

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

WEDNESDAY, THE 11TH DAY OF MARCH 2015/20TH PHALGUNA, 1936

WP(C).No. 7368 of 2015 (U)

PETITIONER :

**FR.JOY SRAMBICAL,
S/O.C.P.PAILY, AGED 45 YEARS,VICAR, ST.SEBASTIAN'S CHURCH,
POYYA P.O., POYYA VILLAGE, KODUNGALLUR TALUK,
THRISSUR DISTRICT (HOLDER OF LORRIES BEARING
REGISTRATION NOS. KL-AY-1526, KL-64 A -652,
KL-42-F-8290, KL-64-A-4978, KL-47-D-40, KL-64-A-9229
AND JCB BEARING REGISTRATION NO.KL -64- C -2519)**

BY ADV. SRI.P.M.ZIRAJ

RESPONDENT(S):

- 1. THE DISTRICT GEOLOGIST,
DEPARTMENT OF MINING AND GEOLOGY,
THRISSUR DISTRICT - 680 001.**
- 2. THE DIRECTOR, MINING AND GEOLOGY,
OFFICE OF THE MINING AND GEOLOGY, KESAVADASAPURAM,
PATTAM, THIRUVANANTHAPURAM - 695 001.**
- 3. THE STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT,
INDUSTRIES DEPARTMENT, GOVERNMENT OF KERALA,
GOVERNMENT.**
- 4. THE INSPECTOR OF POLICE,
MALA POLICE STATION, THRISSUR DISTRICT, PIN: 680 001.**

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

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 11-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

WP(C).No. 7368 of 2015 (U)

APPENDIX

PETITIONER(S)' EXHIBITS

- P1: TRUE COPY OF THE BUILDING PERMIT DATED 13/1/2015 ISSUED BY THE SECRETARY, POYYA GRAMA PANCHAYATH**
- P2: TRUE COPY OF THE JUDGMENT OF THIS HONOURABLE COURT DATED 30/1/2015 IN WPC NO.3047/2015.**
- P3: TRUE COPY OF THE ORDER DATED 26/2/2015 ISSUED BY THE FIRST RESPONDENT**
- P4: TRUE COPY OF THE SPECIMEN OF O(A) FORM ISSUED BY THE FIRST RESPONDENT DATED 28/2/2015**
- P5: TRUE COPY OF THE SEIZURE MAHAZAR DATED 4/3/2015 PREPARED BY THE FOURTH RESPONDENT.**

RESPONDENT(S)' EXHIBITS: **NIL**

/TRUE COPY/

P.A.TO.JUDGE

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P.R.RAMACHANDRA MENON, J.

W.P.(C) No. 7368 of 2015

Dated this the 11th day of March, 2015

J U D G M E N T

Six tipper lorries and a JCB bearing registration numbers -
1) Swaraj Mazda - KL-64-A-9229, 2) Swaraj Mazda - KL-47-D-40, 3) Swaraj Mazda - KL-7-AY-1526, 4) Swaraj Mazda - KL-64-A-652, 5) Swaraj Mazda - KL-42-F-8290, 6) Swaraj Mazda - KL-64-A-4978 and 7) JCB - KL-64-C-2519 were seized, which were, in fact, hired by the petitioner for transporting some ordinary earth from the premise in question. It is stated that the said activity was being done pursuant to Ext.P1 building permit and Ext.P3 order dated 26.2.2015 issued by the 1st respondent. It was without and regard to the actual facts and figures that the vehicles were seized by the 4th respondent as per Ext.P5 mahazar on 4.3.2015 alleging offence under the MMDR Act/KMMC Rules, which made the petitioner approach this Court by filing the Writ Petition.

2. The learned counsel for the petitioner points out that at the time of seizure, as evidence from Ext.P5 itself, three

vehicles were empty which are lorries bearing registration nos. KL-64-A-652, KL-42-F-8290 and KL-64-A-4978. This by itself, shows that absolutely no offence was committed by the petitioner and hence the proceedings are *per se* wrong and illegal in all respects. The learned counsel also submits that no excavation was actually being done by the petitioner and will not be effected, adding that the operation will stand confined to the terms of Ext.P3 permit issued to the petitioner.

3. The learned Government Pleader points out that, as per the permit, the sanction given was only to transport ordinary earth, which was already excavated and stored in the premises and never to excavate anything more. It is also pointed out that at the time of inspection, JCB bearing registration no. KL-64-C-2519 was deployed by the petitioner for conducting further excavation and as such, the offence is made out. It is also pointed out that in the lorries bearing registration nos. KL-64-A-9229, KL-47-D-40 and KL-7-AY-1526, ordinary earth was already filled and as such, the offence was made out in respect of the said vehicles as well. It is also brought to the notice of this Court

that the petitioner sought to compound the offence admitting Will in respect of the vehicles bearing nos. KL-64-A-9229, KL-47-D-40 and KL-7-AY-1526.

4. On going through the materials on record, this Court finds that Ext.P1 building permit has been issued for construction of a residential building, whereas in Ext.P3 permit issued by the Geologist it is stated that the purpose is for the construction of a 'parish hall'. If it is for the purpose of construction of a parish hall, the benefit available to the petitioner by virtue of Rule 14(2) of the KMMC Rules 2014, with reference to the ceiling fixed as to the area of construction, may not apply, as it is beyond the limit. In the said circumstance, it is for the petitioner to consider whether the petitioner should compound the offence in respect of the lorries bearing registration nos. KL-64-A-652, KL-42-F-8290 and KL-64-A-4978 or to face the prosecution proceedings.

5. In the above circumstance, this Court finds that there is no *prima facie* connection for the other vehicles with regard to offence, if any, under the MMDR Act/KMMC Rules and the apprehension that the said vehicles also might be made use of for

pursuing illegal activity, is not sufficient enough to retain the custody.

6. Accordingly, there will be a direction to the 4th respondent to release the vehicles bearing nos. KL-64-A-652, KL-42-F-8290 and KL-64-A-4978 to the petitioner forthwith on execution of a simple bond, however, without prejudice to the rights and liberties of the respondent to proceed with further steps by way of prosecution proceedings, if any offence is actually made out after conducting the investigation. This will not prevent the petitioner from seeking the benefit of compounding the offence, if at all any such incident is resulted. In the case of JCB bearing registration no. KL-64-C-2519 the vehicle has been produced before the concerned Magistrate's Court and necessary complaint has to be filed so as to enable the prosecution proceedings to be set in motion, unless the offence is compounded.

7. The learned counsel for the petitioner submits that the petitioner is ready to compound the offence in respect of the JCB bearing registration no. KL-64-C-2519. Section 23A of the

'MMDR Act' and the relevant Rules enable the party to have the offence compounded. The question whether prosecution proceedings could be pursued further, once the offence is compounded in accordance with the relevant provisions of the MMDR Act/Rules 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 petitioner is also entitled to have similar relief.

8. 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 has been passing orders enabling the parties 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.

9. In view of the willingness expressed from the part of the petitioner 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 petitioner satisfies a sum of Rs. 25,000/-, in respect of the concerned vehicle. It is ordered accordingly. On satisfaction of the compounding fee, the vehicle shall be released to the petitioner forthwith. It is made clear that once the offence alleged against the petitioner is compounded, no prosecution proceedings shall be pursued against him.

The writ petition is disposed of accordingly. 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