

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

WEDNESDAY, THE 7TH DAY OF JANUARY 2015/17TH POUSHA, 1936

WP(C).No. 12840 of 2009 (Y)

PETITIONER:

**UMMER,
S/O.KUNJIMOHAMMED,
KATTIKULANGARA HOUSE, CHATTIPPARAMBU P.O.
PERINTHALMANNA, MALAPPURAM DISTRICT.**

BY ADV. SRI.P.SAMSUDIN

RESPONDENTS:

- 1. THE STATE OF KERALA,
REPRESENTED BY THE DISTRICT COLLECTOR, MALAPPURAM.**
- 2. THE DISTRICT COLLECTOR,
MALAPPURAM.**
- 3. THE SUB INSPECTOR OF POLICE,
KOLATHUR, PERINTHALMANNA.**

BY GOVERNMENT PLEADER SRI. P.V. ELIAS

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 07-01-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

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WP(C).No. 12840 of 2009 (Y)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT. P-1: TRUE COPY OF THE OBJECTION FILED BY THE PETITIONER BEFORE THE
1ST RESPONDENT DATED 09.02.2009.

EXT. P-2: TRUE COPY OF THE FINAL ORDER DATED 18.02.2009 PASSED BY THE
DISTRICT COLLECTOR.

RESPONDENT(S)' EXHIBITS - NIL

//TRUE COPY//

P.A. TO JUDGE

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C.K. ABDUL REHIM, J.

W.P.(C)No.12840 of 2009

Dated this the 7th day of January, 2015

JUDGMENT

Ext.P2 order passed by the 2nd respondent ordering confiscation of a vehicle belonging to the petitioner, alleging violation of the Kerala Protection of River Banks and Regulation of Removal of Sand Act 2001, is under challenge in this writ petition.

2. A Tipper Mini Lorry bearing Registration No.KL-10-AC 437 was seized by the Tahsildar, Perinthalmanna on 26/12/2008 on the allegation that the vehicle in question was used for transportation of river sand illegally, in violation of the provisions of the Act. A copy of seizure mahazar was submitted by the Tahsildar before the 2nd respondent. Proceedings under Section 23 of the Act read along with Rules 27 and 28 was initiated by the 2nd respondent. The petitioner submitted Ext.P1 objections before the 2nd respondent, *inter alia* contending that the vehicle was seized from the courtyard of his house by the

Tahsildar, When it was kept parked therein, without any evidence to the effect that the vehicle was used for illegal transportation of sand. It was also specifically contended that no copy of the seizure mahazar was furnished to the petitioner at the time when the vehicle was taken into custody. Since the vehicle was not used for transportation of sand in violation of the Act or Rules, it is not liable to be confiscated, is the contention.

3. The 2nd respondent while issuing Ext.P2 impugned proceedings has not taken note of any of the contentions raised by the petitioner in Ext.P1. On the other hand it was observed that, on a perusal of the seizure mahazar it became convinced that sand was transported in the above said vehicle without there being any authorised pass, at about 11:30 p.m. on 26/12/2008. Hence it is found that the petitioner had violated Rule 29(8) of the Kerala Protection of River Banks and Regulation of Removal of Sand Rules, 2002. Therefore it was ordered that the petitioner should remit a sum of Rs.1,75,000/- being amount equal to the value of the vehicle to the

River Management Fund.

4. Learned Government Pleader had produced the files relating to Ext.P2 proceedings for perusal of this court. It is evident that, before issuing Ext.P2 proceedings the 2nd respondent had afforded an opportunity of personal hearing to the petitioner on 09/02/2009. Original of Ext.P1 objections submitted at the date of hearing is available in the files. But none of the contentions raised in Ext.P1 was neither adverted to nor considered by the 2nd respondent. Rule 28 mandates an obligation on the part of the District Collector to consider the objections if any, submitted by the person concerned. It is held by this court in the decision in **Subramanian V. State of Kerala [2009(1) KLT 77]** that the power of confiscation conferred under Section 23 of the Sand Act read with Rule 27 and 28 of the Rules, is a substantive power and is quasi-judicial in character. It is further held that the requirement under Rule 27(2) are mandatory and that violation of any procedure contemplated therein would definitely give rise to an

attack against the seizure itself as being illegal. Any objection by the owner with respect to the seizure or with respect to infraction of the procedure under Rule 27(2), has to be considered by the District Collector while exercising the quasi-judicial power. On a perusal of the seizure mahazar contained in the files produced by the Government Pleader there is nothing to indicate that a copy of the same was furnished to the petitioner or to any person who was in charge of the vehicle. Further it is evident as contended by the petitioner that the vehicle in question was seized from the compound of the house and it contained no sand at the time when it was seized. Therefore, the 2nd respondent ought to have conducted a proper adjudication on these questions in order to ascertain as to whether there was convincing evidence with respect to use of the vehicle for the purpose of transporting the sand in violation of the Act or the Rules and also to ascertain whether there was any violations in the procedure with respect to the seizure, as contemplated under Rule 27(2). Since those aspects

were not seen considered despite Ext.P1 objections raised by the petitioner, this court is of the considered opinion that statutory power vested on the 2nd respondent has not been exercised properly. Hence it is necessary to remand the matter for a fresh adjudication and disposal.

5. Under the above mentioned circumstances, the writ petition is allowed and Ext.P2 is hereby quashed. The 2nd respondent is directed to re-consider the matter with opportunity afforded to the petitioner. Needless to observe that the petitioner will be at liberty to adduce evidence by way of examination of any witness before the 2nd respondent, if he is so advised. The 2nd respondent shall consider all the aspects including Ext.P1 objections raised and shall adjudicate the issue, taking note of the observation contained herein above. Fresh proceedings in this regard shall be issued at the earliest possible, at any rate, within a period of two months from the date of receipt of copy of this judgment.

It is submitted that the vehicle is at present in the custody of the petitioner based on interim custody

granted by the Magistrate's Court. The petitioner shall keep proper custody of the vehicle till finalisation of the proceedings on the basis of the directions issued as above.

**Sd/-C.K. ABDUL REHIM
JUDGE**

MJL