and utilisation of the same for other purposes other than paddy cultivation, such farmers constitute a class by themselves thus precluding the State from further re-classifying the homogeneous class of the same nature merely because the applications are submitted on different dates, which according to us would be nothing but an unreasonable and arbitrary classification, violative of Article 14 of the Constitution of India. At this juncture we are reminded of the basic principles enunciated by the honourable apex court in the context of Article 14 of the Constitution of India that, all persons and things similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed, and equality before the law means amongst the equals the law should be equal and should be equally administered, and that the like should be treated alike. It is also well settled in law that a classification to be valid must be reasonable and must rest upon some real and substantial distinction bearing reasonable and just relation to the needs in respect of which the classification is made i.e., the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group; and the differentia must have a rational relation to the object sought to be achieved by the statute in question. Which thus means, in the instant case there is no object sought to be achieved by differentiating the class of owners of land upto 25 cents on the basis of the date of the application submitted by them before the very same statutory authority. If such an interpretation is made to the Rules, the purpose sought to be achieved by the State Government by granting exemption from payment of fee to the owners of the paddy field up to 25 cents would be lost, or rather defeat the said purpose. Therefore, in our considered opinion, the action of the State Government making an interpretation to the already constituted rules by issuing a circular directing the officers of the State to discharge their functions in a particular manner can never be sustained, being violative of all canons of law and beyond the



comprehension of the Constitutional mandates. As we have pointed out above, interpretation of the laws is the exclusive domain and sphere of the courts which can never be tinkered by the legislature and the executive, by virtue of the principles of separation of powers envisioned by the framers of the Constitution, to be followed scrupulously by all in order to sustain the basic tenets and characteristic spirit of the democratic ethos manifested by the Constitution of India. That is to say, even though the legislature makes the law, the courts alone are vested with powers to interpret, administer and decide the exactitude of the laws, and definitely not the legislature and the executive.

14. Taking into account the aforesaid legal and factual circumstances, we have no hesitation to hold that the circular dated 23.7.2021 is also an unconstitutional one for the fundamental reason that, it is an inroad into the powers exercised by this Court on the principles of separation of powers, and further that, by introducing the circular, the State Government has attempted to interpret the Schedule to the Rules, which by itself is a rule, and for that matter the entire contents of the circular insofar as it is violative of the provisions of the Act 2008 and the Rules 2008 is impermissible in law.

15. Therefore, the Writ Petitions are disposed of directing the appropriate statutory authorities to consider the applications submitted by the petitioners irrespective of the cut off date fixed in the Circular dated 23.7.2021 for payment of fee, however, in accordance with the provisions of the Act, 2008 and the Rules, 2008, at the earliest possible and at any rate within two months from the date of receipt of a copy of this judgment. But we make it clear that the questions raised in the Writ Petitions in regard to the constitutional validity of Ss. 27A to 27D and the consequential rules thereto are left open to be considered in the pending Writ Petitions.”



22. It could be seen from the impugned judgment, one of the petitioners in W.P.(C) No.5449/2019, has been directed to remit the amount demanded in Exhibit-P8 therein, without prejudice to the contentions raised in the said writ petition.

23. Respondent in the instant writ appeal has remitted a sum of Rs.8,83,500/- on 26.10.2021, as per Exhibit-P2 challan. Contention that the landowners remitted the amount on their own and, therefore, the same cannot be directed to be refunded, cannot be countenanced, for the reason that the very circular dated 23.07.2021 (Exhibit-P6), has been set aside by this Court, as unconstitutional. Government orders and circulars, referred to above, apply to all similarly placed persons and there cannot be any discrimination, as contended by the appellants.

24. Merely because some landowners have remitted the amount on their own, without protest or objection, it cannot be construed to mean that the effect of Exhibit-P6 circular dated 23.07.2021 would not be applicable to them, more so when, the same circular has been quashed by this Court, as unconstitutional.

25. When this Court has declared Exhibit-P6 circular dated 23.07.2021 issued by the Additional Chief Secretary, Revenue (P)



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Department, Thiruvananthapuram, as unconstitutional, appellants are bound to refund the amount collected and cannot be permitted to enrich unjustly. Contentions of the appellants run contrary to the decision in **Baby M.K.** (cited supra). Decisions considered by the writ court, applies to the case on hand, that amount illegally collected, has to be refunded.

In the light of the above discussion and decision, writ appeal fails and accordingly, dismissed. No costs.

Sd/-
S . MANIKUMAR
CHIEF JUSTICE

Sd/-
SHAJI P. CHALY
JUDGE

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P.A. TO C.J.