IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

THURSDAY, THE 9TH DAY OF JULY 2015/18TH ASHADHA, 1937

WA.No. 1368 of 2015 () IN WP(C).32946/2014

AGAINST THE ORDER/JUDGMENT IN WP(C) 32946/2014 of HIGH COURT OF KERALA DATED 25-03-2015

APPELLANT(S)/PETITIONER:

AISHA BEEVI
AGED 48 YEARS,
W/O NASAR,
AL-SAVANIA MANZIL, MANNAR PO,
KURATTASSERY VILLAGE,
CHENGANNUR, ALAPPUZHA DT.689622.

BY ADVS.SRI.RAAJESH S.SUBRAHMANIAN
SRI.V.R.RAJESH

RESPONDENT(S/RESPONDENTS:
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1. DISTRICT COLLECTOR,
COLLECTORATE,
PATHANAMTHITTA 689645.

2. THE SUB DIVISIONAL MAGISTRATE,
THIRUVALLA,
PATHANAMTHITTA DT 689101.

3. THE SUB INSPECTOR OF POLICE
PULIKKEZHU POLICE STATION,
VALANJAVATTOM PO,
PATHANAMTHITTA DT 689101.

BY SPL.GOVERNMENT PLEADER SMT.GIRIJA GOPAL

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 09-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WA NO.1368/2015

APPENDIX

APPELLANT'S EXHIBITS

ANNEXURE 1: TRUE COPY OF THE NOTICE DATE:8/6/2015 ISSUED BY THE 2ND RESPONDENT.

Rp

//TRUE COPY//

PS TO JUDGE

ASHOK BHUSHAN, CJ
&
A.M. SHAFFIQUE, J.
==========
W.A. No. 1368 of 2015
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Dated this, the 9th day of July, 2015

J U D G M E N T

Shaffique, J

This writ appeal is filed by the writ petitioner challenging judgment dated 25/3/2015 in WP(C) No.32946/14.

2. The writ petition was filed challenging further orders issued by the Revenue Divisional Officer, District Collector and the District Court in a matter relating to the Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001 (hereinafter referred to as 'the Act').

3. Petitioner's vehicle bearing Regn.No.KL-40/6051 was seized for transporting river sand without necessary pass. The matter was adjudicated by the Sub Divisional Magistrate and Ext.P1 order dated 31/1/2011 was passed permitting the petitioner to get release of the vehicle on depositing the value of the same in terms of Section 23A(3) of the Act within a period of thirty days. Petitioner preferred an appeal before the District

Collector and the same was confirmed calling upon the petitioner to deposit ₹2,50,000/- for release of the vehicle, failing which, he was informed that the vehicle and the materials will be auctioned for recovery of the money.

4. Petitioner thereafter filed an appeal before the District Court with an application to condone delay. The delay petition was dismissed as the Court observed that it had no jurisdiction to condone the delay in filing the appeal. It is impugning the aforesaid orders that the petitioner has filed the writ petition.

5. The main contention urged by the petitioner was that the sand collected from the petitioner's vehicle was not river sand and no scientific material was available to indicate so. Petitioner points out that, in Exts.P1 and P2, it is stated that, what is recovered from the vehicle was 'sand' and not river sand. Further, despite the fact that the petitioner had raised a contention before the appellate authority that what was transported was not river sand, but balance of sand available from a construction site, the appellate authority did not consider that issue. Learned Single Judge dismissed the writ petition on the ground that when statutory authorities have taken a concurrent view in respect of

the material that was transported in the vehicle without transportation pass, this Court sitting in judicial review cannot upset the said finding of fact.

6. It is pointed out by the learned counsel for the appellant that there was no material to indicate that the sand that was carried in the vehicle was river sand to invoke the provisions of the Act. He points out that Ext.P1 is in a standard format and only the details are filled up. But it is relevant to note that the format is being used only for taking action pursuant to the provisions of the Act, wherein it was clearly stated that the sand was carried without transportation pass and action had been taken under the provisions of the Act. Under such circumstances, proceedings had been taken in terms of Ext.P1 under the provisions of Section 23A(3) of the Act. Though the learned counsel for the appellant submitted that a contention was raised before the appellate authority that the sand seized was not river sand, a perusal of the memorandum or appeal, a copy of which was placed before us, does not ever indicate that such a specific contention had been urged on behalf of the appellant. It is in fact stated that what was carried by the petitioner was the balance

sand available from a construction site of the building. For the purpose of construction, definitely river sand is being used and no specific contention has been raised that sand which was transported was not river sand. Under such circumstances, we do not think that the authorities have committed any error in calling upon the petitioner to deposit the amount for release of the vehicle.

In the aforesaid factual background, we do not find any ground to interfere with the judgment of the learned Single Judge and accordingly the appeal is dismissed.

Sd/-
ASHOK BHUSHAN, CHIEF JUSTICE

Sd/-
A.M. SHAFFIQUE, JUDGE

Rp

//True Copy//

PS to Judge