

In the High Court of Judicature at Madras

Dated : 13.12.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM
and

The Honourable Mr.Justice N.SATHISH KUMAR

Writ Petition Nos.32929 and 32932 to 32934 of 2018

P.Kulandaivel	...Petitioner in WP.32929/2018
G.Thangarasu	...Petitioner in WP.32932/2018
A.Poomalai	...Petitioner in WP.32933/2018
R.Mani	...Petitioner in WP.32934/2018

Vs

1.The Sub-Inspector of Police,
Sirupakkam Police Station,
Cuddalore Distridt.

2.The Tahsildar,
Veppur,
Cuddalore District.

...Respondents in all the WPs

PETITIONS under Article 226 of The Constitution of India praying for the issuance of a Writ of Mandamus directing the respondents to release the Tractors with Tippers bearing Registration Nos. TN 31AX9245 and TN31AS5132 in WP.No.32929 of 2018; TN 91X 6864 in WP. No.32932 of 2018; TN 27 Q 2847 in WP.No. 32933 of 2018; and the JCB (Earth Moving Equipment) Registration No.TN91 Z 0599 and a Unregistered New Tractor with Tipper in Model No.575 YUVO Mahendra Chasis No. MBNSFALUAJZEO1441 in WP.No.32934 of 2018 respectively, which were seized by the 1st respondent on 24.9.2018 and thereby consider the representations dated 20.11.2018

For Petitioners : Ms.P.T.Ramadevi
in all WPs

For Respondents : Mrs.A.Srijayanthi, SGP
in all WPs

COMMON ORDER
(Order of the Court was made by T.S.SIVAGNANAM, J)

We have heard Ms.P.T.Ramadevi, learned counsel for the petitioners. Mrs.Srijayanthi, learned Special Government Pleader accepts notice for the respondents.

2. In all the four writ petitions, the relief sought for is identical in the sense that the petitioners, who are the owners of tractors and tippers, seek for a direction upon the respondents to release the tractors and tippers, which have been seized by the first respondent by considering their representations dated 20.11.2018.

3. Earlier, this Court had been issuing directions for release of vehicles, which were seized on the ground that they were transporting illicitly mined sand or other minerals. One such order has been produced by the learned counsel for the petitioners passed in WP.No.21795 of 2018 dated 27.8.2018 wherein a direction was issued to the respondents therein to consider the representation of the petitioner therein. Much earlier, this Court was also issuing directions for release of such seized vehicles subject to certain conditions.

4. Recently, a Division Bench of the Madurai Bench of this Court, to which, one of us was a party (NSKJ), by a common order in WP(MD). Nos.19936 of 2017 and 7595 of 2018 dated 29.10.2018, decided the power of the Tahsildar to retain such vehicles and it has been held that the procedure that has to be adopted is to produce the vehicles before the Special Court. The relevant portions of the said decision read as follows :

"11. Having come to the aforesaid conclusion, we deem it appropriate to direct all the revenue officials to make a complaint after the seizure to the jurisdictional Court. A complaint has to be made immediately after seizure, preferably, within a period of one week. Thereafter, appropriate application can be made for confiscation, which might include a vehicle, said to have been involved.

12. As held by the Hon'ble Apex Court, which dictum is followed by this Court, there is no bar for the police to register a case for the offence under Section 379 IPC along with the offence under the Mines and Minerals (Development and Regulation) Act, 1957. Whenever an offence is registered under Section 379 IPC, it will not take away the power of the revenue officials to give a private complaint. As this position is settled, we direct the revenue officials to inform the police about the seizure made and in the same way, as and when a case is

registered under Section 379 IPC, the police concerned shall inform it to the revenue officials. Therefore, a complaint has to be made by the revenue officials before the jurisdictional Court and on information, case has to be registered by the jurisdictional police. This procedure will have to be followed strictly.

13. As recorded earlier, illegal mining is carrying on unabatedly under the very nose of the revenue officials, which can be taken judicial note of by this Court with a fond hope that the same can be controlled in future. Hence, we issue the following directions:

(i) The District Level Task Forces and Taluk Level Task Forces, constituted pursuant to the order passed in WP(MD)No.9806 of 2018 should follow the G.O.(Ms)No.135 Industries (MMA.1) Department, dated 13.11.2009 in letter and spirit.

(ii) As stated in the above said Government Order, periodical meetings will have to be held which is inclusive of action taken/to be taken for the illicit mining.

(iii) Steps will have to be taken for dereliction of the duty by the concerned officials.

(iv) Taluk Level Task Forces shall also comply with the directions issued in the Government Order by making frequent surprise checks and submit their report to the District Level Task Forces.

(v) The Taluk Level Task Forces shall meet every fortnight as mandated in the Government Order.

(vi) The responsibility fixed in the Government Order will have to be strictly construed and action will have to be taken against the erring Village Administrative Officer, Tahsildar, Officer in-charge of Department of Geology and Mining at District Level.

(vii) Action taken report will have to be sent by the District Collector concerned for the purpose of taking necessary action. The District Collector concerned shall take appropriate departmental action by himself as per the Rules provided so.

(viii) Separate records will have to be maintained by the Village Administrative

Officer, Tahsildar and Officer in-charge of the Department of Geology and Mining with respect to the cases involving illicit mining.

(ix) As and when illicit mining is reported, the same will be recorded in the records.

(x) The respective District Collectors will have to ensure by making wide publicity of phone particulars assigned to the District Level Task Forces and the Talk Level Task Forces, so that, the general public can give their complaints. There should be affixture or display of the phone particulars in the Collectorate, Taluk office, Office of Deputy Director and Assistant Director of Geology and Mining and that of the Village Administrative Officer.

(xi) Complainant will have to be intimated on the action taken within a period of one week from the date of receipt of the complaint. A complaint shall also be received even when made through phone calls.

(xii) Complaints by an authorised person under Section 21 of the Mines and Minerals (Development and Regulation) Act, 1957 are to be made immediately and not later than one week from the date of seizure.

(xiii) Whenever, a final report is filed for the offence under Section 379 IPC by the jurisdictional police before the jurisdictional Magistrate, the same shall also be committed to the Special Court. This is for the reason that it would be appropriate to deal with both the police case and the private complaint by the same Court and in order to avoid any possible conflict.

(xiv) The revenue officials at the time of seizure can issue a memo to the person in-charge of the vehicle, mineral among other things, indicating the seizure made, along with the date and time.

(xv) In so far as the seized vehicles are concerned, they shall be produced before the concerned Magistrate Court by the revenue authorities at the time of filing their respective complaints.

(xvi) Any application for release of vehicle etc., can only be filed before the Special Court alone.

(xvii) Any violation of the above would

constitute a contempt of the order passed by this Court, for which, appropriate application can either be filed before the First Bench of this Court or any other Bench as per the direction of the Hon'ble Chief Justice.

14. With the above observations and directions, these writ petitions are disposed of."

5. Thus, the above directions have been issued in a public interest litigation and therefore, it would bind the respondents as well as the State Government.

6. In the light of the recent development, this Court cannot pass orders imposing conditions for release of the vehicles, which have been seized on the ground that they were illicitly mining sand or minerals.

7. The learned counsel for the petitioners submits that the petitioners are aged persons and that one load of sand was taken by them only for agricultural purposes and not for any commercial purpose.

8. In any event, the vehicles have been detained for over 70 days.

9. The learned counsel for the petitioners submits that appropriate directions may be issued.

10. We have heard Mrs.A.Srijayanthi, learned Special Government Pleader on the above submissions.

11. Considering the fact that no positive direction can be issued in these writ petitions and more particularly in the light of the said decision of the Division Bench, we are of the view that the respondents shall take appropriate action in accordance with law at the earliest because the vehicles have been detained for a long period and there is a likelihood of the same deteriorating in value and theft being committed.

12. Hence, without expressing any opinion on the merits of the matters, the writ petitions are disposed of with a direction to the second respondent to take note of the representations dated 20.11.2018 and initiate appropriate action in accordance with law within a period of one week from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

RS

To

1.The Sub-Inspector of Police,
Sirupakkam Police Station,
Cuddalore Distridt.

2.The Tahsildar,
Veppur,
Cuddalore District.

+8cc to Mr.P.T.Ramadevei, Advocate, S.R.Nos. 86083,86084,86085
and 86086

+1cc to the Government Pleader, S.R.No. 86745

WP.Nos.32929 & 32932
to 32934 of 2018

SPD(CO)

rrs 14/12/2018