

Sudheer Vs. the District Collector and Another

Sudheer Vs. the District Collector and Another

SooperKanoon Citation : sooperkanoon.com/947300

Court : Kerala

Decided On : Jun-24-2011

Reported in : 2011(3)KLT14; 2011(4)KLJ171; 2011(3)KHC673

Judge : Antony Dominic

Appeal No. : W.P.(C).No.19639 of 2008(K)

Appellant : Sudheer

Respondent : The District Collector and Another

Judgement :

1. Petitioner is the registered owner of Tipper Lorry bearing Reg.No.KL-45-A-2719.
2. Proceedings were initiated against the vehicle on the allegation that the vehicle was used for transportation of river sand in violation of the provisions contained in the Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001. Those proceedings culminated in Ext.P2 order of the District Collector. In that order petitioner was found guilty and was directed to remit an amount of `25,000/- towards fine. The order contains a further direction, which reads as under :-

" . .

."

The challenge in this writ petition is only against the aforesaid direction that the payment of fine shall be endorsed in the R.C.Book. Taking note of the said grievance of the petitioner, this Court passed order dated 15.7.2008 directing the learned Govt. Pleader to get instructions as to what is the source of power available to the District Collector to order endorsement of payment of fine in the R.C.Book. However, so far no counter affidavit has been filed in this writ petition.

3. The procedure for confiscation of the vehicle has been laid down in Rule 27 of the provisions of the Kerala Protection of River Banks and Regulation of Removal of Sand Rules, 2002, framed by the State Government exercising its powers under Sec.26 of the Act. This Rule reads as under :-

"27. Procedure for confiscation of vehicles :- (1) The Police or Revenue officials shall seize the vehicle used for transporting sand in violation of the provisions of the Act and these Rules.

(2)In the case of seizure of vehicle under sub-section (1), a mahazar shall be prepared in the presence of two witnesses regarding the vehicle and one copy of the same shall be given to the person possessing the vehicle at the time of seizure and one copy to the District Collector.

(3)The vehicle may be returned if the owner of the vehicle or the possessor remits an amount towards River Management Fund equal to the price fixed by the District Collector with fine within seven days or seizure."

A reading of the rule shows that if the owner of the vehicle remits the amount due, the vehicle should be released to him. The rule does not provide that such payment should be endorsed in the R.C.Book. The District Collector being the statutory authority has to exercise his power within the four corners of the statute. Having regard to the limits prescribed by the statute, the direction of the District Collector to make endorsement of payment of fine in the R.C.Book is unsustainable. Therefore, Ext.P3 order to the extent it directs that the remittance of fine should be endorsed in the R.C.Book of the petitioner is set aside.

4. It is clarified that, in this writ petition the petitioner did not challenge the legality of levy of fine and therefore, that question has not been examined by this Court.

Writ petition is disposed of as above.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com