



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.02.2017

CORAM:

THE HONOURABLE MR. JUSTICE K. RAVICHANDRABAABU

W.P. (MD) No. 2274 of 2017

S. Radhakrishnan

.. Petitioner

Vs.

1. The District Collector,
Virudhunagar District,
Virudhunagar.

2. The Revenue Divisional Officer,
Aruppukkottai,
Virudhunagar District.

3. The Assistant Director,
Geology and Mining Department,
Virudhunagar District,
Virudhunagar.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus by directing the 1st respondent to release the interim custody of the petitioners vehicle namely Tipper lorry bearing registration TN-07 E-3840 pending disposal of the petitioners appeal dated 03.02.2017 preferred against the order passed by the 2nd respondent in vide Na.Ka.No.A2/6339/2016 dated 28.12.2016.

For Petitioner : Mr. A. Balaji

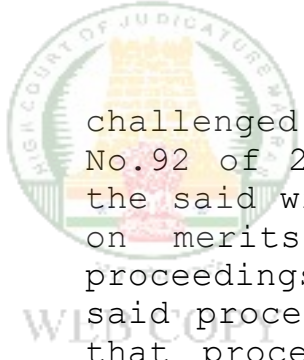
For Respondents : Mr. C. Selvaraj

Special Government Pleader

O R D E R

The petitioner seeks for a Mandamus directing the first respondent to release vehicle namely Tipper lorry bearing registration TN-07 E-3840 pending disposal of the petitioner's appeal dated 03.02.2017 preferred before the first respondent against the order passed by the second respondent, dated 28.12.2016.

2. The petitioner claims to be the owner of the said vehicle. It was seized on 23.12.2016 on an allegation that the said vehicle was indulging in transporting gravel illegally, without having any valid transit permission. Accordingly, an order came to be passed on 26.12.2016 indicating the seizure of the vehicle and initiation of proceedings under Rule 36(A) of the Mines and Mineral Concession Rules, 1959. The said order was



challenged before this Court by the petitioner herein in W.P.(MD) No.92 of 2017. This Court, by an order dated 04.01.2017 disposed the said writ petition by directing the respondents to pass orders on merits and in accordance with law in pursuant to the proceedings dated 26.12.2016, by specifically holding that the said proceedings is only a communication informing the petitioner that proceedings under Section 36(A) is going to be initiated. Thereafter, the second respondent passed the final order on 28.12.2016 imposing fine on the petitioner to the tune of Rs.26,236/- by invoking the provision under Rule 36(A) (1) of the above said Rules. The said order is challenged by the petitioner before the first respondent by way of an appeal dated 03.02.2017. Pending disposal of the appeal, the petitioner seeks for release of the vehicle. Therefore, he filed the present writ petition seeking for such relief.

3. Heard the learned counsel for the petitioner and the learned Special Government Pleader for the respondents.

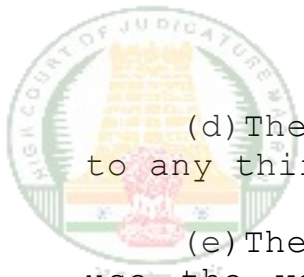
4. It is not in dispute that a final order under Rule 36(A) of the said Rules, is passed by the second respondent on 28.12.2016 and the said order is challenged in appeal before the first respondent. Therefore, the correctness or otherwise of the order passed by the second respondent has to be considered and decided only in the appeal pending before the first respondent. Thus, this Court, at this stage, cannot go into the rival contention of the parties and give any finding as to whether the fine imposed on the petitioner is justifiable or not. However, as it is prayed by the petitioner for release of the vehicle, pending disposal of the appeal before the first respondent, and considering the fact that the vehicle was seized as early as on 23.12.2016 and the same is now being exposed to sun and rain, thereby diminishing its value, this Court is of the view that the vehicle can be released however by protecting the interest of both parties, by imposing certain conditions for release of the vehicle.

5. Accordingly, this writ petition is disposed of by directing the respondents to release the vehicle bearing registration No.TN 07 E 3840, subject to the following conditions:-

(a) The petitioner shall deposit a sum of Rs.25,000/- before the second respondent within seven days from today;

(b) The petitioner shall produce the original documents in support of his claim of ownership over the said vehicle bearing registration No.TN 07 E 3840;

(c) On being satisfied with the ownership of the vehicle and on deposit of the amount, as stated supra, the respondents shall release the vehicle to the petitioner, within a period of seven days from the date of receipt of a copy of this order;



(d) The petitioner shall not alienate or encumber the vehicle to any third parties during the pendency of the proceedings;

(e) The petitioner shall give an undertaking that he will not use the vehicle for any illegal activities in future and shall produce the same as and when required by the second respondent.

6. The first respondent shall dispose of the appeal within a period of four weeks from the date of receipt of a copy of this order. If the appeal is disposed of in favour of the petitioner, the amount so paid by the petitioner shall be refunded to him immediately. No costs.

Sd/-
Assistant Registrar(C)

/True copy/

Sub Assistant Registrar

To

1. The District Collector,
Virudhunagar District,
Virudhunagar.
2. The Revenue Divisional Officer,
Aruppukkottai,
Virudhunagar District.
3. The Assistant Director,
Geology and Mining Department,
Virudhunagar District,
Virudhunagar.

+1cc to Mr.A.Balaji, Advocate, SR.No:8478
+1cc to Mr.Spl. Govt. Pleader, SR.No:8633

rj2
AE/PM/PN/SAR2/16.02.2017/3P/6C

W.P. (MD) No.2274 of 2017
15.02.2017