

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 21ST DAY OF JULY 2015/30TH ASHADHA, 1937

WP(C).No. 18768 of 2015 (U)

PETITIONER:

JUBY JOHN, AGED 36, S/o. BABY JOHN,
RESIDING AT KUMMINIYIL HOUSE, 9/41,
UDUMBANNOOR, MOOLAKKAD P.O., UPPUKUNNU, THODUPUZHA.

BY ADV. SRI.P.G.JAYASHANKAR

RESPONDENTS:

1. STATE FOF KERALA,
REPRESENTED BY ITS CHIEF SECRETARY,
GOVERNMENT SECRETARIAT, TRIVANDRUM- 695001.
2. DIVISIONAL FOREST OFFICER,
DIVISIONAL FOREST OFFICE,
KOTHAMANGALAM FOREST DIVISION,
KOTHAMANGALAM P.O. - 686691.
3. FOREST RANGE OFFICER,
THODUPUZHA RANGE, THODUPUZHA - 685587.

BY SPECIAL GOVERNMENT PLEADER, SRI.M.A.THOMASKUTTY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 21-07-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

P.T.O

WP(C).No. 18768 of 2015 (U)

APPENDIX

PETITIONER(S) ' EXHIBITS:

EXHIBIT P1- TRUE COPY OF THE FOREST OFFENCE SEIZURE REPORT IN
OR No.3/2015, UNDER S.52(1) OF THE KERALA FOREST ACT, 1961

EXHIBIT P2 - TRUE COPY OF THE NOTICE BEARING No. A2.148/14
DATED 01/06/2015

EXHIBIT P3 - TRUE COPY OF THE REPLY DATED 17/06/2015

RESPONDENT(S) ' EXHIBITS: NIL

//TRUE COPY//

P.S. TO JUDGE

LPD

K. VINOD CHANDRAN, J.

W.P.(C) No. 18768 of 2015 (U)

Dated this the 21st day of July, 2015

J U D G M E N T

The petitioner is aggrieved with the fact that the petitioner has been threatened with the sale of vehicles as per Ext.P2 notice, which according to the petitioner is against the provisions of the Kerala Forest Act, 1961 (for brevity the 'Act').

2. Admittedly, two vehicles of the petitioner were seized with timber logs by the departmental officers of the respondent alleging commission of a forest offence. The Forest Offences Seizure Report was filed before the jurisdictional Magistrate as is indicated at Ext.P1. The authorised officer under Section 61A of the Act hence issued Ext.P2 notice to the petitioner, to either deposit the amount or furnish security for the amount for which the vehicles were valued, coming to Rs.6,20,000/-, within a period of 7 days, failing which sale-in-auction was

threatened.

3. The petitioner's contention is that the same goes against the provisions of the Act and the Act contemplates the sale of vehicles only after its confiscation. Looking at the provisions of the Act, this Court is of the opinion that the Act contemplates only confiscation and not sale. The sale is a decision taken by the Government after the confiscation; if at all the vehicles are not required to be used by the State. Hence, it cannot, at all, be said that the vehicles cannot be sold prior to the confiscation proceedings.

4. Any prejudice occasioned to the petitioner is mitigated insofar as the authorised officer permitting release of the vehicles, temporarily to the registered owner, on condition of providing sufficient security for the vehicle. The same is also not a specific provision as provided under the Act. Hence, the provisions of the enactment, especially one which imposes such penalty, mandating confiscation of

vehicles, used in commission of the offences, necessarily the authority is entitled to provide for measures, sufficient enough to safeguard the interest of the State as also ensuring that no prejudice is caused to the accused.

5. Further, it is to be noticed that a Division Bench of this Court in M.A.C.A. No.1458/2006 dated 2.12.2008 had specifically taken note of the manner in which the automobiles seized in pursuance of detection of offences are kept idle for long period, which results in virtually rendering them scrap after long period of time. In such circumstance, confiscation also would not be of any benefit to the Government since the vehicles would have been rendered useless by the time proceedings are completed. The alleged offender would also be prejudiced insofar as the owner not being able to enjoy the fruits of the order of acquittal, if so eventually found.

6. In such circumstance, this Court is of the opinion that there is absolutely no infirmity in Ext.P2 order. The

authorised officer has only directed the sale of the vehicle with 7 days, in the event of the petitioner not providing sufficient security, in lieu of the value of the vehicle. The sale, if conducted, the proceeds would not be forfeited to the Government and it would definitely depend on the confiscation proceedings. If the proceedings are finalised clearing the alleged offender of the blame, then the amount would have to be re-funded. Hence, the prejudice to the registered owner of the vehicle is avoided as also interest of the Government safeguarded.

7. Writ petition hence would be dismissed however, granting the petitioner two weeks time from today to produce sufficient security to the satisfaction of the authorised officer for getting release of the vehicle. No costs.

Sd/-
K.VINOD CHANDRAN,
JUDGE