

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 23RD DAY OF SEPTEMBER 2015/1ST ASWINA, 1937

WP(C).No. 30769 of 2009 (M)

PETITIONER(S) :

**MADHU, S/O.PADMANABHAN,
KALATHINGAL THOOVAKATTU HOUSE, VAZHAYOOR,
AZHINJILAM, MALAPPURAM DISTRICT.**

BY ADV. SRI.BABU S. NAIR

RESPONDENT(S) :

- 1. THE DISTRICT COLLECTOR,
KOZHIKKODE.**
- 2. THE SUB INSPECTOR OF POLICE,
MEDICAL COLLEGE POLICE STATION, KOZHIKKODE.**

BY GOVERNMENT PLEADER SRI.SOJAN JAMES

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 23-09-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

Msd.

WP(C).No. 30769 of 2009 (M)

APPENDIX

PETITIONER(S)' EXHIBITS :

**EXHIBIT P1: TRUE COPY OF THE JUDGMENT DATED 24.07.2009 OF
THIS HON'BLE COURT IN W.P(C).NO.20870/2009.**

**EXHIBIT P2: TRUE COPY OF THE APPLICATION SUBMITTED BY
THE PETITIONER DATED 07.08.2009 BEFORE
THE 1ST RESPONDENT.**

**EXHIBIT P3: TRUE COPY OF THE FINAL ORDER PASSED BY
THE 1ST RESPONDENT DATED 10.09.2009 AS NO.D6(A)-30859/09.**

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 30769 of 2009

Dated this the 23rd day of September, 2015

J U D G M E N T

Under challenge in this writ petition is Ext.P3 final order passed by the 1st respondent in exercise of powers under the Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001.

2. The vehicle of the petitioner was seized by the 2nd respondent on 16.07.2009 alleging illegal transportation of river sand. According to the petitioner, he was carrying sand when the same was asked to be removed by a contractor from one work site to the other in Kozhikode District. Immediately on seizing the vehicle, the petitioner had approached this Court for getting interim custody of the vehicle, which was disposed of vide Ext.P1 judgment, directing the District Collector to consider the question of granting interim custody of the vehicle. Immediately, the petitioner had approached the

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1st respondent and submitted Ext.P2 representation with a copy of Ext.P1 judgment and requested that the vehicle be released for interim custody. The petitioner alleges that though he submitted the copy of the judgment, no interim custody was given to the petitioner and Ext.P3 final order was passed by the 1st respondent on 10.09.2009. As per Ext.P3, the petitioner was directed to remit an amount of ₹1 lakh being the value of the vehicle to the river management fund. The petitioner alleges that he was not afforded an opportunity of being heard before passing the said order. According to the petitioner, Ext.P3 is a mechanical, non-speaking order. Hence, this writ petition.

3. Arguments have been heard.

4. The grievance of the petitioner is that the impugned order was passed without affording the petitioner an opportunity of being heard. It appears from record that the impugned order was passed while this Court has passed a direction to give interim custody of

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the vehicle as per Ext.P1 judgment dated 24.07.2009 in WP(C) No.20870/2009. It is also crucial to note that the 1st respondent has arrived at the value of the vehicle without resorting to any proper method. As it appears that the impugned order was passed just to avoid the contempt proceedings in WP(C) No.20870/2009, this Court is of the view that the matter requires a reconsideration by the 1st respondent.

Therefore, the writ petition is allowed. Ext.P3 is quashed. The 1st respondent is directed to reconsider the issue after affording the petitioner an opportunity of being heard within a period of two months from the date of receipt of a copy of this judgment.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

bka/-