

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

WEDNESDAY, THE 1ST DAY OF JULY 2015/10TH ASHADHA, 1937

WP(C).No. 14945 of 2007 (D)

PETITIONER :

**JOY JOSEPH,
KALLUVELIL HOUSE,
P.O.PERINGOME, PAYYANNUR,
KANNUR DISTRICT.**

BY ADV. SRI.T.K.VIPINDAS

RESPONDENT(S):

- 1. THE STATE OF KERALA,
REPRESENTED BY SECRETARY, DEPARTMENT OF HOME,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.**
- 2. DIRECTOR GENERAL OF POLICE (JAILS),
POLICE HEAD QUARTERS, THIRUVANANTHAPURAM.**
- 3. SUPERINTENDENT OF OPEN PRISON,
CHEEMENI, KASARAGOD DISTRICT.**

BY GOVERNMENT PLEADER SMT. M.T.SHEEBA

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 01-07-2015,ALONG WITH WP(C).NO.10706 OF 2008, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:**

sts

WP(C).NO.14945/2007

APPENDIX

PETITIONER'S EXHIBITS:

- P1 COPY OF THE AUCTION NOTIFICATION DATED 31/1/2007 ALONG WITH THE CONDITIONS.**
- P2 COPY OF THE RECEIPT ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER DATED 24/2/2007**
- P3 COPY OF THE RECEIPT ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER DATED 24/2/2007**

RESPONDENT'S EXHIBITS: NIL

/TRUE COPY/

P.A.TO JUDGE

sts

A. MUHAMED MUSTAQUE, J.

W.P(C). Nos. 14945 of 2007 & 10706 of 2008

Dated this the 1st day of July, 2015

J U D G M E N T

The petitioner was an auction purchaser for collecting cashew nuts from the open Jail in Cheemeni. Ext.P1 produced in WP(C) No.14945/2007 is the tender document and the auction was scheduled on 24.02.2007. Successive bidder has to deposit ₹1,00,000/-. The petitioner deposited the amount on the same day. Thereafter there was no confirmation of the auction. Therefore petitioner approached this Court in WP(C) No.14945/2007 for return of the amount deposited.

2. It appears that subsequently confirmation of auction was ordered as per proceedings of Director General Police, Prison dated 09.05.2007. Since the petitioner did not remit the balance amount, revenue recovery proceedings were initiated. It is challenging the above, the petitioner filed WP(C) No.10706/2008.

3. The only issue is that, whether the petitioner is entitled to resile from the auction conducted on 24.02.2007. Petitioner's case is that, the time limit to collect the cashew nut was only up to 30.06.2007. The confirmation was only on 09.05.2007. It was

received by him only on 25.05.2007.

4. In the counter affidavit it is stated that the petitioner started collecting cashewnuts before the confirmation and the confirmation order sent to him was returned unclaimed. It is further stated that confirmation order was finally served on him from the jail premises on 25.05.2007.

5. There is nothing on record to show that the petitioner collected nuts before the confirmation. In this counter itself, it admitted that collection has to be started from the month of March, 2015 itself. Therefore, time is essence of such contract. Any delay in confirmation certainly would frustrate the contract. Therefore, this Court is of the view that the petitioner is entitled to refund and recovery is liable to be set aside.

6. In that view of the matter, WP(C) No. 14945/2007 is allowed. There shall be a direction to the competent respondent to return the EMD deposited by the petitioner within two months.

WP(C) No.10706/2008 is allowed quashing revenue recovery proceedings.

Sd/-

A. MUHAMED MUSTAQUE, JUDGE.

Pn