

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 27TH DAY OF MAY 2015/6TH JYAISHTA, 1937

WP(C).No. 10516 of 2010 (L)

PETITIONER :

SHIBUKUMAR K.C.,
KUNNEL HOUSE, KUNTHIRICKAL P.O., THALAVADY
ALAPPUZHA.

BY ADV. SRI. T.P.PRADEEP

RESPONDENT(S) :

1. THE R.D.O.,
REVENUE DIVISIONAL OFFICE,
THIRUVALLA.
2. THE SUB INSPECTOR OF POLICE,
PULIKEEZHU.
3. THE VILLAGE OFFICER,
KADAPRA, THIRUVALLA TALUK.
4. KRISHI OFFICER,
KRISHI BHAVAN, KADAPRA, THIRUVALLA TALUK.
5. SHAJI VARGHESE,
PARAYAN THALAVADIYIL, KADAPRA VILLAGE,
THIRUVALLA.
6. THAHAZILDAR,
TALUK OFFICE, THIRUVALLA.

*ADDL. R7 IMPEADED

*ADDL.R7. THE DISTRICT COLLECTOR
PATHANAMTHITTA.

*ADDL. R7 IS IMPEADED AS PER ORDER I.A. NO. 4844/2010
DATED 27/05/2015.

R1 TO R4,R6 & R7 BY GOVT. PLEADER SRI. S. JAMAL
R5 BY ADVS. SRI.R.GIREESH VARMA
SRI.V.K.GANGADHARAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27-05-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :

- EXT.P1 : COPY OF THE RELEVANT PAGES OF R C BOOK.
- EXT.P2 COPY OF THE LETTER OF 4TH RESPONDENT DATED 22.3.2010.
- EXT.P3 COPY OF THE COMMUNICATION DATED 25.3.2010 OBTAINED FROM THE 2ND RESPONDENT.
- EXT.P4 COPY OF THE MAHAZAR PREPARED BY THE 3RD RESPONDENT.
- EXT.P5 COPY OF THE REPORT DATED 25.3.2010.
- EXT.P6 COPY OF THE JUDGMENT DATED 13.2.2009 IN WP(C) NO. 4304/2009.
- EXT.P7 COPY OF THE ORDER DATED 19.1.2010 IN WP(C) NO. 1277/2010.
- EXT.P8 COPY OF THE ORDER DATED 3.4.09 IN WP(C) NO. 11206/09.

RESPONDENT'S EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

Mn

K. VINOD CHANDRAN, J

W.P(C) No. 10516 of 2010

Dated this the 27th day of May, 2015

J U D G M E N T

The petitioner is aggrieved with the seizure of an Eicher Mvg Tipper Lorry bearing registration No.KL 04-X-6746. It is not clear from any of the documents produced as to the exact offence committed for which the vehicle was seized. The documents reveal an allegation of unauthorised quarrying of ordinary sand. The petitioner who was the registered owner of the vehicle was before this Court with the above writ petition and the vehicle was handed over to the petitioner on execution of a bond. The Government has not filed any counter affidavit and it is not clear as to whether any proceedings were taken under any of the enactments, with respect to the allegation of offence committed. Hence it has to be deemed as the vehicle was merely taken

possession of and the same was released on the orders issued from this Court.

2. The learned counsel for the petitioner submits that the vehicle was seized on 22.3.2010 and since the allegation was with respect to the quarrying of ordinary sand, the only offence that could have been alleged was under the Kerala Minor Mineral Concession Rules, 1967 as also the Mines and Mineral (Development and Regulation) Act, 1957. The offence that could have been alleged was under rule 58 (3) which clearly indicate that the seizure can be made only by an officer or authority specially empowered in this behalf by the Government. It is submitted that there is no specific empowerment of any officer under subsection (3) of Section 58. However, the learned counsel would concede that there is a notification issued under clause (iv) of Rule 3 of the Rules wherein only the Tahsildar, RDO, District Collector, Municipal Secretary, Municipal Council, Panchayat Secretary,

Divisional Forest Officer or the Director of Mining and Geology were notified. Even going by the notification the seizure made by the Agricultural Officer in the present circumstances cannot be sustained, is the contention.

3. The learned Government Pleader would, however, contend that the seizure was affected on the instruction of the RDO, who is a notified officer and whether such seizure can be sustained is a question pending before the Division Bench on two different opinions expressed by two learned Judges of this Court. However, the learned counsel for the petitioner submits that the said issue does not arise in the aforesaid writ petition.

4. Looking at the facts of the case, the seizure was made by the Agricultural Officer by Ext.P2 dated 22.3.2010. The Mahazar is produced at Ext.P4, which was prepared by the Village Officer. It is this mahazar that speaks of the information received from the RDO. A reading of the Mahazar would indicate that

neither the place at which the vehicle was seized nor the mahazar prepared, nor the date on which it was prepared is noticed therein. Ext.P4 merely refers to an instruction of the RDO which is relied on by the learned Government Pleader to contend that the seizure was effected on the strength of the RDO's specific instructions. However, the same is belied by the production of Ext.P5.

5. Ext.P5 is a communication issued by the Village Officer, Kadapra intimating the RDO of the seizure effected which merely refers to a telephonic communication of the RDO. In such circumstance, this Court is of the opinion that the issue pending before the Division Bench need not detain this Court to consider this writ petition.

6. A reading of the Mahazar would indicate that the Mahazar was prepared in the presence of the Agricultural Officer, who was instrumental in effecting the detention of the vehicle as is indicated in Ext.P2. The said officer is not a signatory even as a

witness in the Mahazar. The place of preparation of the Mahazar has not been specified and it is written in such a manner as to give an impression that the same was prepared at the place of detention effected by the Agricultural Officer. If that is so, definitely, the Village Officer should have also taken into possession the sand which was carried in the vehicle. The specific recital in Ext.P5 would indicate that the sand was unloaded at the road side and the vehicle was stopped ten meters beyond. If that be so, definitely, the sand would have been taken into custody. In such circumstance, the contention that the vehicle was seized, when sand was being transported, without any permission, cannot be sustained. The Agricultural Officer who detained the vehicle and the Village Officer who prepared the Mahazar are not officers who are competent to take proceedings under the Minor Mineral Concessions Rule, 1967, as notified thereunder.

7. In such circumstance, the release of the vehicle to

the petitioner has to be un conditional and the bond executed would not be acted upon. If at all any proceedings are taken after the filing of the writ petition, then, the same shall be continued in accordance with law.

The above writ petition stands allowed. No costs.

Sd/-

(K. VINOD CHANDRAN, JUDGE)

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P.A to Judge