

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE N. NAGARESH

WEDNESDAY, THE 20TH DAY OF JULY 2022 / 29TH ASHADHA, 1944

WP(C) NO. 13271 OF 2022

PETITIONER:

PRAKASH O. S.
AGED 58 YEARS
S/O. SAHADEVAN, OLANICKAL HOUSE,
KIZHATHADIYOOOR P. O., NEAR COURT COMPLEX,
PALA, KOTTAYAM - 686575.

BY ADV K.C.VINCENT

RESPONDENTS:

- 1 THE STATE OF KERALA
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
DEPARTMENT OF REVENUE, SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.
- 2 THE LAND REVENUE COMMISSIONER
OFFICE OF THE LAND REVENUE COMMISSION,
PUBLIC OFFICE BUILDINGS, VIKAS BHAVAN P. O.,
THIRUVANANTHAPURAM - 695 033.
- 3 THE REVENUE DIVISIONAL OFFICER
OFFICE OF THE REVENUE DIVISIONAL OFFICER,
CIVIL STATION, PALA, KOTTAYAM - 686575.
- 4 THE TAHSILDAR
MEENACHIL TALUK, PALA P. O.,
KOTTAYAM - 686575.
- 5 THE TAHSILDAR (LAND RECORDS)
MEENACHIL TALUK, PALA P. O.,
KOTTAYAM - 686575.

W.P.(C) No.13271/2022

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6 THE VILLAGE OFFICER
LALAM VILLAGE OFFICE, LALAM,
CIVIL STATION, PALA P. O.,
KOTTAYAM - 686575.

BY ADV A.R.GEORGE
SMT.SURYA BINOY B, SR.GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 20.07.2022, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

N. NAGARESH, J.

.....
W.P.(C) No.13271 of 2022
.....

Dated this the 20th day of July, 2022

J U D G M E N T

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The petitioner, who is owner of 12.14 Ares of property in Re-survey No.125/28-1 in Block No.80 of Lalam Village of Meenachil Taluk, is before this Court seeking to quash Ext.P5 and to declare that the lands permitted for conversion under Section 9(5) of the Kerala Conservation of Paddy Land and Wetland Act, 2008 are eligible for reassessment of tax and for effecting necessary entries in Revenue records showing the actual status of such land as Purayidam / Garden land without securing orders under Section 27A of the Act, 2008.

2. The petitioner states that the land owned by him was described as paddy land in Revenue records. The

petitioner wanted to construct a house in the property and submitted Form-1 application to the Local Level Monitoring Committee (LLMC) formed under the Kerala Conservation of Paddy Land and Wetland Act, 2008. The LLMC gave its recommendation and the District Level Authorised Committee (DLAC) gave sanction to construct house in 2.02 Ares, demarcated out of the 12.14 Ares of land, as per Ext.P2.

3. As the said 2.02 Ares of land continued to be categorised as 'Nilam' in Revenue records, the petitioner submitted a Form A application to the Tahsildar seeking to reassess the land under the Kerala Land Tax Act. The Tahsildar required the petitioner to submit a representation to him. Therefore, the petitioner filed Ext.P3 representation dated 14.01.2022 before the Tahsildar. The petitioner submitted Form-1 application also to the Tahsildar by registered post, which was acknowledged as per Ext.P4.

4. Now, the Tahsildar as per Ext.P5 communication, has required the petitioner to approach the Revenue

Divisional Officer. The Tahsildar wants the petitioner to make an application under Section 27A of the Kerala Conservation of Paddy Land and Wetland Act, 2008. The petitioner states that when a land is converted in due compliance of statutory mandates, tax shall be reassessed and land categorisation should be changed. In view of Section 27C of the Act, 2008 also, the Tahsildar has to reassess the tax and make necessary entries in the Revenue records.

5. The Senior Government Pleader entered appearance on behalf of the respondents and resisted the writ petition. The Government Pleader pointed out that the petitioner has invoked the provisions of the Kerala Conservation of Paddy Land and Wetland Act, 2008 for reclaiming the land to construct house. The petitioner is bound to comply with other provisions of the Act, 2008 also for changing the nature of the land in Revenue records.

6. After 30.12.2017, a person seeking to remove the land from Data Bank or to change the nature of the land in

Revenue records has to make applications under Form-5 or Form-6, as the case may be, and has to pay the fees prescribed. The petitioner cannot resort to any shortcut to escape from payment of statutory fees, contended the Government Pleader.

7. I have heard the learned counsel for the petitioner and the learned Senior Government Pleader representing the respondents.

8. The petitioner wanted to construct a house in his property which is described as paddy land in Revenue records. Section 9 of the Kerala Conservation of Paddy Land and Wetland Act, 2008 empowered the DLAC to permit the owner of a paddy land to construct a residential house for himself, reclaiming paddy land. The petitioner made an application for such permission in Form-1. Considering the recommendations of LLMC, the DLAC permitted the petitioner to reclaim 2.02 Ares of land, as per Ext.P2.

9. Once the land is so reclaimed, the land has to be reassessed for land tax. The petitioner therefore submitted

an application under the Kerala Land Tax Act, 1961 seeking to reassess his 2.02 Ares of land and to make necessary entries in records. The application is acknowledged by the Tahsildar as per Ext.P4. The Tahsildar has required the petitioner to approach the Revenue Divisional Officer. By implication, the petitioner is required to submit application in compliance of Section 27A of the Kerala Conservation of Paddy Land and Wetland Act, 2008.

10. It is to be noted that Section 27A applies to unnotified lands. The petitioner's land was admittedly a paddy land. This is evident from the fact that the DLAC has given permission to the petitioner to reclaim the 2.02 Ares of land for house construction under Section 9 of the Act, 2008, as per Ext.P2 order.

11. This Court considered a similar issue in W.P.(C) No.2527 of 2019. In the said case, the owner of the land had obtained regularisation of reclamation of paddy land and made application for reassessment of land tax and to make additional entry in BTR, under the Kerala Land Tax Act,

1961. This Court, as per Ext.P6 judgment, directed the respondents to consider the application of the petitioner therein for reassessment of tax. The petitioner in this case stands on a better footing, inasmuch as the petitioner has reclaimed the 2.02 Ares of land only after obtaining Ext.P2 order.

12. The crucial point in this case is that the 2.02 Ares reclaimed by the petitioner was admittedly paddy land. That is the reason which necessitated a Form-1 application by the petitioner and Ext.P2 order by the Revenue Divisional Officer. Therefore, the petitioner cannot be forced to treat the land as unnotified land and to approach the Revenue Divisional Officer. Once a statutory authority permits the owner of the land to reclaim paddy land, then on an application by the owner of the property, the Tahsildar is bound to reassess the land for the purpose of levy of land tax.

The writ petition is therefore allowed. Ext.P5 is set aside. The 5th respondent-Tahsildar is directed to consider

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the Form-1 application submitted by the petitioner and take decision thereon in accordance with law, within a period of one month.

Sd/-

N. NAGARESH, JUDGE

aks/19.07.2022

APPENDIX OF WP (C) 13271/2022

PETITIONER'S EXHIBITS

- Exhibit P1 A TRUE COPY OF THE TAX RECEIPT DATED
03.08.2021.
- Exhibit P2 A TRUE COPY OF THE PROCEEDINGS OF THE
REVENUE DIVISIONAL OFFICER, KOTTAYAM
DATED 19.09.2015.
- Exhibit P3 A TRUE COPY OF THE APPLICATION DATED
14.01.2022 SUBMITTED BEFORE THE
TAHSILDAR.
- Exhibit P4 A TRUE COPY OF THE POSTAL
ACKNOWLEDGMENT DATED 20.01.2022.
- Exhibit P5 A TRUE COPY OF THE LETTER DATED
10.02.2022 ISSUED BY THE 5TH
RESPONDENT.
- Exhibit P6 A TRUE COPY OF THE JUDGMENT DATED
28.01.2019 IN WP(C) NO.2527 OF 2019.