

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.25212 of 2003

1. S.Alfred (deceased)
2. Mrs.Mavis Mortin
3. Mrs.Jacquiline Alfred
4. Mr.Victor Joney Alfred
5. Mr.Victor Stanley Alfred

(Petitioners 2 to 5 are substituted as Legal Representatives of the deceased first petitioner S.Alfred, as per order dated 22.01.2018 passed in W.M.P.No.26860 of 2017 in W.P.No.25212 of 2003) ... Petitioners

Vs.

1. The Revenue Divisional Officer,
Padmanabhapuram,
Thuckalay,
Kanyakumari District.
2. The Tahsildar,
Vilavancode Taluk,
Kanyakumari District. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus to direct the respondents to pay a compensation of Rs.3,10,000/- to the petitioner on account of illegal detention of the Lorry bearing Regn.No.KRF-2192 from 25.04.2000 to 28.02.2011 (310 days) in the premises of the second respondent, exposed to sun, dust and rain.

For Petitioner : Mr.P.Selvaraj

For Respondents : Mr.S.N.Parthasarathy, Govt. Advocate

ORDER

The petitioner has come forward with this Writ Petition praying for issuance of a Writ of Mandamus to direct the respondents to pay a compensation of Rs.3,10,000/- to the petitioner on account of illegal detention of the Lorry bearing Regn.No.KRF-2192 from 25.04.2000 to 28.02.2011 (310 days) in the premises of the second respondent, exposed to sun, dust and rain.

2. According to the original petitioner S.Alfred (since deceased), his brother Ravi Pillai is the owner of the lorry bearing Registration No.KRF-2192. During the pendency of the Writ Petition, the petitioner-S.Alfred passed away and his legal heirs have been substituted in the Writ Petition. The lorry was intercepted by the Tahsildar on 25.04.2000 while it was going to workshop and that there was no transport or Sand or Blue Metal or any other mineral in the lorry. The Tahsildar detained the lorry without any case or charge in respect of the lorry. It is the further case of the petitioners that the original petitioner-Alfred gave a representation on 26.04.2000 to the first respondent to enquire into the matter and release the lorry, as the same has been detained without any basis. The petitioner has filed W.P.No.8948 of 2000 to release the lorry, and the said Writ Petition was disposed of by this Court on 07.06.2000, permitting the petitioner to approach the concerned Criminal Court for obtaining an order for release of the lorry seized by the respondents on 25.04.2000. Subsequently, W.M.P.No.24155 of 2000 in W.P.No.8948 of 2000 was filed for modification of the said order of this Court, dated 07.06.2000 and the said W.M.P. was disposed of by this Court on 13.12.2000, directing the release of lorry on certain conditions, which reads as follows:

"6. The respondents are directed to release the lorry KRF 2192 to the petitioner subject to fulfilling the following conditions:

(i) The petitioner shall execute an undertaking before the respondents to surrender the vehicle as and when required;

(ii) The petitioner shall not use the vehicle in future for any illicit quarry or for illicit transportation of minerals;

(iii) The petitioner shall deposit a sum of Rs.25,000/- (Rupees twenty five thousand only) before the second respondent herein who shall deposit the same in the Nationalised Bank for a period of six months and renew thereafter subject to the finality in the confiscation proceedings by the competent authority and furnish security for a sum of Rs.1,75,000/- (Rupees one lakh seventy five thousand only).

7. It is made clear that even after expiry of six months as mentioned above, if there is no case against the petitioner as mentioned above, the petitioner is permitted to withdraw the amount deposited as per the present order of this Court."

3. It is further stated that the aforesaid observations were made by this Court, as there was no case against the petitioner even after six months of seizing the lorry. Pursuant to the said order of this Court as modified by P.Sathasivam, J (as His Lordship then was), in W.M.P.No.24155 of 2000, as stated supra, Rs.25,000/- was deposited and security for a sum of Rs.1,75,000/- was also furnished. The lorry was released and a sum of Rs.25,000/- was also returned. According to the petitioner, the lorry was illegally detained for 310 days from 25.04.2000 to 28.02.2001 and that the petitioner was getting a sum of Rs.1,000/- per day which is the normal income when the lorry was given to others on rental basis. On account of the seizure of lorry without any reason, there was a loss of Rs.3,10,000/- and that petitioner will have to be paid compensation.

4. A detailed counter affidavit, dated 16.08.2017 has been filed by the respondents after this Court directed the first respondent to appear before this Court on 17.08.2017 along with the counter affidavit and required files, failing which, costs Rs.10,000/- would be imposed on them and the same will be recovered from the personal accounts of the RDO. The RDO was present before this Court on 17.08.2017 and counter was also filed.

5. In the counter affidavit filed by the respondents, it is stated that the original petitioner has violated the provisions of the Tamil Nadu Minor Minearl Concession Rules, by illegally transporting rough stones in the lorry on 25.4.2000 and for this illicit transportation, the lorry was seized by the first respondent and kept in the premises of the Taluk Office, Vilavancode. The petitioner approached this Court by filing W.P.No.8948 of 2000 to release the lorry and this Court, by order, dated 07.06.2000, directed the petitioner to approach the concerned Criminal Court for release of the lorry and since the Criminal Court has no jurisdiction for release of the lorry, the petitioner has again approached this Court by filing a modification petition in W.M.P.No.24155 of 2000 to modify the said order of this Court, dated 07.06.2000, and this Court directed release of the lorry with conditions extracted supra. After release of the lorry on 28.02.2001, the petitioner filed the present Writ Petition claiming compensation of Rs.3,10,000/- for the illegal detention of the lorry from 25.04.2000 to 28.02.2001. According to the respondents, the original petitioner who

filed this petition, died on 29.03.2016 and no legal heirs of the deceased first petitioner took steps to prosecute the case by impleading themselves in this Writ Petition. In view of the same, there was a delay in filing counter, but however, it has been stated that the petitioner was transporting rough stones in the lorry as mentioned supra. It is stated that the petitioner had fulfilled the conditions imposed by this Court as stated supra, for release of the lorry and the amount of Rs.25,000/- paid was returned. After seizure of the lorry on 25.04.2000, the petitioner has approached this Court by filing Writ Petition and the first respondent is empowered to seize the vehicles which are indulged in illegal transportation of mines and minerals, and the original petitioner ought to have proved his innocence before the competent forum. It is further stated in the counter that the first respondent has not acted on personal whims in seizing the vehicle and the petitioner is not entitled to compensation as prayed for.

6. Heard both sides and perused the materials available on record.

7. It is not in dispute that the said lorry was seized, which belongs to the brother of the original petitioner Alfred who is no more. The legal heirs of the deceased Alfred have been impleaded as petitioners 2 to 5. From the narration of events supra, it is clear that the respondents have not disputed the fact that no case has been filed against the original petitioner. While passing orders in the said W.M.P., this Court has recorded the submission of the learned counsel for the petitioner that "till date, the respondents have not initiated any proceedings including filing of First Information Report". There is no iota of evidence as to whether the said vehicle or any of the person is involved in the illegal transportation attracting the violations of the provisions of the Tamil Nadu Minor Mineral Concession Rules. Though the respondents are empowered to seize the lorry for an offence, seizing the lorry and keeping quiet without registering a case and contending at a later point of time that the lorry has been returned and that the petitioners would not be entitled to get compensation, may not be correct. The original petitioner should have been put on notice even at the time of seizing the vehicle. As there is no evidence even as on date, produced by the respondents about any criminal case against the deceased petitioner-Alfred or the brother of the original petitioner Alfred or that the lorry was involved in any offence, I am of the view that the petitioner is entitled to compensation. Even though it was contended by the original petitioner that he would be entitled to Rs.1,000/- per day as compensation, and stated that if the lorry had been given to others on rental basis, he would have earned Rs.1,000/- per day, there is no documentary evidence produced by the petitioners for the illegal act committed by the respondents in seizing the lorry, and hence, this Court is of

the view that the petitioners are entitled to compensation and this Court, fixes a sum of Rs.50,000/- (Rupees fifty thousand only) as compensation, as the incident had taken place 18 years ago and the said amount shall be paid by the respondents to the petitioners as expeditiously as possible. As there is no iota of evidence as to the loss of compensation caused to the original petitioner, it is needless to mention that it is open for the petitioners to approach appropriate forum to claim enhanced compensation for the illegal act of the respondents, by producing necessary evidence. The Writ Petition is disposed of accordingly. No costs.

8. Before parting with the case, it is to be observed that this Court is coming across number of cases and old matters, wherein the Government Officials like the Tahsildar, the Revenue Divisional Officer, the District Revenue Officer, Block Development Officer, etc., are not co-operating and assisting the Government Advocates in order to produce necessary files and file counter affidavit or status report wherever necessary. This is one such case and only after this Court passed an order that costs would be imposed, the counter affidavit was filed. Nothing prevented the official respondents from filing counter affidavit or status report and thereafter seek adjournment. As this is a clear case of slackness on the part of the Government Officials in not filing the counter affidavit, this Court observed above that if counter affidavit was not filed on the next hearing date, costs of Rs.10,000/- would be imposed on each of the respondents, which will be recovered from their personal accounts. If the concerned official respondents who were there at the time of illegal seizure, is not in service, the recovery need not be effected, as there cannot be any punishment or penalty on the subsequent officers who may not be at fault. Hence, the Chief Secretary to Government, Secretariat, Chennai, is directed to issue Circular to all the Government Officers/Town Panchayat/Panchayat/Municipality/Corporation etc., to the effect that whenever the cases are filed in Court, the counter affidavit/status report will have to be filed within the time stipulated by the Court, failing which, the Court may have to direct the personal appearance of the Chief Secretary to Government or the concerned Principal Secretary to Government of the concerned Department.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Revenue Divisional Officer,
Padmanabhapuram,
Thuckalay,
Kanyakumari District.
2. The Tahsildar,
Vilavancode Taluk,
Kanyakumari District.
3. The Chief Secretary to Government,
Secretariat,
Fort St.George,
Chennai-600 009.

+1cc to Government Pleader, sr,15424.

+1cc to Mr.P.Selvaraj, Advocate,sr.14359

RMP (21/03/2018)

W.P.No.25212 of 2003



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