

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

FRIDAY, THE 27TH DAY OF FEBRUARY 2015/8TH PHALGUNA, 1936

WP(C).No. 30114 of 2013 (L)

PETITIONER:

**VARGHESE, S/O.DEVASSY, AGED 63 YEARS,
RESIDING AT CHAKIATHUMOODA,
KUZHIKKATTUSSERY, THAZHEKKADU VILLAGE,
MUKUNDHAPURAM TALUK, THRISSUR DISTRICT
(OWNER OF EXCAVATOR JCB BEARING
REGISTRATION NO.KL-45-G-4827)**

BY ADV. SRI.P.M.ZIRAJ

RESPONDENT(S):

- 1. THE SUB INSPECTOR OF POLICE,
MALA POLICE STATION,
THRISSUR DISTRICT, PIN - 680 732.**
- 2. THE DISTRICT GEOLOGIST,
THRISSUR , CIVIL STATION,
THRISSUR, PIN - 680 001.**

BY SENIOR GOVT. PLEADER SRI.MUHAMMED SHAFI.M

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 27-02-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

mbr/

WP(C).No. 30114 of 2013 (L)

APPENDIX

PETITIONER(S)' EXHIBITS:

EXHIBIT P1 : TRUE COPY OF THE SEIZURE MAHAZAR DATED 2//12/2013 PREPARED BY THE FIRST RESPONDENT.

EXHIBIT P2 : TRUE COPY OF THE NO OBJECTION CERTIFICATE ISSUED BY THE DISTRICT COLLECTOR, THRISSUR TO REMOVE EARTH FROM THE PROPERTY DATED 29/1/2013.

EXHIBIT P3 : TRUE COPY OF THE LAST PERMIT ISSUED BY THE SECOND RESPONDENT DATED 8/11/2013.

RESPONDENT(S)' EXHIBITS:

- NIL

/TRUE COPY/

P.A.TO JUDGE

mbr/

P.R. RAMACHANDRA MENON, J.

W.P.(C) No.30114 of 2013

Dated this the 27th day of February, 2015

JUDGMENT

The vehicle bearing No.KL-45-G-4827 was seized by the first respondent alleging offence under the MMDR Act/KMMC 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 **06.12.2013**, the vehicle was caused to be released, **on satisfaction of a sum Rs.25,000/-** and **on executing a simple bond**. In the said circumstance, the further course of action required is to surrender the vehicle 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 petitioner expresses desire to compound the offence by virtue of the enabling provisions under the relevant provisions of law. This Court finds it fit and proper to permit the petitioner to have the offence compounded on satisfying the compounding fee of Rs.25,000/-. The amount ordered to be paid as per the interim order dated 06.12.2013 shall be treated as compounding fee and offence shall be treated as compounded. 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]. It shall be reported to the concerned Magistrate, if the crime has already been reported. If there is any failure in compounding the offence, the respondent shall pursue further steps to **seize the vehicle** and proceed with steps for prosecution.

The writ petition is disposed of.

Sd/-
P.R. RAMACHANDRA MENON,
JUDGE.

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