

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 8TH DAY OF JULY 2015/17TH ASHADHA, 1937

W.P.(C).No.17753 of 2015 (T)

PETITIONER(S):-

1. KUNHABDULLA, AGED 58 YEARS, S/O ITHELU,
THENGILAKATH HOUSE, PUTHUR.P.O.,
KOTTAKKAL, MALAPPURAM DISTRICT.
2. HARIS, AGED 32 YEARS, S/O.KUNHABDULLA,
THENGILAKATH HOUSE, PUTHUR.P.O.,
KOTTAKKAL, MALAPPURAM DISTRICT.

BY ADVS.SRI.SHIRAZ ABDULLA
SRI.JOJO PAPPACHAN.

RESPONDENT(S):-

1. DISTRICT COLLECTOR,
COLLECTORATE, MALAPPURAM DISTRICT-676001.
2. THE VILLAGE OFFICER,
KOTTAKKAL, TIRUR TALUK, MALAPPURAM DISTRICT-676001.

R1 & R2 BY GOVERNMENT PLEADER SMT.C.K.SHERIN.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
08-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

WP(C).No.17753 of 2015 (T)

APPENDIX

PETITIONER(S)' EXHIBITS:-

EXT.P1 COPY OF THE CERTIFICATE OF REGISTRATION.
EXT.P1(a) COPY OF THE CERTIFICATE OF REGISTRATION.
EXT.P2 PHOTOGRAPHS.
EXT.P3 COPY OF THE SEIZURE MAHASSAR,.
EXT.P4 OPY OF THE ORDER BY THE IST RESPONDENT.
EXT.P4(a) COPY OF THE ORDER BY THE IST RESPONDENT.

RESPONDENT(S)' EXHIBITS:-

NIL.

Vku/-

[true copy]

K. Vinod Chandran, J

W.P.(C).No.17753 of 2015-T

Dated this the 08th day of July, 2015

JUDGMENT

The petitioners are concerned with the confiscation of vehicles allegedly used in conversion of a paddy land, as is evident from Exhibit P4. The District Collector, by Exhibit P4 order, imposed a fine of Rs.3,80,000/- [Rupees three lakhs and eighty thousand] on the L&T Excavator bearing registration No.KL-10-Z-6165 and Rs.1,90,000/- [Rupees one lakh and ninety thousand] on the Tipper Lorry bearing registration No.KL-55-G-1701, as per the valuation taken of the vehicles.

2. The petitioners, the vehicle owners, primarily contend that they have not committed any offence and they have merely given on hire, the vehicles, to the owner of the property and also takes up a contention that the photographs produced along with the writ petition as also a reading of the seizure mahazar would indicate that no conversion as such was being effected. The learned counsel for the petitioners also points to the object, with which the Kerala

Conservation of Paddy and Wet Land Act, 2008 [for brevity “Paddy Land Act”] was enacted, being to conserve paddy lands and wetlands and restrict the conversion or reclamation thereof. The learned counsel specifically refers to sub-section (2) of Section 3, wherein it is indicated that only conversions changing the ecological nature of the land could be brought under the provisions of the Act.

3. A reading of the seizure mahazar would indicate that the allegation was that the petitioners' vehicles were used for excavating and removing ordinary sand from a land owned by one Kunjumadan Muhammedkutty in Block No.39, Re-survey No.141/5 of Kottakkal Village in Tirur Taluk. The allegation is that the L&T Excavator was used to extract ordinary earth and the same was transported in the Tipper Lorry to another property of the afore-mentioned Kunjumadan Muhammedkutty, situated in Re-survey No.141/8.

4. The learned counsel for the petitioners would contend that, even going by the photographs of the lands lying contiguously, it is clear that the owner of the property was digging a well in one of the properties for irrigation purposes and the sludge and soil so extracted was put in the other property, which lands, even looking at

the photographs, should be taken to be a garden land.

5. The seizure mahazar very specifically raises the allegation of extraction of sand from one property and filling up of another property with the extracted sand. Evidently the sand from one property was transported to the other property by means of a Tipper Lorry. Both the properties are described as 'Nilam' in the Basic Tax Register [BTR] and are included in the Data Bank as 'paddy lands'. The District Collector, by Exhibit P4, had considered the reports of the Village Officer and the Agricultural Officer, which indicated that the lands in which the activities were carried on using the afore-mentioned vehicles were lands which could have been cultivated.

6. The petitioners' contention that the offence under the Paddy Land Act would be attracted only if there is a change in the ecological nature of the land cannot be countenanced. Even looking at sub-section (2) of Section 3, what is indicated is the application of such land, to cultivation of any intermediary crops without changing the nature of the land or of strengthening of the outer bunds for protection of such alternate cultivation.

7. Though the photographs cannot be relied upon, even

they would indicate that ordinary earth extracted from one property was used for levelling the other property. Hence, it cannot be said that the activities carried in the lands, described as 'paddy land' in the revenue records was one; applying it for cultivating any intermediary crop or for strengthening of the outer bunds for protecting the cultivation. The activity which was carried on by the petitioners, consequently, comes under Section 3(1). Definitely penal action has to be proceeded against the property owner, but that cannot absolve the petitioners.

8. The vehicle owners cannot absolve themselves from the liability of confiscation proceedings on the ground that they have only hired the vehicle to the property owner and they cannot be found to be aware the categorisation of the land in the village records and the change attempted of the nature of the land. As has been noticed, the object of the Act is to preserve paddy lands and wetlands and restrict the conversion or reclamation of such lands. The owner of a L&T Excavator used for extraction of sand and a Tipper Lorry used for transportation of such excavated sand for levelling another land, cannot plead ignorance of such enactment and absolve themselves of the liability of confiscation under the Act,

on the premise that it was the land owner who committed the offence. A person who hires such vehicles for the specific purpose and also employs his own workmen for the activities, when violating the provisions of an enactment, especially one brought into force for maintaining the ecological balance, are liable under the penal provisions of the enactment. In such circumstances, the contention of the petitioners that they being the owners of vehicle, they are not to be proceeded against, cannot be countenanced. The writ petition, for all the above reasons, is found to be devoid of merit.

This Court does not find any reason to interfere with Exhibit P4 passed by the District Collector. The writ petition would stand dismissed. No costs.

Sd/-

K.Vinod Chandran
Judge.

vkul/-

[true copy]