

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

WEDNESDAY, THE 4TH DAY OF MARCH 2015/13TH PHALGUNA, 1936

WP(C).No. 6320 of 2015 (L)

PETITIONER(S):

**SANTHOSH, AGED 40 YEARS,
S/O.MOHANAN, THALAMANGALATHU HOUSE, BHUDANOOR MURI,
BHUDANOOR VILLAGE, CHENGANNUR TALUK,
ALAPPUZHA DISTRICT.**

BY ADV. SRI.AJITH MURALI

RESPONDENT(S):

- 1. THE DISTRICT COLLECTOR,
ALAPPUZHA, ALAPPUZHA DISTRICT - 688 001.**
- 2. THE REVENUE DIVISIOANL OFFICER,
CHENGANNUR, ALAPPUZHA DISTRICT - 689 121.**
- 3. THE SUB INSPECTOR,
CHENGANNUR POLICE STATION, CHENGANNUR TALUK,
ALAPPUZHA DISTRICT - 689 121.**
- 4. THE SENIOR GEOLOGIST,
DEPARTMENT OF MINING AND GEOLOGY, DISTRICT OFFICE,
ALAPPUZHA DISTRICT - 688 001.**

BY GOVERNMENT PLEADER SRI.K.C.VINCENT

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
04-03-2015, ALONG WITH WPC. 6336/2015, THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

WP(C).No. 6320 of 2015 (L)

APPENDIX

PETITIONER(S)' EXHIBITS

**EXT. P1-THE TRUE COPY OF THE F.I.R AND MAHAZER PREPARED BY THE
3RD RESPONDENT DATED 24-02-2015.**

**EXT. P2-THE TRUE COPY OF THE ORDER NO.192/2014-15/MM/OE/DOA/3020/2015
DATED 23-02-2015 ISSUED BY THE 4TH RESPONDENT.**

EXT. P3-THE TRUE COPY OF THE REGISTRATION CERTIFICATE.

**EXT. P4-PHOTO COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER
BEFORE THE 3RD RESPONDENT DATED 25-02-2015.**

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Ms v/

P.R. RAMACHANDRA MENON J.

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of 2015

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Dated, this the 4th day of March, 2015

JUDGMENT

The petitioner in W.P.(C) No. 6320 of 2015 is the owner of the vehicle bearing No. **KL 05 T 1189** while the petitioner in W.P.(C) No. 6336 of 2015 is the owner of the vehicle bearing No. **KL 30 A 4777**, which was seized by the third respondent/S.I. Of Police, alleging commission of offence under the the Mines and Mineral (Development and Regulation) Act, 1957 and the Kerala Minor Mineral Concession Rules. According to the petitioners, the proceedings are per se wrong an illegal in all respects, as the activities were being pursued by the petitioners in support of the valid documents, including Ext. P2 permit. Hence the writ petitions.

2. Heard the learned Government Pleader, who submits, on instructions and also with reference to the materials on record, that as per Ext. P2 permit, particularly the condition No. 6, it is clearly mentioned that on the strength of said permit no excavation shall be done in any manner. But contrary to the said stipulation, the

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petitioners were doing excavation at the time of seizure, as discernible from Ext. P1 FIR, which very much invites the offence under the MMDR Act/KMMC Rules. Hence the petitioners have been proceeded against. It is also brought to the notice of this Court that further proceeding by way of prosecution can go on, in view of the amendment to the Statute i.e. MMDR Act w.e.f 12.01.2015; by virtue of which no separate complaint is required to be filed before the Magistrate's Court and that the learned Magistrate can act on the basis of a police report.

3. In the above circumstances, the writ petitions are disposed of, without prejudice to the rights of the petitioner to move the Magistrate's Court for getting interim custody of the vehicle subject to appropriate conditions. This however will not bar the way of the of the petitioner to compound the offence before the 3rd respondent, if so desired.

4. Section 23A of the 'Act and the relevant Rules enable the parties to have the offence compounded. 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' by virtue of the incorporation of Section 4(1A), for which separate penalty is provided under the 'Act' itself. It was in the said circumstance, that this Court has been passing various orders in similar matters enabling the concerned parties to have the interim custody of the vehicle on satisfaction of a sum of **Rs.25,000/-** and also by directing the concerned respondent to consider the application for compounding, if any.

6. A question arose before this Court as to whether the prosecution proceedings could be pursued further, once the offence is compounded in accordance with the relevant provisions. This issue 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.

7. In view of the law declared as mentioned herein before, there will be a direction to the third respondent/S.I. Of Police to consider the applications, if any, filed by the petitioners to compound the offence; and pass appropriate orders forthwith,

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subject to satisfaction of a sum of **Rs.25000/-** as the compounding fee. Once the offence is compounded, no prosecution proceedings shall lie against the petitioner. The outcome shall be informed to the concerned Magistrate's Court accordingly.

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

Sd/-

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

kmd