

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. 6376 of 2015 (V)

PETITIONER(S):

1. KISHORE BALAKRISHNAN,
S/O.BALAKRISHNAN, AGED 39 YEARS,
CHOOKALAKUZHIYIL HOUSE,PERUMBALLOOR P.O.,
ARAKUZHA VILLAGE,MUVATTUPUZHA TALUK,
ERNAKULAM DISTRICT
(OWNER OF A LORRY BEARING REGISTRATION
NO.KL-KL-17-F-1836 AND A HITACHI EXCAVATOR 110).
2. SUNIL BHASKARAN,S/O.BHASKARAN,AGED 32 YEARS,
KANAKUZHGIPTHANPURAYIL,PANDAPPILLY P.O.,
ARAKUZHA VILLAGE, MUVATTUPUZHA TALUK,
ERNAKULAM DISTRICT (OWNER OF A LORRY BEARING REGISTRATION
NO.KL-17-L-5884).

BY ADV. SRI.P.M.ZIRAJ

RESPONDENT(S):

1. THE SUB INSPECTOR OF POLICE,
MUVATTUPUZHA POLICE STATION,
ERNAKULAM DISTRICT-682 101.
2. THE STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT,
INDUSTRIES DEPARTMENT, GOVERNMENT OF KERALA,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695 001.

R1 & R2 BY SR GOVERNMENT PLEADER SRI.K.C.VINCENT

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

sts

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APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1: TRUE COPY OF THE SEIZURE MAHAZAR DATED 21.02.2015 PREPARED
 BY THE FIRST RESPONDENT.**
- EXT.P2: TRUE COPY OF THE ORDER ISSUED BY THE DEPARTMENT OF MINING
 AND GEOLOGY TO THE LAND OWNER DATED 16.02.2015.**
- EXT.P3: TRUE COPY OF THE JUDGMENT OF THIS HONOURABLE COURT
 DATED 19.01.2015 IN WPC.NO.1174/2015.**
- EXT.P4: TRUE COPY OF THE BUILDING PERMIT ISSUED TO THE LAND OWNER
 BY THE SECRETARY, MUVATTUPUZHA MUNICIPALITY DATED
 07.04.2014.**
- EXT.P5: TRUE PHOTOGRAPHS OF THE BUILDING SITE IN WHERE EXCAVATOR
 ALLEGEDLY USED FOR REMOVING EARTH.**
- EXT.P6: TRUE PHOTOGRAPHS OF THE SITE WHERE THE BUILDING WASTE
 UNLOADED.**

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

P.A.TO.JUDGE

sts

P.R.RAMACHANDRA MENON, J.

W.P.(C).No.6376 of 2015

Dated this the 4th day of March, 2015

JUDGMENT

The petitioners are the owners of vehicles bearing registration No.KL-17-F-1836 and KL-17-L-5884 which were seized by the first respondent as per Ext.P1 seizure mahzar dated 21.2.2015 alleging commission of offence under the 'MMDR Act, 1957'/'KMMC Rules'. The case of the petitioners is that the material that was being transported in the vehicles was on the strength of valid documents including P forms. The seizure in the said circumstances *per se* arbitrary and illegal in all respects and hence the writ petition.

2. The learned Government Pleader has made available the copies of the P forms stated as carried in the vehicles in support of the said transaction. It is stated that the P forms were never completely filled up. It is also pointed that in one of the P forms the date is not mentioned and in other, particulars have not been given in the manner as contemplated under the statute. It is also

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pointed out that the time stipulated in the P form is at 5.30PM whereas the seizure was effected from the site at 7.15PM.

3. The learned counsel for the petitioners submit that the petitioners are ready to substantiate the facts and figures before the competent court of law and non-reporting of the seizure is causing utmost difficulty to the petitioners and hence interference of this Court is sought for.

4. After hearing both the sides, this Court finds that the first respondent has to report the seizure to the concerned Magistrate having jurisdiction over the area if at all any offence is involved. This shall be done forthwith at any rate within a period of 'three' days from the date of receipt of a copy of this judgment. This however will not bar the way of the petitioners seeking to compound the offence by virtue of the enabling provisions under the statute.

5. 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

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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 was passing orders enabling the party to have interim custody of the vehicle, on satisfaction of a sum of Rs.25,000/-, also directing the concerned respondent to consider the application for compounding, if any.

6. In the above circumstances, if the petitioners desire to have the offence compounded, conceding the guilt, this Court finds it fit and proper to direct the concerned respondent to compound the offence, if the petitioners satisfy a sum of **Rs.25,000/-** as the compounding fee in respect of each vehicle. 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.

The Writ Petition stands disposed of accordingly.

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

Sd/-
P.R.RAMACHANDRA MENON,
JUDGE.

rkc.