

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

FRIDAY, THE 31ST DAY OF OCTOBER 2014/9TH KARTHIKA, 1936

WP(C).No. 21972 of 2014 (V)

PETITIONER(S):

1. V.N.MOHANAN NAIR, AGED 60 YEARS,
S/O.NARAYANAN NAIR, VATTOLLY HOUSE,
IRINGOLE KARA, PERUMBAVOOR VILLAGE,
KUNNATHUNADU TALUK
2. R.JAYASREE, AGED 58 YEARS,
W/O.V.N MOHANAN NAIR, VATTOLLY HOUSE,
IRINGOLE KARA, PERUMBAVOOR VILLAGE,
KUNNATHUNADU TALUK.

**BY ADVS.SRI.G.RAJAGOPAL
SMT.S.LEELALAKSHMI
SMT.N.RENJINEE DEVI**

RESPONDENT:

**TAHSILDAR, KUNNATHUNADU TALUK,
TALUK OFFICE, PERUMBAVOOR - 683 542.**

BY SPECIAL GOVERNMENT PLEADER SRI.P.K.SOYUZ (REVENUE)

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLT HEARD
ON 31-10-2014, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

mbr/

APPENDIX

PETITIONER(S)' EXHIBITS:

**EXHIBIT P1 : TRUE PHOTOCOPY OF THE PETITION NUMBERED AS G2-2631/14
DATED 20/02/2014 SUBMITTED BY THE FIRST PETITIONER BEFORE THE
RESPONDENT WITHOUT ENCLOSURE.**

**EXHIBIT P2 : TRUE PHOTOCOPY OF THE RECEIPT ISSUED BY THE RESPONDENT
FOR RECEIVING PETITION G2-2631/14 SUBMITTED BY THE FIRST
PETITIONER.**

**EXHIBIT P3 : TRUE PHOTOCOPY OF PETITION NUMBERED AS G2-2630/14
DATED 20/02/2014 SUBMITTED BY THE SECOND PETITIONER BEFORE
THE RESPONDENT WITHOUT ENCLOSURE.**

**EXHIBIT P4 : TRUE PHOTOCOPY OF THE RECEIPT ISSUED BY THE RESPONDENT
FOR RECEIVING PETITION G2-2630/14 SUBMITTED BY THE SECOND
PETITIONER**

RESPONDENT(S)' EXHIBITS:

EXT.R1(A): TRUE COPY OF THE RELEVANT DRAFT DATA BANK.

/TRUE COPY/

P.A. TO JUDGE

mbr/

A.MUHAMED MUSTAQUE, J.

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WP(C).No.21972 of 2014-V.
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Dated this the 31st day of October, 2014.

J U D G M E N T

This writ petition is filed seeking for a direction to the respondents to change the entries in the Basic Tax Register and the Revenue Register with respect to the properties, owned by the petitioners, shown as nilam to purayidom.

2. The petitioners claim to be the joint owners of the property having an extent of 6 Ares 7 Square Metres comprised in Re-survey No.7/1 of Block 126 of Perumbavoor Village as per sale deed No.4053/1989 of SRO, Perumbavoor. The second petitioner claims to be the owner of 17.51 Ares of land as per the same sale deed. The petitioners are jointly enjoying a total extent of 23.58 Ares of land.

3. It is admitted by the learned Special Government Pleader that the above properties are not included in the Draft Data Bank.

4. Learned counsel for the petitioners submit that they are entitled for a declaration from this Court in the light of the dictum laid down by this Court in **Revenue Divisional Officer, Fort Kochi and others v. Jalaja Dileep and another** (2014 (1) KLT 161), to effectuate changes in the Basic Tax Register as the properties have been reclaimed long before the enactment of the Kerala Conservation of Paddy Land and Wet Land Act, 2008 (for short the “Act 28 of 2008”). It is further submitted, without prejudice to the petitioners' right as above, for seeking a declaration, the petitioners are entitled to convert or utilise the above land for any other purposes other than for cultivating food crops, as these properties are no longer fit for any cultivation.

5. The Collector has power under clause (6) of the Kerala Land Utilisation Order, 1967 (for short, the “KLUO”) to grant permission to utilise such land for any other purposes. The Collector is defined under clause 2(a) of the KLUO which includes the Revenue Divisional Officer as

well. Though the properties are reclaimed before the enactment of the Act 28 of 2008, nevertheless, if the land in question was under cultivation with any food crop either three years prior to the commencement of the KLUO or after its commencement, permission from the Collector is necessary for utilising the above land for any other purposes. This Court in **Praveen K. v. Land Revenue Commissioner, Thiruvananthapuram and others** (2010 (2) KHC 499) held as follows:

“If an application is made under the Kerala Land Utilisation Order, the same is not liable to be dismissed before an enquiry is held by the concerned authority under the Act and a finding is entered that the land in respect of which the application is made is a paddy land or a wetland. If the land is not found to be paddy land or wetland, application has to be considered as per the provisions of the KLU.”

6. In **Sunil v. Killimangalam Panjal 5th Ward, Nellulpadaka Samootham** (2012 (4) KLT 511) another Division Bench of this Court held that permission under clause 6 can be granted for construction of building for industrial purposes also. In **Praveen's** case (supra) also

this Court laid down the manner in which an application under clause 6 of the KLUO has to be dealt with by the Collector.

7. In the light of the provisions as above, I am of the view that the petitioners in each case can approach the Revenue Divisional Officer, Muvattupuzha within whose jurisdiction the properties are situated with a request in terms of clause 6 of the KLUO. If the request is so received from the petitioners, the RDO shall consider the same after affording an opportunity of hearing to the petitioners. Needful shall be done within a period of two months from the date of receipt of a copy of this judgment. It is made clear that this writ petition is disposed without prejudice to the petitioners' right to establish any claim based on **Jalaja Dileep's** case (supra). No costs.

**A.MUHAMED MUSTAQUE,
(Judge)**

Kvs/-