IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 11TH DAY OF NOVEMBER 2015/20TH KARTHIKA, 1937

WP(C).No. 11609 of 2009 (U)

PETITIONER(S):

ABDURAHIMAN P.P. S/O. MAMMAD HAJI,
PALLIPARAMBAN HOUSE, KEEZHUPARAMBU P.O.,
AREACODE, MALAPPURAM DISTRICT.
(OWNER OF VEHICLE BEARING REG. NO.KL-10/AB 4960).

BY ADVS.SRI.P.VIJAYA BHANU,
SRI.P.VENUGOPAL.

RESPONDENT(S):

1. **SECRETARY,**
   AREACODE GRAMA PANCHAYATH,
   AREACODE P.O., MALAPPURAM DISTRICT.

2. **P. SUNIL, L.D. CLERK,**
   TALUK OFFICE, ERNAD TALUK,
   MANJERI, MALAPPURAM DISTRICT.

3. **THE DISTRICT COLLECTOR,**
   MALAPPURAM.

R1 BY ADV. SRI.C.M.MOHAMMED IQUABAL.
R3 BY GOVT. PLEADER SRI.SOJAN JAMES.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 03/11/2015, THE COURT ON 11/11/2015 DELIVERED THE THE FOLLOWING:

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

EXT.P1	COPY OF THE PASS ISSUED BY THE FIRST RESPONDENT TO THE VEHICLE OF THE PETITIONER.
EXT.P2	COPY OF THE LETTER ISSUED BY THE PRESIDENT, KIZHUPARAMBA GRAMA PANCHAYATH DATED 17/01/2009.
EXT.P3	COPY OF THE COMMUNICATION ISSUED BY THE FIRST RESPONDENT TO THE THIRD RESPONDENT.
EXT.P4	COPY OF THE RECEIPT ISSUED BY THE KPR AUTOMOBILES, MANJERI FOR PAYMENT OF REPAIR CHARGES.
EXT.P5	COPY OF THE MAHAZAR PREPARED BY THE SECOND RESPONDENT.
EXT.P6	COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER TO THE THIRD RESPONDENT.
EXT.P7	COPY OF THE ORDER NO.P4-4035/2009 PASSED BY THE THIRD RESPONDENT DATED 09/03/2009.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.11609 of 2009

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Dated this the 11th day of November, 2015

JUDGMENT

The petitioner is the owner of a goods carriage vehicle bearing Reg. No.KL-10/AB-4960 which was engaged to transport river sand on the strength of a pass issued by the first respondent. The petitioner alleges that while the vehicle was proceeding towards its destination, there was some mechanical failure and the vehicle has to be stopped enroute. Immediately, the matter was reported to the concerned authorities. The petitioner further alleges that after completing the repairing works, the vehicle had to be shifted to a nearby place where the road is wide enough to avoid traffic congestion. At that time, the second respondent came there and seized the vehicle alleging illegal transportation of river sand, in violation of the provisions of Kerala Protection of River Banks and Regulation of Removal of Sand Act.

2. The petitioner points out that though true facts were convincingly informed to the second respondent, he has not heeded to the same and took the vehicle into custody. Therefore, the petitioner approached the third respondent and submitted a representation narrating the true facts leading to the seizure of

the vehicle. The documents to substantiate the contentions were also placed before the third respondent. However, the third respondent on a wrong appraisal of the facts and misconception of law passed Ext.P7 order directing the petitioner to remit a sum of ₹2,75,000/- being the value of the vehicle to the river management fund. It is with this background, the petitioner has approached this Court.

3. In the counter affidavit filed by the first respondent it was contended as follows:

The petitioner is not entitled to get any relief against the Grama Panchayat in this matter. It is true that the petitioner was given a pass on 17.1.2009 for transporting river sand from Elanjikalkadavu to Valillapuzha. It is also true that the petitioner has submitted a letter before the Grama Panchayat stating that the vehicle had to be stopped enroute due to mechanical failure while transporting the sand. The petitioner wanted the panchayat to return the money deposited in the panchayat and he was told that the panchayat is not in a position to do so unless they get orders from the superior authorities.

4. Arguments have been heard.

5. Opposing the writ petition, the learned Senior Government Pleader would submit that the petitioner, at the time

of hearing before the District Collector, has not produced any documents in support of his claim. The definite stand taken by the petitioner is that the third respondent has failed to conduct an enquiry as contemplated under the Act. It was pointed out that, though Ext.P1 permit was shown and the reasons for the discontinuance of the journey was explained convincingly to the second respondent, he has ignored it for extraneous reasons.

6. As rightly pointed out by the learned counsel for the petitioner, the third respondent has gone wrong in discarding the representations made by the petitioner in spite of specifically representing the precise reasons resulted in the seizure of the vehicle and producing all the relevant documents before him by the petitioner during enquiry. The sole material which the third respondent has looked into and relied upon while passing Ext.P7 order is the version of the second respondent. However, Exts.P2 and P3 were discarded without assigning any convincing reason.

7. Ext.P2 is the copy of the letter issued by the President of Kizhuparamba Grama Panchayat dated 17.1.2009. The definite case of the petitioner is that when the vehicle reached within the area of Kizhuparamba Grama Panchayat, due to mechanical failure, the transportation had to be halted enroute and a mechanic was brought to the spot and on examination, it was

found that much time would be taken for repairing and to rectify the defect. As there was possibility of causing obstruction to the free flow of traffic and as it was not possible to shift the loaded sand to another vehicle for want of required pass, the matter was reported to the President of the panchayat, within whose jurisdiction the vehicle was stationed as well as the Secretary of the said panchayat, who issued the permit to the vehicle. These facts are evidenced by Ext.P2 letter issued by the President of the grama panchayat.

8. Ext.P3 is the copy of the communication issued by the first respondent to the third respondent wherein, the Secretary has informed the District Collector that the petitioner had communicated the office of the panchayat that the vehicle had to be halted on account of break down enroute. To show that the repairing works were carried out by a mechanic from KPR Automobiles, Manjeri, the petitioner has produced Ext.P4 evidencing payment of repair charges. These documents escaped the attention of the District Collector. I see valid force in the said submission made by the learned counsel for the petitioner that the third respondent has gone wrong in discarding the submissions made mention of by the petitioner and the impugned order was passed without considering the merits.

As the order is erroneous and against natural justice, this Court is of the view that the petitioner is entitled to the reliefs prayed for. Therefore, the writ petition is allowed. Ext.P7 is quashed and the third respondent is directed to drop all further proceedings in connection with the seizure of the vehicle belonging to the petitioner.

Sd/-
A.V.RAMAKRISHNA PILLAI
JUDGE

krj

//true copy//

P.A to judge