

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

FRIDAY, THE 13TH DAY OF NOVEMBER 2015/22ND KARTHIKA, 1937

WP(C) .No. 13723 of 2012 (M)

PETITIONER(S) :

THOMAS JOHN, AGED ABOUT 45 YEARS,
S/O. YOHANNAN, MELEKALAYIL
VETTIPURAM MURIYIL, MUNDUVATTAIKKAL.P.O
PATHANAMTHITTA - 689 645.

BY ADVS.SRI.RAJESH THOMAS
SRI.A.M.NASEER
SMT.TANOOSHA PAUL

RESPONDENT(S) :

1. STATE OF KERALA
REPRESENTED BY ITS SECRETARY, REVENUE DEPARTMENT,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.

2. DISTRICT COLLECTOR,
COLLECTORATE, CIVIL STATION, ALAPPUZHA - 688 001.

3. REVENUE DIVISIONAL OFFICER,
ALAPPUZHA - 688 524.

4. GEOLOGIST,
MINING AND GEOLOGY DEPARTMENT, DISTRICT OFFICE,
MINI CIVIL STATION, CHERTHALA, ALAPPUZHA - 688 524.

5. REGIONAL TRANSPORT OFFICER,
REGIONAL TRANSPORT OFFICE, CIVIL STATION,
ALAPPUZHA - 688 001.

6. SUB INSPECTOR OF POLICE,
PULINKUNNU POLICE STATION, ALAPPUZHA - 688 504.

R1-R6 BY GOVERNMENT PLEADER SRI.T.J.MICHAEL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 13-11-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

WP(C) .No. 13723 of 2012 (M)

APPENDIX

PETITIONER(S) EXHIBITS

EXHIBIT-P1-TRUE COPY OF THE REGISTRATION CERTIFICATE
ISSUED BY RA, PATHANAMTHITTA DATED 13/09/2006

EXHIBIT-P2-TRUE COPY OF THE SALE AGREEMENT DATED 04/01/2007

EXHIBIT-P3-TRUE COPY OF THE REPORT AND MAHAZAR OF THE 6TH
RESPONDENT

EXHIBIT-P4-TRUE COPY OF THE REPORT NO. D.O.A 1588/MM/2010
DATED 31/08/2010 ISSUED BY THE 4TH RESPONDENT TO THE
2ND RESPONDENT.

EXHIBIT-P5-TRUE COPY OF THE LETTER NO. C10/5733/A/2010 DATED
05/10/2010 ISSUED BY THE 5TH RESPONDENT TO THE
2ND RESPONDENT.

EXHIBIT-P6-TRUE COPY OF THE ORDER NO. G 4681/2010 DATED
29/12/2010 ISSUED BY THE 3RD RESPONDENT TO THE
PETITIONER

EXHIBIT-P7-TRUE COPY OF THE ORDER NO. C2-697/2011 DATED
17/02/2011 ISSUED BY THE 2ND RESPONDENT.

RESPONDENTS' EXHIBITS : NIL

OKB

True copy

P.A. to Judge

K.HARILAL, J.

W.P.(C) No.13723 of 2012

Dated this the 13th day of November, 2015.

JUDGMENT

The petitioner is the registered owner of 'Eicher 10.90E Truck' bearing Registration No.KL-03/P-6767, which stands confiscated in exercise of jurisdiction and power under Section 23 of the Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001 by the 3rd respondent and affirmed by Ext.P7 order passed by the 2nd respondent in appeal. According to the petitioner, he used to give his vehicle for sub contract and also on one such occasion the said vehicle was seized by the 6th respondent on 5.8.2010 Mankambu Block Junction road with the said vehicle used for transporting river sand under Ext.P3 mahazar and report. The said report was sent to the 2nd respondent and the 2nd respondent forwarded the sample sent to the 4th respondent for examination and

the 4th respondent after prima facie examination forwarded the report stating that the sand seized from the petitioner's vehicle resembles to 'Kayal sand'. By Ext.P5, the 5th respondent assessed the upset price of the said vehicle and set an upset price of Rs.3.25 lakhs and the 3rd respondent issued Ext.P6 order imposing a fine of Rs.3,25,000/- on the petitioner on the basis of Exts.P4 & P5 reports under the Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001 and Rules. Aggrieved by the confiscation, though the petitioner had preferred an appeal before the 2nd respondent, he also confirmed the confiscation by Ext.P7. Thus, this writ petition has been filed praying, inter alia, for calling reports including Ext.P7 and to quash the same.

2. Heard The learned counsel for the petitioner and learned Government Pleader.

3. The learned counsel for the petitioner advanced arguments in extenso contending that in the absence of any specific geological report by a competent expert stating that the sand seized from the

vehicle of the petitioner is river sand, no confiscation could have been made against the petitioner's vehicle. The learned counsel for the petitioner drew my attention to Ext.P4 report filed by the Geologist, Alappuzha, stating that the sand which was seized from the petitioner's vehicle resembles 'Kayal sand'. According to the learned counsel, unless and until it is found that the vehicle contained river sand at the time of seizure, no confiscation proceedings could have been initiated against the vehicle. It is also contended that neither the 3rd respondent nor the 2nd respondent has addressed or formed an opinion on this aspect in the impugned orders passed by them. The statutory authorities have not applied their mind over the Mahazar, seizure report and the expert's opinion.

4. Per contra, the learned Government Pleader advanced arguments to justify the confiscation proceedings which had been initiated against the petitioner. According to him, it was incumbent upon the owner of the vehicle to convince that his vehicle did not contain river sand and unless that burden of

proof is discharged, it could be reasonably presumed that he has transported river sand in contravention to the provisions in the Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001.

5. The short point that arises for consideration is, whether there is any illegality or impropriety in the manner in which the statutory authorities have formed the opinion that the petitioner's vehicle was used for transporting river sand in violation of the provisions of the Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001.

6. Apparently, going by Ext.P4, it is seen that the Geologist has reported that they are not provided with sufficient equipments to test whether the sand produced before them is river sand or not. Further, it is stated that on a prima facie perusal it seems that the sand resembles 'Kayal sand'. Going by the Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001, it is seen that neither river sand nor kayal sand is defined in the said Act. But, going by the objects and reasons of the enactment, it is seen that

the enactment is made to regulate removal of river sand from river and river banks only. If that be so, confiscation can be made only if it is undoubtedly found that the seized sand is a sand removed from river or river banks. All kind of sands are not liable to be confiscated under the Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001. This view is supported by sending of the sample to Geologist for expert's opinion by the competent authorities. If that be so, if the expert is unable to arrive at a definite conclusion or if it is found that the sand seized from the petitioner's vehicle is having a resemblance only on examination by naked eye, I am of the opinion that no confiscation can be made believing such a bare statement or guess work, which an ordinary prudent man may make. However, it is seen that neither the 3rd respondent who passed Ext.P6 order nor the 2nd respondent who examined the finding of the 3rd respondent under appeal has applied his mind over the crucial question in controversy. It seems that the impugned orders are passed in a perfunctory manner,

without application of mind. Needless to say, the findings are arbitrary and illegal. In the above view of the matter, Exts.P6 & P7 will stand set aside and it is made clear that the petitioner is entitled to get reimbursed the amount, which has been deposited in compliance with the interim order of this Court. The respondents are directed to release the said amount to the petitioner forthwith.

This writ petition is allowed accordingly.

Sd/-

K. HARILAL, JUDGE

okb.