



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 18.08.2016

CORAM

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THE HONOURABLE MR.JUSTICE M.VENUGOPAL

W.P(MD)No.15126 of 2016

Lakshmirajan

..Petitioner

Vs

1.The Revenue Divisional Officer,
Tenkasi,
Tirunelveli District.

2.The Tahsildar,
Sivagiri,
Tirunelveli District.

..Respondents.

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus directing the First Respondent to release the Tractor and Trailer bearing Registration No.TN 76 S 3562 and TN 76 S 3561 to the Petitioner.

For Petitioner :M/s.K.Prabhu

For Respondents :Mr.S.SadeshKumar
Addl.Govt.Pleader

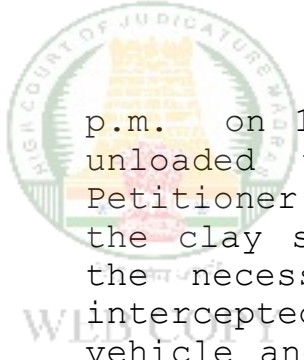
ORDER

Heard both sides.

2.By consent of both sides, the main Writ Petition itself is taken up for final disposal.

3.No counter is filed on behalf of the Respondents.

4.According to the Petitioner, he is the owner of the Tractor and Trailer bearing Registration Nos.TN 76 S 3562 and TN 76 S 3561. He has purchased the vehicle in the year 2012. He bought the permit from the Regional Transport Authority and the vehicle has been used for commercial purpose. When that be the factual situation, on 15.7.2016 the Petitioner used his vehicle to take the clay sand, which is used for manufacturing bricks by getting necessary permission from one Gurunathan at Sivagiri. In fact, he obtained permit and the time was given from 12.35 p.m. To 3.35



p.m. on 15.7.2016. In fact, the Petitioner's driver Manikandan unloaded the sand to the bricks manufacturing place. Further, the Petitioner obtained permit for the same purpose and transported the clay sand from the very same permit issuing authority with the necessary permit. However, the Second Respondent had intercepted the vehicle within the permit time and seized the vehicle and also the permit. Immediately, his driver had informed the Petitioner that he had approached the Second Respondent to release the Tractor and Trailer, since the same was within the permit time only. Indeed, the Second Respondent not only failed to issue the necessary Athatchi for seizure of the Petitioner's vehicle, but also the permit was seized. From 16.7.2016, the Petitioner had requested orally to the Second Respondent and in fact, the Second Respondent had directed him to approach the First Respondent. Even after approaching the First Respondent for release of the Tractor and Trailer, his vehicle was not released. Hence he has filed the present Writ Petition on the ground that if the vehicle in question is exposed to hot sun and rain, the value of the vehicle will get diminished day by day, besides the vehicle will get rusted. The stand of the Petitioner is that he had also sent a representation on 15.8.2016 seeking release of his vehicle addressed to the Respondents.

5.Considering the fact that the Petitioner's vehicle was seized on 15.7.2016 by the Second Respondent and it is represented before this Court that till date adjudication proceedings by the concerned authority are not yet over and also this Court bearing in mind the primordial fact that if the vehicle is not released and if it is allowed to remain in the custody of the Second Respondent, then there is every possibility of the vehicle getting rusted and also suffers under hot sun and rain.

6.In this connection, this Court relevantly points out that on 17.05.2013, this Court in W.P.(MD)No.14224 of 2013 between **K.Gangadaran vs. (i) the District Collector, Coimbatore District and another**, whereby and where-under at paragraphs-8 to 10, it is observed and laid down as under.

"8. In the instant case, the petitioner is said to have submitted his representation dated 02.05.2013 addressed to the second 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 of 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

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 seized vehicle cannot be kept either in the Police Station or within a precincts of R.D.O.'s 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 first 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 first 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 first 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 first 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 second respondent on 25.04.2013, the above order is to be complied with, within three days, if no order of attachment or confiscation is passed or confiscation is passed on as today.



7. Following the said order, this Court directs the First Respondent to release the Tractor and Trailer bearing Registration No. TN 76 S 3562 and TN 76 S 3561, 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 first 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 first respondent is directed to release the seized vehicle (Tractor and Trailer) bearing Registration No. TN 76 S 3562 and TN 76 S 3561 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 first 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 (Tractor and Trailer) bearing Registration No. TN 76 S 3562 and TN 76 S 3561 is seized by the Second Respondent on 15.07.2016, the above order is to be complied with within a period of one week, if no order of adjudication is passed as on today.

8. With the aforesaid directions, the Writ Petition stands disposed of. No costs.

Sd/-

Assistant Registrar (AS)

/True copy/

Sub Assistant Registrar



To

1.The Revenue Divisional Officer,
Tenkasi,
Tirunelveli District.

2.The Tahsildar,
Sivagiri,
Tirunelveli District.

+1 cc to M/s.K.Prabhu, Advocate in SR.No.45459

+1 cc to The Special Government Pleader in SR.No. 45487

vsn

CSL/AAL-MPA/SAR-I/22.08.2016:5P/5C

W.P (MD) No.15126 of 2016
18.08.2016