

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

FRIDAY, THE 13TH DAY OF MARCH 2015/22ND PHALGUNA, 1936

WP(C).No. 7093 of 2015 (J)

PETITIONER(S) :

**RAMALINGAM.S, AGED 55 YEARS,
S/O.SUBBAYYA, 7/4, KANDATHUPARA,
MARUTHA ROAD P.O., CHANDRA NAGAR, PALAKKAD- 678 007,
(REGISTERED OWNER OF KL-02-S/1676-LMV EXCAVATOR).**

BY ADV. SRI.SHOBY K.FRANCIS

RESPONDENT(S) :

- 1. THE DISTRICT COLLECTOR,
PALAKKAD- 678 001.**
- 2. VILLAGE OFFICER,
KODUMBU VILLAGE, KODUMBU P.O., PALAKKAD- 678 551.**

BY GOVERNMENT PLEADER SRI.JOSEPH GEORGE

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 13-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

Msd.

WP(C).No. 7093 of 2015 (J)

APPENDIX

PETITIONER(S)' EXHIBITS

**EXHIBIT P1: TRUE COPY OF REGISTRATION CERTIFICATE OF THE VEHICLE
KL-02-S/1676/LMV EXCAVATOR DATED 30-04-2004.**

**EXHIBIT P2: TRUE COPY OF THE SEIZURE MAHAZAR DATED 18-02-2015
ISSUED BY THE 2ND RESPONDENT.**

**EXHIBIT P3: TRUE COPY OF CERTIFICATE DATED 02-03-2015 ISSUED BY
THE 2ND RESPONDENT.**

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

P.R.RAMACHANDRA MENON, J.

W.P.(C).No.7093 of 2015

Dated this the 13th day of March, 2015

JUDGMENT

The petitioner is the owner of a vehicle bearing Reg.No.KL-02-S/1676-LMV which was seized by the 2nd respondent on 18.2.2015 as per Ext.P2 mahazar alleging offence under Act 22 of 2008. According to the petitioner, no offence has been committed by the petitioner under the said Act and the property is actually not paddy land or wet land as defined under the said statute and has not been included in the data bank register. But the attempt made by the petitioner to get the vehicle released did not come to be fruitful and hence the writ petition.

2. The learned Government Pleader appearing for the respondents submits on instructions that on verification of the records, it has been revealed that though the property has been shown as 'nilam' in the Revenue Records, the same has not been included in the Data Bank Register. It has been declared by this Court on many an occasion that, if the property was not lying as

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a paddy land or wet land as on the date of commencement of the Act and is not included in the Data Bank Register, proceedings under the said Act are not attracted. The same is the position which stands declared and affirmed by the Apex Court as well, as per the latest decision reported in **Revenue Divisional Officer Vs. Jalaja Dileep [2015 (1) KLT 984]**; while holding that classification cannot be changed in the BTR.

3. Now coming to the facts and figures, it is seen that no document has been produced by the petitioner with regard to the authority to have excavation. In the above circumstances, there will be a direction to the 2nd respondent to release the vehicle to the petitioner on execution of a simple bond, which however shall be without prejudice to the rights and liberties of the respondents to proceed with further steps in accordance with law, if at all any offence under the MMDR Act/KMMC Rules is involved by filing necessary steps for prosecution. This however will not bar the way of the petitioner to compound the offence by virtue of the enabling provisions under the said statute. If any offence is involved as above and if the petitioner files a petition to

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compound the offence, it shall be considered and the offence shall be compounded, subject to satisfaction of the sum of ₹ 25000/-. Once the offence is compounded, in view of the law declared by this Court as per the decision reported in **2013 (1) KLT 600 (Digil v. Sub Inspector of Police)**, no prosecution proceedings shall be pursued against him.

The writ petition is disposed of. The petitioner 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.