

Dr.Abdul Rasheed Vs. the State of Kerala

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Court : Kerala

Decided On : Jul-31-2013

Judge : Honourable Mr.Justice P.R.Ramachandra Menon

Appellant : Dr.Abdul Rasheed

Respondent : The State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON WEDNESDAY, THE 31ST DAY OF JULY 2013 9TH SRAVANA, 1935 WP(C).No. 31251 of 2012 (F) ----- PETITIONER: DR.ABDUL RASHEED, S/O.MOHAMMED KUTTY VAIDYAR, AGED 4 YEARS RESIDING AT VERINGOTT THODIYIL HOUSE, IRIMBILIYAM VALAMCHERRY, MALAPPURAM DISTRICT. BY ADVS.SRI.K.M.JAMALUDHEEN SMT.LATHA PRABHAKARAN RESPONDENTS:

1. THE STATE OF KERALA, REPRESENTED BY SECRETARY TO GOVERNMENT MINISTRY OF REVENUE, SECRETARIATE THIRUVANANTHAPURAM

037.

2. THE DISTRICT COLLECTOR, CIVIL STATION, UPHILL, MALAPPURAM.

3. THE STATION HOUSE OFFICER, VALANCHERRY POLICE STATION, MALAPPURAM BY SR. GOVERNMENT PLEADER SRI JOSEPH GEORGE THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 31-07-2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: WPC 31251/2012 APPENDIX PETITIONER(S) EXHIBITS EXT.P1: TRUE COPY OF THE SAND PASS ISSUED FROM IRIMBILIYAM GRAMA PANCHAYATH. EXT.P2: TRUE COPY OF THE SAND PASS ISSUED FROM IRIMBILIYAM GRAMA PANCHAYATH. EXT.P3: TRUE COPY OF THE SAND PASS ISSUED FROM IRIMBILIYAM GRAMA PANCHAYATH. EXT.P4: TRUE COPY OF THE SAND PASS ISSUED FROM IRIMBILIYAM GRAMA PANCHAYATH. EXT.P5: TRUE COPY OF THE SAND PASS ISSUED FROM IRIMBILIYAM GRAMA PANCHAYATH. EXT.P6: TRUE COPY OF THE SAND PASS ISSUED FROM IRIMBILIYAM GRAMA PANCHAYATH. EXT.P7: TRUE COPY OF THE SAND PASS ISSUED FROM IRIMBILIYAM GRAMA PANCHAYATH. EXT.P8: TRUE COPY OF THE SAND PASS ISSUED FROM IRIMBILIYAM GRAMA PANCHAYATH. EXT.P9: TRUE COPY OF THE SAND PASS ISSUED FROM IRIMBILIYAM GRAMA PANCHAYATH. EXT.P10: TRUE COPY OF THE SAND PASS ISSUED FROM IRIMBILIYAM GRAMA PANCHAYATH. EXT.P11: TRUE COPY OF THE SAND PASS ISSUED FROM IRIMBILIYAM GRAMA PANCHAYATH. EXT.P12: TRUE COPY OF THE SAND PASS ISSUED FROM IRIMBILIYAM GRAMA PANCHAYATH. EXT.P13: TRUE COPY OF THE SAND PASS ISSUED FROM IRIMBILIYAM GRAMA PANCHAYATH. EXT.P14: TRUE COPY OF THE SEIZURE MAHAZAR PREPARED BY THE 3RD RESPONDENT. EXT.P15: TRUE COPY OF THE PETITION FILED BY THE PETITIONER ALONG WITH LIST OF DOCUMENTS. EXT.P16: TRUE COPY OF THE ORDER PASSED ON BEHALF OF THE 2ND RESPONDENT. RESPONDENTS' EXHIBITS NIL TRUE COPY KS. P.S. TO JUDGE P.R. RAMACHANDRA MENON J.

~~~~~ W.P.(C) No. 31251 of 2012  
~~~~~ Dated, this the 31st day of July, 2013 JUDGMENT  
The petitioner is challenging the correctness and sustainability of Ext. P16 proceedings/order dated 06.12.2012 issued by the second respondent. The case of the petitioner is that, the petitioner had stored river sand, having purchased the same from various dealers on the strength of Exts. P1 to P13 passes, for

constructing a residential building in his property. While so, the third respondent seized the same on 29.10.2013 preparing Ext. P14 seizure mahazar, stating that, the petitioner had collected the sand illegally from various 'kadavus' in Bharatapuzha. Eventhough the petitioner tried to substantiate the position by filing Ext. P14, it did not turn to be fruitful, leading to Ext. P16, ordering confiscation of the sand seized.

2. When the matter came up for consideration on 28.06.2013, the following interim order was passed : "Learned Government Pleader is required to get instruction as to whether Ext. P16 order has been passed by the District Collector and get the particulars of the hearing W.P.(C) No. 31251 of 2012 :

2. : held on 28.11.2012. The petitioner is required to produce the relevant bills as to the purchase of sand from the concerned dealers from where the sand was allegedly purchased on the strength of Exts. P1 to P3 passes. Post after two weeks." 3. The learned Government Pleader appearing for the respondents submits that Ext. P16 came to be passed pursuant to the hearing held on 28.11.2012, simultaneously adding that, but for Ext. P16, no other order has been passed. On going through the contents of Ext. P16, the only observation is that the petitioner could not produce relevant documents in support of the sand stored, which was seized as per Ext. P14 seizure mahazar. The petitioner has got a case that all the relevant documents were produced before the respondents and that the matter was heard on 28.11.2012. But Ext. P16 remains to be just a 'three lines' order, which cannot be regarded as a speaking order at all. It is true that the petitioner has not produced the bills or authorised copies of the bills, based on which, the river sand was allegedly purchased by him from the concerned dealers, who have passed on copies of the relevant passes to the petitioner as borne by Exts. P1 to P13. However, since Ext. P16 is not a reasoned order and further in view of the submission of the learned Government Pleader that no other W.P.(C) No. 31251 of 2012 :

3. : order has been passed by the District Collector, this Court finds that, the matter requires to be considered by the second respondent with notice to the petitioner, giving a chance to the petitioner to substantiate his case. Accordingly,

Ext. P16 will stand set aside and the second respondent is directed to reconsider the matter with notice to the petitioner, who shall finalize the same, passing a speaking order, in accordance with law, at the earliest, at any rate, within two months from the date of receipt of a copy of this judgment. It is open for the petitioner to produce the relevant documents including the bills/authorized photocopies of the bills to be obtained from the dealers before the second respondent . Petitioner shall produce a copy of this judgment along with copy of the writ petition before the second respondent for further steps. The Writ Petition is disposed of. Sd/- P. R. RAMACHANDRA MENON, (JUDGE) kmd

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