

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

THURSDAY, THE 26TH DAY OF FEBRUARY 2015/7TH PHALGUNA, 1936

WP(C).No. 6414 of 2013 (B)

PETITIONER(S):

**V.R.PRADEEP, AGED 40 YEARS
S/O RAVEENDRAN, VADAYADIYIL HOUSE, MACHIPLAVU P.O
ADIMALY, IDUKKI DISTRICT
(REGISTRED OWNER OF AN EXCAVATOR/ HITACHI).**

BY ADV. SRI.BABU S. NAIR

RESPONDENT(S):

- 1. THE DISTRICT COLLECTOR,
IDUKKI, PIN 685602.**
- 2. THE SUB INSPECTOR OF POLICE,
ADIMALI POLICE STATION, IDUKKI DISTRICT 685561.**

BY GOVERNMENT PLEADER SRI.MUHAMMED SHAFI.M.

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 26-02-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

PJ

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APPENDIX

PETITIONER(S) EXHIBITS

EXHIBIT P1: TRUE COPY OF THE SEIZURE MAHAZAR PREPARED BY THE SECOND RESPONDENT DATED, 5.3.2013.

EXHIBIT P2: TRUE COPY OF THE INTERIM ORDER DATED, 3.4.2009 IN W.P.(C). NO.11206/2009 OF THIS HON'BLE COURT.

EXHIBIT P3: TRUE COPY OF THE INTERIM ORDER DATED, 7.12.2011 IN W.P.(C) NO.31828/2011 OF THIS HON'BLE COURT.

EXHIBIT P4: TRUE COPY OF THE INTERIM ORDER DATED, 3.6.2011 IN W.P.(C) NO.15058/2011 OF THIS HON'BLE COURT.

EXHIBIT P5: TRUE COPY OF THE INTERIM ORDER DATED, 11.3.2011 IN W.P.(C) NO.7689/2011 OF THIS HON'BLE COURT.

RESPONDENTS' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

P.R. RAMACHANDRA MENON J.

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Dated, this the 26th day of February, 2015

JUDGMENT

The **Excavator/Hitachi** was seized by the **2nd respondent/S.I. of Police** alleging offence under the Mines and Mineral (Development and Regulation) Act and the Kerala Minor Mineral Concession Rules. The main ground of challenge is that, the 2nd respondent is not having the jurisdiction or authority to effect seizure.

2. Heard both the sides.

3. The authority of the 2nd respondent to effect seizure has already been considered by this Court and the power and competence has been upheld as per the decision reported in **Aloshias C. Antony Vs. Government of Kerala** [2014(1) KLT 536]. The said decision was rendered, also taking note of the nature of offence which is a 'cognizable' one (notwithstanding anything contained in the Cr.P.C) as stipulated in Section 21(6) of MMDR Act, 1957 and also placing reliance on the judgment rendered by a Division Bench of this Court in **Construction Materials Movers Association V. State of Kerala**

[2008 (4) KLT 909]. In the said circumstance, there is no tenable ground to call for interference.

4. When the matter came up for consideration on **07.03.2013**, the vehicle was caused to be released, **on satisfaction of a sum Rs.25,000/-** and **on execution of a simple bond**. In the said circumstance, the further course of action required is to surrender the vehicle before the 2nd respondent, so as to enable the 2nd respondent to produce it before the concerned Magistrate having jurisdiction over the area and to proceed with steps for prosecution, unless the offence is sought to be compounded.

5. The petitioner expresses desire to compound the offence by virtue of the enabling provisions under the relevant provisions of law. This Court finds it fit and proper to permit the petitioner to have the offence compounded on satisfying the compounding fee of Rs.25,000/-. The amount ordered to be paid as per the interim order dated **07.03.2013** shall be treated as compounding fee and offence shall be treated as compounded. Once the offence is compounded, no prosecution proceedings will lie in view of the law declared by this Court in **Digil Vs. Sub Inspector of Police** [2013 (1) KLT 600]. It shall be reported to the concerned Magistrate, if

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the crime has already been reported. If there is any failure in satisfying the compounding fee, the 2nd respondent shall pursue further steps in connection with the prosecution before the concerned Magistrate having jurisdiction over the area.

The writ petition is disposed of.

Sd/-

**P. R. RAMACHANDRA MENON,
(JUDGE)**

kmd