

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

WEDNESDAY, THE 4TH DAY OF FEBRUARY 2015/15TH MAGHA, 1936

WP(C).No. 30732 of 2014 (N)

PETITIONER:

**JAFARALI, S/O.ABOOBACKER,
MUTHIRIPARAMPAN HOUSE, NELLIKUTH POST,
MANJERI, MALAPPURAM DISTRICT.**

BY ADV. SRI.T.PRASAD

RESPONDENT(S):

- 1. THE DISTRICT COLLECTOR,
COLLECTORATE, UP HILL ,
MALAPPURAM, PIN - 676 505.**
- 2. THE SUB COLLECTOR,
PERINTHALMANNA,
MALAPPURAM DISTRICT, PIN - 679 322.**
- 3. THE SUB INSPECTOR OF POLICE,
MANJERI POLICE STATION, MANJERI PO,
MALAPPURAM, PIN - 676 121.**

BY SENIOR GOVERNMENT PLEADER SRI.K.C.VINCENT

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 04-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

mbr/

WP(C).No. 30732 of 2014 (N)

APPENDIX

PETITIONER(S)' EXHIBITS:

**EXHIBIT P1 : THE TRUE COPY OF THE R.C. PARTICULARS OF PETITIONER'S
VEHICLE BEARING REG.NO.KL-10-F-2055.**

**EXHIBIT P2 : THE TRUE COPY OF THE ORDER IN CMP NO.7435/2013 OF THE
JUDICIAL FIRST CLASS MAGISTRATE COURT-1, MANJERI.**

**EXHIBIT P3 : THE TRUE COPY OF THE PROCEEDINGS NO.K/10689/13(X)1 OF THE
2ND RESPONDENT.**

RESPONDENT(S)' EXHIBITS:

- NIL

/TRUE COPY/

P.A. TO JUDGE

mbr/

P.R. RAMACHANDRA MENON, J.

W.P.(C) No.30732 of 2014

Dated this the 4th day of February, 2015

JUDGMENT

The petitioner has approached this Court with the following prayers:

"i) To call for the records leading to Ext.P3 and other proceedings with respect to the petitioner's vehicle from the 1st and 2nd respondents and issue a writ of certiorari or any other appropriate writ, order or direction quashes Ext.P3 and confiscation proceedings as illegal.

ii) To issue a writ of mandamus or other appropriate writ, order or direction commanding the 1st and 2nd respondents to release the petitioner's vehicle bearing registration No.KL-10-F-2055 to the petitioner as per the provisions of Kerala Protection of River Banks and Regulation of Removal of Sand Act 2001 and Rule.

iii) To call of the Records leading to the Petitioner's case from Respondents 1 and 2 and issue a writ of certiorari or other appropriate writ, order or direction quashing the proceedings against the Petitioner's vehicle bearing Reg. No.KL-10-F-2055 as illegal.

iv) To issue such other reliefs as this Hon'ble Court may deem fit and proper in the circumstances of the case."

2. The learned counsel for the petitioner submits that, vehicle bearing Registration No.KL-10-F-2055 belonging to the petitioner was proceeded against in respect of the alleged offence under the Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001. The interim custody of the said

vehicle was caused to be released on approaching the concerned Magistrate's Court by filing C.M.P. No.7435 of 2013, which led to Ext.P2 order dated 21.04.2014. It is stated that, the petitioner did not pursue further steps to get the interim custody released by satisfying the condition. Subsequently, the petitioner came to know that the vehicle is put to auction as borne by Ext.P3 proceedings issued by the 2nd respondent. This, according to the petitioner, is per se wrong and illegal in all respects as no prior notice was ever issued to the petitioner with regard to the confiscation, nor was any order passed in this regard and hence the challenge.

3. The 2nd respondent has filed a Counter Affidavit referring to the sequence of events and as to the culmination of the proceedings leading to Ext.P3. Paragraphs 2 and 3 of the said Counter Affidavit dated 12.01.2015 are relevant, which hence are reproduced below:

"2. At the outset, it is submitted that letter No.DM6-28006/13 dated 25.07.2013 from District Collector, Malappuram has been received in this office for the auction of vehicles which are seized under Kerala Protection of River Banks and Regulation of Removal of Sand Act and kept at different public places which leads to inconvenience. Above vehicles under Perinthelmann Sub Division was confiscated as per Escheits and Forfeitures

Act 1964, after the publication of notification in the Kerala Gazette. After three months from the date of above notification, the above vehicles were put for auction after one month sale notification in the Kerala Gazette No.629 Volume 3 dated 20.02.2014. Sale notice was also published in various dailies. Vehicles including the petitioner's vehicle were auctioned accordingly. The conformation of the said auction was also done by the District Collector, Malappuram as per proceedings No.DM4-14735/2012 dated 21.07.2014. The petitioner has not approached or filed any application for releasing his vehicle in this office until the completion of the above auction proceedings.

3. With regard to the averments contained in paragraphs 1 and 2, it is submitted that as per letter No.DM6-28006/13 dated 25.07.2013, action was taken for auction of vehicles which are seized under Kerala Protection of River Banks and Regulation of Removal of Sand Act. Since, no one come forward claiming their right over the vehicle, procedure for the auction of the vehicle was started considering the vehicle as "unclaimed property" mentioned in Chapter III of Kerala Eschets and Forfeitures Act 1964. As per the above Act, a notification was published in Kerala Gazette No.2866 (Extra ordinary) Volume 2 dated 03.10.2013, giving an opportunity for claiming the right if any within a period of 3 months from the date of publication. Even after the elapse of the time limit, the petitioner did not approach with a claim. In the above situation, no individual notice was issued to the petitioner. Petitioner's vehicle bearing No.KL-10-F-2055 was taken by Sub Inspector of Police, Manjeri for illegal transportation of river sand."

4. Heard the learned Government Pleader as well, who points out that the auction notice was published on 20.02.2014 and auction pursuant to such notice was confirmed on 21.07.2014. This Court finds that the writ petition has been filed by the petitioner only on 18.11.2014 and this Court does not find

it as a fit case to call for interference invoking the discretionary remedy under Article 226 of the Constitution of India, under any circumstances.

The writ petition is dismissed accordingly.

**P.R. RAMACHANDRA MENON,
JUDGE**

sp