

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 4TH DAY OF AUGUST 2015/13TH SRAVANA, 1937

WP(C).No. 34153 of 2009 (L)

PETITIONER :

**V.PRADEEPKUMAR, S/O.VISWAMBHARAN,
AGED 60 YEARS, THUNDIPPARAMBIL HOUSE, 19/610 A,
WATERLAND ROAD, PALLURUTHY, KOCHI - 06.**

BY ADV. SRI.ABDUL JALEEL.A

RESPONDENT(S):

- 1. STATE OF KERALA,
REPRESENTED BY CHIEF SECRETARY,
SECRETARIAT, THIRUVANANTHAPURAM.**
- 2. DISTRICT COLLECTOR, ALAPPUZHA.**
- 3. SUB INSPECTOR OF POLICE,
AROOR POLICE STATION, AROOR.**
- 4. DEPARTMENT OF MINING AND GEOLOGY, ALAPPUZHA,
REPRESENTED BY ITS DISTRICT GEOLOGIST.**

BY GOVERNMENT PLEADER SRI.MANOJ P. KUNJACHAN

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 04-08-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

sts

WP(C).NO.34153/2009

APPENDIX

PETITIONER'S EXHIBITS:

- P1 COPY OF THE CERTIFICATE OF REGISTRATION ISSUED TO THE PETITIONER.
- P2 COPY OF THE ORDER PASSED BY THE 2ND RESPONDENT BEARING NUMBER
C2-533448/09 DATED 06/11/2009
- P3 COPY OF THE VALUATION REPORT DATED 6/11/2009

RESPONDENT'S EXHIBITS: NIL

/TRUE COPY/

P.A.TO JUDGE

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K. VINOD CHANDRAN, J.

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Dated this the 4th day of August, 2015

J U D G M E N T

The petitioner is aggrieved with Ext.P2 order passed under Section 23A of the Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001 (for brevity, 'Sand Act')

2. The learned Counsel for the petitioner raises two contentions to assail Ext.P2. The primary contention is that the Geologist's report merely suggests that the sand transported is river sand and hence no confiscation order could be passed on the basis of such suggestion. The other contention is that sub-section (4) of Section 23A of the Sand Act specifically empowers confiscation of the vehicle seized and by the proviso also provides for release of the vehicle on remitting an amount equal to the value of the confiscated articles. Herein, the vehicle was seized and it is the confiscation of that vehicle, which was

proceeded with under Section 23A of the Sand Act. The District Collector by Ext.P2 has imposed a fine of Rs.25,000/- in addition to the value of the vehicle determined at Rs.55,000/-. Fine which could be imposed under Section 20 of the Sand Act could only be imposed by the Court taking cognizance of the offence.

3. The report of the Geologist refers to the possibility of the goods transported being river sand. However, it is to be specifically noticed that the petitioner does not have a specific contention as to the nature of the sand, which was transported or the area from which such sand was obtained. The petitioner's contention is also noticed in Ext.P2, which is only that the petitioner had obtained the sand for the purpose of reconstruction of his residential house and that he had obtained the same from a contractor. The name of the contractor or the location from which the sand was mined is not indicated in Ext.P2. There is also no denial that the sand was river sand. In such circumstance, this Court does not find any reason to

interfere with Ext.P2 order by reason only of reliance placed on the Geologist's report.

4. However, the contention with respect to imposition of fine of Rs.25,000/- is perfectly correct going by the provisions of the Sand Act. The District Collector could release the confiscated vehicle for the amount assessed as its value. The value of the vehicle was assessed at Rs.55,000/-. In such circumstance, the District Collector could have only directed deposit of Rs.55,000/-. The imposition of fine of Rs.25,000/- in Ext.P2 is hereby set aside.

5. The petitioner would be obliged to pay Rs.55,000/- which is fixed as the value of the vehicle. The petitioner was granted release of the vehicle by an interim order of this Court by depositing Rs.25,000/- and also execution of bond of Rs.30,000/-. If the petitioner has deposited the amount and got release of the vehicle, necessarily, the same shall be deducted. The petitioner shall pay the balance amounts within a period of

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two weeks, in default of which the bond can be enforced or the vehicle proceeded against and seized.

The writ petition is disposed of with the above directions.

Sd/-
K. VINOD CHANDRAN,
JUDGE

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P.A to Judge.