

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

WEDNESDAY, THE 7TH DAY OF JANUARY 2015/17TH POUSHA, 1936

WP(C).No. 385 of 2015 (W)

PETITIONER :

**VIJAYAN.C.P., AGED 60 YEARS, S/O PAPPU,
CHIRAGARAIL HOUSE, ASAMANNOR VILLAGE,
PANICHAYAM, ERNAKULAM 683545**

**BY ADVS.SRI.K.S.ANEESH
SRI.P.J.SAGAR**

RESPONDENT :

**DISTRICT COLLECTOR,
KOTTAYAM DISTRICT 686002**

BY GOVERNMENT PLEADER SRI. JOSEPH GEORGE

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 07-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

bp

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1: TRUE COPY OF THE SEIZURE MAHAZER ISSUED BY THE TAHSILDAR, CHANGANASSERY.
- EXHIBIT P2: TRUE COPY OF THE PHOTOGRAPHS SHOWING THE ORIGINAL PICTURE OF THE LAND IN SURVEY NO 294/3-2 AND NEIGHBOURING PROPERTIES.
- EXHIBIT P3: TRUE COPY OF THE REPORT SUBMITTED BY THE PUMING CONTRACTOR BEFORE THE SPECIAL PUNCHA OFFICE, ALAPPUZHA IN THE YEAR 2008 (MALAYALAM ERA 1184)
- EXHIBIT P4 TRUE COPY OF THE CERTIFICATE ISSUED BY THE VILLAGE OFFICER VAZHAPPALY WEST DATED 13-05-2009.
- EXHIBIT P5: TRUE COPY OF THE REPRESENTATION SUBMITTED BEFORE THE RESPONDENT BY THE PETITIONER.
- EXHIBIT P6: TRUE COPY OF THE REPRESENTATION SUBMITTED BEFORE THE TAHSILDAR, CHANGANASSERY BY THE PETITIONER.
- EXHIBIT P7: TRUE COPY OF THE ORDER IN THE WRIT PETITION WPC NO 31877/2014
- EXHIBIT P8: TRUE COPY OF THE APPLICATION DATED N06-12-2014 BEFORE THE RESPONDENT.
- EXHIBIT P9: TRUE COPY OF THE NOTICE DATED 09-12-2014 ISSUED BY THE RESPONDENT.
- EXHIBIT P10: TRUE COPY OF THE NOTICE DATED 15-12-2014 SERVED ON THE OFFICE OF THE RESPONDENT

RESPONDENT(S)' EXHIBITS

:

NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

P.R. RAMACHANDRA MENON, J.

W.P(C). No. 385 of 2015

Dated this the 7th day of January, 2015

J U D G M E N T

The petitioner is the owner of the JCB Excavator bearing Registration No.KL-17-D-8608 which was seized by the respondent as per Ext.P1 seizure mahazar. The case of the petitioner is that the property concerned herein is not a Paddy land or Wet Land as defined under Section 2(xii) or 2(xviii) of Act 28 of 2008 and that the property is a 'dry land'. There is no rhyme or reason to have taken the vehicle to custody. The petitioner had approached this Court earlier by filing WP(C) No.31877 of 2014, which was disposed of as per Ext.P7 judgment dated 28.11.2014, whereby the interim custody of the vehicle was directed to be considered. Pursuant to the said verdict the respondent issued Ext.P9 notice dated 09.12.2014 to the petitioner asking the petition to satisfy 1.5 times of the value of the vehicle or to furnish security by way of immovable property for the requisite value so as to release the vehicle. The petitioner submitted Ext.P10 stating that the direction in Ext.P7 judgment is to ascertain whether the land in question is seemingly a 'dry land'

and if so, to have the custody released on execution of a 'simple bond'.

2. The learned Government Pleader appearing for the respondent submits that, no such positive direction was given by this Court in Ext.P7 nor is there any positive declaration of law as to the course of action to be pursued. Section 20 of the Kerala Conservation of Paddy Land and Wetland Act & Rules reads as follows:

“Confiscation of vessel, vehicle, etc. - (1) After obtaining a report regarding seizure under Section 12 or Section 19, the Collector may, if he thinks fit, order confiscation of the object seized:

Provided that the owner or the person in custody of the same, shall be given an option to pay, in lieu of its confiscation, a sum equal to one and a half times the value of the seized articles, as may be determined by the District Collector.

(2) No order of confiscation under sub-section (1) shall be made by the District Collector unless the owner thereof has been given an opportunity of being heard in the matter.

(3) No order of confiscation under sub-section (1) shall be invalid merely by reason of any defect or irregularity in the notice given under sub-section (2), if the provisions have been substantially complied with.”

3. In so far as there is a statutory prescription, there

cannot be any writ or mandamus contrary to the provisions of statute. The question is whether the property concerned is a paddy land or a dry land. This has to be considered by the competent authority in accordance with the relevant provisions of law. The petitioner was given an opportunity to have interim custody of the vehicle by the respondent, in conformity with the provisions of Section 20. He was also given an option to furnish adequate security by way of immovable property of the requisite value as per Ext.P9. It is open for the petitioner to satisfy the same and have the custody. In any view of the matter, the proceedings have to be taken to logical conclusion. Accordingly, there will be a direction to the 1st respondent to finalise the adjudication proceedings, which shall be done at the earliest, at any rate, within 'four weeks' from the date of receipt of a copy of this judgment.

The petitioner shall produce a copy of this judgment along with a copy of this writ petition before the respondent for further steps.

Sd/-

P.R. RAMACHANDRA MENON, JUDGE.