

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

WEDNESDAY, THE 29TH DAY OF JULY 2015/7TH SRAVANA, 1937

WP(C).No. 1603 of 2005 (N)

PETITIONER :

M.SHEREEF, S/O.UMMER,
PODANCHERI HOUSE, CHEROOPPA P.O., MAVOOR,
KOZHIKODE TALUK.

BY ADV. SRI.SUNNY MATHEW

RESPONDENTS :

1. THE ADDITIONAL DISTRICT MAGISTRATE,
KOZHIKODE.
2. THE DISTRICT COLLECTOR, KOZHIKODE.
3. STATE OF KERALA,
REP. BY THE CHIEF SECRETARY TO GOVERNMENT, SECRETARIAT,
TRIVANDRUM.

R1 & R2 BY SR.GOVERNMENT PLEADER SRI.SOJAN JAMES

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 29-07-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 1603 of 2005 (N)

APPENDIX

PETITIONER'S EXHIBITS :-

- | | | |
|--------|---|---|
| EXT.P1 | : | COPY OF THE AGREEMENT OF SALE ENTERED INTO BETWEEN THE PETITIONER AND SMT.E.M.SHEKKIRE. |
| EXT.P2 | : | COPY OF THE PASS ISSUED BY THE KEEZHUPARAMBU PANCHAYAT. |
| EXT.P3 | : | COPY OF THE ORDER DTD.7.1.2005 ISSUED BY THE 2ND RESPONDENT. |

RESPONDENTS' EXHIBITS :- NIL.

True copy

P.A to Judge

ANIL K.NARENDRA, J.

W.P.(C)No.1603 of 2005

Dated this the 29th day of July, 2015

JUDGMENT

The petitioner has filed this Writ Petition seeking a writ of certiorari to quash Ext.P3 notice dated 7.1.2005 issued by the 2nd respondent and seeking a writ of mandamus commanding the 2nd respondent to release the vehicle bearing registration No.KL-11-5559 to the petitioner.

2. By order dated 18.1.2005 this Court granted an interim direction to the 2nd respondent to release vehicle bearing registration No.KL-11-5559 to the petitioner on furnishing bank guarantee for a sum of ₹26,000/-. It was also made clear that, the release of the vehicle as ordered above, will be on a further condition of the petitioner filing a written undertaking before the Registrar of this Court to the effect that he shall not transfer the vehicle in any manner.

3. Going by the averments in the Writ Petition, the petitioner is in possession and enjoyment of the vehicle bearing registration No.KL-11-5559, on the strength of Ext.P1 agreement.

On 19.12.2004 the 1st respondent took the said vehicle into custody alleging that it was used for illicit transportation of river sand collected from the Kadavu of Keezhuparambu Panchayat. The petitioner would contend that, the transportation of river sand was on the strength of Ext.P2 pass issued by the Keezhuparambu Panchayat. The proceedings initiated against the petitioner culminated in Ext.P3 notice issued by the 2nd respondent, by which the petitioner was directed to remit a sum of ₹26,000/- as fine, for releasing the vehicle, taking note of the fact that it was for the second time the vehicle in question was seized for illicit transportation of the river sand. The main contention raised in the Writ Petition is that the seizure of the vehicle was contrary to the procedure for confiscation contemplated under Rule 27 of the Kerala Protection of River Banks and Regulation of Removal of Sand Rules, 2002.

4. The 2nd respondent has filed a counter affidavit stating that the seizure of vehicle on 19.12.2004 was while it was used for illicit transportation of river sand. The 2nd respondent would also contend that Ext.P2 pass is for transportation of sand from

Keezhuparamba near Areacode in Malappuram District to Chengottukavu. For transportation of sand on the strength of Ext.P2 pass there was no necessity to pass through Malayala Manorama junction in Calicut city, which itself makes it explicitly clear that the vehicle in question was used for illicit transportation of river sand. The 2nd respondent would also point out that, the time of issue of Ext.P2 pass is 6AM on 19.12.2004 and the vehicle was seized at 11.10 AM on that day and that the very same vehicle was seized for illicit transportation of river sand in March, 2004 as well. Therefore, the 2nd respondent would contend that, since the vehicle was involved in illicit transportation of river sand, reasoning of the 2nd respondent in Ext.P3 is perfectly legal and no interference of this Court is called for.

5. The sole issue that arises for consideration in this Writ Petition is as to the legality or otherwise of Ext.P3 notice issued by the 2nd respondent.

6. The specific contention raised in this Writ Petition is that the procedure adopted by the 2nd respondent for seizure of the vehicle in question is contrary to Rule 27 of the Kerala Protection of

River Banks and Regulation of Removal of Sand Rules, 2002. Rule 27 deals with procedure for confiscation of vehicles. Going by Sub-Rule (1) of Rule 27, the police or revenue officials shall seize the vehicle used for transporting sand in violation of the provisions of the Act and the Rules made thereunder. Going by Sub-Rule (2) of Rule 27, in the case of seizure of vehicle under sub-section (1), a mahazar shall be prepared in the presence of two witnesses and one copy of the same shall be given to the person possessing the vehicle at the time of seizure and one copy to the District Collector. Going by Sub-Rule (3) of Rule 27, the vehicle may be returned if the owner of the vehicle or the possessor remits an amount towards River Management Fund equal to the price fixed by the District Collector, with fine within 7 days of seizure.

7. Since the specific stand taken by the petitioner is that the seizure was even without furnishing a copy of the seizure mahazar to the person in possession of the vehicle, the learned Government Pleader was directed by order dated 25.6.2015 to make available the files relating to Ext.P3 notice of the 2nd respondent, including the permit referred to in paragraph 7 and also the official records

referred to in paragraph 9 of the counter affidavit filed by respondents 1 and 2.

8. The records made available by the learned Government Pleader makes it explicitly clear that, at the time of seizure a copy of the seizure mahazar was not given to the person in possession of the vehicle. If that be so, I find absolutely no grounds to sustain Ext.P3 notice issued by the 2nd respondent, which is without following the mandatory procedure under Rule 27 of the Kerala Protection of River Banks and Regulation of Removal of Sand Rules, 2002.

9. In the result, Ext.P3 notice is set aside and the Writ Petition is allowed. The 2nd respondent shall return the security amount deposited by the petitioner, within a period of three months from the date of receipt of a certified copy of this judgment.

No order as to costs.

ANIL K.NARENDRAN, JUDGE

skj