

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

THURSDAY, THE 26TH DAY OF FEBRUARY 2015/7TH PHALGUNA, 1936

WP(C).No. 11813 of 2013 (B)

PETITIONER(S):

1. **ABDUL RASHEED, S/O.ABDULLA HAJI, AGED 35 YEARS
RESIDING AT NANDANAYIL HOUSE
POMUNDAM (PO), PONMUNDAM VILLAGE, THIRUR TALUK
MALAPPURAM DISTRICT (OWNER OF LORRY BEARING REGISTRATION
NUMBER KL-55-M-4066).**
2. **BIBITHA K.K., DAUGHTER OF THOOMBAN, AGED 22 YEARS
RESIDING AT KALLUVETTU KUZHIYIL HOUSE
UZHAVUR (PO) THANUR VILLAGE, THIRUR TALUK
MALAPPURAM DISTRICT (OWNER OF LORRY BEARING REGISTRATION
NUMBER KL-55-C-4805).**
3. **SHABEER, S/O.SIDDIQUE, AGED 25 YEARS
PUTHUPARAMBIL HOUSE, AALATHIYUR P.O., THIRUR TALUK
MALAPPURAM DISTRICT (OWNER OF JCB BEARING REGISTRATION
NUMBER KL-55-E-9765).**
4. **RAJEENA, DAUGHTER OF ABDUL LATHEEF, AGED 32 YEARS
THOTTIYIL HOUSE, VETTAM (PO)
VETTAM VILLAGE THIRUR TALUK
MALAPPURAM DISTRICT (OWNER OF TATA HITACHI).**

BY ADV. SRI.P.M.ZIRAJ

RESPONDENT(S):

1. **THE SENIOR SUPERINTENDENT
REVENUE DIVISIONAL OFFICE, THIRUR, MALAPPURAM DISTRICT
PIN-680 581.**
2. **THE REVENUE DIVISIONAL OFFICER (R.D.O)
REVENUE DIVISIONAL OFFICE, THIRUR, MALAPPURAM DISTRICT
PIN-680 581.**

BY GOVERNMENT PLEADER SMT.ANITHA RAVINDRAN

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 26-02-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

WP(C).No. 11813 of 2013 (B)

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1 - TRUE COPY OF THE MAHAZAR PREPARED BY THE FIRST
RESPONDENT DATED 20-4-2013**
- EXT.P2 - TRUE COPY OF THE INTERIM ORDER OF THIS HONOURABLE COURT
DATED 14-12-2012 IN WPC.NO.29993/2012**
- EXT.P3 - TRUE COPY OF THE ITNERIM ORDER OF THIS HONOURABLE COURT
DATED 23-4-2013 IN WPC. NO.11124 OF 2013.**
- EXT.P4 - TRUE COPY OF THE INTERIM ORDER OF THIS HONOURABLE COURT
DATED 30-4-2013 IN WPC.NO.11619 OF 2013.**

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

P.R. RAMACHANDRA MENON J.

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W.P.(C) No. 11813 of 2013

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Dated, this the 26th day of February, 2015

JUDGMENT

The vehicles bearing Nos. **KL 55 M 4066, KL 55 C 4805, KL 55 E 9765** and **Tata Hitachi** were seized by the **first respondent/Senior Superintendent of Revenue Divisional Office (Revenue Official)** alleging offence under the Mines and Mineral (Development and Regulation) Act and the Kerala Minor Mineral Concession Rules. The main ground of challenge is that, the respondent is not having the jurisdiction or authority to effect seizure.

2. Heard both the sides.

3. The authority of the first respondent to effect seizure has already been considered by this Court and the power and competence has been upheld as per the decision reported in **Aloshias C. Antony Vs. Government of Kerala** [2014(1) KLT 536]. The said decision was rendered, also taking note of the nature of offence which is a 'cognizable' one (notwithstanding anything contained in the Cr.P.C) as stipulated in Section 21(6) of MMDR Act, 1957 and also placing

reliance on the judgment rendered by a Division Bench of this Court in **Construction Materials Movers Association V. State of Kerala** [2008 (4) KLT 909]. In the said circumstance, there is no tenable ground to call for interference.

4. When the matter came up for consideration on **3.5.2013**, the vehicle was caused to be released, **on execution of a simple bond** before the second respondent. In the said circumstance, the further course of action required is to surrender the vehicle before the second respondent, so as to enable the second respondent to produce it before the concerned Magistrate having jurisdiction over the area and to proceed with steps for prosecution, unless the offence is sought to be compounded.

5. The petitioners express desire to compound the offence by virtue of the enabling provisions under the relevant provisions of law. This Court finds it fit and proper to permit the petitioners to have it compounded on satisfying the compounding fee of Rs.25,000/- within **two weeks** from the date of receipt of a copy of this judgment. Once the offence is compounded, no prosecution proceedings will lie in view of the law declared by this Court in **Digil Vs. Sub Inspector of Police** [2013(1) KLT 600]. It shall be

W.P.(C) No. 11813 of 2013

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reported to the concerned Magistrate, if the crime has already been reported. If there is any failure in compounding the offence, the second respondent shall pursue further steps to **seize the vehicle** and proceed with steps for prosecution.

The writ petition is disposed of.

Sd/-

**P. R. RAMACHANDRA MENON,
(JUDGE)**

kmd