

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

MONDAY, THE 5TH DAY OF JANUARY 2015/15TH POUSHA, 1936

WP(C).No. 29037 of 2009 (Y)

PETITIONER:

**V.SURENDRAN, SHEEJA NIVAS,
KALLUVAYAL, SULTHAN BATHERY, WAYANAD DISTRICT.**

BY ADV. SRI.M.PASHOK KUMAR

RESPONDENTS:

- 1. STATE OF KERALA, REPRESENTED BY THE
SECRETARY TO GOVERNMENT, FOREST DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM.**
- 2. THE DIVISIONAL FOREST OFFICER,
SOUTH WAYANAD DIVISION, KALPETTA, WAYANAD DISTRICT**

R1 &R2 BY SPECIAL GOVERNMENT PLEADER SRI.M.P.MADHAVAN KUTTY

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05-01-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS:

- EXT.P1: THE PHOTOCOPY OF THE JUDGMENT DATED 15.06.05 IN CRP 964/03
- EXT.P2: THE PHOTOCOPY OF THE APPLICATION TENDERED TO THE 2ND
RESPONDENT DATED 27.10.2006
- EX.P3: THE PHOTOCOPY OF THE ORDER DATED 20.07.2007 ISSUED BY THE
2ND RESPONDENT.

RESPONDENTS' EXHIBITS:

- EXT.-R2(a): TRUE COPY OF APPLICATION FILED BY SMT.BIJI MOL DT.27.11.1998
APPLICATION FILED BY SMT.BIJI MOL DT.27.11.1998
- EXT.R2(b): TRUE COPY OF VALUATION REPORT DT.11.2.1999
- EXT.R2(c): TRUE COPY OF THE APPLICATION SUBMITTED BY SMT.BIJI MOL
- EXT.R2(d): TRUE COPY OF SOLVENCY CERTIFICATE DT.23.3.1999
- EXT.R2(e): TRUE COPY OF INDEMNITY BOND DT.24.3.1999
- EXT.R2(f): TRUE COPY OF ORDER DT.21.4.1999

/TRUE COPY/

P A TO JUDGE

MJL

C.K. ABDUL REHIM, J.

WP(C)No.29037 of 2009

Dated this the 5th day of January, 2015

JUDGMENT

Brief facts narrated in the writ petition is that a mini lorry bearing Registration No.KL-10-6316, to which the petitioner's daughter was the registered owner, was seized by the Forest Officials on 06/11/1997 alleging commission of offence punishable under the Kerala Forest Act, 1961. The vehicle was released under interim custody, pending finalisation of the proceedings for confiscation, by virtue of Ext.R2(f) order passed by the 2nd respondent on 21/04/1999. Interim custody of the vehicle was given in exercise of powers vested under Section 53 of the Act, subject to the condition of the registered owner furnishing security bond along with solvency certificate. On the indemnity executed by the petitioner along with production of the title deed of his immovable property, the vehicle was released. Thereafter an order under Section 61 A was issued by the Authorised

Officer confiscating the vehicle. Despite appeal preferred by the registered owner before the District Court and further revision petition preferred before this court, the order of confiscation was confirmed. Consequently, the vehicle was surrendered before the respondents and it was sold in public auction for a sum of Rs.43,333/-. But when the petitioner approached the 2nd respondent seeking release of the title deed furnished along with the indemnity bond, the 2nd respondent had issued Ext.P3 proceedings stating that the vehicle was released under interim custody on furnishing bond for a value of Rs.90,000/- which was assessed at that time, and the Government had suffered loss while auctioning the vehicle to the tune of Rs.46,667/-. Therefore the difference in the value fetched in public auction is demanded as amount liable to be paid by the petitioner in order to make good the loss sustained to the Government. It is challenging Ext.P3, this writ petition is filed.

2. Question mooted for consideration is as to whether the respondents are entitled to claim any amount

from the petitioner towards the alleged loss sustained, because the auction sale of the vehicle has not fetched the value assessed at the time when the vehicle was released under interim custody. Section 61 A of the Act contemplates confiscation of the vehicle when the Authorised Officer is satisfied that a forest offence has been committed in respect of the said vehicle. The provision enables confiscation of the forest goods as well as the vehicles seized, which is allegedly used for commission of the forest offence. Where as Section 53 of the Act enables the Forest Officer to release the vehicle to the owner of the vehicle on execution of a bond for production of the property so released, as and when required. From Ext.R2(f) it is evident that the 2nd respondent has taken a decision to release the vehicle to its registered owner on execution of an undertaking for production of the vehicle at any time as requested, subject to furnishing of solvency certificate. The interim release was ordered on the basis of the finding that the enquiry proceedings may take time to finalise and if the

vehicle is kept idle till finalisation of such proceedings, there is possibility that the vehicle will become useless. The conditions incorporated at the time of release is that the vehicle should be produced as and when required and further that if any damage is sustained to the vehicle or if any part thereof is lost, the loss should be made good by the person who submit the solvency. In the case at hand, after finalisation of the confiscation proceedings the registered owner had surrendered the vehicle before the 2nd respondent. The vehicle was accepted by the Forest Officials without raising any complaint with respect to any damage caused or loss sustained to any parts. The vehicle was sold in public auction and the sale was confirmed by the higher authorities of the Forest Department. There is no obligation on the part of either the registered owner or the person who furnished the solvency to pay any additional amount than the value fetched on the sale of the vehicle. Merely because the value of the vehicle was assessed at a higher rate at the time of release on interim custody, the Government is not

supposed to claim difference in the amount from the person who had taken interim custody of the vehicle. The relevant provision is not intended to gain for the Government anything other than the vehicle, by way of the confiscation. On confiscation of the vehicle the Government will get only the value of the vehicle which will be fetched on public auction. No further gain can be made out of the situation merely because the value assessed at the time of interim release was higher than the amount fetched in auction.

3. Learned counsel for the petitioner had pointed out that, the vehicle in question was released under interim custody only after the lapse of about one year from the date of seizure. Ext.R2(b) letter of valuation would indicate that the vehicle at that time had considerable damage to its body, tyres, door glass, dynamo, battery etc. The vehicle would have been totally ruined if it was kept idle without releasing the same under the interim custody. Further it is stated that the vehicle was returned (surrendered) after confiscation in a better condition,

than the one existed at the time when it was released.

4. However, as observed above, the legal provisions does not permit the Government to claim any loss as mentioned in Ext.P3. Contention raised in the counter affidavit to the effect that, there exists a contractual obligation by virtue of creation of valid indemnity under the purview of Section 125 of the Indian Contract Act, cannot be accepted, based on the legal provisions enabling the confiscation.

In the result, the writ petition is to be allowed. Ext.P3 impugned proceedings issued by the 2nd respondent is held as unsustainable in law. Therefore the same is hereby quashed. The 2nd respondent is directed to return the security of title deed deposited by the petitioner, forthwith, if the same is not already released.

**Sd/-C.K. ABDUL REHIM
JUDGE**