

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

THURSDAY, THE 22ND DAY OF JANUARY 2015/2ND MAGHA, 1936

WP(C).No. 2024 of 2015 (C)

PETITIONER:

**ANTONY, S/O.CHIMMAR, AGED 45 YEARS,
VEVUKATTU, VARAPPUZHA P.O.,
VARAPPUZHA VILLAGE, PARAVUR TALUK,
ERNAKULAM DISTRICT (OWNER OF A LORRY
BEARING REGISTRATION NO.KL-7-AG-5912).**

BY ADV. SRI.P.M.ZIRAJ

RESPONDENT(S):

- 1. THE SUB INSPECTOR OF POLICE,
CHERANELLOOR POLICE STATION,
ERNAKULAM DISTRICT - 682 301.**
- 2. THE DIRTRICT COLLECTOR,
ERNAKULAM, CIVIL STATION, KAKKANAD,
ERNAKULAM DISTRICT - 682 030.**
- 3. STATE OF KERALA, REPRESENTED BY
SECRETARY TO GOVERNMENT,
DEPARTMENT OF REVENUE,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.**

BY SENIOR GOVERNMENT PLEADER SRI.K.C.VINCENT

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 22-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

mbr/

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APPENDIX

PETITIONER(S)' EXHIBITS:

- EXT.P1:** TRUE COPY OF THE MAHAZAR DATED 18/11/2014 PREPARED BY THE FIRST RESPONDENT IN CONNECTION WITH THE SEIZURE OF THE VEHICLE OF THE PETITIONER.
- EXT.P2:** TRUE COPY OF THE REPORT DATED 20/11/2014 SUBMITTED BY THE FIRST RESPONDENT BEFORE THE SECOND RESPONDENT.
- EXT.P3:** TRUE COPY OF THE REPORT DATED 19/11/2014 SUBMITTED BY THE VILLAGE OFFICER, CHERANELLOOR VILLAGE BEFORE THE SECOND RESPONDENT.
- EXT.P4:** TRUE COPY OF THE RELEVANT PAGES OF THE FARE VALUE OF LAND REGISTRAR OF GOVERNMENT OF KERALA.

RESPONDENT(S)' EXHIBITS: - NIL

/TRUE COPY/

P.S. TO JUDGE

mbr/

P.R. RAMACHANDRA MENON, J.

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Dated this the 22nd day of January, 2015

JUDGMENT

Petitioner is the owner of the vehicle bearing registration No. KL-7-AG-5912, which was seized by the 1st respondent on 18.11.2014 alleging illegal filling of paddy land. The case of the petitioner is that the property concerned herein is not a paddy land or wet land as defined under the Act 28 of 2008. The property has been notified as residential plot as evident from Ext.P4, which is a copy of the fair value register notified and published by the Government. Out of the property having a total extent nearly 36 cents, a portion of nearly 30 cents is owned by the husband and the remaining portion of 6 cents is owned by the wife. The extent of 30 cents is shown as 'Purayidam' in the draft data bank register, whereas the remaining extent of 6 cents has been shown as paddy land. The entire property of 36

cents has been shown as 'Nilam' in the BTR.

2. The learned counsel appearing for the petitioner points out that the property is surrounded by compound walls and quite a lot of improvements are there. It is also pointed out that, there is no paddy cultivation in the said land or nearby land for the past several decades and that the seizure effected by the 1st respondent is per se wrong and illegal in all respects, as the provisions of Act 28 of 2008 are not attracted.

3. The learned Government Pleader points out that one side of the property is paddy land and there is no compound wall on all the sides as contented by the petitioner. Reference is also made to Ext.P3 report of the Village Officer submitted before the 2nd respondent in this regard showing the nature of the property concerned.

4. In view of the disputed question of fact, it requires to be considered and adjudicated by the 2nd respondent. But coming to the question of interim

custody, it has to be noted that, even according to the 1st respondent, the filling up exercise was being effected in a **“Paramba”** as observed in Ext.P1 Mahazar, identifying the spot. But there is mention with regard to the nature of property as 'paddy land' in some other portion of Ext.P1. This has to be considered and finalised by the 2nd respondent. If the property concerned was not lying as a paddy land or wet land as on the date of commencement of the Act, the provisions of Act 28 of 2008 are not attracted.

5. In the said circumstance, interim custody of the vehicle is ordered to be released to the petitioner forthwith, on execution of a 'simple bond' and on giving an undertaking in the form of an affidavit to the effect that the vehicle will not be alienated, nor will any action be taken so as to diminish the value of the same, till the proceedings are finalised. The subject matter forming part of Exts.P1 and P3 shall be considered and finalised

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in the light of all the relevant documents including Exts.P2 and P3. This shall be done at the earliest, at any rate within two months from the date of receipt of a copy of this judgment, after affording an opportunity of hearing the petitioner. Petitioner shall produce a copy of the judgment along with the copy of the writ petition before the concerned respondent.

Sd/-
P.R. RAMACHANDRA MENON
JUDGE

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