

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

TUESDAY, THE 13TH DAY OF JANUARY 2015/23RD POUSHA, 1936

WP(C).No. 335 of 2015 (N)

PETITIONER(S) :

**DINESAN, AGED 45 YEARS,
S/O.PRABHAKARAN, KANDAMKULATHIL HOUSE, 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.**

BY GOVERNMENT PLEADER SRI.JOSEPH GEORGE

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 13-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

Msd.

WP(C).No. 335 of 2015 (N)

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1: TRUE COPY OF REGISTRATION CERTIFICATE OF PETITIONER'S
 VEHICLE.**
- 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 30-06-2014.**

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

P.S.TO JUDGE.

Msd.

P.R. RAMACHANDRA MENON, J.

.....
W.P.(C)No.335 OF 2015
.....

Dated this the 13th January, 2015

J U D G M E N T

The petitioner who is stated as the owner of the vehicle bearing No.KL-57B/725, is aggrieved by seizure of the said vehicle on 26.12.2014, by the 1st respondent/Tahsildar, 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. In support of the case projected by the petitioner, a rough sketch has been prepared and produced as Ext.P5 along

with I.A.No.427 of 2015 . In the affidavit filed in support of the I.A., the petitioner contends as follows:

"As a matter of fact, in order to reach the property of P.K. Muthuswamy which is covered by Exhibit P3 building permit, a road had to be constructed and the same was done by using the JCB which was also seized by the 1st respondent . The earth collected by constructing the road was carried in the petitioner's vehicle. It is respectfully submitted that the petitioner is not conversant with the lay of the area and therefore, while instructing the counsel the petitioner was also under the reasonable belief that the place from where the earth was excavated is also within Chevayoor Village and the property belongs to Sri Muthurswamy. Before carrying the red earth the petitioner was shown by Sri. Muthuswamy aforesaid a copy of the permit. There is no boundary wall demarcating the boundary of the property of Sri.P.K. Muthuswamy. Therefore the petitioner was under the reasonable belief that the property from where earth was loaded is within Chevayoor Village/"

By virtue of turn of events, the petitioner concedes that the ordinary earth was being removed not from the property belonging to the permit holder by name Muthuswamy, but from the property belonging to somebody else, through which a road was intended to be constructed to reach the property of the permit holder Muthuswamy. Rule 8(1B) of the Kerala Minor Mineral Concession Rules, 1967 stipulates that no 'NOC' is required if at all the ordinary earth is to be removed from the property of the permit holder, once such a permission is issued by the Local Authority. In view of the admitted fact that the earth collected and transported in the vehicle belonging to the petitioner was from some other property though situated nearby, in so far as the same is not from the property of the permit holder, an offence is made out under the relevant provisions of the MMDR Act, 1957/ Kerala Minor Mineral Concession Rules, 1967.

4. On going through the materials produced also, 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.

5. 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.

P.R.RAMACHANDRA MENON
JUDGE

/k