

APPELLATE CIVIL

Mr. Justice A. Muhammed Mustaque and Mr. Justice Hariankar V. Menon

W.A. No. 2448 of 2025

2025 December 12

Venugopalan C. . . Appellant

v.

Tahasildar (Land Records) and others . . . Respondents

Appellant was the Writ petitioner. He is the owner of a JCB excavator, which was rented out. The person who took it on rent used it for reclamation of paddy land. District Collector came to know of illegal reclamation and ordered confiscation of the JCB. Petitioner challenged the confiscation in Writ petition, which was dismissed. Writ petitioner took appeal contending that he was unaware of the purpose for which the JCB was used. Allowing the appeal, the Court;

Issue for Consideration

Whether the vehicle rented out can be confiscated for alleged use in reclaiming paddy land, where it is used without knowledge of the Owner of the vehicle?

Conservation of Paddy Land and Wet Land Act, 2008 (Kerala Act 8 of 2008)—Section 20—If the Owner of the vehicle was not aware about the purpose for which the vehicle has been rented out, the vehicle cannot be confiscated for violating the law.

Held:

In the report dated 30.01.2025, submitted by the Village Officer, along with the seizure mahazar of even date, nothing has been attributed to the knowledge of appellant, Mr. Venugopalan C., about the nature of the land and the offence committed. In the report dated 30.01.2025 submitted by the Tahsildar to the District Collector also, there is no mention of knowledge attributable to Venugopalan. In the notice dated 03.03.2025 issued by the District Collector to Venugopalan, there is no reference to the knowledge of Venugopalan about the nature of the land. The foundational facts to confiscate the JCB are absent in the notice. In the order impugned before this Court confiscating the vehicle, there is no finding that Venugopalan lent the JCB fully knowing that the land in question is paddy land. The District Collector proceeded to confiscate the vehicle based on the record that the land in question is paddy. The District Collector had not examined the innocence of Venugopalan while exercising the power under Section 20 of the Act. In the absence of any attribution of knowledge against the appellant, Venugopalan, the District Collector ought to have exercised the discretion in favour of

the appellant to absolve him from the ultimate penalty being imposed on him. In the result, the appeal is allowed. The impugned order (Ext.P11 produced in the writ petition) is set aside as against the appellant, and we direct the District Collector to proceed against the owner of the land in accordance with law. We also direct the District Collector to release all security furnished for the interim release of the JCB. (Paragraphs 11 and 12)

Case Law Cited:

(1) (1884) 13 Q.B.D. 207; (2) 1987 (2) K.L.T. 341; (3) 2023 Supreme Online (K.E.R.) 11418; (4) I.L.R. 2003 M.P. 579—*Referred to.*

List of Acts and Rules:

(1) Kerala Conservation of Paddy Land and Wet land Act, 2008.

List of Keywords:

Enquiry, Confiscation, Vehicle, Use for illegal act without knowledge of owner

Case Arising From:

Against the Judgment of Mr. Justice C.S. Dias in W.P. (C) No.16627 of 2025.

Appearance of Parties:

Sri. Krishna Prasad S, Smt. Sindhu S.Kamath, Smt. Swapna S.K., Smt. Rohini Nair, Sri. Suraj Kumar D, Sri. Sunilkumar K.K. and Smt. A.Karthika Sivan . . . for appellant

Sri. P.M. Shameer (G.P.), Sri. Anil Kumar K.P., Smt. Mariyamma A.K., Smt. Ipsita Ojal and Smt. Laya Simon . . . for respondents

JUDGMENT

The Judgment of the Court was delivered by **A. Muhammed Mustaque, J.**—In quasi-criminal matters, ignorance of fact or lack of personal knowledge may be an immaterial defence. The proposition of the law in this regard is clear and followed at least from 1884 onwards, see opinion of the Queen's Bench in **Cundy v. Le Cocq** [(1884) 13 Q.B.D. 207], which we quote here:

“In some crimes a guilty mind is a necessary ingredient, but those crimes have now been defined, and so the old maxim has been superseded by the precise definitions of most crime, and, at the present day, whether a guilty mind is a necessary ingredient in any particular offence turns upon the words of each definition or of each statute.”

2. When the law and its enforcers fail to distinguish between the wicked and the blameless, justice becomes elusive, and the Court may inadvertently become complicit in the injustice. Though it is often difficult to adjudge each case in light of its unique facts and

circumstances, the Court must nevertheless strive to adopt an approach that advances the ends of justice. In doing so, it may become necessary to invoke principles of fairness while interpreting a statute that accords some latitude for discretion—particularly where the impugned act is attributable to the will or choice of another. This would be impossible if statutory provisions did not provide for such discretion.

3. In the present case, we are examining an order directing the confiscation of an excavator allegedly used for reclaiming paddy land. We are in full agreement with the concerns expressed by the District Collector as well as with the submissions of the learned Government Pleader. Any act of conversion or reclamation of paddy land must indeed be viewed with utmost seriousness. At the same time, we cannot overlook the position of the owner of the JCB excavator, valued at 32,25,000/-, who appears to have been induced to undertake the work by the landowner. Nowhere in the proceedings is there any finding that the excavator owner, Mr. Venugopalan C., knew that the land was classified as paddy in the revenue records or the Data Bank.

4. As we noted, in quasi-criminal matters, *mens rea* may not be decisive, or ignorance of fact or absence of knowledge may not constitute a valid defence. The statutory provision authorises the District Collector to order confiscation of seized articles, including vehicles. Also, it provides an alternative by permitting payment of an amount equal to one and a half times the value of the seized property in lieu of confiscation. The difficulty in the present case does not lie in interpreting the statute. Rather, the statute does not distinguish between the landowner who uses a vehicle or article for illegal reclamation and a third-party contractor who merely hires out his vehicle at the behest of the landowner.

5. It is precisely in such circumstances that the modern statute ensures that the inherent value of fairness embedded in every legal provision is used to absolve the innocent. Accordingly, before proceeding further, we deem it appropriate to frame the following questions:

- 5.i. Does the statute distinguish between the landowner who employs articles or vehicles for reclamation in contravention of the Act, and a third-party owner of such articles or vehicles who is merely engaged by the landowner?
- 5.ii. Does the statute confer any discretion to exonerate the owner of the vehicle or article from confiscation under Section 20? If the statute is silent regarding the differing roles of various persons involved, can individuals responsible for different acts or omissions be treated differently?
- 5.iii. Is the mere consequence of the act of a person who is not the landowner sufficient to justify confiscation, or must it be supported by a culpable act or omission attributable to that person whose article or vehicle is sought to be confiscated?

6. We find that the answers to the pointed questions tend to overlap, making it appropriate for us to consider and answer all the questions together.

7. To understand the issues involved, first, we must look at the statutory provision. The statutory provision under Section 20 of the Kerala Conservation of Paddy Land and

Wetland Act, 2008 (hereinafter referred to as the “Act”) reads thus:

“20. Confiscation of vessel, vehicle, etc. (1) After obtaining a report regarding seizure under Section 12 or Section 19, the District Collector **may**, if he thinks fit, order confiscation of the object seized: (emphasis supplied)

Provided that the owner or the person in custody of the same, shall be given an option to pay, in lieu of its confiscation, a sum equal to one and a half times the value of the seized articles, as may be determined by the District Collector.

Provided further that the District Collector may take any action, in such manner as may be prescribed, to dispose the seized clay, sand, earth, brick, tile etc. and cause to remit the sums collected to the Fund.

(2) No order of confiscation under sub-section (1) shall be made by the District Collector unless the owner thereof has been given an opportunity of being heard in the matter.

(3) No order of confiscation under sub-section (1) shall be invalid merely by reason of any defect or irregularity in the notice given under sub-section (2), if the provisions have been substantially complied with.”

The above statutory provision alludes to the power of the District Collector. It provides discretion to the District Collector upon seizure of a vehicle, allowing them to either confiscate it or release it without confiscation. The Legislature’s intention in using the word “may” would indicate that not every seizure of an article or vehicle must result in confiscation. We need to look into the word “may” and how we interpret the meaning of “may” is the question involved in this issue.

8. A paddy land or wetland, as the case may be, if it is included in the data bank, it is declared by the law that it cannot be converted or reclaimed. The owner of such land is legally barred under Section 3 of the Act from undertaking an activity for reclamation or conversion of the land except in accordance with the provisions of the Act. The prohibition applies to the owner, occupier, or person in custody of such land. Similar provisions have been made under Section 11 of the Act on the reclamation of wetland. But in Section 11, there is a total prohibition against reclamation of land without reference to ownership or the nature of the relationship of the person on such land. It may not make much difference, as far as contravention of such provision is concerned, since the seizure is made *qua* the article used for contravention of Section 3 or Section 11 of the Act, as the case may be. The liability of the owner would arise *qua* Section 3, and the liability of the third party would arise in the confiscation proceedings under Section 20. It is in Section 20 that a discretion is left to the District Collector. But, as we noted earlier, the discretionary power given to the District Collector in Section 20 of the Act, in fact, is not based on Section 3 of the Act, where there is a clear prohibition against reclamation or conversion of paddy land by the owner or occupier or any person in custody of the land. Therefore, any article or vehicle used by such an owner would necessarily result in confiscation, and there is no element of discretion left to the District Collector. That creates some sort of absolute liability. We state that the absolute liability is based on Section 3, which gives no room for avoidance of any

inevitable consequence of the act of reclamation or conversion. That is not the case when an article belonging to a third party is used for the reclamation or conversion. In such situations, the issue falls within the realm of the strict liability principle. Such persons (third party) can always plead innocence. Innocence is not to exonerate from the act, but to absolve from the ultimate action of Section 20 of the Act. We state that it is based on the strict liability principle, a third party's responsibility would arise when he uses an article or vehicle for such conversion. The exoneration or impunity is not based on the innocence of the act, but to escape from the ultimate penalty of confiscation.

9. The case of such a third party would be different if he is attributed with knowledge or connivance with the landowner. If that is attributed and established, then even if the penalty appears disproportionate, such a third party cannot be absolved or exonerated merely by citing disproportionate punishment. See *the consistent view taken by this Court with reference to confiscations under similar statutes*.

9.i. A Full Bench of this Court in **State of Kerala v. Sukumara Panicker** (1987 (2) K.L.T. 341) dealt with the question of proportionality in forest offence and held as follows:

“7. We are aware of the trend in recent judicial thought that if a punishment is “altogether excessive” and “out of proportion” to the occasion, the Court can interfere. The revocation of a market trader’s licence which entailed deprivation of his livelihood was held to be excessive penalty in relation to an offence committed by the trader which was indulgence in abusive language. (See *R. v. Barnsley MBC-1976* (3) All ER 452). See also *CCSU. v. Minister for the Civil Service* - (1984) 3 All ER 935 at p. 950), where the question was left open. But, the question that arises in this case is far different. Here, the offence committed and proved is a “forest offence”. One of the punishments levied is confiscation of the vehicle, which was used in committing the offence. The offence is one against public interest and a serious one. The only question is whether confiscation of the vehicle, used in the commission of the said offence, is justified. No question of proportionality between the offence committed and the punishment levied can arise, in ordering confiscation of the vehicle used in the commission of the forest offence.”

9.ii. A Single Bench of this Court reiterated the same view in **Juby John v. State of Kerala** [2023 Supreme (Online)(K.E.R.) 11418].

10. It is to be noted that the statutory provision cannot be construed to exculpate a third party who had no knowledge, but intended to absolve him from the liability of the act committed, and to exonerate him from facing the ultimate consequence of the confiscation. This is exactly why “may” is used in Section 20 of the Act, which allows the District Collector to let off such innocent persons. If the statutory provision provides for discretion, confiscation is not obligatory in all cases, and discretion should be exercised based on the facts and circumstances. {See the judgment of the Madhya Pradesh High Court in **Shrish Agrawal v. State of M.P. and another** [I.L.R. 2003 M.P. 579].}

11. In the report dated 30.01.2025, submitted by the Village Officer, along with the seizure mahazar of even date, nothing has been attributed to the knowledge of appellant,

Mr. Venugopalan C., about the nature of the land and the offence committed. In the report dated 30.01.2025 submitted by the Tahsildar to the District Collector also, there is no mention of knowledge attributable to Venugopalan. In the notice dated 03.03.2025 issued by the District Collector to Venugopalan, there is no reference to the knowledge of Venugopalan about the nature of the land. The foundational facts to confiscate the JCB are absent in the notice. In the order impugned before this Court confiscating the vehicle, there is no finding that Venugopalan lent the JCB fully knowing that the land in question is paddy land. The District Collector proceeded to confiscate the vehicle based on the record that the land in question is paddy. The District Collector had not examined the innocence of Venugopalan while exercising the power under Section 20 of the Act.

12. In the absence of any attribution of knowledge against the appellant, Venugopalan, the District Collector ought to have exercised the discretion in favour of the appellant to absolve him from the ultimate penalty being imposed on him.

In the result, the appeal is allowed. The impugned order (Ext.P11 produced in the writ petition) is set aside as against the appellant, and we direct the District Collector to proceed against the owner of the land in accordance with law. We also direct the District Collector to release all security furnished for the interim release of the JCB.

Result of the Case

Writ appeal allowed

Headnote prepared by M.S.
