

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

FRIDAY, THE 6TH DAY OF MARCH 2015/15TH PHALGUNA, 1936

WP(C).No. 7098 of 2015 (J)

PETITIONER :

**LIJO VARGHESE,
KALATHIL PARAMBIL HOUSE,
NALUKODY KARA, PAIPPADU VILLAGE,
CHANGANASSERRY,
(OWNER OF JCB EXCAVATOR BEARING REGISTRATION NO.KL-05-V-826).**

**BY ADVS.SRI.T.P.PRADEEP
SRI.P.K.SATHEES KUMAR**

RESPONDENT(S):

- 1. THE VILLAGE OFFICER,
KAVUMBHAGOM, THIRUVALLA-689 102**
- 2. ADDITIONAL THAHZILDAR, THALUK OFFICE,
THIRUVALLA.**
- 3. REVENUE DIVISIONAL OFFICER,
THIRUVALLA-689 101**
- 4. THE AGRICULTURAL OFFICER, KRISHI BHAVAN,
PERINGARA-689 108**

R1 TO R4 BY SR GOVERNMENT PLEADER SRI.K.C.VINCENT

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 06-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

sts

WP(C).NO.7098/2015

APPENDIX

PETITIONER'S EXHIBITS:

- P1 COPY OF THE RELEVANT PAGE OF THE REGISTRATION CERTIFICATE OF JCB EXCAVATOR BEARING REGISTRATION NO.KL-05-V-826.**
- P1(A) COPY OF THE SALE AGREEMENT DATED 25/11/2014**
- P2 COPY OF THE MAHAZAR PREPARED BY THE 1ST RESPONDENT DATED 25/02/2015**
- P3 COPY OF THE REPORT SUBMITTED BY THE 2ND RESPONDENT DATED 26/02/2015**
- P4 COPY OF THE RELEVANT PAGE OF THE DATA BANK PREPARED BY THE 4TH RESPONDENT**
- P5 COPY OF THE PHOTOGRAPHS OF THE PROPERTY**
- P6 COPY OF THE ORDER OF THIS HON'BLE COURT IN WP(C).NO.32642/2011 DATED 19/12/2011.**

RESPONDENT'S EXHIBITS: NIL

/TRUE COPY/

P.S.TO.JUDGE

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P.R. RAMACHANDRA MENON, J.

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W.P.(C)No.7098 OF 2015
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Dated this the 6th March, 2015

J U D G M E N T

Petitioner is the owner of JCB Excavator bearing No.**KL.05-V-826**, which was seized by the by the first respondent/Village Officer, as evident from Ext.P2 seizure Mahazar. The allegation against the petitioner is that some unauthorised activity was being carried out in the premises deploying the JCB, so as to level the ordinary earth which was collected and dumped there. The learned Counsel for the petitioner submits that no offence whatsoever has been committed by the petitioner, either under the Act 28 of 2008 or under MMDR Act/KMMC Rules, 2015. With reference to the materials on record, the learned Counsel for the petitioner points out that the property concerned is not a paddy land or wet land and that the nature of the property has been shown as 'reclaimed land ' in the draft Data Bank Register. The nature of improvements effected has also been sought to be highlighted with reference to Ext.P5 photographs .

2. Heard the learned Government Pleader as well.

3. On going through the materials on record, this Court doubts whether any offence under the MMDR Act/KMMC Rules,

2015 is made out, with the deployment of JCB. The provisions of the Act 28 of 2008 cannot be attracted to the case in hand, in so far as it is not a paddy land or wet land , though there is an observation in Ext.P2 to the effect that on the southern side, there is water logged paddy land.

4. The learned Counsel for the petitioner submits that such observation is only with reference to the boundary and not with reference to the property concerned herein. Even otherwise, the contents of Ext.P2 do not reveal that, it is a paddy land or wet land. Further, the actual nature of the property is clearly given in Ext.P4 Data Bank Register.

5. In the said circumstance, the respondents are directed to release the custody of the vehicle to the petitioner forthwith on execution of a simple bond, undertaking to produce the same as and when required and that no activity will be pursued so as to diminish the value of the vehicle . If any offence is detected, it is open for the competent authority to take appropriate action by filing necessary proceedings before the competent Forum, which shall be done at the earliest, at any rate, within one month from the date of receipt of a copy of the

judgment.

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

P.R.RAMACHANDRA MENON
JUDGE

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