

Thomas Mathew vs the Sub Collector,

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Court : Kerala

Decided On : Nov-08-2022

Judge : Honourable Mr. Justice P.V.Kunhikrishnan

Appeal No. : WP(C)/7824/2009

Appellant : Thomas Mathew

Respondent : The Sub Collector,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN
TUESDAY, THE 8TH DAY OF NOVEMBER 2022 / 17TH KARTHIKA,
1944 WP(C) NO. 7824 OF 2009 PETITIONER: THOMAS MATHEW
VAZHAYIL HOUSE, THIRUVANDOOR, CHENGANNUR TALUK. BY
ADVS. SRI.PHILIP T.VARGHESE SRI.THOMAS T.VARGHESE
RESPONDENTS: 1 THE SUB COLLECTOR, CHENGANNUR. 2 THE
ADDITIONAL TAHSILDAR CHENGANNUR. 3 THE VILLAGE OFFICER
THIRUVANDOOR. 4 V.P.MOHAN KUMAR, S/O.PRABHAKARAN PILLAI
VAVDAKKEDATH HOUSE, THIRUVANDOOR PO, CHENGANNUR
TALUK. BY ADV GOVERNMENT PLEADER OTHER PRESENT:
SRI.K.M.FAISAL, GP THIS WRIT PETITION (CIVIL) HAVING COME UP

FOR ADMISSION ON 08.11.2022, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

P.V.KUNHIKRISHNAN, J.

----- W.P.(C).No.7824 of 2009
----- Dated this the 08th day of November,
2022

JUDGMENT

This writ petition is filed challenging Exts.P2 and P4 orders passed by the Additional Tahsildar, Chengannur and the

Sub Collector, Chengannur. By Ext.P2 order, an amount of Rs.3,73,055/- was imposed as fine from the petitioner alleging that 8766 m³ of river sand has been removed. It is the case of the petitioner that the above order is passed simply because the petitioner is having a property near the Varettar River. According to the petitioner, the finding in Ext.P2 is without any basis and the 2nd respondent passed Ext.P2 order on mere suspicion. The appeal filed by the petitioner is also dismissed by the 1st respondent without considering the contentions raised is the grievance. Hence this writ petition.

2. Heard the learned counsel for the petitioner and the learned Government Pleader.

3. This Court perused Ext.P2 order. A perusal of Ext.P2 order will show that the 2nd respondent passed such an

order based on a Mahazar prepared by the Village Officer

which is produced as Ext.R1(b) in the counter affidavit. This Court perused Ext.R1(b). A perusal of Ext.R1(b) will not show that the Village Officer found that the petitioner removed sand. But in Ext.P2 it is stated that the fine is imposed based on the report of the Village officer. Except Ext.R1(b) no other report is produced before this Court. A perusal of Ext.R1(b)

will not show that the petitioner removed the sand. In Ext.R1(b) it is only stated that near the property of the petitioner the sand is seen removed and a heap of sand is also seen. There is nothing in Ext.R1(b) to show that the petitioner removed the sand from the river. The 2 nd respondent based on suspicion concluded that the petitioner removed the sand. But no enquiry is seen conducted by the 2 nd respondent before

passing Ext.P2 order. The petitioner challenged Ext.P2 and filed an appeal before the 1st respondent. Appeal also dismissed as evident by Ext.P4. A perusal of Ext.P4 will also show that the appeal also dismissed stating that there is nothing to interfere with Ext.P3 order. Moreover, a perusal of

Ext.P2 will show that the 2nd respondent imposed fine. This Court, in Sijo Jose Padayattil v. Village Officer, Ernakulam and Another [2013 (3) KLT 669], observed that the Revenue Divisional Officer has no power to impose fine. As per Ext.P2, an amount of Rs.3,73,055/- is imposed as fine. In the light of the above decision, it is clear that the 2 nd respondent has no power to impose fine. Moreover in Ext.P4 it is stated that large quantities of river sand was found removed from the river puramboke adjacent to the petitioners property. Heaps of river sands was seized from the petitioners property. But a perusal of Ext.R1(b) will not show that the sand was seen in the property of the petitioner. In the light of the above discussion, according to me, Exts.P2 and P4 will not stand.

Therefore, this writ petition is allowed and Exts.P2 and P4 are quashed. sd/-
P.V.KUNHIKRISHNAN JV JUDGE APPENDIX OF WP(C) 7824/2009
PETITIONER EXHIBITS Exhibit P1 TRUE COPY OF SALE DEED NO.1268/2003
OF SRO, CHENGANNUR DATED 5.6.2003. Exhibit P2 TRUE COPY OF THE
ORDER IN L.C.NO.11/2002 ISSUED BY THE 2ND RESPONDENT DATED
20.8.2003. Exhibit P3 TRUE COPY OF DEMAND NOTICE ISSUED BY THE 3RD
RESPONDENT TO THE PETITIONER DATED 21.11.2018. Exhibit P4 TRUE
COPY OF THE ORDER OF THE 1ST RESPONDENT IN L.C.O.8/2003 DATED
6.11.2003. RESPONDENTS EXHIBITS Exhibit R1(A) THE TRUE COPY OF THE
WRITTEN STATEMENT DATED 18.11.2002 FILED BY THE PETITIONER
BEFORE THE 2ND RESPONDENT. Exhibit R1(B) TRUE COPY OF THE

REPORT DATED 08.08.2017.

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