



2023:KER:59195

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

TUESDAY, THE 19TH DAY OF SEPTEMBER 2023 / 28TH BHADRA, 1945

WP(C) NO. 28419 OF 2023

PETITIONER:

SIRAJ, AGED 32 YEARS,
S/O. MAYIN HAJI, ANDADIPOYIL HOUSE,
PAVANDOUR (PO), NANMANDA,
KOZHIKODE DISTRICT, PIN - 673 613.
BY ADVS.
CIBI THOMAS
ANSIA K.A.

RESPONDENTS:

- 1 THE DISTRICT COLLECTOR
CIVIL STATION. P.O,
KOZHIKODE, PIN - 673 020.
- 2 THE VILLAGE OFFICER
CHELLANNUR VILLAGE OFFICE,
CHELLANNUR. P.O,
KOZHIKODE, PIN - 673 616.
ADV.DEVISHRI R. GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
19.09.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



BECHU KURIAN THOMAS, J

CR

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W.P.(C).No.28419 of 2023

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Dated this the 19th day of September, 2023

JUDGMENT

A lorry was seized under section 19 of the Kerala Conservation of Paddy Land and Wetland Act, 2008 (for short, ‘the Act’), alleging it to have been used for the reclamation of a paddy land. Petitioner, as the owner of the said vehicle, seeks, inter-alia, a declaration that the proceeding resulting in the seizure is illegal.

2. Petitioner is the registered owner of a tipper lorry bearing registration No.KL-57/A-4480. By a mahazar dated 17.03.2023, the said vehicle was seized by the 2nd respondent, alleging that it was used for transportation of earth for reclamation of a paddy land. Petitioner contends that the vehicle was seized from a public road, and there was no soil in it and hence, the seizure is illegal.

3. I have heard Sri. Cibi Thomas, the learned counsel for the



petitioner and Smt.Devishri R., the learned Government Pleader.

4. The power of seizure under Section 19 of the Act can be invoked when a vehicle or other machinery is used or deemed to have been used for any activity in contravention of the provisions of the Act. For the purpose of reference, Section 19 of the Act is extracted below:

S. 19. "Power of entry and seizure- (1) Any officer of the Revenue Department not below the rank (of Village Officer) or any Officer authorised by the Government in this behalf or any police officer not below the rank of a Sub-Inspector, with a view to ensure the compliance of the provisions of this Act, may enter and search any premises and seize any vessel, vehicle or any other conveyance (or any clay, sand, earth etc., removed from the paddy land or wetland or any brick, tile made of all or any of them) or machinery used or deemed to have been used for any activity in contravention of the provisions of this Act, and a report regarding such seizure, whether prosecution proceedings have been initiated or not, shall be given to the District Collector having jurisdiction over that area within forty-eight hours of such seizure."

5. Seizure is a drastic power and can be exercised only when it is conferred by a statute. Seizure of a vehicle interferes with the



right of an owner to use his property in the manner he likes, subject, of course, to law. Since seizure interferes with proprietary rights, provisions conferring the power of seizure must be interpreted strictly. The safeguards and the stipulations provided by the statute for the exercise of such a power must also be strictly complied with.

6. Section 19 of the Act vests the power of seizure upon three categories of persons who are empowered to invoke the power to seize a vehicle or other things mentioned therein. They are (i) any officer of the Revenue Department not below the rank of a Village Officer, (ii) any officer authorised under Section 12 of the Act, and (iii) a Police Officer not below the rank of a Sub Inspector. Apart from the specific category of persons who can invoke the power of seizure, section 19 of the Act also stipulates that a vehicle can be seized only when it is used or deemed to have been used for any activity in contravention of the provisions of this Act. The above safeguards provided by the statute ought to be interpreted strictly lest there be a misuse of the extraordinary power conferred upon the authorities under the Act. Therefore, unless the Officer seizing



the vehicle is satisfied that such a vehicle was used or deemed to have been used for converting a paddy land, he cannot resort to the power of seizure.

7. A perusal of the mahazar reveals that the officer, while effecting seizure of the vehicle, had not observed that the vehicle was used or deemed to have been used for contravening the provisions of the Act. The only observation as noticed from the mahazar is that he was satisfied ‘that there was contravention of the provisions of the Act, and hence, the vehicle is being taken into custody’. There is no whisper even that the vehicle was used or can be said to be deemed to have been used for contravening the provisions of the Act. In the absence of any allegation that the vehicle was used or deemed to have been used for contravening the provisions of the Act, no seizure can be effected.

8. In the decision in *Amity Rock Products v. District Collector, Kottayam and Another* 2021 KHC 3245, this Court held that an empty vehicle seized from the side of a paddy land could not be assumed to be used for the transportation of earth in the vehicle for reclamation of paddy land or wetland.



9. Since it is evident that while seizing the vehicle of the petitioner, the second respondent had not specifically observed that the vehicle was used or deemed to have been used for contravening the provisions of the Act, the seizure of petitioner's lorry is without authority and contrary to the provisions of the Act.

10. Hence, it is declared that Proceeding No.69/23 dated 17.03.2023, initiated against the vehicle of the petitioner bearing registration No.KL-57/A-4480 is without authority and hence illegal. In view of the above conclusion, the vehicle of the petitioner ought to be released to the petitioner forthwith.

The writ petition is allowed as above.

**BECHU KURIAN THOMAS
JUDGE**



APPENDIX OF WP(C) 28419/2023

PETITIONER EXHIBITS

- EXHIBIT P1** TRUE COPY OF THE REGISTRATION
CERTIFICATE OF THE VEHICLE BEARING
REGISTRATION NO. KL-57A-4480
- EXHIBIT P2** TRUE COPY OF THE SEIZURE MAHASER
PREPARED BY THE 2ND RESPONDENT IN
PROCEEDINGS NO. 69/2023 DATED
17.03.2023 REGARDING THE SEIZURE
VEHICLE BEARING REGISTRATION NO. KL-
57A-4480 .
- EXHIBIT P3** TRUE COPY OF THE JUDGMENT DATED
08.01.2021 IN WP(C).NO.23829/2020
- EXHIBIT P4** TRUE COPY OF THE ORDER DATED
06.07.2023 IN CRL. MP.NO. 781/2023
BEFORE THE JFCM COURT-III, KOZHIKODE

TRUE COPY