

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

TUESDAY, THE 10TH DAY OF MARCH 2015/19TH PHALGUNA, 1936

WP(C). No.20889 of 2012 (I)

PETITIONER(S):

**CHANDRALAL AGED 39 YEARS
39 YEARS, S/O.JANARDHANAN, PARAVILA VEEDU
PAVITHRESWARAM P.O., PUTHOOR, KOLLAM DISTRICT.**

BY ADV. SRI.C.RAJENDRAN

RESPONDENT(S):

- 1. STATE OF KERALA,
REPRESENTED BY ITS CHIEF SECRETARY,
TRIVANDRUM 695001.**
 - 2. DISTRICT COLLECTOR, KOLLAM - 691 013.**
 - 3. THE REVENUE DIVISIONAL OFFICER, KOLLAM - 691 001.**
 - 4. THE SUB INSPECTOR OF POLICE, PUTHOOR POLICE STATION,
KOLLAM DISTRICT - 691507.**
- R1 TO R4 BY GOVERNMENT PLEADER SHRI NOUSHAD THOTTATHIL**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10-03-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

WP(C). No.20889 of 2012 (I)

APPENDIX

PETITIONER(S) EXHIBITS:-

EXT.P-1 A TRUE PHOTOCOPY OF THE PROCEEDINGS OF THE 3RD
RESPONDENT DATED 22/9/2010.

EXT.P-2 A TRUE PHOTOCOPY OF THE NOTICE ISSUED BY THE 2ND THE
RESPONDENT TO THE PETITIONER DATED 30/07/2012.

RESPONDENTS' EXHIBITS :- NIL

KRJ

/True Copy/
P.A to Judge

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.20889 of 2012

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Dated this the 10th day of March, 2015

JUDGMENT

Ext.P2 is under challenge. By Ext.P2 the petitioner was directed to deposit a sum ₹2,45,000/- within one week, being the 2/3rd value of the vehicle owned by the petitioner. It was further ordered that, on failure the said amount would be realised from the immovable property which was furnished as security by revenue recovery proceedings.

2. The petitioner is the owner of a tipper lorry bearing Reg. No.KL 24/B 2706. The fourth respondent took the vehicle into custody on 5.5.2010 on the allegation that the same was used for unauthorised transportation of river sand. Thereafter, the third respondent by Ext.P1 directed the petitioner to pay a sum of ₹1,50,000/- being 1/3rd of the value fixed and to executed a bank guarantee or security for the balance amount for releasing the same into the interim custody of the petitioner. The petitioner alleges that he deposited the said amount and got the vehicle released into his interim custody.

3. The petitioner further alleges that thereafter without conducting any confiscation proceedings nor giving the petitioner an opportunity of being heard, the second respondent issued notice dated 30.7.2012 directing him to deposit the balance amount of ₹2,45,000/- within a week. It is with this background, the petitioner has come up before this Court.

4. In the counter affidavit filed by the second respondent, it was contended that the petitioner's goods vehicle was seized by the Sub Inspector of Police, Puthoor, at 2 pm on 5.5.2010 for the illegal transportation of river sand. Crime was registered. The Revenue Divisional Officer, Kollam granted interim custody of the vehicle to the petitioner as per proceedings dated 29.9.2010 on the basis of the judgment of this Court in W.A No.855 of 2010 dated 21.7.2010. They stated that on depositing 30% of the value of the vehicle fixed by the Regional Transport Officer, Kollam and on furnishing security for the balance amount i.e. 70% of the value of the vehicle, the petitioner was heard.

5. It was further stated that the petitioner submitted application before the R.D.O. Kollam. Thereafter, the petitioner deposited 30% of the upset value of the vehicle for ₹1,05,000/-,

furnished and pledged the immovable properties comprised in different survey numbers.

6. Later, proceedings were finalised and the District Collector issued Ext.P2 order dated 30.7.2012 directing the petitioner to remit ₹2,45,000/- being the 70% of the value of the vehicle as determined by the Motor Vehicle Inspector. According to the respondent, the order issued was as per the provisions of Kerala Protection of River Bank and Regularisation of Removal of Sand Act, 2001. The third respondent issued the order according to the provisions of the Act and in accordance with the directions in the W.A No.885 of 2010 of this Court. According to the respondent, the RDO, Kollam has already heard the petitioner before issuing the order for interim custody of the vehicle. Therefore, they justified their stand.

6. Arguments have been heard.

7. It was argued by the learned counsel for the petitioner that the confiscation proceedings had been initiated by the third respondent when the amended ordinance was in force. It was further argued that as the ordinance has not been crystalised into enactment, the proceedings initiated by the third respondent are *ab*

initio void. Therefore, it was argued that Ext.P2 order which was issued in continuation of Ext.P1 is also void.

8. The Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2013 which was issued on 7.3.2013 has retrospective operation with effect from 25.11.2012. Confiscation proceedings has been initiated by the third respondent as per the powers vested upon him by ordinance issued on 14.6.2010 which expired after six months. The ordinance has not been crystalised into an enactment by that time. Formerly, the power to pass final orders in the matter of seizure of vehicles for illegal transportation of river sand was on the District Collector. However, by amendment of the ordinance of January 2011, the Act was amended conferring the jurisdiction of the Sub Divisional Magistrate to pass final orders in respect of seizure of vehicles for illegal transportation of river sand with a right of revision to the District Collector and further right of appeal to the District Collector. That ordinance expired in June, 2011.

9. Later, the amendment in the form of another ordinance i.e Ordinance No.60/12 came on 25.11.2012. The learned counsel for the petitioner submitted that as the order of the District Collector

was on 30.7.2012, the District Collector was incompetent to pass the impugned order. I see valid force in the said submission.

In the result, the writ petition is allowed. Ext.P2 is quashed. As the petitioner has deposited an amount of ₹1,05,000/-, it is open to him to get the same reimbursed on the strength of this judgment.

Sd/-
A.V.RAMAKRISHNA PILLAI
JUDGE

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