IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

THURSDAY, THE 8TH DAY OF JANUARY 2015/18TH POUSHA, 1936

WP(C).No. 35452 of 2014 (F)

PETITIONER(S):

VARGHESE T.D., AGED 38 YEARS,
S/O.DEVASSIA, THEKKEL HOUSE, EDAVAKA. P.O.,
KALLODY, MANANTHAVADY TALUK, WAYANAD DISTRICT.

BY ADV. SRI.P.V.VARGHESE (KANJIRAMATTOM).

RESPONDENT(S):

1. **STATE OF KERALA,**
   REP. BY SECRETARY, DEPARTMENT OF HOME AFFAIRS,
   SECRETARIAT, TRIVANDRUM - 695 001.

2. **THE DISTRICT COLLECTOR,**
   WAYANAD DISTRICT, CIVIL STATION,
   KALPATTA - 673 701.

3. **THE SUB DIVISIONAL MAGISTRATE**
   AND SUB COLLECTOR, (REVENUE DIVISIONAL OFFICER),
   MANANTHAVADY - 670 645, WAYANAD DISTRICT.

4. **SUB INSPECTOR OF POLICE,**
   MANANTHAVADY POLICE STATION,
   MANANTHAVADY - 670 645, WAYANAD DISTRICT.

BY SR. GOVT. PLEADER SRI.K.C. VINCENT.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 08-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rs.

WP(C).No. 35452 of 2014 (F)

APPENDIX

PETITIONER'S EXHIBITS:-

EXT.P1: TRUE PHOTOSTAT COPY OF THE FIR IN CRIME NO.840/2014.

EXT.P2: TRUE PHOTOSTAT COPY OF THE SEIZURE MAHASAR.

EXT.P3: TRUE PHOTOSTAT COPY OF THE JUDGMENT DATED 13/10/2014 IN WP(C).NO. 26398/2014.

EXT.P4: TRUE PHOTOSTAT COPY OF THE ORDER DATED 18/12/2014 ISSUED BY 3RD RESPONDENT RDO.

EXT.P5: TRUE PHOTOSTAT COPY OF THE REVISION BEFORE THE 2ND RESPONDENT WITHOUT ANNEXURE.

EXT.P6: TRUE PHOTOSTAT COPY OF THE JUDGMENT DATED 27/10/2014 IN WP(C).NO.27983/2014.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

P.R. RAMACHANDRA MENON, J.

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W.P(C)No.35452 OF 2014

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Dated this the 8th January, 2015

J U D G M E N T

The petitioner is the owner of the vehicle bearing No.KL.10N.1332, which was seized allegedly for illegal transportation of river sand , as borne by Ext.P1 FIR and Ext.P2 Mahazar. The petitioner approached this Court by filing W.P.(C) No.26398 of 2014, which was disposed of as per Ext.P3 judgment, whereby the third respondent therein/Sub Inspector of Police was directed to report the seizure of the vehicle before the concerned Magistrate's Court and also setting the petitioner at liberty to approach the Magistrate's Court , so as to enable the petitioner to get interim custody of the vehicle. The second respondent/RDO was directed to finalise the confiscation proceedings within one month, after hearing the petitioner. The case of the petitioner is that by the time, the petitioner took steps to get interim custody of the vehicle by approaching the Magistrate's Court in view of the direction contained in Ext.P3 judgment, the confiscation proceedings were finalised by the third respondent/RDO, who passed Ext.P4 order dated 18.12.2014 ordering confiscation of the vehicle with liberty to

the petitioner to redeem the vehicle on satisfaction of Rs. Two lakhs, based on the valuation effected by the Sub Regional Transport Officer, Mananthavady, as per his report dated 13.11.2014. The petitioner, being aggrieved of Ext.P4, moved the second respondent/District Collector, who is the revisional authority under the Statute by way of Ext.P5 and has sought for interim custody of the vehicle, which is still to be acted upon. This made the petitioner to approach this Court seeking for appropriate directions for release of the vehicle. Reliance is sought to be placed on Ext.P6 judgment dated 27.10.2014, wherein interim custody of the vehicle was ordered to be given on satisfaction of 30% of the value of the vehicle and also on furnishing security for the balance amount either by way of Bank Guarantee or immovable property. The petitioner also seeks for similar relief in this case as well.

2. The learned Government Pleader appearing for the respondents submits that the petitioner has to satisfy the entire amount covered by Ext.P4 and that he can obtain refund on successful culmination of the appeal or the revision, as the case may be. It is also pointed out that the petitioner is not entitled

for interim custody of the vehicle without satisfying the redemption fee as ordered in Ext.P4, which in fact has to go to 'River Management Fund'. The learned Government Pleader adds that by virtue of Section 23A(4) and (5) of the Kerala Protection of River Banks and Regulations of Removal of River Sand Act, 2001 (Act 15 of 2013), it is obligatory for the petitioner to effect the payment, which shall go to the River Management Fund and that the payment so effected to the River Management Find will be subject to the outcome of the Revision or appeal to be preferred under Sections 23B or 23C. According to the learned Government Pleader **Section 23D** places a bar in granting interim custody of the vehicle and as such, the relief is not liable to be entertained. This Court finds it difficult to accept the said proposition.

3. The categorical expression of the words used in Section 23D refers to the course, which is to be followed once the District Collector in a Revision Petition or the District Court in an appeal amends to cancel an order passed under Section 23B or 23C. The said provision does not come to support the case projected by the learned Government Pleader , in so far as the

issue involved in the present case is with regard to the interim custody of the vehicle during pendency of the Revision. Section 23D obviously is with reference to the outcome on finalisiation of the proceedings, either in Revision or Appeal. As such, the version putforth by the respondents stands repelled.

4. After hearing both the sides, this Court finds that the interest of the Revenue is well protected by Ext.P6 verdict, when the party has been directed to deposit 30% value of the vehicle and the balance was ordered to be met by way of Bank Guarantee or immovable property. This Court does not find any reason to deviate from the said course. It is ordered accordingly.

The writ petition is disposed of. The petitioner shall produce a copy of the judgment along with a copy of the writ petition before the concerned respondent for further steps.

P.R.RAMACHANDRA MENON
JUDGE

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