

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 8635 OF 2017**

Adhik Anna Mahadik

....Petitioner.

Vs.

State of Maharashtra & Anr.

....Respondents.

Mr. P.S. Sarkar for the Petitioner.

Mr. C.P. Yadav, AGP for the Respondents.

CORAM : R.M. BORDE AND**R.G. KETKAR, JJ.****DATE : 18 JANUARY 2018.****P.C.:-**

Heard.

2 The Petitioner is praying for issuance of directions to the Respondents to release the vehicle, seized by the Respondents-Authority on account of commission of an offence punishable under the provisions of the Essential Commodities Act, 1955. On consideration of the request made by the Petitioner to the Collector, an order came to be issued on 18 December 2015, directing the release of the vehicle, seized for carrying the essential commodities, on condition of deposit of the price of the vehicle computed on the date

of commission of the offence. The Petitioner is thus, directed by the Collector to deposit a fine amount of Rs.5,60,000/- equivalent to the price of the vehicle on the date of the commission of the offence.

3 Section 6C of the Essential Commodities Act provides for remedy of an Appeal to the Judicial Authority appointed by the State Government concerned. The Petitioner has failed to present an Appeal to the prescribed authority. The Petitioner, in fact, tendered an application to the Magistrate claiming release of the vehicle. The Application was tendered on the footing that an offence under the Penal provisions was registered against him and in pursuance thereof the vehicle was seized. In exercise of powers conferred on the Magistrate under the Code of Criminal Procedure, a direction came to be issued to release the vehicle subject to execution of bond of Rs. 8 lakhs. The order that has been passed by the Judicial Magistrate, First Class, is in reference to the registration of Crime No. 102 of 2015 at Market Yard Police Station, Pune. However, the order that has been passed by the Collector is in reference to the offence registered against the Petitioner under the provisions of Essential Commodities Act being Crime No. 3068 of 2015. The order directing the Petitioner to deposit

an amount of penalty by the Collector is required to be complied with, subject to any modification of the said order, by appellate forum.

4 It would be appropriate to refer to the Judgment of the Supreme Court in the matter of Deputy Commissioner, Dakshina Kannada District Vs. Rudolph Fernandes¹. The Hon'ble Apex Court has interpreted to the second proviso to Sub-Section 1 of Section 6A and it is opined that, the individual whose vehicle was confiscated, shall be required to deposit a fine up to the market price of such vehicle, vessel or any other conveyance sought to be confiscated. In paragraph 6 of the said Judgment, the Supreme Court has observed thus-

6. In the light of aforesaid provisions, second proviso to S. 6A is required to be considered. First it is to be stated that the proviso limits the power of the competent authority to recover fine up to the market price for releasing the animal, vehicle, vessel or other conveyance sought to be confiscated. So maximum fine that can be levied in lieu of confiscation should not exceed the market price. For our purpose, relevant part of proviso would be "in the case of... vehicle... the owner of such...vehicle shall be given an option to pay, in lieu of its confiscation, a fine not exceeding the market price at the date of seizure of the essential commodity sought to be carried by such... vehicle". Question is whether fine should not exceed the market price of the seized

1 AIR 2000 S.C. 1132

essential commodity or whether it should not exceed the market price of the vehicle. For this purpose, it appears that there is some ambiguity in the Section. It is not specifically provided that in lieu of confiscation of vehicle a fine not exceeding the market price of the vehicle or of the seized essential commodity is to be taken as measure. Still however, it is difficult to say that measure of fine is related to the market price of the essential commodity at the date of its seizure. It nowhere provides that fine should not exceed market price of the essential commodity at the date of seizure of the vehicle. The proviso requires the competent authority to give an option to the owner of such vehicle to pay in lieu of confiscation a fine not exceeding the market price. What is to be confiscated is the vehicle and, therefore, measure of fine would be relatable to the market price of the vehicle at the date of seizure of the essential commodity sought to be carried by such vehicle. This would also be consistent with the scheme of S.7 which provides for levy of penalty. It empowers the Court trying the criminal case to pass an order forfeiting to the Government any property in respect of which the order under S. 3 has been contravened. It also empowers forfeiture to the Government any package, covering or receptacle in which the property is found and in addition any animal, vehicle, vessel or other conveyance used in carrying the commodity. Therefore, not only the essential commodity which is seized is to be forfeited, but the vehicle also could be forfeited to the Government. Hence, measure of fine which is required to be levied in lieu of confiscation under second proviso to S. 6A(1) would be relatable to the market price of the vehicle and not of the seized essential commodity. And, the fine amount in lieu of confiscation is not to exceed the market price of the vehicle on the date of seizure of essential commodity. That is to say, limit of such fine would be up-to the market price of the vehicle on the relevant date and it is within the discretion of the competent authority to fix such reasonable amount considering the facts and circumstances of each case.”

5 In view of the Judgment of the Supreme Court as above and in view of the availability of alternate remedy available to the Petitioner in law, no interference is called for. Keeping the option of the Petitioner to avail of the alternate remedy open, the Writ Petition is disposed of.

(R.G. KETKAR, J.)

(R.M. BORDE, J.)