

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

MONDAY, THE 9TH DAY OF MARCH 2015/18TH PHALGUNA, 1936

WP(C).No. 20841 of 2013 (F)

PETITIONER(S):

1. ANIMON, S/O.VIJAYAN, AGED 44 YEARS,
CHITHIRA, VALLIKUNNAM P.O., VALLIKUNNAM VILLAGE,
MAVELIKKARA TALUK, ALAPPUZHA DISTRICT,
(OWNER OF JCB BEARING REGISTRATION
NUMBER KL-31-D-6264 AND A LORRY BEARING
REGISTRATION NO.KL-31-D-5481).
2. AJIMON,S/O.VIJAYAN,AGED 42 YEARS,
SREEPARVATHY, VALLIKUNNAM P.O.,
VALLIKUNNAM VILLAGE, MAVELIKARA TALUK,
ALAPPUZHA DISTRICT, (OWNER OF LORRY BEARING
REGISTRATION NUMBER KL-31-D-4500)
3. PRADEEP, S/O.PRABHAKARAN, AGED 35 YEARS,
ALINTAVADAKATHIL, VALLIKUNNAM P.O.,
VALLIKUNNAM VILLAGE, MAVELIKKARA TALUK,
ALAPPUZHA DISTRICT, (OWNER OF LORRY BEARING
REGISTRATION NUMBER KL-31-D-3663 AND A JCB BEARING
REGISTRATION NO.KL-31-D-9369)
4. SMITHA SANTHOSH,W/O.SANTHOSH, AGED 31 YEARS,
VYSAKHAM , ELIPPAKULAM P.O., BHARANIKAVU,
BHARANIKAVU VILLAGE, MAVELIKKARA TALUK
ALAPPUZHA DISTRICT, (OWNER OF LORRY BEARING
REGISTRATION NUMBER KL-31-4352).
5. GEETHA KALADHARAN, AGED 31 YEARS, W/O.KALADHARAN,
KALALAYAM, SOORANADU NORTH, KARUNAGAPPALLY P.O.,
KOLLAM (OWNER OF LORRY BEARING
REGISTRATION NUMBER KL-23-D-7509).
6. VIJAYAN,S/O.MADHU, AGED 48 YEARS,
VIJESH BHAVAN,KANNANAKUZHAY P.O.,
THAMARAKULAM VILLAGE, MAVELIKKARA TALUK,
ALAPPUZHA, (OWNER OF LORRY BEARING REGISTRATION
NUMBER KL-31-B-3831 AND KL-31-C-7362)

msv/

WP(C).No. 20841 of 2013 (F)

7. SAJEEV, S/O.GOVINDAN PILLAI, AGED 43 YEARS,
PAVOOR, KATTACHIRA MURI,
BHARANIKAVU VILLAGE, PALLICKAL P.O.,
ALAPPUZHA, (OWNER OF LORRY BEARING
REGISTRATION NUMBER KL-31-C-9498).
8. RAVEENDRAN, S/O.KUNJUKUNJU, AGED 65 YEARS,
SANTHI BHAVANAM, ERUMAKUZHAY MURI, NOORANADU P.O.,
PALAMEL VILLAGE, MAVELIKKARA TALUK,
(OWNER OF LORRY BEARING REGISTRATION
NUMBER KL-31-A-4109)

BY ADV. SRI.P.M.ZIRAJ

RESPONDENT(S):

THE SUB INSPECTOR OF POLICE, VALLIKUNNAM POLICE STATION,
ALAPPUZHA DISTRICT, PIN-690 501.

BY SENIOR GOVERNMENT PLEADER SMT.ANITHA RAVINDRAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
09-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

msv/

WP(C).No. 20841 of 2013 (F)

APPENDIX

PETITIONER(S)' EXHIBITS

**EXT. P1: TRUE COPY OF THE SEIZURE MAHAZAR DATED 18.8.2013 PREPARED BY
THE RESPONDENT.**

**EXT. P2: TRUE COPY OF THE QUARRYING PERMIT DATED 7.8.2013 ISSUED BY THE
DISTRICT GEOLOGIST, ALAPPUZHA.**

**EXT. P3: TRUE COPY OF THE NO OBJECTION CERTIFICATE DATED 21.5.2013 ISSUED
BY THE DISTRICT COLLECTOR, ALAPPUZHA.**

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

P.R. RAMACHANDRA MENON J.

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W.P.(C) No. 20841 of 2013

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Dated, this the 9th day of March, 2015

JUDGMENT

The vehicles bearing Nos. **KL - 31 D 6264, KL 31 D 5481, KL 31 D 4500, KL 31 D 3663, KL 31 D 9369, KL 31 4352, KL 23 D 7509, KL 31 B 3831, KL 31 C 7362, KL 31 C 9498** and **KL 31 A 4109** were seized by the **respondent/S.I. of Police** alleging offence under the Mines and Mineral (Development and Regulation) Act and the Kerala Minor Mineral Concession Rules. The main ground of challenge is that, the respondent is not having the jurisdiction or authority to effect seizure.

2. Heard both the sides.

3. The authority of the respondent to effect seizure has already been considered by this Court and the power and competence has been upheld as per the decision reported in **Aloshias C. Antony Vs. Government of Kerala** [2014(1) KLT 536]. The said decision was rendered, also taking note of the nature of offence which is a 'cognizable' one (notwithstanding anything contained in the Cr.P.C) as stipulated in Section 21(6) of MMDR Act, 1957 and also placing reliance on the judgment rendered by a Division Bench of this Court in **Construction Materials Movers Association V. State of Kerala**

[2008 (4) KLT 909]. In the said circumstance, there is no tenable ground to call for interference.

4. When the matter came up for consideration on 23.08.2013, the vehicles were caused to be released, on satisfaction of a sum Rs.25,000/- each and on execution of a simple bond, undertaking to produce the vehicles as and when required. In the said circumstance, the further course of action required is to surrender the vehicles before the respondent, so as to enable the respondent to produce it before the concerned Magistrate having jurisdiction over the area and to proceed with steps for prosecution, unless the offence is sought to be compounded.

5. The learned counsel for the petitioners submits that the petitioners are ready to face the prosecution proceedings. In the said circumstances, this Court finds that there is no other way out, unless the offence is sought to be compounded by filing necessary application in this regard. If no such exercise is pursued the right and prerogative of the petitioner is to challenge the proceedings taken by the respondents before the trial Court. Since the offence under Section 4 (1A) of the Act does not fix any ceiling for the fine, and the offence can be punished also with imprisonment, the

matter is to be considered by the trial Court.

6. In the said circumstances, the petitioner is directed to surrender the vehicles before the respondent forthwith, at any rate, within 10 days from the date of receipt of a copy of this judgment, so as to enable the respondent to proceed with further steps for prosecution. The respondent shall file necessary proceedings before the concerned Magistrate's Court having jurisdiction over the area in connection with MMDR Act/KMMC Rules, at any rate, within one month thereafter. It is made clear that, this will not bar the way of the petitioners to compound the offence, if so advised, subject to satisfaction of appropriate extent of compounding fee. The amount if any paid as per the interim order dated 23.08.2013 shall be given credit to and only the balance, if any, shall be required to be paid as the compounding fee. Once the offence is compounded, no prosecution proceedings will lie in view of the law declared by this Court in **Digil Vs. Sub Inspector of Police** [2013 (1) KLT 600].

The writ petition is disposed of.

Sd/-

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

kmd