

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

WEDNESDAY, THE 18TH DAY OF FEBRUARY 2015/29TH MAGHA, 1936

WP(C).No. 4522 of 2015 (M)

PETITIONER(S):

1. FAISAL M.A.
MADATHATTU HOUSE, NEDUVANNOOR,
CHOWARA P.O., ALUVA, ERNAKULAM
(OWNER OF TORUS TIPPER LORRY BEARING REGISTRATIN NO. KL 41 H 5147)
2. SANDEEP P.K,
PATTOORPADY HOUSE, CHOWARA P.O.
ALUVA ERNAKULAM OWNER OF TORUS TIPPER LORRY BEARING
REGISTRATIN NO. KL 41 J 3528)

BY ADVS.SRI.T.P.PRADEEP
SRI.P.K.SATHEES KUMAR

RESPONDENT(S):

1. SUB INSPECTOR OF POLICE
PULINKUNNU 688503
2. THE AGRICULTURAL OFFICER
KRISHI BHAVAN, PULINKUNNU, ALAPPUZHA 688503
3. KURUNNAPPAN,
ERUPATHIL HOUSE, CHATHURTHYAKARI,
KUTTANADU - 688506
4. THE DISTRICT COLLECTOR
ALAPPUZHA - 689126

R1,2 & 4 BY SR. GOVERNMENT PLEADER MR. K.C VINCENT

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
18-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 4522 of 2015 (M)

APPENDIX

PETITIONER(S)' EXHIBITS

P1:TRUE COPY OF THE RELEVANT PAGE OF THE REGISTRATION CERTIFICATE OF TIPPER LORRY BEARING REGISTRTION NO. KL 41 H 5147

P2:TRUE COPY OF THE RELEVANT PAGE OF THE REGISTRTION CERTIFICATE OF TIPPER LORRY BEARING REGISTRATION NO. KL 41 J 3528

P3:TRUE COPY OF THE MAHAZAR PREPARED BY THE 1ST RESPONDENT DATED 20.01.2015

P4:TRUE COPY OF THE REPORT SUBMITTED BY THE 1ST RESPONDENT DATED 20.01.2015

P5:TRUE COPY OF THE CERTIFICATE DATED 10.02.2015 ISSUED BY THE 2ND REPENDENT

P6:TRUE COPY OF THE PHOTOGRAPHS OF THE PROPERTY

P7:TRUE COPY OF THE ORDER OF THIS HONOURABLE COURT IN WPC No.32642/2011 DATED 19.12.2011

RESPONDENT(S)' EXHIBITS

NIL

// TRUE COPY //

P.A. TO JUDGE

sol.

P.R.RAMACHANDRA MENON, J.

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W.P.(C) No.4522 of 2015

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Dated this the 18th day of February, 2015

JUDGMENT

Petitioners are owners of the vehicles bearing Reg. Nos. **KL-41-H-5147** and **KL-41-J-3528** respectively which were seized as per Ext.P3 Mahazar prepared by the 1st respondent on 20.01.2015 alleging offence under Act 28 of 2008. According to the petitioners, the said vehicles were deployed for the authorised filling of the paddy land. The land in question, according to the petitioners, is not a 'paddy land' at all and the same is not included in the Draft Data Bank Register as disclosed from Ext.P5 certificate issued by the 2nd respondent. Reliance is also sought to be placed on various other records/ reports including the title deed, to show the lie and nature of the property concerned.

2. The learned Government Pleader, appearing for the respondents, submits on instructions that, though the land is not included as paddy land or wetland in the Data Bank Register, it has been shown as a paddy land in the revenue records. But the

law stands declared by this Court holding that, if the land in question was not lying as paddy land or wet land as per the definition under Sections 2(xii) and 2(xviii) of the Act 28 of 2008, the provisions of the said Act are not attracted. In the said circumstances, this Court finds that the offence, if at all any, committed by the petitioners could only be with reference to the provisions of the 'MMDR Act, 1957'/'KMMC Rules, 1967. By virtue of the enabling provisions of the 'MMDR Act, 1957'/'KMMC Rules, 1967, particularly, Section 23A of the 'MMDR Act' and Rule 60A of the 'KMMC Rules', the petitioners are entitled to compound the offences, if so desired.

3. Section 23A of the 'MMDR Act' and Rule 60A of the 'KMMC Rules' enable the party to have the offence compounded. The question whether prosecution proceedings could be pursued further, once the offence is compounded in accordance with the relevant provisions of the MMDR Act/Rules has already been considered and decided by this Court in **2013 (1) KLT 600 (Digil v. Sub Inspector of Police)**, holding that, once the offence is compounded, there cannot be any further prosecution proceedings. The directions given as per the above verdict are

extracted below :

"i) In cases where compounding applications have been acted upon as per the interim orders passed by this Court and the offences have been compounded and compounding fees have been collected and vehicles have been released, it is declared that no further proceedings can be taken for confiscation of the vehicles;

ii) In cases where complaints have been filed before the Court but compounding applications have been entertained and offences have been compounded, appropriate applications will be filed before the Courts and the concerned Courts will pass appropriate orders in the matter with regard to the closure of the cases pending;

iii) In cases where compounding applications are yet to be filed by the parties concerned, it is open to them to file applications which will be dealt with by the officer concerned in accordance with law and they will be free to pass appropriate orders on it. If no applications are filed within a period of three weeks from today and if compounding is not being allowed, it is open to the concerned officers to complete the procedures as enjoined by law."

After hearing both the sides, this Court finds that the petitioners are also entitled to have similar relief.

4. Coming to the extent of amount to be satisfied as compounding fee, the Rules specifically stipulate that any offence under the Rules can be compounded subject to the satisfaction of the maximum fine prescribed under the Rules, which is stated as Rs.5,000/-. But in respect of the

transportation of sand/earth without any valid pass/sanction, it is stated as an offence under the 'Act' itself by virtue of the incorporation of Section 4(1A), for which separate penalty is provided under the Act itself. The maximum fine in respect of such offence prescribed under the Act is stated as **₹25,000/-** each. It was in the said circumstance, that this Court has passed orders enabling the parties to have interim custody of the vehicle, on satisfaction of a sum of ₹25,000/-, also directing the 1st respondent to consider the application for compounding, if any.

5. In view of the willingness expressed from the part of the petitioners to have the offence compounded, conceding the guilt, this Court finds it fit and proper to direct the respondent to compound the offence, if the petitioners satisfy a sum of **₹25,000/-**. It is ordered accordingly. On satisfaction of the compounding fee, the vehicles shall be released to the petitioners forthwith. It is made clear that once the offence alleged against the petitioners is compounded, no prosecution proceedings shall be pursued against them.

6. The writ petition is disposed of accordingly. The petitioners shall produce a copy of this judgment along with a copy of this writ petition before the concerned respondent for further steps.

It is also made clear that unless proper authority/sanction is obtained under the KLU order from the competent authority, no further filling exercise shall be pursued in the property in question.

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

sj