

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 21ST DAY OF MAY 2015/31ST VAISAKHA, 1937

WP(C).No. 27854 of 2006 (N)

PETITIONER(S):

- 1. BIJU THOMAS,
S/O.CHERIAN, NADUKKUDIYIL HOUSE, HOUSE NO.9/26
KOTHAMANGALAM.**
- 2. K.C.AUGUSTINE BONEY,
KALLUMPURATHU HOUSE, NAZRETH ROAD, ALUVA.**

BY ADV. SRI.S.SREEKUMAR

RESPONDENT(S):

- 1. STATE OF KERALA,
REP. BY SECRETARY TO GOVERNMENT,
FOREST AND WILD LIFE DEPARTMENT, GOVT. SECRETARIAT,
THIRUVANANTHAPURAM.**
- 2. THE DIVISIONAL FOREST OFFICER,
MUNNAR, DEVIKOLAM.**

**BY GOVERNMENT PLEADER SRI.S.JAMAL
BY SMT. SUSEELA R.BHAT, SPL. GOVERNMENT PLEADER FOR FOREST**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
21-05-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

WP(C).No. 27854 of 2006 (N)

APPENDIX

PETITIONER(S)' EXHIBITS:

**EXT.P1: TRUE COPY OF JUDGMENT IN CMA NO.96 OF 1994 DTD.3.10.1996 OF
DISTRICT COURT, THODUPUZHA.**

EXT.P2: TRUE COPY OF JUDGMENT IN OP.NO.10832 OF 1994 DTD.8.8.1994.

EXT.P3: TRUE COPY OF ORDER IN CRP NO.2010/1997 DTD.6.9.2005.

EXT.P4: TRUE COPY OF ORDER DTD.2.8.2006 OF THE 2ND RESPONDENT.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

K. VINOD CHANDRAN, J

W.P(C) No. 27854 of 2006

Dated this the 21st day of May, 2015

J U D G M E N T

The petitioners are aggrieved with Ext.P4 order issued by the 2nd respondent seeking encashment of the guarantee furnished by the petitioner. The brief facts leading to Ext.P4 order are that the petitioners are the subsequent owners of a motor car bearing Registration No. KL 7B/1429, which was allegedly confiscated for commission of forest offence as defined under the Indian Forest Act, 1927 (hereinafter referred to as “the Act”). Admittedly the car was seized in front of a lodge and three persons who were staying in the lodge were also arrested alleging commission of a forest offence. Only a saw was recovered from the car and there were two workers who had come to the said lodge in the said vehicle, who were apprehended by the Forest authorities.

2. Confiscation proceedings were taken under Section 61 A, which was challenged by the 2nd petitioner herein before the District Judge, Thodupuzha. C.M.A No.96/94 was allowed by Ext.P1 judgment in which the learned District Judge found that there was no recovery made from the vehicle and that the petitioner was not issued with notice or heard in compliance of Section 61 B of the Act. On the count of the allegations not having been proved as also violation of natural justice, the confiscation order was set aside.

3. The Department was before this Court with a revision, the order in which is produced at Ext.P3. While the same was pending, the 2nd petitioner had approached this Court for release of the vehicle which was granted as per Ext.P2, on the petitioner furnishing bank guarantee, which bank guarantee is now sought to be encashed, by Ext.P4 order.

4. In the revision filed by the Department, this Court

found that the order of the District Judge insofar as finding the offence to be not made out for reason of no contraband articles being available in the car, was set aside. The recovery of the saw and the presence of two workers, according to this Court, would sustain the proceedings. However, on the question of violation of natural justice, the revisional Court concurred with the appellate Court. By Ext.P3 judgment in revision, it was directed that the petitioner be permitted to cross-examine the witnesses who had deposed against him. The issue was hence remanded back to the authority under the Forest Act by Ext.P3 judgment. Nothing transpired after such remand being made by this Court. The petitioner was then faced with Ext.P4 order threatening encashment of the bank guarantee. Admittedly no proceedings were taken pursuant to Ext.P3 order.

5. In fact, the learned Special Government Pleader (Forest) on the basis of written instructions received, would

contend that the files were not traceable and hence no proceedings were taken pursuant to Ext.P3. In such circumstance, the remand order having not been complied with, there is no proceeding for confiscation pending against the petitioner as of now. The vehicle was released, on furnishing of Bank guarantee, as per Ext.P2, which is subject to final orders being passed against the vehicle. No such proceeding having been issued till date, and the files being not available with the Department, there can be no encashment of bank guarantee furnished as an interim measure, in accordance with Ext.P2 judgment. Ext.P4 order shall stand set aside. The guarantee furnished to the petitioner shall stand released.

Writ petition is disposed of.

Sd/-
(K. VINOD CHANDRAN, JUDGE)

jma

//true copy//

P.A to Judge