

Supreme Court of India The Revenue Div. Officer Fort ... vs Jalaja Dileep & Anr on 10 March, 2015 Bench: V. Gopala Gowda, R. Banumathi

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2749 OF 2015
(Arising out of SLP (Civil) No.3172/2014)

THE REVENUE DIVISIONAL OFFICER ... Appellants FORT, KOCHI & ORS.

Versus

JALAJA DILEEP & ANR. ... Respondents

WITH

CIVIL APPEAL NO. 2750 OF 2015
(Arising out of SLP (C) No. 16851/2014)

CIVIL APPEAL NO. 2751 OF 2015
(Arising out of SLP(C) No. 26518/2014)

CIVIL APPEAL NO. 2752 OF 2015
(Arising out of SLP (C) No. 27218/2014)

CIVIL APPEAL NO. 2753 OF 2015
(Arising out of SLP (C) No. 32231/2014)

AND

CIVIL APPEAL NO. 2754 OF 2015
(Arising out of SLP (C) No. 1135/2015)

J U D G M E N T

R. BANUMATHI, J. Delay condoned in SLP (C) No.32231 of 2014 and leave granted in all the special leave petitions. 2. This bunch of appeals raises question of substantial importance, whether the order of conversion of land passed by the Tahsildar under Kerala Land Tax Act would circumvent the provisions of beneficial legislations such as Kerala Conservation of Paddy and Wetland Act, 2008 and the Kerala Land Utilization Order, 1967? 3. These appeals arise out of the order passed by the Division Bench of the Kerala High Court, which upheld the order passed by the learned Single Judge and thereby directing the Tahsildar to effect a change in the Basic Tax Register (BTR) and correct the

nature of land from ‘Nilam’ (Wetland) to ‘Purayidam’ (Dry land). For convenience, facts in civil appeal arising out of Special Leave Petition (C) No.3172 of 2014 is referred to and taken as the lead case. 4. Briefly stated facts of the case are as under:- Respondent No.1 herein is the joint owner of the land comprised in Survey No.330/2 of Ernakulam Village in Ernakulam District to an extent of 12.286 cents. The respondents approached the Agricultural Officer who gave a certificate on 10.2.2012, to the effect that the land in question was recorded as a converted land in the Paddy Wetland in the survey records in Ernakulam Village and additionally, a possession certificate was also issued by the Village Officer on 15.2.2012, wherein it was reported that the land in question is actually a dry land. When the heirs of the respondents tried to sell the land, the purchasers of the land insisted for production of an order showing nature of land as a dry land, as a condition precedent for registering sale deed, but the revenue authorities refused to correct the same. 5. The respondent No.1 filed a Writ Petition No.11784 of 2012, before the High Court seeking a writ of mandamus to the authorities to effect necessary corrections in the Basic Tax Register and change the nature of lands from ‘wetland’ to ‘dry land’. Respondent No.1 averred that the disputed property is a dry land, but wrongly described as a wetland (Nilam) in their sale deed and that it was never used for any agricultural purposes. The Single Judge of the High Court vide Order dated 13.7.2012, allowed the writ petition directing that the property of the respondent No.1 will have to be classified as ‘reclaimed purayidam’ (dry land) in the Basic Tax Register (for short ‘BTR’) and further issued a direction to the Tahsildar and the Village Officer to effect appropriate correction as per the terms of the direction. Aggrieved by the Order, State preferred W.A. No.412 of 2013, wherein the Division Bench of the High Court vide impugned judgment dated 2.1.2014, upheld the order of the Single Judge and dismissed the appeal. Aggrieved, the State of Kerala has filed this appeal by way of special leave assailing the impugned judgment. 6. Learned senior counsel for the appellants contended that without making an application for conversion of nature of land before any statutory authority, writ proceedings were initiated by respondent No.1 and the impugned order would circumvent the provisions of Kerala Conservation of Paddy and Wetland Act, 2008 and the Kerala Land Utilization Order, 1967. It was submitted that ‘Nilam’ (wetland) in due course had been changed or transformed into reclaimed ‘purayidam’ dry land or any other state of condition and the change so effected or made by itself will not amount to ‘a mistake’ as referred to in Section 18 of Kerala Land Tax Act and the Tahsildar has absolutely no competence to decide upon the reclassification application in respect of the correction of BTR and the impugned order is liable to be set aside as they are in contravention of provisions of KLU Order, 1967 and Kerala Conservation of Paddy and Wetland Act, 2008. 7. Per contra, learned counsel for respondents contended that since District Collector declined to make necessary changes in the BTR, in exercise of power under Article 226 of the Constitution, Tahsildar was rightly directed to make necessary changes in the BTR and the impugned order does not contravene the provisions of the Acts. 8. We have considered the rival contentions and perused the impugned order and materials on record. Before going into

the merits of the contentions and the impugned order, it is imperative to refer to the scheme of the relevant Acts. 9. Scheme and Object of Land Utilization Order, 1967: The Kerala Land Utilization Order, 1967 ('KLUO' for brevity) was issued by the Government of Kerala under the Essential Commodities Act 1955 (10 of 1955) at a time when India was facing food grain deficit and there were also some restrictions on inter-State movement of food grain. The object of KLUO is:- (a) to bring occupied waste or arable lands likely to be left fallow during a cultivation season under cultivation with paddy or other food crops; (b) to prevent the conversion of any land cultivated with food crops for other purpose, except with the written permission of the District Collector or the Revenue Divisional Officers in case the powers of District Collectors have been delegated to them. 10. Clause 3 of the Order provides that the State Government may direct, every holder of land shall grow over such portion of his land food crops such as paddy, fish, sugarcane, vegetables, tapioca, yarn, tea, coffee, cardamom, pepper, ground-nut cocoa and banana in addition to any crop he may have grown over such land. Clauses 4 to 7 postulate the role of Collector in implementing the object of the Act and the sanctions he can impose in case of non-compliance by holder of land. Clause 6 of the order provides that land cultivated with any food crop for a continuous period of three years shall not be converted or utilized for cultivation of any other food crop or for any other purpose except with the written permission of the Collector. Clause 7 of the Order empowers the Collector to call upon any person who contravenes the provisions of KLUO to cultivate the land with such food crops and within such period as may be specified in the notice. If the notice is not complied with within the time specified, the Collector may, by order direct and arrange for the sale by public auction. Thus, the KLUO vests District Collectors with powers to enforce cultivation of food crops. 11. Further vide Notification No. G.O. (Rt.) No. 157/2002/AD dated 5.2.2002, Government of Kerala, Agriculture (NCA) Department has issued instructions to follow the modalities for implementation of the KLU Order, wherein conversion for construction of houses for individuals are permitted and it reads as under: The direction issued to District Collectors vide reference read as first paper (Government letter No. 47165/NCA-3/97/AD dated 17.12.1997) will be withdrawn. This would mean that applications for conversion can be considered and disposed off by Revenue Divisional Officers/District Collectors in accordance with the provisions of the KLU Order and related standing instructions. The Land Revenue Commissioner will hear appeals and the Government (in the Agriculture Department) will exercise revisional powers as provided for in the KLU Orders. District Collectors will ensure the conversions, which are likely to render irrigation investments infructuous, are not to be allowed. Similarly large scale conversion for Commercial purpose should be discouraged. In all cases, where conversion is allowed, Collectors/Revenue Divisional Officers must ensure that drainage for neighbouring or nearby plots is not blocked or rendered impossible. Conversion of land for construction of houses for individuals, upto 5 cents, should generally be allowed. However, large-scale conversion of land by artificial partitioning into small plots of less than 5 cents should be detected and disallowed. The revenue

machinery at the taluka and village-level should be activated to ensure that in future, conversions or attempted conversions without sanction are promptly detected and proceeded against. Conversions should not be presented as a 'fait accompli' which have to be inevitably regularized. Government will examine the suggestions of Collectors/Principal Agricultural Officers for changes to the KLU Order to make the penal provisions more effective and also for levying as on conversion.

12. Scheme and Object of the Kerala Conservation of Paddy Land and Wetland Act, 2008 (for short 'Wetland Act'):- Indiscriminate and uncontrolled reclamation and massive conversion of paddy land and wetland that were taking place in the State led to the passing of the Kerala Conservation of Paddy and Wetland Act, 2008 with an aim to conserve the paddy land and wetland and to restrict the conversion or reclamation thereof, in order to promote growth in the agricultural sector and to sustain the ecological system in the State of Kerala.

13. Section 2 (xii) of the Act of 2008 defines "paddy land" as all types of land situated in the State where paddy is cultivated at least once in a year or suitable for paddy, cultivation but uncultivated and left fallow, and includes its allied constructions like bunds, drainage channels, ponds and canals. Further, as evident from the objects and scheme of the Act, whether a land in question would come under paddy land defined in Conservation of Paddy Land and Wetland Act, 2008, is to be determined on the basis of facts as they exist on ground and not on the basis of description in the revenue records or in the deeds.

Section 3 is the pivotal provision of the Act which prohibits conversion or reclamation of paddy land. As per Section 3, that on and from the date of commencement of this Act, the owner, occupier or the person in custody of any paddy land shall not undertake any activity for the conversion or reclamation of such paddy land except in accordance with the provisions of this Act.

Section 13 read with Section 3 provides that District Collector is empowered to order re-conversion of the land only if reclamation or conversion was made after the commencement of the provisions of the Act.

14. To ensure the proper implementation of objectives, the Act envisages the constitution of Committees at three different levels i.e. Local Level Monitoring Committee (S.5), State Level Committee (S.8) and District Level Authorized Committee (S.9). Besides it, Wetland Act also provides for the reporting officers under Section 7 who are Agriculture Officers vested with responsibility to report the Revenue Divisional Officer as well as to Committees, regarding any act in violation of provisions of the Act.

15. The Act provides for a local-level monitoring committee in each panchayat or municipality for monitoring the implementation of the Act. The powers of the Committee are conferred under sub-section (3) of Section 5. Sub-section (ii) of Section 5(3), vests the power to Local Committee to inspect the paddy land situated within the jurisdiction of the Committee to monitor whether the provisions of the Act are being complied with and the same has to be reported to the Revenue Divisional Officer. The Committee can examine complaints from the public about attempts to violate the provisions of the Act and intervene to prevent violation. Under sub-section 4(iv) of Section 5, the Committee has got the function to collect the details of the paddy land within the area of jurisdiction of the Committee, reclaimed in contravention of

the provision of any law for the time being in force, before the date of commencement of the Act and to give the report to the Revenue Divisional Officer.

16. The Local Level Monitoring Committee is empowered to recommend to the State-Level Committee or the District-Level Authorized Committee, as the case may be, the reclamation of paddy land for public purpose or for construction of residential buildings for the owner of the land, subject to conditions fixing the extent of the land to be so utilized. The State-Level Committee has to scrutinize each application recommended by the local-level committee for filling up or reclamation of paddy land for public purpose. It should examine in detail if alternative land is available in the area for the purpose and the ecological changes that may occur from reclamation.

17. “Paddy land” and “Wetlands” are defined under Sections 2 (xii) and 2 (xviii) of the Act respectively. As per Section 5(4), the Committee shall interalia prepare a Data Bank with details of cultivable paddy land within the jurisdiction of the Committee. If the land is not included in the Data Bank or Draft Data Bank prepared under the Kerala Cultivation of Paddy Land and Wetland Act 2008 and if it is not a “Paddy Land” or “Wetland” as defined under Act 28 of 2008, at the time of commencement of the Act 12 of 2008 and the classification of land is noted as “Nilam” in the revenue records, the provision of Kerala Land Utilization Order 1967 will be applicable to such land and the Collector as defined in clause 2(a) of KLU Order 1967 has the power to grant permission to utilize the land for other purposes. As stated in clause 2 (a) of KLU Order, Collectors shall examine such request for residential purpose, on merits on a case to case basis. However, with a view to prevent indiscriminate filling of Paddy Lands in the State, the Government have also prescribed certain restrictions in the Notification dated 5.2.2002 noted (supra), in which District Collectors have been directed interalia to ensure that the conversions which are likely to render irrigation investments infructuous and large scale conversion for commercial purpose are not allowed.

18. If a property is included in the Data Bank or the Draft Data Bank prepared under the Wet Land Act 2008 as a “Paddy Land” or “Wetland” and the classification of land is noted as “Nilam” in revenue records, the provisions of the Act 28/2008 would apply. As noticed earlier, there is ample provision within the Act to grant permission for such land for residential purpose or public purpose as defined in the Act. And as elaborated earlier, if the property is not included in the Data Bank as “Paddy Land” or “Wetland” as defined under Act 28/2008, it is still governed by the provisions of KLU Order 1967. Thus, State of Kerala has two statutes -KLU Order 1967 and Kerala Cultivation of Paddy Land and Wetland Act 2008 each dealing with delineated areas with respect to preservation, management and process of reclamation of agricultural and paddy land for any other legitimate use.

19. Kerala Land Tax Act 1961 is an Act to provide for levy of basic tax of land in the State of Kerala. High Court directed correction of Basic Tax Register (BTR) under Section 18 of Kerala Land Tax Act to order change of nature of land. The change of nature of the land with the passage of time cannot be regarded as a conversion which can be rectified under Section 18 of the KLT Act. Section 18 of KLT Act provides for rectification of mistakes. Section 18 reads as follows:- “18. Rectification of mistakes.-At any

time within four years from the date of any order passed by it the prescribed authority or the appellate authority or the revisional authority may, on its own motion, rectify any mistake apparent from the record and shall, within a like period, rectify any such mistake which has not been brought to the notice of the prescribed authority or the appellate authority or the revisional authority, as the case may be, by a land-holder or other person liable to pay tax: Provided that no such rectification shall be made which has the effect of enhancing the tax payable unless the landholder and any other person liable to pay tax have been given a reasonable opportunity of being heard in the matter.” 20. By the perusal of the above provision, it is evident that the rectification of mistake narrated in Section 18 relates to the apparent mistake on the face of the record in relation to any order passed by the prescribed authority, appellate authority or the revisional authority under the Act. Therefore, the rectification of mistake can only be in respect of proceedings or orders passed by the original authority, appellate authority or the revisional authority. 21. Statutory enquiry to ascertain whether the land is a “Paddy Land” or “Wetland” and conversion of the land for residential purpose or for any public purpose is governed by KLU Order or the Kerala Wetland Act, 2008 for conversion of the land from “Nilam” (Wetland) to ‘Purayidam’ (Dry Land). The concerned authorities constituted under KLU Order or Kerala Wetland Act 2008 are the competent authority. Nature of the land cannot be changed or converted by directing changes in the Basic Tax Register which is maintained only for the purpose of land tax. The rectification envisaged by Section 18 of Kerala Land Tax Act can only be in respect of arithmetical or clerical error, that too in the order of determining the tax due. Section 18 cannot be made use or the same cannot be taken as a means to effect conversion of the nature of the land by-passing the competent authority and the procedure stipulated under the KLU Order, 1967 and the Kerala Wetland Act, 2008 and the impugned judgment is liable to be set aside. 22. For the foregoing reasons, the impugned judgment passed by the High Court in Writ Appeal No.412/2013 is set aside and the appeal is allowed. Accordingly impugned judgments in connected matters are also set aside and the appeals are allowed. 23. The respondents in all the appeals are directed to approach the competent authorities constituted under KLU Order 1967/Kerala Conservation of Paddy Land and Wetland Act 2008 as the case may be for conversion of the land. When the respondents approach the concerned authorities constituted under the above statutes, the concerned authorities shall consider the application of the respondents in accordance with the relevant provisions of the statutes and also the notification G.O.(Rt.) No.157/2002/AD dated 5.2.2002 already extracted above in para 11 and in accordance with law keeping in view the factual position that may be brought to the notice of the authorities along-with material to substantiate their claim. In the facts and circumstances of the case, we make no order as to costs.J. (V. GOPALA GOWDA)J. (R. BANUMATHI) New Delhi; March 10, 2015 —————