

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. 6536 of 2015 (N)

PETITIONER(S) :

1. **SULAIMAN A, AGED 44 YEARS,
S/O.ALIKUNJU M., RESIDING AT 'THAIVILAKOM HOUSE',
16TH MILE, THONNAKKAL P.O, THIRUVANANTHAPURAM- 695 317.**
2. **RAJU V., AGED 39 YEARS,
S/O.VIDYADHARAN, RESIDING AT 'SHYNI MANDIRAM',
ELOOR P.O, ANCHAL, KOLLAM.**
3. **B.VELMURUGAN, AGED 33 YEARS,
S/O.BALAIKONAR, 3/57 A, METTUPPATTI STREET,
VERRA SIGAMANI, THIRUNELVELI- 627 862, TAMIL NADU.**

**BY ADVS.SRI.SAIJU S.
SRI.P.H.RISHAD**

RESPONDENT(S) :

1. **THE DISTRICT COLLECTOR,
COLLECTORATE, THIRUVANANTHAPURAM, PIN- 695 001.**
2. **THE SUB-INSPECTOR OF POLICE,
NEYATTINKARA POLICE STATION,
THIRUVANANTHAPURAM, PIN- 695 014.**

BY 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:**

Msd.

WP(C).No. 6536 of 2015 (N)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1: THE TRUE COPY OF THE REGISTRATION CERTIFICATE PERTAINING TO THE 1ST PETITIONER'S VEHICLE MERCEDES BENZ HGV- TIPPER REGISTRATION NO.KL-22 F-7212.

EXHIBIT P2: THE TRUE COPIES OF THE REGISTRATION CERTIFICATES PERTAINING TO THE 2ND PETITIONER'S VEHICLES ASHOK LEYLAND HGV-GOODS CARRIAGE VEHICLE REGISTRATION NO.KL-25-A-4833 AND TATA MOTORS HGV-TIPPER VEHICLE WITH REGISTRATION NO.KL-25-E-2466.

EXHIBIT P3: TRUE COPIES OF SEIZURE MAHAZAR DATED 16.02.2015 PREPARED BY THE 2ND RESPONDENT.

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

P.R.RAMACHANDRA MENON, J.

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W.P.(C) No.6536 of 2015

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Dated this the 4th day of March, 2015

JUDGMENT

The petitioners have approached this Court with the following prayers:

- i) To set aside Ext.P3 Seizure Mahazar restrain the 1st respondent from acting pursuant to same.
- ii) To issue a writ of mandamus or other appropriate order or direction commanding the respondents to grant interim custody of the vehicles viz, (a) Mercedes Benz HGV-Tipper bearing Registration No.KL-22-F-7212 owned by the 1st petitioner, (b) Ashok Leyland HGV-Goods Carriage bearing Registration No.KL-25-A-4833 and Tata Motors HGV-Tipper bearing Registration No.KL-25-E-2466 owned by the 2nd petitioner, and © Hitachi E.110 (Machine Serial No.1101-5990) belonging to the 3rd petitioner.

2. The 1st petitioner is the owner of the vehicle bearing No. KL-22-F-7212, while the 2nd petitioner owns the vehicles bearing registration Nos.KL-25-A-4833 and KL-25-E-2466. The 3rd petitioner is the owner of the Hitachi bearing No.E.110 (Machine Serial No.1101-5990). Alleging violation of the provisions under

the 'MMDR Act, 1957'/'KMMC Rules, the above vehicles were taken into custody by the 2nd respondent as per Ext.P3 seizure mahazar dated 16.02.2015.

3. The learned counsel for the petitioners points out that absolutely no offence has been committed by the petitioners and that the vehicles belonging to the 2nd petitioner were virtually 'empty', as discernible from Ext.P3 seizure mahazar and as such, no offence will lie.

4. The learned Government Pleader points out that, the excavation and loading exercise was being done at night time, that too without any valid pass, sanction, clearance and no document was ever produced before the concerned officer, despite the opportunity given.

5. Admittedly, one vehicle was partly loaded with ordinary earth and the vehicles belonging to the 2nd petitioner were waiting nearby, to be loaded in the due course. It is also pointed out that no offence under the Act 28 of Kerala Conservation of Paddy Land and Wet Land Act, 2008 is involved and the offence, if at all any, could only be under the 'MMDR Act, 1957'/'KMMC Rules.

6. In the above circumstance, this Court finds that there is no reason to detain the empty vehicles belonging to the 2nd petitioner. The said vehicles bearing Registration Nos. KL-25-A-4833 and KL-25-E-2466 are ordered to be released on a 'simple bond' to be executed by the 2nd petitioner agreeing to produce the vehicle as and when required. It shall be without prejudice to the rights and liberties of the concerned respondent to proceed with the prosecution proceedings, if at all any offence is involved in respect of the said vehicles as well. Coming to the lorry bearing No.KL-22-F-7212 belonging to the 1st petitioner and the Hitachi belonging to the 3rd petitioner, prima facie the contents of Ext.P3 mahazar connect the said vehicles to the alleged offence.

7. In the said circumstance, the said vehicles are ordered to be produced before the concerned Magistrate having jurisdiction over the area, also by filing a complaint/report in terms of the relevant provisions of law, so as to proceed with further steps, if at all any offence is involved. This however will not bar the way of the concerned petitioner in seeking the offence to be compounded

and if such a course is pursued by filing necessary application, the same shall be considered and the offence shall be compounded, subject to satisfaction of **Rs.25,000/-** as the compounding fee in respect of each vehicle. If the offence is compounded as above, no further prosecution proceedings will lie against the concerned petitioner in view of the law declared by this Court as per the decision reported in **Digil V Sub Inspector of Police(2013(1) KLT 600)**.

Writ petition disposed of.

Sd/-

P.R.RAMACHANDRA MENON, JUDGE

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