

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

MONDAY, THE 30TH DAY OF MARCH 2015/9TH CHAITHRA, 1937

WP(C).No. 9511 of 2015 (L)

PETITIONER(S):

**AYYANDURAI C.,
S/O.CHINNATHAMBI, PALAVADI,
SALEM, TAMIL NADU, NOW RESIDING AT
K.R.QUARTERS, ALATHIYOOR,
TIRUR - 676 102, (REGISTERED OWNER OF VEHICLE
BEARING REG. NO.TN/52 W 8123 EARTH REMOVER)**

BY ADV. SRI.K.K.MOHAMED RAVUF

RESPONDENT(S):

- 1. THE VILLAGE OFFICER, ALATHIYOOR,
TIRUR, MALAPPURAM DISTRICT - 676 101.**
- 2. THE ADDITIONAL TAHSILDAR, TIRUR,
MALAPPURAM DISTRICT - 676 101.**
- 3. THE REVENUE DIVISIONAL OFFICER, TIRUR,
MALAPPURAM DISTRICT - 676 101.**

BY GOVERNMENT PLEADER SRI.JOSEPH GEORGE

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
30-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

WP(C).No. 9511 of 2015 (L)

APPENDIX

PETITIONER(S)' EXHIBITS:

**EXT.P1: TRUE COPY OF THE REGISTRATION CERTIFICATE OF PETITIONER'S EARTH
REMOVER BEARING REG. NO.TN-52/1-8123.**

EXT.P2: TRUE COPY OF THE MAHASSAR PREPARED BY THE FIRST RESPONDENT.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

MsV/

P.R. RAMACHANDRA MENON, J.

W.P.(C) No.9511 of 2015

Dated this the 30th day of March, 2015

JUDGMENT

The petitioner is aggrieved of the seizure of the vehicle (earth mover) bearing registration No.TN/52/W-8123 belonging to the petitioner as per Ext.P2 Mahazar, alleging offence under Act 28 of 2008.

2. The learned counsel for the petitioner submits that, there is absolutely no rhyme or reason for having effected the seizure as the property concerned herein is not a 'paddy land' or 'converted land', having effected the conversion years back.

3. The learned Government Pleader submits on instructions that, verification of the factual position revealed that the property has not been included is a 'paddy land' as defined under Section 2(xii) or 2(xviii) of Act 28 of 2008 and that the entry has been shown as a converted land.

4. In the said circumstances, this Court finds that, no

offence under Act 28 of 2008 is involved and the offence, if at all any, could only be under the MMDR Act/KMMC Rules.

5. The learned Counsel for the petitioner submits that the petitioner is ready to compound the offence and that an opportunity might be given to get the vehicle released, after satisfying the compounding fee.

6. The issue involved in this case is, whether the petitioner, who has been proceeded against in respect of the offences under the Mines and Mineral (Development and Regulation) Act, 1957 and the Kerala Minor Mineral Concession Rules, 2015 is entitled to have the offence compounded in view of the desire expressed from the part of the petitioner in this regard.

7. Section 23A of the 'Act' and the relevant Rules enable the parties to have the offence compounded. 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 various orders in similar matters enabling the concerned parties to have the interim custody of the vehicle on satisfaction of a sum of **Rs.25,000/-** and also by directing the concerned respondent to consider the application for compounding, if any.

8. A question arose before this Court as to whether the prosecution proceedings could be pursued further, once the offence is compounded in accordance with the relevant provisions. This issue 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.

7. In view of the law declared as mentioned herein before, there will be a direction to the first respondent to consider the application filed by the petitioner to compound the offence; and pass appropriate orders forthwith, subject to satisfaction of a

sum of **Rs.25000/-** as the compounding fee. Once the offence is compounded, no prosecution proceedings shall lie against the petitioner.

The petitioner shall produce a copy of this judgment, along with a copy of this writ petition, before the 1st respondent, for further steps.

The writ petition is disposed of.

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

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