

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

TUESDAY, THE 24TH DAY OF FEBRUARY 2015/5TH PHALGUNA, 1936

WP(C).No. 13882 of 2011 (I)

PETITIONER :

**SAJAN THOMAS, KANNAMALA THADATHIL
HOUSE, PUTHUSSERY P.O., KALLOOPPARA
MALLAPPALLY, PATHANAMTHITTA.**

**BY ADVS.SRI.P.DEEPAK
SMT.APARNA RAJAN**

RESPONDENTS :

- 1. SUB INSPECTOR OF POLICE,
KEEZHVAYIPUR POLICE STATION, MALLAPPALLY,
PATHANAMTHITTA - 689584**
- 2. TAHASILDAR, MALLAPPALLY TALUK,
MALLAPPALLY, PATHANAMTHITTA - 689584**
- 3. ADDL.TAHASILDAR,
MALLAPPALLY TALUK, MALLAPPALLY, PATHANAMTHITTA-689584**
- 4. DISTRICT COLLECTOR, PATHANAMTHITTA - 689001**
- 5. SUB COLLECTOR,
THIRUVALLA, PATHANAMTHITTA - 689514**

R1 TO R5 BY GOVERNMENT PLEADER SRI. M. MUHAMMED SHAFI

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 24-02-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

bp

WP(C).No. 13882 of 2011 (I)

APPENDIX

PETITIONER'S EXHIBITS :

- P1: COPY OF THE REGISTRATION CERTIFICATE.
- P2: COPY OF THE BUILDING PERMIT DT 29/7/2010.
- P3: COPY OF THE TAX RECEIPT DT 2/12/2009.
- P4: COPY OF THE MAHAZAR DT 13/05/2011.
- P4(a): COPY OF THE PHOTOGRAPH
- P5: COPY OF THE ORDER DT 5/4/2010

RESPONDENT'S EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

P.R. RAMACHANDRA MENON, J.

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W.P.(C). No. 13882 of 2011

Dated this the 24th day of February, 2015

JUDGMENT

The petitioner has approached this Court with the following prayers:

"i. Call for the records leading to Ext.P4 and quash the same by the issue of a writ in the nature of certiorari or any other such appropriate writ, order or direction.

ii. Issue a writ of mandamus commanding the respondents to release the petitioner's Excavator bearing Reg.No. KL-28-A 784 forthwith.

iii. Declare the respondents have no authority to seize the petitioner's Excavator on the allegation of violation of minor mineral concession rules when it is engaged in activities covered by clause 2 of Ext.P5."

2. When the matter came up for consideration before this Court on 24.4.2011 an interim order was passed, pursuant to which the JCB bearing No. KL-28A 784 was released to the petitioner. The case of the petitioner is that, the above JCB was taken on hire to construct a septic tank in the newly constructed residential building. The factual position is discernible from Ext.P4 mahazar itself and that the activity was being pursued after obtaining Ext.P2 building permit by the owner of the land in

question. Reliance is sought to be placed on Ext.P5 G.O wherein such activity stands in the exempted category particularly by virtue of Clause '2' thereunder.

3. The fifth respondent has filed a counter affidavit. This Court has gone through the pleadings and proceedings.

4. After hearing both the sides, this Court does not find any merit in the case projected from the part of the respondents and the pleadings in the counter affidavit are not substantiated. No action is also stated as taken against the concerned S.I of Police who admittedly prepared the mahazar with intent to reduce the gravity of the offence of the petitioner, to get the vehicle released.

In the said circumstance the interim order is made absolute and the writ petition is disposed of accordingly.

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