

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. 6851 of 2015 (F)

PETITIONER(S):

1. BENNY, S/O.SAURU, AGED 38 YEARS,
EDAPPULAVAN, KODANADU P.O.,
KODANADU VILLAGE, KUNNATHUNADU TALUK,
ERNAKULAM DISTRICT (OWNER OF LORRY
BEARING REGISTRATION NO.KL-08-AR-9342).
2. LISSY PAULOSE,W/O.PAULOSE, AGED 42 YEARS,
MANJALY HOUSE, KODANADU P.O.,
KODANADU VILLAGE, KUNNATHUNADU TALUK,
ERNAKULAM DISTRICT (OWNER OF A LORRY BEARING
REGISTRATION NO.KL-08-Z-6625) .

BY ADV. SRI.P.M.ZIRAJ

RESPONDENT(S):

1. THE SUB INSPECTOR OF POLICE,
PERUMBAVUR POLICE STATION,
ERNAKULAM DISTRICT -682 101.
2. THE DISTRICT COLLECTOR,
ERNAKULAM DISTRICT -682 030.
3. THE VILLAGE OFFICER,
CHELAMATTOM VILLAGE, ERNAKULAM DISTRICT - 682 101.
4. THE AGRICULTURAL OFFICER,
KRISHI BHAVAN, PERUMBAVOOR,
ERNAKULAM DISTRICT -682 101.

R1 TO R4 BY GOVERNMENT PLEADER SRI.JOSEPH GEORGE

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

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APPENDIX

PETITIONER(S)' EXHIBITS

- P1: TRUE COPY OF THE MAHASSAR DATED 10/2/2015 PREPARED BY THE FIRST RESPONDENT IN CONNECTION WITH THE SEIZURE OF THE VEHICLES OF PETITIONER.
- P2: TRUE COPY OF THE POSSESSION CERTIFICATE OF THE ALLEGED LAND DATED 12/2/2015 ISSUED BY THE THIRD RESPONDENT
- P3: TRUE COPY OF THE CERTIFICATE ISSUED BY THE THIRD RESPONDENT DECLARING THAT THE ALLEGED PROPERTY IS A DRY LAND DATED 12/2/2015.
- P4: TRUE COPY OF THE CERTIFICATE DATED 19/02/2015 ISSUED BY THE FOURTH RESPONDENT STATING THAT THE PROPERTY IS NOT INCLUDED IN THE DRAFT DATA BANK
- P5: TRUE COPY OF THE CASH MEMORANDUM DATED 10/2/2015 ISSUED BY AN EARTH DEALER BY NAME T.O.JOHNSON WHICH WAS COUNTER SIGNED BY THE DISTRICT GEOLOGIST TO THE FIRST PETITIONER
- P6: TRUE COPY OF THE CASH MEMORANDUM DATED 10/2/2015 ISSUED BY AN EARTH DEALER BY NAME T.O.JOHNSON WHICH WAS COUNTER SIGNED BY THE DISTRICT GEOLOGIST TO THE SECOND PETITIONER

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

P.A.TO.JUDGE

P.R. RAMACHANDRA MENON, J.

W.P(C). No. 6851 of 2015

Dated this the 4th day of March, 2015

J U D G M E N T

The petitioners are the owners of the vehicles bearing registration Nos.KL-08-AR-9342 and KL-08-Z-6625, which were seized by the 1st respondent on 10.02.2015 as per Ext.P1 mahazar, alleging unauthorised filling of paddy lands, in contravention of the provision of the Act 28/2008. The case of the petitioners is that, the property concerned herein is not a 'paddy land' or 'wet land' as defined under Act 28/2008 and the same is actually a 'dry land'. The factual position has been certified by the concerned Village Officer as borne by Ext.P3 and also by the Agricultural Field Officer, vide Ext.P4, that, it is not included in the Data Bank Register. Reliance is also sought to be placed on Exts.P5 and P6 cash memoranda which were stated as available in the vehicles at the relevant time. But the contents of the mahazar do not disclose availability of any supporting documents in the form of Exts.P5 and P6 at the time of interception.

2. Heard the learned Government Pleader as well.

3. Going by the contents of the materials produced before this Court, particularly, the report of the 3rd respondent and 4th respondents (Convenor of the Local Level Monitoring Committee), it is seen that the property is not included in the Data Bank Register. If the property is not included in the Data Bank Register and the property was not remaining as a 'paddy land' or 'wet land' as envisaged under Section 2(xii) or 2(xviii) of the Act 28/2008 on the date of commencement of the Act; the provisions of the said Act are not attracted. This is the law declared by this Court in **Jafarkhan V. K.A.Kochumarakkar & others (2012 (1) KHC 523)**. This being the position, the offence if at all any, could only be under the MMDR Act/KMMC Rules and by virtue of the enabling provisions under the statute, the petitioners are entitled to compound the offence. Learned counsel for the petitioners submits that the petitioners are ready to compound the offence.

4. Section 23A of the Act and the relevant Rules enable the party to have the offence compounded. The question whether the prosecution proceedings could be pursued further, once the offence is compounded in accordance with the relevant provisions

of the MMDR Act 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.

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 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 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 **Rs.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. The decision shall be intimated by the 1st respondent to the District Collector, before whom the

proceedings are pending.

The Writ Petition stands disposed of accordingly. The petitioners shall produce a copy of this judgment along with a copy of this writ petition before the 1st respondent for further steps.

Sd/-

P.R. RAMACHANDRA MENON, JUDGE.

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