

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

MONDAY, THE 5TH DAY OF JANUARY 2015/15TH POUSHA, 1936

WP(C).No. 3133 of 2013 (N)

PETITIONER :

**SURENDRAN, AGED 39 YEARS,
S/O.KUNHUNNI NAIR, 'SURABHI',
THACHERI THAZHATH HOUSE,
KAKKODI, KOZHIKODE DISTRICT.**

**BY ADVS.SRI.C.P.PEETHAMBARAN
SMT.MINI.V.A.**

RESPONDENT(S):

**1. THE DISTRICT COLLECTOR,
KOZHIKODE-673 001**

2. THE TAHSILDAR, KOZHIKODE-673 001

R1 & R2 BY GOVERNMENT PLEADER SRI.R.RANJITH

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 07-11-2014 , THE COURT ON 05-01-2015 DELIVERED THE
FOLLOWING:**

sts

WP(C).NO.3133/2013

APPENDIX

PETITIONER(S) EXHIBITS

**EXHIBIT P1: TRUE COPY OF THE REGISTRATION CERTIFICATE OF THE VEHICLE
BEARING REG.NO.KL-11/AG-5405**

**EXHIBIT P2: TRUE COPY OF THE SEIZURE MAHAZAR PREPARED BY THE 2ND
RESPONDENT DATED 25.12.2012**

**EXHIBIT P3: TRUE PHOTOGRAPHS SHOWING THE NATURE OF THE LAND AND ALSO
THE MATERIALS UNLOADED IN THE LAND**

**EXHIBIT P4: TRUE COPY OF THE JUDGMENT DATED 3.1.2013 IN WP(C)NO.318/2013
OF THIS HON'BLE COURT.**

**EXHIBIT P5: TRUE COPY OF THE APPLICATION DATED 14.1.2013 FILED BY THE
PETITIONER BEFORE THE 1ST RESPONDENT**

EXHIBIT P6: TRUE COPY OF THE ORDER DATED 22/1/2013 OF THE 1ST RESPONDENT

RESPONDENTS' EXHIBITS :

EXHIBIT R1(A): TRUE COPY OF THE RELEVANT PAGE OF THE DATA BANK.

**EXHIBIT R1(B): TRUE COPY OF THE REPORT ADDITIONAL TAHSILDAR,
KOZHIKODE DATED 04/05/2013.**

/TRUE COPY/

P.S.TO.JUDGE

sts

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 3133 of 2013

Dated this the 5th day of January, 2015

J U D G M E N T

The petitioner, who is the registered owner of a goods vehicle bearing Reg.No.KL-11/AG-5405, has come up before this Court challenging the confiscation of his vehicle in a proceeding initiated under the Kerala Conservation of Paddy Land and Wet Land Act, 2008 (hereinafter referred to as, "the Act").

2. The petitioner's vehicle was seized by the 2nd respondent on 25.12.2012 alleging that the vehicle was used for unloading red earth in a property comprised in R.S.Nos.51/1A and 1B of Kuruvattoor Village, having an extent of 32 cents owned by one Ushakumari. According to the 2nd respondent, the vehicle was used for reclaiming paddy field in violation of the Act. According to the petitioner, though as a matter of fact, the revenue records describe the nature of land as 'nilam', it was a pacca garden land having several improvements and coconut

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trees aged more than 15 years. The petitioner alleges that the provisions of the Act are not applicable to the property, which has been converted prior to the introduction of the Act; and therefore, the very seizure itself is illegal. The petitioner further points out that there are two houses situated in the adjacent property, which are constructed after the introduction of the Act. The petitioner points out that his vehicle was taken on rent by a contractor and the petitioner was not involved in the offence as alleged. The petitioner approached this Court with WP(C) No.318/2013, in which, this Court, by Ext.P4 judgment, directed the 1st respondent to consider the release of the vehicle as an interim measure within a period of two weeks from the date of application for claiming such release. The petitioner filed Ext.P5 application before the 1st respondent stating that he was innocent. The petitioner alleges that the 1st respondent, without considering the real nature of the land, disposed of Ext.P5 application by Ext.P6 order directing the

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petitioner to remit ₹7,27,500/-, being 1½ times value of the seized vehicle, for interim custody. It is with this background, the petitioner has come up before this Court.

3. The 1st respondent has filed a counter affidavit contending that the petitioner's vehicle was engaged in illegal and unauthorized filling up of paddy land in R.S.No.52/1D of Kuruvattur Desom in Kuruvattur Village. According to the 1st respondent, this land was classified as 'nilam' in the revenue records and also included in the draft data bank prepared as per the Act. The 1st respondent has produced Ext.R1(a), which is the true copy of the relevant page of the Data Bank. The 1st respondent maintained the stand that as per Ext.R1(b) report of the Additional Tahsildar, Kozhikode, the vehicle was used for unauthorized conversion of paddy land; and therefore, the vehicle was seized and confiscated as per Section 20 of the Act. In compliance of the direction of this Court, Ext.P6 order was issued directing the petitioner to remit ₹7,27,500/- as 1½ times value of the

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said vehicle as reported by the Regional Transport Officer, Kozhikode. Therefore, the 1st respondent justified the stand taken by them.

4. Arguments have been heard.

5. The argument of the learned counsel for the petitioner is that the property, where the red soil has been unloaded, cannot be described as 'nilam'; and it is a pucca garden land. According to the petitioner, the conversion has taken place before the introduction of the Act; and therefore, the provisions of the Act cannot be invoked. It was further pointed out that the 1st respondent is not empowered to impose such a huge amount as a pre-condition for release of the vehicle as an interim measure. The petitioner produced Ext.P3 photographs, which would go to show that aged coconut trees are there in the property, where the red earth was unloaded. The specific case of the petitioner that the land is a reclaimed land, has not been denied by the respondents in the counter affidavit. On the other hand, they would contend

that mere presence of some coconut trees is not sufficient to prove that it is a pucca garden land. Their stand is that as per the draft data bank, it is a paddy land; and therefore, the vehicle was used for illegal conversion of the said paddy land.

6. This Court in **Shahanaz Shukkoor** v. **Chelannoor Gramapanchayat** [2009 (3) KLT 899] has held that mere description of an item of property as 'nilam' (paddy field or wet land) in revenue records is insufficient to assume that the land cannot be used for any purpose other than those, for which, a paddy field or wet land uses. This is because of the fact that the Act deals with the conservation of lands, which are wet lands and paddy fields, on the basis of actual fact situation and not depending on the description of property in revenue records. Viewed in that profile, it has to be held that the seizure on the basis of the alleged violation of the provisions of the Act itself is illegal. Moreover, as per Ext.R1(b), the red earth said to have been deposited in

the aforesaid property has been removed by the owner subsequently. Now, the District Collector, by Ext.P6 order directed the petitioner to remit a sum of ₹7,27,500/-, which is 1½ times value of the seized vehicle. As this Court is of the view that the seizure itself is illegal, the direction to remit the amount for release of the vehicle cannot be sustained. Therefore, on a consideration of the entire materials now placed on record, this Court is of the view that the petitioner is entitled to succeed.

In the result, the writ petition is allowed.

Ext.P6 is quashed. The respondents are directed to release the vehicle to the petitioner without imposing any further condition in the light of what has been stated above. Formal orders to this effect shall be issued within a period of one month from the date of receipt of a copy of this judgment.

Sd/-
A.V. RAMAKRISHNA PILLAI,
JUDGE

bka/-