IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

FRIDAY, THE 31ST DAY OF JANUARY 2025 / 11TH MAGHA, 1946

WP(C) NO. 14337 OF 2024

PETITIONER/S:

O.A.MOHAMMED KUNHI,
AGED 82 YEARS
S/O.O.A.ALIKUNHI, RESIDING AT FLAT NO.7A,
PINEWOOD,SKYLINE CITY PARK, JAWAHAR NAGAR, KADAVANTHRA,
ERNAKULAM DISTRICT, PIN - 682020

BY ADV SAFEER BAWA A.S.

RESPONDENT/S:

1 **THE REVENUE DIVISIONAL OFFICER,**
CIVIL STATION, CIVIL LINES ROAD, AYYANTHOLE (P.O.),
THRISSUR DISTRICT, PIN - 680003

2 **THE LOCAL LEVEL MONITORING COMMITTEE,**
REPRESENTED BY THE AGRICULTURAL OFFICER,OFFICE OF THE
PRINCIPAL AGRICULTURAL OFFICER,UDAYA NAGAR (P.O.),
CHEMBUKKAV, THRISSUR DISTRICT, PIN - 680005

3 **THE TAHSILDAR,**
THRISSUR TALUK OFFICE, CHEMBUKKAVU (P.O.),THRISSUR
DISTRICT, PIN - 680020

4 **THE VILLAGE OFFICER,**
AYYANTHOLE VILLAGE OFFICE,NGO QUARTERS ROAD, AYYANTHOLE
(P.O.),THRISSUR DISTRICT, PIN - 680003

OTHER PRESENT:

ADV PREETHA K K SR GP

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 31.01.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J U D G M E N T

The petitioner is the owner in possession of property having an extent of 51 cents of land comprised in Re.Sy.Nos.382 and 283 of Ayyanthole Village in Thrissur District. The challenge in this writ petition is mainly against Ext.P6 order passed by the 1st respondent by which the application submitted by the petitioner in Form-5 to remove the said property from the Data Bank was rejected. The factual circumstances which ultimately led to the filing of this writ petition are as follows:-

2. According to the petitioner, the property was reclaimed much prior to the enactment of Kerala Conservation of Paddy and Wetland Act, 2008(hereinafter referred to as the Paddy Land Act). Earlier, the petitioner submitted an application before the Revenue Divisional Officer Thrissur, under Clause 6 of the Kerala Land Utilisation Order, 1967, to permit the petitioner to utilize the said property for non-agricultural purpose. The said application was allowed as per Ext.P3 order dated 15.11.1995. On the strength of the same, the petitioner reclaimed the land immediately after the issuance of Ext.P3. Later, as the said property was erroneously included

in the Data Bank prepared under the Kerala Conservation of Paddy and Wetland Act, 2008, the petitioner submitted an application in Form 5, before the 3rd respondent as contemplated under Rule 4(d) of the Kerala Conservation of Paddy and Wetland Rules, 2008. However, the said application was rejected as per Ext.P6 and this writ petition is submitted in such circumstances.

3. A statement has been submitted by the 1st respondent, in response to the averments contained in the writ petition. As per the averments contained therein, Ext.P6 order was passed by the 1st respondent, acting upon the report submitted by the Agricultural Officer stating that, the property was converted before 2008, and the land is a low lying land and fruit bearing trees are absent. It was also submitted that, even though the KLU order was issued by the Revenue Divisional Officer, further proceedings have not been resorted to by the Tahsildar (LR, Thrissur). Thus, the stand taken by the 1st respondent in Ext.P6 was sought to be justified.

4. I have heard the Sri. Safeer Bava A.S, the learned counsel appearing for the petitioner and Smt Preetha K.K., the learned Government Pleader for the State.

5. The specific challenge raised in this writ petition is against Ext.P6 order passed by the 1st respondent. The main contention raised by the learned counsel for the petitioner is that, in view of the fact that the property of the petitioner was permitted to be converted as per the order passed by the competent authority, namely the 1st respondent herein, by invoking the statutory powers vested upon him by virtue of clause 6 of the KLU Order, the property could not have been included in the Data Bank. The learned counsel for the petitioner placed reliance upon the Ext.P14 judgment rendered by this Court in WPC No.15168/2020 wherein various decisions including those rendered in ***LLMC, Kizhakkambalam Grama Panchayath and others v. Mariumma and another*** *[2015 (2) KLT 516 (DB)],* ***Geo Peter v. Revenue Divisional Officer*** *[2019 (3) KLT 838],* ***Renji K.Paul v. Revenue Divisional Officer*** *[2019 (2) KLT 262],* ***Salim C.K. v. State of Kerala and others*** *[2019 (3) KLT 604 (DB)]* were relied on.

6. After carefully going through the materials placed on record and hearing the learned counsels for the both sides, I find merits in the submissions put forward by the

learned counsel for the petitioner. It is evident from the records that, the property was permitted to be reclaimed as per Ext.P3 much prior to the enactment of the Kerala Conservation of Paddy and Wetland Act, 2008. It is also the case of the petitioner that, on the strength of Ext.P3 order, the petitioner had already reclaimed the said property and as of now, the said property is not fit for paddy cultivation.

7. Examining the contents of Ext.P6, it can be seen that the application submitted by the petitioner in Form 6 was rejected only upon the report of the Agricultural officer stating that the property was not reclaimed prior to 2008.

8. The crucial aspect to be noticed is that, in Ext.P6, the fact that the petitioner was granted permission, as evidenced by Ext.P3 in clause 6 of KLU, was not at all referred to. Thus, consequences and the implications of an order under clause 6 of the KLU Order, were never subjected to consideration while passing Ext.P6. As far as the application in Form 5 is concerned, the same was introduced as per the amendment brought for the Kerala in the year 2018. The applicability of the provisions which came into force as per the said amendment, in respect of the orders passed under Clause 6 of the KLU prior to the

enactment of the amendment Act was specifically considered by the Hon'ble Supreme Court in ***Tahsildar Vs. Renjith George*** reported in **2025 KHC ONLINE 7012** wherein after considering the provisions, it was specifically observed by the Hon'ble Supreme Court that, new conditions in the Amendment, cannot made applicable to the applications filed under KLU Order prior to the amendment.

9. In this case, admittedly, Ext.P3 order has been passed under Clause 6 KLU Order, by which the permission for reclaiming the land was already granted. It is also the case of the petitioner that, the property stood reclaimed immediately after the same. The photographs produced along with the writ petition also indicate the same. In Ext.P14 judgment rendered by this Court, a similar issue was considered and in paragraph 14, the following observations were made:-

> *'14. In this case, it appears that the statutory permission under Rule 6(2) of the KLU Order has been obtained by the petitioner's predecessor as per Ext.P-4 order dated 16.10.1995, which is much prior to 12.08.2008. A case of a party who diligently prosecutes his rights and gets the statutory permission under Rule 6(2) of the KLU Order, even before the coming into force of the Kerala*

Conservation of Paddy Land and Wetland Act, 2008 (State Act 28 of 2008) would stand on a much better pedestal than cases wherein the party has filed the requisite application under Rule 6(2) of the KLU Order after 12.08.2008, but before 30.12.2017 (date of coming into force of the amended provisions of State Act 28 of 2008) which has introduced Section 27A thereof, and orders of permission are passed either after the cut off date of 30.12.2017. Even in cases where the party has filed the requisite Rule 6(2) application after 12.08.2008 but before 30.12.2017, this Court has held that the party is entitled to get the said application considered strictly in terms of Rule 6(2) of the KLU Order and that in such a case the party cannot be compelled to pay the amounts as conceived as per the amended provisions of the Kerala Conservation of Paddy Land and Wetland Act, 2008, which included Section 27A thereof and the amended Rules including Rule 12(17) thereof. Therefore, a case in this nature would stand on a much better pedestal inasmuch as statutory permission obtained much prior to coming into force of the State Act 28 of 2008. Therefore, in the instant case the stand of the 3rd respondent that the petitioner should necessarily pay the higher amounts as conceived as per the amended provisions of the Kerala Conservation of Paddy Land and Wetland Act, 2008 and the Rules framed thereunder is illegal and ultravires'

10. Thus, it is clear that, since the property stood reclaimed on the strength of Ext.P3 order passed under KLU, under no circumstances, the 1st respondent could have

rejected the application submitted by the petitioner in Form 5, without considering the said order. Since the property is already permitted to be reclaimed as per statutory order issued by a competent authority, the same could not have been ignored. Therefore, the inclusion of the property of the petitioner in the Data Bank itself was not legally sustainable.

11. However, in ***Revenue Divisional Officer, Ekm v. M/s. Poothotta Resorts Pvt. Ltd***. reported in **2023 (1) KHC 34**, this Court after referring to Rule 4(d) of the 2008 Rules held that, even in respect of such cases, an application in Form 5 has to be submitted by the person concerned and the Revenue Divisional Officer shall pass appropriate orders on the said application. The said observations were made by a Division Bench of this Court, taking note of the fact that in Rule 4(d), of the Kerala Conservation of Paddy Land and Wetland Rules, it is provided that, any person aggrieved by the contents of the Data Bank may submit objections regarding that, before the Revenue Divisional Officer in a prescribed form, namely Form-5. Therefore, even for removing an erroneous entry, an application in Form-5 is required. However, it does not

mean that while passing orders on said application, the fact that the property was already directed to be reclaimed as per statutory order passed under clause 6 of KLU cannot be ignored. The said order and its consequences are to be given due weightage while considering the same, as that was an order passed under a statutory provision which was governing the field at the relevant time. Therefore, Ext.P6 order passed by the 1st respondent without considering the said aspect is only to be interfered with.

12. Another aspect to be noticed is that once the property of the petitioner is removed from the Data Bank, the next question that will arise is with regard to the change to be effected in the revenue records as to the description of the nature of the property. It is evident that, even if the property is removed from the Data Bank, the same is likely to be retained as paddy land in the revenue records. In the light of categorical observations made by the Hon'ble Supreme Court in ***Renjith George*** (*supra),* for the classification of the property in the land records, the petitioner cannot be subjected to any additional conditions introduced as per Sec.27A of the Ker`ala conservation of Paddy Land and Wetland Act as per the Amendment Act,

2018, which came into force with effect from 30.12.2017. This is in view of the fact that Ext.P3 order was passed much prior to the introduction of the Amendment Act and the additional conditions introduced as per the provisions therein.

13. Therefore, the consequence of the aforesaid legal propositions is that, once the property of the petitioner is removed from the Data Bank, the property has to be re-assessed in the revenue records, by invoking the provisions of the Kerala Land Tax Act, upon an application being submitted by the petitioner in this regard. It is the right of the petitioner to avail the said remedies, and it is thus declared in favour of the petitioner.

Therefore, this writ petition is disposed of quashing Ext.P6 order, by directing the 1st respondent to reconsider the Form-5 application submitted by the petitioner in the light of the observations made by this Court in this judgment and also in the light of Ext.P14 and the decisions rendered by the Hon'ble Supreme Court in ***Renjith George*** (*supra)*. It is further directed that, in case the property of the petitioner is removed from the Data Bank, it shall be open to the petitioner to submit necessary applications

under the provisions of Kerala Land Tax Act to get the property re-assessed in the revenue records by making necessary endorsement in this regard. It is further directed that the 1st respondent shall consider the application submitted by the petitioner in Form-5, and the orders shall be passed within a period of three months from the date of receipt of a copy of this judgment, taking note of the observations made in this judgment and other decisions referred to above.

Sd/-

ZIYAD RAHMAN A.A.
JUDGE

SM

APPENDIX OF WP(C) 14337/2024

PETITIONER EXHIBITS

Exhibit -P1	**TRUE COPY OF THE REGISTERED DEED DATED 25-3-1995 BEARING NUMBERS 2228/1995 OF SRO AYYANTHOLE.**
Exhibit-P2	**RUE COPY OF THE REGISTERED DEED DATED 25-3-1995 BEARING NUMBERS 2229/1995 OF SRO AYYANTHOLE.**
Exhibit -P3	**TRUE COPY OF THE SAID ORDER DATED 15-11-1995 .**
Exhibit -P4	**TRUE COPY OF THE PHOTOGRAPHS (3 NOS.)**
Exhibit -P5	**TRUE COPY OF COMMUNICATION DATED 13-1-2020 ISSUED BY THE AGRICULTURAL OFFICER, KRISHI BHAVAN, AYYANTHOLE TO THE PETITIONER ALONG WITH THE RELEVANT PAGES OF THE DATABANK .**
Exhibit -P6	**TRUE COPY OF THE REJECTION ORDER DATED 24-1-2024 OF THE REVENUE DIVISIONAL OFFICER, THRISSUR**
Exhibit-P7	**TRUE COPY OF THE LAND TAC RECEIPT DATED 29-7-1998 IN RESPECT OF THE PETITIONER'S PROPERTY.**
Exhibit -P8	**TRUE COPY OF THE LAND TAC RECEIPT DATED 30-9-2002 IN RESPECT OF THE PETITIONER'S PROPERTY.**
Exhibit -P9	**TRUE COPY OF THE LAND TAC RECEIPT DATED 14-12-2005 IN RESPECT OF THE PETITIONER'S PROPERTY.**
Exhibit-P10	**TRUE COPY OF THE LAND TAC RECEIPT DATED 28-6-2007 IN RESPECT OF THE PETITIONER'S PROPERTY.**
Exhibit -P11	**TRUE COPY OF THE LAND TAC RECEIPT DATED 26-6-2009 IN RESPECT OF THE PETITIONER'S PROPERTY.**
Exhibit -P12	**TRUE COPY OF THE LAND TAC RECEIPT DATED 11-9-2014 IN RESPECT OF THE PETITIONER'S PROPERTY.**

Exhibit -P13	**TRUE COPY OF THE LAND TAC RECEIPT DATED 25-7-2015 IN RESPECT OF THE PETITIONER'S PROPERTY.**
Exhibit -P14	**COPY OF THE JUDGMENT DATED 07-08-2020 IN WP (C) NO.15168/2020 OF THIS HON'BLE COURT.**

RESPONDENTS' EXHIBITS:NIL

TRUE COPY

P.A.TO JUDGE