



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.15167 of 2016

B.Jeyasingh Moses

..Petitioner

Vs

1.The District Collector,
Nagercoil,
Kanyakumari District.

2.The Assistant Director of Geology
and Mining,
Kanyakumari District.

3.The Revenue Divisional Officer
represented by Sub-Collector,Office in charge,
Takkalai,
Kanyakumari District.

4.The Tahsildar,
Kalkulam Taluk,
Kanyakumari 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 Respondents to release the 407 Tempo bearing Registration No.TN-75-J-8764 which was seized by the third respondent without any valid authority on 18.07.2016 at 1.30 a.m from Verkilambi and stationed in the third respondent's Office within the period stipulated by this Court.

For Petitioner :M/s.G.Radhakrishnan

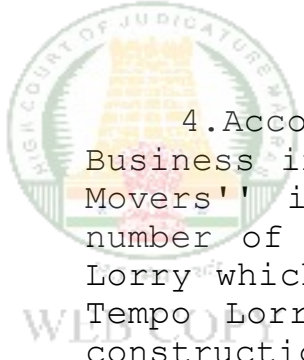
For Respondents :Mr.K.Guru
Addl.Govt.Pleader

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.



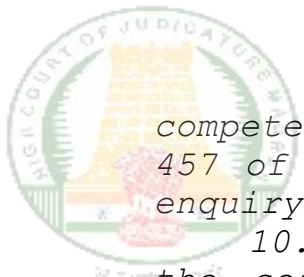
4. According to the Petitioner, he is running Transport Business in the name and style of 'Jesus Lorry Service and Earth Movers' in Poovankodu, Kanyakumari District. He is having many number of transport vehicles including the above mentioned Tempo Lorry which was purchased in his name in the year 2012. The said Tempo Lorry and other vehicles are used for transporting the construction materials through proper bill and license. When that be the factual situation, on 18.7.2016 a JCB bearing Registration No. PY-01-AD-2578 and the above said Tempo Lorry was engaged in removing the wastage materials in the demolished old building namely, Issravel Hospital in Verkilambi, Kanyakumari District. As such, wastage materials was transported by his tempo lorry from 17.07.2016 at 11.00 p.m and at that time, on 18.07.2016 at 1.30 p.m., the Third Respondent with the help of the Police Officials seized his tempo lorry bearing Registration No. PY-01-AD-2578 and was stationed at the Third Respondent's Office. According to the Petitioner, he is transporting wastage building materials alone as per proceedings in Na.Ka.No.A3/4697/2016, dated 19.07.2016. After receipt of the Fourth Respondent report, the Third Respondent failed to release my Tempo Lorry bearing Registration No. PY-01-AD-2578. Till date, the Tempo Lorry is kept in the custody of the Third Respondent which was seized on 18.07.2016. Hence the Petitioner has filed the present Writ Petition before this Court seeking release of the vehicle in question.

5. Considering the fact that the Petitioner's vehicle was seized on 18.07.2016 by the Third Respondent/The Revenue Divisional Officer, represented by the Sub-Collector, Office in-charge, Takkalai, Kanyakumari District and also this Court taking note of the fact that if the vehicle in question is kept in hot sun and rain, it will get rusted and also spoiled.

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 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 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 adjudication is passed or confiscation is passed on as today.

<https://hcservices.ecourts.gov.in/services/> the said order, this Court directs the Third Respondent to release the 407 Tempo bearing Registration No.TN-75-J-8764, 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 third 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 third respondent is directed to release the seized vehicle 407 Tempo bearing Registration No.TN-75-J-8764, 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 Third 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 407 Tempo bearing Registration No.TN-75-J-8764 is seized by the Third Respondent on 18.07.2016, the above order is to be complied with within a period of one week, if no order of adjudication is passed as on today.

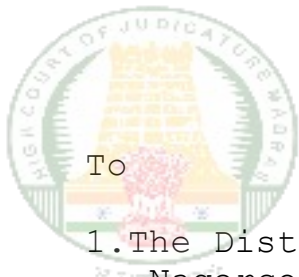
8. With the aforesaid directions, the Writ Petition stands disposed of. No costs.

Sd/-

Assistant Registrar(Writs)

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Sub Assistant Registrar



To

- 1.The District Collector,
Nagercoil,
Kanyakumari District.
- 2.The Assistant Director of Geology
and Mining,
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- 3.The Revenue Divisional Officer
represented by Sub-Collector,Office in charge,
Takkalai,
Kanyakumari District.
- 4.The Tahsildar,
Kalkulam Taluk,
Kanyakumari District.

+1cc to M/S.G.RADHAKRISHNAN,ADVOCATE, SR NO:46028

+1cc to M/S.THE SPECIAL GOVERNMENT PLEADER, SR NO: 45401

JA-KBM-26.08.2016-5P;7C

W.P (MD) No.15167 of 2016

18.08.2016