

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

THURSDAY, THE 19TH DAY OF FEBRUARY 2015/30TH MAGHA, 1936

WP(C).No. 12301 of 2014 (K)

PETITIONER(S) :

**SHERLY, AGED 46 YEARS,
W/O.PEARSON, VATTACHIRAYIL HOUSE,
CHINGAVANAM P.O, KOTTAYAM DISTRICT.**

**BY ADVS.SRI.NAGARAJ NARAYANAN
SRI.SAIJO HASSAN
SRI.BENOJ C AUGUSTIN
SRI.SEBIN THOMAS
SRI.PRATHAP PILLAI
SMT.J.KASTHURI
SRI.VIVEK V. KANNANKERI**

RESPONDENT(S) :

- 1. STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY,
GOVERNMENT OF KERALA, GOVT. SECRETARIAT,
THIRUVANANTHAPURAM- 686 001.**
- 2. THE DISTRICT COLLECTOR,
KOTTAYAM- 686 001.**
- 3. THE TAHASILDAR,
CHANGANASSERY, KOTTAYAM DISTRICT-686 101.**
- 4. THE VILLAGE OFFICER,
WEST VAZHAPPALLY, KOTTAYAM DISTRICT- 686 103.**

BY GOVERNMENT PLEADER SRI.NOUSHAD THOTTATHIL

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 19-02-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

Msd.

WP(C).No. 12301 of 2014 (K)

APPENDIX

PETITIONER(S)' EXHIBITS

**EXHIBIT P1: TRUE COPY OF THE REGISTRATION CERTIFICATE OF VEHICLE
BEARING REG.NO.KL-05-AA-9030.**

**EXHIBIT P2: TRUE COPY OF THE MAHAZAR DATED 03.05.2014 PREPARED BY
VILLAGE OFFICER, WEST VAZHAPPALLY.**

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

P.S.TO JUDGE.

Msd.

A.V.RAMAKRISHNA PILLAI, J

WPC No.12301 of 2014

Dated this the 19th day of February, 2015

JUDGMENT

The petitioner is the registered owner of a Tipper Lorry bearing Reg.No.KL-05AA-9030, which was seized by the fourth respondent on 3.5.2014 under the provisions of the Kerala Minor Mineral Concession Rules, 1967 on the allegation that the vehicle was used for unauthorized transportation of building waste and red earth. The petitioner alleges that as per the provisions of the Act and Rules, it is not possible to seize the vehicle transporting building waste and there was no direction from the District Collector to seize the vehicle. As per the decision of the Apex Court in (**Threesiamma Jacob v Geologist, Department of Mining**) 2013(9) SCC 725, the right over the soil/sub soil is with the owner of the property and the Government has no authority to interfere in the same and there is no law enabling the Government to take the right of sub soil in the property of

private person; it is alleged. Therefore, according to the petitioner, the seizure of the vehicle by the fourth respondent is illegal and beyond his jurisdiction. It is with this background, the petitioner has come up before this Court.

2. This Court, by interim order dated 13.5.2014, ordered release of the vehicle to the petitioner on satisfaction of a sum of ₹25,000/- (Rupees twenty five thousand only) before the authority concerned subject to further orders in this writ petition and also made clear that in case the vehicle in question had been involved in a similar offence on any earlier occasion and was released with similar conditions, then the petitioner would not be entitled to get the vehicle released under the above mentioned order.

This Court is of the view that the writ petition can be disposed of permitting the petitioner to compound the offences. If the petitioner is ready to compound the offences, she shall file a compounding petition within a period of one month from the date of receipt of a copy of

this judgment. In the event of filing the compounding petition, the respondents shall appropriate the amount ordered to be deposited by the petitioner towards fine. After compounding the offences, the respondents shall report the fact to the Magistrate's Court concerned so that further proceedings could be dropped.

The writ petition is disposed of as above.

**sd/- A.V.RAMAKRISHNA PILLAI
JUDGE**

css/

true copy

P.S.TO JUDGE