

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

TUESDAY, THE 6TH DAY OF JANUARY 2015/16TH POUSHA, 1936

WP(C).No. 247 of 2015 (E)

PETITIONER :

**DINESAN,S/O.PRABHAKARAN, AGED 45 YEARS,
KULAKKADAVIL HOUSE, KONOTT P.O.,
KURUVATTOOR, KOZHIKODE DISTRICT.**

BY ADV. SRI.SUNNY MATHEW

RESPONDENT(S):

- 1. THE TAHSILDAR,
OFFICE OF THE TAHSILDAR,
KOZHIKODE - 673 001.**
- 2. THE SUB COLLECTOR,
KOZHIKODE - 673 001.**
- 3. STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY TO GOVERNMENT,
SECRETARIAT, TRIVANDRUM- 695 001.**

R1 TO R3 BY SR GOVERNMENT PLEADER SRI.JOSEPH GEORGE

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 06-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

sts

WP(C).No. 247 of 2015 (E)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1: TRUE COPY OF REGISTRATION CERTIFICATE OF PETITIONER'S JCB

EXT.P2: TRUE COPY OF THE MAHAZAR DATED 26/12/2014

**EXT.P3: TRUE COPY OF THE BUILDING PERMIT ISSUED TO
SRI.P.K.MUTHUSAMY BY THE CORPORATION OF KOZHIKODE.**

EXT.P4: TRUE COPY OF THE GAZETTE NOTIFICATION DATED 30/6/2014.

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

P.A.TO.JUDGE

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P.R. RAMACHANDRA MENON, J.

W.P(C). No. 247 of 2015

Dated this the 6th day of January, 2015

J U D G M E N T

The petitioner who is stated as the owner of the JCB bearing No.KL-2W-8097, is aggrieved by seizure of the said vehicle on 26.12.2014, by the 1st respondent, alleging illegal mining of 'red earth'. The case of the petitioner is that, his vehicle was hired by the owner of the property concerned, who has been issued Ext.P3 permit by the concerned Local Authority, for construction of a residential building therein. It was for facilitating such exercise, that the petitioner's vehicle was deployed and this being an activity coming within the four walls of law, by virtue of the amendment of the Statute particularly, Rule 8(1B) notified as per Ext.P4, by the Government, the seizure is *per se* wrong and illegal in all respects and hence the writ petition.

2. Heard the learned Government Pleader as well.

3. On going through the materials produced, this Court finds that Ext.P2 mahazar clearly describes the place of seizure as situated in “**Vengery Village**” of Kozhikode Taluk whereas, Ext.P3 permit issued by the Local Authority refers to the property

in Survey No. 132/6 in “**Chevayoor Village**” of Kozhikode District. This clearly reveals that the properties are entirely different and as such, the version of the petitioner is far from the track of truth. This Court does not find any tenable ground to call for interference. Accordingly, the writ petition stands dismissed.

However, the petitioner will stand permitted to compound the offence, if so advised, by virtue of the enabling provisions under the statute; on which occasion, the vehicle shall be released to the petitioner forthwith on satisfying Rs.25,000/- (Rupees twenty five thousand only) as the compounding fee. Once the offence is compounded, no prosecution proceedings shall lie against the petitioner.

Sd/-

P.R. RAMACHANDRA MENON, JUDGE.