

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 2.12.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.A.No.1561 of 2016
and
C.M.P.No.19325 of 2016

C.R.Tamilvanan,
Proprietor,
CRT Granite Park,
5/157, Teachers Colony,
NGO Colony Post,
Dindigul 625 405. ...Appellant/Petitioner

Versus

1. The Commissioner of Police, Salem.
2. The Inspector of Police,
Sooramangalam Police Station,
Sooramangalam,
Salem Town. ... Respondents/Respondents

Prayer: Writ Appeal filed filed under Clause 15 of the Letters Patent against the order dated 23.8.2016 passed in W.P.No.28989 of 2016 on the file of this court.

Writ of Mandamus directing the 1st respondent to consider the petitioners representation dt. 12.07.2016 as expeditiously as possible by passing appropriate orders thereon thereby entrusting the entire investigation of the Cr. No.386/ 2016 to some other officer under the control of the commissioner of police Salem in the light of the orders of the Honourable High Court in CrI. O.P. No.29659 of 2015 dt. 07.01.2016 and in CrI. OP. No.10841 of 2016 dt. 26.05.2016 and in the light of the status quo order passed by the Sub-Court Dindigul in IA No.21/16 in O.S. No.16/16

For appellant : Mr.R.Shanmugam for
M/s.Shanmugha Associates
For Respondents : Mr.P.S.Sivashanmugasundaram,
Special Government Pleader

JUDGMENT

(Judgment of the court was made by HULUVADI G.RAMESH, J.)

Heard the learned counsel appearing for the appellant and Mr.P.S.Sivashanmugasundaram, learned Special Government Pleader, who is directed to take notice on behalf of the respondents.

2. The writ appeal is filed challenging the order of the learned Single Judge, dismissing the writ petition filed by the appellant seeking for a mandamus to consider his representation dated 12.7.2016.

3. It transpires that the appellant/petitioner purchased a JCB vehicle from the erstwhile owner and it appears that the erstwhile owner had purchased the said vehicle under the Hire Purchase Agreement and this appellant, being a subsequent purchaser, had let out the JCB vehicle to some other third party. It further appears that on default in payment of lease amount by the third party-lessee, the appellant took steps to take back the vehicle, but, during transit of the said vehicle, the vehicle appears to have been waylaid and illegally taken by the erstwhile owner/financier, for which the police is also said to have extended assistance.

4. At this stage, the appellant is shown to have lodged a complaint before the police regarding illegal dispossession of the vehicle from the custody of the appellant, during transit, after seizure of the same from the lessee on account of breach of the contract between the appellant and the third party/lessee.

5. Such being the case, the appellant is also shown to have moved the civil court and having made out a prima facie case, obtained an order of status quo. In the meanwhile, the appellant also moved the writ petition wherein the learned Single Judge, having noted the pendency of the Original Suit filed by the appellant before the civil court and referring to the judgment of the Apex Court regarding the seizure of the vehicle either by the financier or by third party lessee and

having observed that the financier has got every right of possession of the vehicle which is under Hire Purchase Agreement and also having noted that the prayer of the appellant cannot be considered and a direction in favour of the hirer of the vehicle viz., the appellant, to dispose of his representation dated 12.7.2016, cannot be issued in view of the judgment of this court in the case of INGACI v. COMMISSIONER OF DEVAKOTTAI MUNICIPALITY, SIVAGANGAI DISTRICT (2010 (2) LW 785).

6. The learned Single Judge, although, has not explained in many words as to the entitlement and custody of the vehicle concerned to the hirer, since the vehicle itself is said to have been purchased by the appellant as a subsequent purchaser while the original vendor is shown to have purchased the vehicle in Hire Purchase and the lessee of the vehicle under the appellant is shown to have not paid lease amount, it appears that the vehicle has been the subject matter of the dispute and the financier seems to have taken the custody of the vehicle on the way the vehicle being transported from the place of the lessee to the place of the appellant and in this regard, a complaint is filed by the appellant seeking custody of the vehicle. It also appears that, as noted by the learned Single Judge, the vehicle could have been taken over by the financier for the default committed in payment of instalments. These things could be settled before the civil court. The issues with regard to illegal dispossession of vehicle purchased under Hire Purchase Agreement, the right of the financier etc., have been decided in a catena of decisions. It would be apt for the appellant to pursue the matter by virtue of the order of the civil court in furtherance as provided under the Code of Criminal Procedure. Therefore, it is for the appellant to file a complaint before the Magistrate Court concerned, who can pass appropriate orders in this regard for custody of the vehicle. Although a civil suit is pending and an order of status quo is passed, it is for the civil court to decide as to whether the appellant or the financier or the lessee with whom the vehicle is there, as it is a matter finding of fact by a civil court, after holding a preliminary enquiry in the criminal proceedings at the instance of the Magistrate. Therefore, on such application being filed by the appellant, ultimately, the police would submit a report in this regard.

7. Further, as noted by the learned Single Judge, the financier has a lean over the vehicle till the last instalment of the loan is paid. The appellant, although, is said to have purchased the vehicle, the liability is passed on the subsequent purchaser, and ultimately, the subsequent purchaser, if he has undertaken to pay the instalments and it is this appellant, who

steps into the shoes of the original vendor of the JCB vehicle, who purchased it under the Hire Purchase Agreement through the finance being extended by the financier.

8. Though the apprehension of the appellant is that the vehicle is taken away unauthorisedly and he is entitled to the custody, the fact remains that in the case on hand, the vehicle is taken over by the Hire Purchaser/Financier. Whether the vehicle taken over by the third party lessee to whom the vehicle was leased out by the appellant and whether there is any default committed in breach of contract between the parties are quasi criminal proceedings and it would be dealt with by the civil court so far it relates to fact finding. The writ appeal is disposed of accordingly. No costs. The connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

ssk.

To:

1. The Commissioner of Police,
Salem.
2. The Inspector of Police,
Sooramangalam Police Station,
Sooramangalam,
Salem Town.

+1cc to M/S.Shanmuga Associates, Advocate Sr.71389
+1cc to the Government Pleader Sr.71666

W.A.No.1561 of 2016

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