



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.06.2016

CORAM:

THE HONOURABLE Mr. JUSTICE M. VENUGOPAL

W.P. (MD) No. 11493 of 2016

WEB COPY

R. Rajeev

... Petitioner

Vs.

1. The District Revenue Officer,
Kanyakumari District,
Nagercoil.

2. The Special Tahsildar,
(Flying Squad),
Kanyakumari District.

... Respondents

Prayer: Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the 1st respondent to release the Swaraj Mazda Tempo bearing registration No. KL - 21 B - 4961 seized by the 2nd respondent on 11.06.2016 to the petitioner.

For Petitioner : Mr. T. Lenin Kumar

For Respondents : Mr. S. Chandrasekar, G.A.

ORDER

Heard both sides.

2. By consent, the main Writ petition itself is taken up for final disposal.

3. According to the petitioner, he being the owner of Swaraj Mazda Tempo vehicle bearing registration No. KL 21 B 4961. On 11.06.2016, the 2nd respondent / Special Tahsildar, Flying Squad, Kanyakumari, seized his vehicle on the allegation that the vehicle was used to transport 48 bags of rice (each containing 50 Kgs.). Thereafter, the 2nd respondent produced the vehicle before the 1st respondent / District Revenue Officer, Nagercoil.

4. The stand of the petitioner is that he made a representation dated 13.06.2016 before the 1st respondent, seeking release of his vehicle. However, his representation till date has not met with any positive response. At this stage, the learned counsel for the petitioner projects a legal argument that if the seized vehicle is



exposed to hot sun and rain and if it is kept in the open yard, then the seized vehicle will lose its value. Further more, it will become unfit to ply on road. Further more, till date no confiscation proceedings have been initiated by the concerned authorities. Hence, he has filed the present Writ petition praying for passing of an order by this Court in directing the 1st respondent to release the Swaraj Mazda Tempo vehicle bearing registration No. KL 21 B 4961 seized by the 2nd respondent on 11.06.2016.

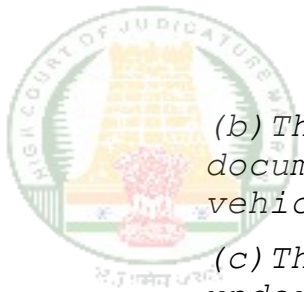
5. At this stage, it comes to be known that this Court on 17.05.2013 in W.P.(MD)No.14224 of 2013 at paragraph Nos.8 to 10 had observed as follows:

"8. In the instant case, the petitioner is said to have submitted his representation dated 02.05.2013 addressed to the 2nd respondent praying for handing over of the Pick up Mini Van bearing Registration No. KL 9 AD 3334 in question.

9. One cannot ignore an important fact that a Judicial Magistrate can pass an order under Section 451 Cr.P.C. only after physical or symbolical production of seized material before the Court and that too only after hearing both sides. It cannot be gainsaid that such an order is final as between the parties. A party affected by such an order is entitled to file a Revision before the Competent Forum. For disposal of property under Section 451 of Cr.P.C., it is necessary that the property should be in the control of Magistrate. The orders to be passed by the Competent Judicial Magistrate are under Sections 451 and 457 of Cr.P.C., which are during the pendency of trial or enquiry.

10. Be that as it may and taking note of the fact that the sized vehicle cannot be kept either in the Police Station or within a precincts of R.D.Os. office etc., and also bearing in mind an important fact that such keeping of seized vehicle for a long time will be detriment to the interest of the Petitioner, this Court, in the interest of justice, directs the 1st respondent to release the Ashok Leyland Mini Pick up Van bearing Registration No. KL 9 AD 3334, subject to the petitioner fulfilling the following conditions:

(a) The petitioner is directed to deposit a sum of Rs.25,000/- (Rupees twenty five thousand only) in cash before the 1st respondent;



(b) The petitioner is directed to produce all the documents pertaining to the ownership of the seized vehicle;

(c) The petitioner is to file an affidavit of undertaking that he will cause production of the vehicle in question before the competent / concerned Respondents (as the case may be) as and when called for and further, he will not alienate the vehicle in question till the appropriate proceedings initiated are completed;

(d) On compliance of the above conditions, the 1st respondent is directed to release the seized vehicle bearing Registration No. KL 9 AD 3334 to the petitioner (if he is in custody and possession), within three days from the date of receipt of a copy of this order;

(e) The 1st respondent is directed to pass final orders in the adjudication proceedings within a period of 45 days;

(f) This order for the release of the vehicle can be pressed into service by the petitioner only if the vehicle is not in the custody of the criminal court. If the vehicle is in the custody of concerned criminal court of appropriate jurisdiction, then, option is given to the Petitioner to approach the concerned Judicial Magistrate to get release of the vehicle, by filing necessary Application in the manner known to law and in accordance with law; and

(g) Inasmuch as the vehicle Ashok Leyland Mini Pick up Van bearing Registration No. KL 9 AD 3334 is seized by the 2nd respondent on 25.04.2013, the above order is to be complied with, within three days, if no order of adjudication is passed or confiscation is passed as on today."

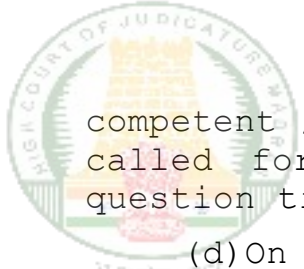
6. Following the aforesaid order, this Court directs the release of vehicle bearing registration No. KL 21 B 4961 subject to the following conditions:

(a) The petitioner is directed to deposit a sum of Rs.25,000/- (Rupees twenty five thousand only) in cash before the 1st respondent;

(b) The petitioner is directed to produce all the documents pertaining to the ownership of the seized vehicle;

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(c) The petitioner is to file an affidavit of undertaking that he will cause production of the vehicle in question before the



competent / concerned Respondents (as the case may be) as and when called for and further, he will not alienate the vehicle in question till the appropriate proceedings initiated are completed;

(d) On compliance of the above conditions, the 1st respondent is directed to release the seized vehicle bearing Registration No. KL 21 B 4961 to the petitioner (if he is in custody and possession), within three days from the date of receipt of a copy of this order;

(e) The 1st respondent is directed to pass final orders in the adjudication proceedings within a period of 45 days;

(f) This order for the release of the vehicle can be pressed into service by the petitioner only if the vehicle is not in the custody of the criminal court. If the vehicle is in the custody of concerned criminal court of appropriate jurisdiction, then, option is given to the Petitioner to approach the concerned Judicial Magistrate to get release of the vehicle, by filing necessary Application in the manner known to law and in accordance with law; and

g) In view of the fact that the vehicle bearing registration No. KL 21 B 4961 was seized by the 2nd respondent on 11.06.2016, the above order is to be complied with within one week, if no order of adjudication is passed or confiscation is passed as on today.

7. With the aforesaid direction the Writ petition is disposed of. No costs.

Sd/-

Assistant Registrar (CS-II)

/True copy/

Sub Assistant Registrar

To

1. The District Revenue Officer, Kanyakumari District, Nagercoil.
2. The Special Tahsildar, (Flying Squad), Kanyakumari District.

+1 cc to M/s. T. Lenin kumar, Advocate in SR.No.33648

+1 cc to The Special Government Pleader in SR.No. 33901

nbj

CSL/ARK-PV/05.07.2016 : 4p/5c

W.P. (MD) No.11493 of 2016
28.06.2016