

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

FRIDAY, THE 13TH DAY OF NOVEMBER 2015/22ND KARTHIKA, 1937

WP(C) .No. 10928 of 2012 (M)

PETITIONERS:

1. DR.ABDUL RAZAK, AGED 61 YEARS,
S/O LATE PERINKADAKKAD KUNJU MUHAMMED MASTER,
PANDIKKADU AMSOM, DESOM, ERNAD TALUK,
MALAPPURAM DISTRICT.

2. DR. SIYAD, AGED 41 YEARS,
S/O KATTAKATH MULANGATT ABDUL SALAM MASTER,
SREENARAYANAPURAM AMSOM, DESOM, KODUNGALLOOR TALUK
THRISSUR DISTRICT.

3. DR. ARIFA,
D/O. LATE KADAMBOT CHEMBRAMBATH MOHAMMED,
ERIYAD AMSOM, DESOM, KODUNGALLOOR TALUK,
THRISSUR DISTRICT.

4. DR. BIBIN,
S/O PERINKADAKKAD ABDUL RAZAK,
PANDIKKAD AMSOM, DESOM,
ERNAD TALUK, MALAPPURAM DISTRICT.

5. SHAJNA SIYAD,
D/O PERINKADAKKAD ABDUL RAZAK,
PANDIKKAD AMSOM, DESOM,
ERNAD TALUK, MALAPPURAM DISTRICT.

BY ADVS.SRI.BABU KARUKAPADATH
SMT.M.A.VAHEEDA BABU
SRI.JAGAN GEORGE
SRI.K.A.NOUSHAD
SRI.P.G.PRAMOD

RESPONDENT(S) :

1. DISTRICT COLECTOR,
MALAPPURAM-688 001.

2. DEPUTY COLLECTOR,
DISASTER MANAGEMENT, MALAPPURAM-688 001.

3. VILLAGE OFFICER,
MAMPAD, MALAPPURAM-688001.

BY GOVERNMENT PLEADER SRI.T.J. MICHAEL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY
HEARD ON 13-11-2015, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

WP(C) NO.10928 OF 2012

APPENDIX

PETITIONERS' EXHIBITS:

EXT.P1 - TRUE COPY OF THE BROCHURE PUBLISHED BY THE PETITIONERS REGARDING THE SCHOOL.

EXT.P2 - TRUE COPY OF THE MAHAZAR DATED 3/5/2012 PREPARED BY THE 3RD RESPONDENT.

EXT.P3 - TRUE COPIES OF THE PHOTOGRAPHS SHOWING THAT THE SAND WAS BEING REMOVED FROM THE PROPERTY OF THE PETITIONERS.

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P.S. to Judge

K. HARILAL, J.

W.P. (C) No.10928 of 2012-M

Dated this the 13th day of November, 2015

JUDGMENT

The petitioners 1 to 4 are the Medical Practitioners, by profession, and the 5th petitioner is the wife of the 2nd petitioner. They are members of Board of Trustees of a Trust, named, 'PKM Educational and Charitable Trust, Manjeri', which is running a school by name 'Springs Continental' having classes from LKG to 10th Standard. They are the owners of the land having an extent of 19.14 Acres comprised in different survey numbers of Mampad Village and they proposed to start a new school with international standards in the above mentioned property and in that attempt, they have collected substantial quantities of

building materials, including sand, river sand and 'M' sand in the said property. They have started construction of the buildings for the school. While so, on the afternoon of 3/5/2012, some officials of the Revenue Department, along with the 3rd respondent, came to the property, prepared Ext.P2 mahazar under the purported orders of the 3rd respondent and a JCB was brought to the site and portions of river sand and other sand collected therein was removed by them in various lorries, including lorries bearing Registration Nos.KL-10G-5823 and KL-50A-8476. The Revenue Officials, under the leadership of the 3rd respondent, seized the materials, without giving any information as regards the seizure to the petitioners and thereby, the petitioners have been deprived of an opportunity of being heard. Later, in the evening of 4/5/2012, a representative of the petitioners obtained a copy of the mahazar prepared by the 3rd respondent from him and from the mahazar, it is learnt that the building materials, including river sand and 'M' sand were

seized on the basis of an allegation that those materials were obtained illegally. According to the petitioners, in fact, those materials were procured from the legal sources by adopting the procedure contemplated under law. In the above factual matrix, the petitioners filed this writ petition praying, inter alia, for issuing a writ of certiorari, calling for all the records leading to Ext.P2 mahazar and quash the same.

2. The learned Government Pleader, on instructions, submits that Ext.P2 is a mahazar prepared in exercise of the power contemplated under Sec.23 of the Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001 (for short 'the Act'). According to the learned Government Pleader, this writ petition is premature, as the same is filed immediately after the seizure of the materials and that opportunity of being heard is provided to the aggrieved parties under sub-section (3) of Sec.23A of the Act and the concerned authorities could not

proceed further to that stage due to the interim order passed by this Court and further proceedings will be taken only after affording an opportunity of being heard to the petitioners, as provided under sub-section (3) of Sec.23A of the Act.

3. Going by the averments in the petition, it is seen that the building materials, including sand, were seized on the after noon of 3/5/2012 and they have effected seizure of the materials in compliance with the procedure contemplated under Sec.23 of the Act. Going by the procedure under Sec.23 of the Act, it is seen that, at the time of seizure, the aggrieved parties have no right to be heard and the aggrieved parties have been given an opportunity of being heard under sub-section (3) of Sec.23A of the Act. Therefore, I find that there is no violation of the statutory mandate under Sec.23 of the Act or the principles of natural justice.

4. In the above view of the matter, I find no reason to interfere with the present proceedings

initiated against the petitioners. The 1st respondent is directed to take steps under sub-section (3) of Sec.23A of the Act and proceed further, after affording an opportunity of being heard to the petitioners only.

This writ petition is disposed of with the above observations.

Sd/-

(K. HARILAL, JUDGE)

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P.S. to Judge