

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V**

FRIDAY, THE 11TH DAY OF DECEMBER 2015/20TH AGRAHAYANA, 1937

WA.No. 2679 of 2015

AGAINST THE ORDER IN W.P.(C).NO.32992/2015, DATED 20-11-2015

APPELLANT(S)/1ST RESPONDENT IN THE W.P.(C) :

**DISTRICT COLLECTOR,
ERNAKULAM.**

BY SR.GOVERNMENT PLEADER SRI.P.IDAVIS

RESPONDENT(S)/PETITIONER AND 2ND RESPONDENT IN W.P(C) :

- 1. KURIACHAN M.M.,
S/O.MATHEW, MADATHUMPADY HOUSE, NORTH FORT GATE,
THRIPUNITHURA- 682 301.**
- 2. THE SECRETARY,
MARADU MUNICIPALITY, MARADU P.O., THRIPUNITHURA- 682 301.**

**R1 BY ADV. SMT.V.J.RUBY
R2 BY ADV. SRI.T.R.RAJAN, S.C, MARADU MUNICIPALITY**

**THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 11-12-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

Msd.

Ashok Bhushan, CJ & Raja Vijayaraghavan V., J

W.A. No. 2679 of 2015

Dated this the 11th day of December, 2015

JUDGMENT

Ashok Bhushan, CJ.

Heard learned Special Government Pleader for appellant and learned counsel appearing for the first respondent as well as learned counsel for the Municipality.

2. This writ appeal has been filed against the interim order dated 20.11.2015 in Writ Petition(C) No.32992 of 2015. The writ petition is still pending. With the consent of the parties, we heard the appeal finally and we decide this appeal by this order.

3. The writ petition was filed by the first respondent praying for the following reliefs :

“i. Issue a writ of mandamus or any other writ, order or direction directing the 2nd respondent to complete the adjudication in connection with the seizure of the vehicle within a short span which this Honourable Court may deem fit and proper and suspend the order issued by respondent dated 16.10.2015 in the interest of justice circumstance of the case.

ii. Direct the respondent to release the vehicle for a custody till finalization of adjudication proceedings within two days pending and this Honourable Court may deem fit and proper in the interest of justice circumstance of the case.”

The vehicle which was the subject matter of the order dated 16.10.2015 was subject to different litigations. Regarding seizure of the vehicle, the earlier owner had filed the writ petition.

4. The petitioner also had filed writ petition being W.P(C) No.11005 of 2015 which was decided on 10.4.2015. Aggrieved by the said judgment, Writ Appeal No.933 of 2015 was filed, which was disposed on 12.5.2015 where the Division Bench has modified the judgment of learned Single Judge and directed the District Collector to complete adjudication under section 20 of the Kerala Conservation of Paddy land and Wet land Act, 2008 on an early basis. Consequent to the order of the Division Bench, the District Collector has passed an order, Exhibit P6 on 16.10.2015 which was the subject matter of the writ petition giving rise to this writ appeal.

5. Learned Single Judge, by the interim order directed release of the vehicle without any condition. However, neither order dated 16.10.2012 has been suspended nor the order has been adverted to, according to which order the vehicle could have been released after fulfillment of the conditions as indicated therein.

6. Learned counsel for the writ petitioner submitted that the petitioner was only involved in loading and unloading and he is not aware of the details of land and permits. It is further submitted that a contempt case has already been filed by the writ petitioner where an order has been passed.

7. We have considered the submission of learned counsel for the parties and perused the records. A perusal of the interim order would indicate that learned Single Judge has passed an order directing for release of the vehicle unconditionally where as under the order dated 16.10.2015, conditions were imposed for release of the vehicle by which the vehicle has been confiscated and option was given to get the vehicle released. Further submission is that the relief which has been granted by the learned Single Judge ought to have been available at the time of final disposal of the writ petition and could not have been granted as an interim measure.

8. A perusal of the order would indicate that the learned Single Judge did not advert to the order dated 16.10.2015 and without suspending or setting aside the order, directed for release of the vehicle.

9. We are of the view that interest of justice will be

served in setting aside the order dated 20.11.2015 and remanding the matter before the learned Single Judge for consideration afresh. We make it clear that we are not expressing any opinion on the merits of the case and it shall be open for the learned Single Judge to pass fresh orders on the interim application of the writ petitioner. It will be open for both the parties to request for early disposal of the matter.

The writ appeal is disposed of accordingly.

Sd/-
Ashok Bhushan,
Chief Justice

Sd/-
Raja Vijayaraghavan V,
Judge