

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2016

CORAM

THE HONOURABLE Mr. JUSTICE M.DURAI SWAMY

W.P.No.35139 of 2014 &
M.P.No.2 of 2014

N.Yashvanth Kumar ... Petitioner

v.

1. State of Tamil Nadu
Rep. By Commissioner and Secretary to Government
Prohibition and Excise department
Fort st. George
Chennai - 600 009.
2. Additional Director General of Police (Enforcement)
Prohibition Enforcement Wing (PEW)
DGP Office, Mylapore
Chennai - 600 004.
3. Superintendent of Police
Coimbatore
Coimbatore District - 641 018.
4. Additional Superintendent of Police
Prohibition Enforcement Wing (PEW)
Coimbatore
Coimbatore District - 641 018.
5. Inspector of Police
Kinathukadavu Police Station
Pollachi Taluk
Coimbatore District.
6. S.Selvanayagam
Sub-Inspector of Police
Kinathukadavu Police Station
Pollachi Taluk
Coimbatore District.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of certiorarified mandamus to call for the entire records pertaining to the impugned order in C.No.92/ADSP/PEW/CBE/2014, dated 27.10.2014 and final order dated 22.12.2014 (sale notice) issued by the 4th respondent and

quash the same and further directing the 4th respondent to conduct the enquiry for proper disposal.

For Petitioner : Mr.J.Venkatraman

For Respondents : Mr.M.S.Ramesh
Addl. Govt. Pleader - for R1 to R5

Mr.S.Thirumavalavan - for R6

ORDER

The petitioner has filed the above writ petition to issue a writ of certiorarified mandamus to call for the records pertaining to the impugned order dated 27.10.2014 and final order dated 22.12.2014 issued by the 4th respondent, to quash the same and further direct the 4th respondent to conduct the enquiry for proper disposal.

2. It is the case of the petitioner that the 6th respondent registered the first Information Report against the petitioner under Section 4(1) (a) of the Tamil Nadu Prohibition Act (Transport) in Crime No.295 of 2014. Pursuant to the registration of the First Information Report, the Maruti Omni Car bearing Registration No.TN 38 AW 0599 was detained by the 6th respondent viz., Sub-Inspector of Police, Kinathukadavu Police Station and the petitioner's representation for the release of the vehicle was not considered by the respondents. By order dated 27.10.2014, the 4th respondent confiscated the Maruti Omni Car. Challenging the said order, the petitioner has filed the above writ petition.

3. The learned counsel appearing for the petitioner mainly contended that under section 14(4) of the Tamil Nadu Prohibition Act, (i) the petitioner should give notice in writing informing him of the grounds on which it is proposed to confiscate the vehicle; (ii) should give an opportunity of making a representation in writing within a reasonable time, not exceeding fourteen days ; and (iii) giving an opportunity of being heard in the matter. The learned counsel further submitted that the 4th respondent had passed the impugned order without following the mandatory provisions of section 14(4) of the Act.

4. It would be pertinent to extract sub section (4) of Section 14 of the Tamil Nadu Prohibition Act, which reads as follows:-

(4) Notwithstanding anything contained in sub-sections (1) to (3) the Collector or other Prohibition Officer in-charge of the district or any other officer authorised by the State Government in that behalf is satisfied that an offence has been committed against this Act and

whether or not a prosecution is instituted for such offence, he may, without prejudice to any other punishment to which the offender is liable under this Act, order confiscation of any animal, vessel, cart or other vehicle used in the commission of such offence :

Provided that, before passing an order of confiscation, the owner or the person from whom such animal, vessel cart or other vehicle is seized, shall be given -

(i) a notice in writing informing him of the grounds on which it is proposed to confiscate the animal, vessel, cart or other vehicle;

(ii) an opportunity of making a representation in writing within a reasonable time, not exceeding fourteen days, as may be specified in the notice, against the grounds of confiscation; and

(iii) a reasonable opportunity of being heard in the matter.

Provided further that the owner or the person from whom such animal, vessel, cart or other vehicle is seized, shall be given an option to pay, in lieu of its confiscation, an amount not exceeding the market price of such animal, vessel, cart or other vehicle.

5. In the counter filed by the 5th respondent, he has stated that the procedures laid down in section 14(4) of the Act was followed and therefore, the impugned order requires no interference.

6. The petitioner had made some allegations against the 6th respondent in the affidavit filed in support of the writ petition and subsequently, during the pendency of the writ petition, the petitioner filed an affidavit withdrawing the case against the 6th respondent.

7. The affidavit filed by the petitioner is taken on record and the 6th respondent is exonerated from the writ petition.

8. On a perusal of the impugned order, it is clear that the 4th respondent had not followed the provisions of section 14 (4) of the Tamil Nadu Prohibition Act and there is no reference in the impugned order that any notice was served on the petitioner and then an opportunity was given to the petitioner to put-forth his case. It is also pertinent to note that the show cause notice should contain the ground on which it is proposed to confiscate the vehicle.

9. In similar circumstances, this court, by order dated 02.09.2014, in W.P.Nos.22337 of 2014, set aside the confiscation order holding that provisions of section 14(4) of the Tamil Nadu Prohibition Act were not followed.

10. In the absence of any materials to establish that the 4th respondent had passed the impugned order in accordance with the provisions of section 14(4) of the Act, I am of the view that the impugned order dated 27.10.2014 is liable to be set aside. Accordingly, the impugned order dated 27.10.2014 is set aside and the respondents 3 to 6 are directed to release the vehicle to the petitioner. It is made clear that the impugned order is being set aside only on the ground that the provisions of section 14(4) of the Tamil Nadu Prohibition Act were not followed by the 4th respondent. It is also made clear that if any re-investigation has been done in the matter, after the passing of the impugned order, can be ignored.

With these observations, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

Rj

To

1. The Commissioner and Secretary to Government
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Fort st. George
Chennai - 600 009.
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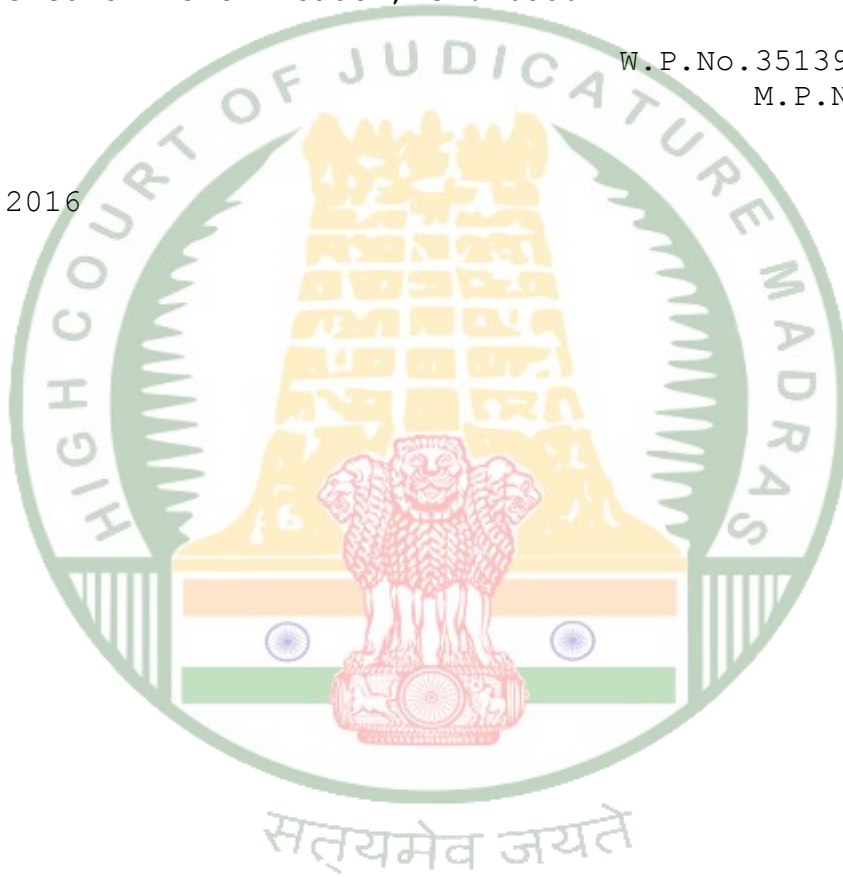
6. The Sub-Inspector of Police
Kinathukadavu Police Station
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1 cc to M/s.J.Agni Selvaraju, Advocate, sr.26027

1 cc to The Government Pleader, sr.26330

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kra 29.04.2016



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