

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 17TH DAY OF NOVEMBER 2015/26TH KARTHIKA, 1937

WP(C) .No. 22735 of 2012 (N)

PETITIONERS:

WEST COAST DREDGING COMPANY,
KUNNEELAKATT BUILDING, ATLANTIS, M.G.ROAD,
COHIN-682015,
REPRESENTED BY ITS MANAGING PARTNER
SRI. K.V.THOMAS.

BY ADVS.SRI.P.SANJAY
SMT.A.PARVATHI MENON

RESPONDENTS:

1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY,
WATER RESOURCES DEPARTMENT,
TRIVANDRUM, PIN-695 001.

2. THE CHIEF INSPECTOR OF BOATS,,
WATER RESOURCES DEPARTMENT, CIVIL STATION,
KOCHI- PIN-682 030.

3. CANAL OFFICER,
WATER RESOURCES DEPARTMENT, BOAT JETTY,
ERNAKULAM-PIN-682011.

4. THE CHIEF SURVEYOR,
PORT DEPARTMENT, GOVERNMENT OF KERALA,
TRIVANDRUM-PIN-695 001.

5. THE SECRETARY,
PORT DEPARTMENT, GOVERNMENT OF KERALA,
TRIVANDRUM-PIN-695001.

BY ADV. GOVERNMENT PLEADER SRI. T.J. MICHAEL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY
HEARD ON 17-11-2015, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

WP(C) NO.22735 OF 2012

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 - TRUE COPY OF INVOICE ISSUED BY WESTERN INDIA SHIPYARD LTD., FOR THE PURCHASE OF THE DUMB BARGE.

EXT.P2 - TRUE COPY OF THE DETAILS OF THE TOW PLAN ALONG WITH THE APPROVAL ISSUED BY THE INDIAN REGISTER OF SHIPPING DATED 23/3/2010.

EXT.P3 - TRUE COPY OF THE E-MAIL RECEIVED FROM THE INDIAN REGISTER OF SHIPPING DATED 24/03/2010.

EXT.P4 - TRUE COPY OF THE LETTER DATED 22/3/2010.

EXT.P5 - TRUE COPY OF THE LICENCE ISSUED BY THE 2ND RESPONDENT DATED 28/9/2010.

EXT.P6 - TRUE COPY OF OTHE LATEST LICENCE ISSUED BY THE 3RD RESPONDENT DATED 11/4/2012.

EXT.P7 - TRUE COPY OF THE ORDER DATED 26/9/2012 ISSUED TO THE PETITIONER.

EXT.P8 - TRUE COPY OF THE WORK ORDER NO.CIV/031/2012/CGM (Tech) PART-II, ISSUED TO THE PETITIONER DATED 28/9/2012.

EXT.P9 - TRUE COPY OF THE REPRESENTATION TO THE 4TH RESPONDENT DATED 27/9/2012.

//true copy//

P.S. to Judge

K. HARILAL, J.

W.P. (C) No.22735 of 2012-N

Dated this the 17th day of November, 2015

JUDGMENT

The petitioner is the owner of a dumb barge which is engaged in the dredging and deepening of the ship channels in Kochi Port. He is aggrieved by the order; whereby he is forbidden to ply the said vessel in the inland waters of Kerala, passed by the 4th respondent. According to the petitioner, the petitioner has Ext.P6 licence issued by the Water Resources Department and now the licence is current and valid. Since the vessel is not a mechanically propelled vessel which is incapable of moving on its own will not come under the purview of the 4th respondent.

2. Per contra, the 4th respondent filed a counter affidavit stating that the petitioner's dumb barge is an Inland Mechanically Propelled Vessel falling under Sec.

(I)(C) of the Inland Vessels Act, 1917 and the said provision states that “Mechanically Propelled Vessel” means every description of vessel propelled wholly or in part by electricity, steam or other mechanical power, including dumb vessel towed by the Mechanically Propelled Vessel and the vessel propelled by cut board motor. So, the detention order of the said barge was issued for the effective implementation of the Kerala Inland Vessels Rules, 2010 and the provisional detention order was served to the petitioner under the power vested in Rule 20(1) of the Kerala Inland Vessels Rules, 2010.

3. In view of the rival pleas, the disputed question that centers around the issue is, whether the petitioner's dumb barge is a Mechanically Propelled Vessel falling under Sec.(I)(C) of the Inland Vessels Act, 1917. This is a disputed question which has to be decided by the competent authorities provided under the relevant law.

4. The jurisdiction and power under Art.226 of the Constitution of India cannot be exercised to resolve a

disputed fact, for which statutory remedies are available under the relevant law and the Rules made thereunder. The above view is supported by the decision of the Supreme Court in *Prasanna Kumar Roy Karmakar v. State of West Bengal* [AIR 1996 SC 1517]. This Court declines the jurisdiction to resolve the disputed question which is placed before this Court, by a writ petition.

5. However, it is brought to the notice of this Court that Ext.P9 representation has been filed as early in the year 2012 and the same has not been considered so far. In this view, the 4th respondent is directed to consider and pass orders on Ext.P9 representation, after affording an opportunity of being heard to the petitioner. The petitioner will produce a copy of this writ petition along with a copy of this judgment before the 4th respondent.

This writ petition is disposed of accordingly.

Sd/-

(K. HARILAL, JUDGE)

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P.S. to Judge