

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.09.2019

CORAM

THE HON'BLE MR.JUSTICE M.M.SUNDRESH

and

THE HON'BLE MR.JUSTICE RMT. TEEKAA RAMAN

W.P.Nos. 26931, 26934, 26949, 26983, 26985, 26990, 26994, 26998,
27000, 27106, 27143, 27144, 27228, 27235, 27244 of 2019 and
34803 of 2018
and W.M.P.No.6994 of 2019

SHANTHI	..PETITIONER in WP No.26931 of 2019
V.RAMALINGAM	..PETITIONER in WP No.26934 of 2019
P.KATHAVARAYAN	..PETITIONER in WP No.26949 of 2019
R.RAVEENDIRAN	..PETITIONER in WP No.26983 of 2019
N.ANIL KUMAR	..PETITIONER in WP No.26985 of 2019
N.SATHISH	..PETITIONER in WP No.26990 of 2019
SUBRAMANIAM	..PETITIONER in WP No.26994 of 2019
K.KUMARAVEL	..PETITIONER in WP No.26998 of 2019
MANI	..PETITIONER in WP No.27000 of 2019
P.ELAVARASAN	..PETITIONER in WP No.27106 of 2019
P.SILAMBARASAN	..PETITIONER in WP No.27143 of 2019
P.KANNATHASAN	..PETITIONER in WP No.27144 of 2019
SURESH	..PETITIONER in WP No.27228 of 2019
PRABHU	..PETITIONER in WP No.27235 of 2019
SELVAM	..PETITIONER in WP No.27244 of 2019

M/S.MAHENDRA KUMAR AND SONS
137 NORTH USMAN ROAD,
T.NAGAR, CHENNAI
REP.BY ITS AUTHORISED MANAGER
S.SURESH

..PETITIONER IN WP.No.34803 of 2018

Vs.

THE INSPECTOR OF POLICE,
THEVOOR POLICE STATION, SANKARI TALUK,
SALEM DISTRICT.

..RESPONDENT in WP No.26931 of 2019

1 THE SUB COLLECTOR
OFFICE OF THE SUB COLLECTOR VIRUDHACHALAM
CUDDALORE DISTRICT.

2 THE ASSISTANT DIRECTOR
GEOLOGY AND MINING CUDDALORE,
OFFICE OF THE GEOLOGY AND MINING/DISTRICT COLLECTORATE
CUDDALORE DISTRICT.

3 THE INSPECTOR OF POLICE
VEPPUR POLICE STATION,VEPPUR,
CUDDALORE DISTRICT. ..RESPONDENTS in WP No.26934 of 2019

1 THE SUB COLLECTOR
OFFICE OF THE SUB COLLECTOR,
VIRUDHACHALAM, CUDDALORE DISTRICT.

2 THE ASSISTANT DIRECTOR
GEOLOGY AND MINING, CUDDALORE,
OFFICE OF THE GEOLOGY AND MINING/
DISTRICT COLLECTORATE
CUDDALORE DISTRICT.

3 THE INSPECTOR OF POLICE
MANGALAMPET POLICE STATION, MANGALAMPET,
CUDDALORE DISTRICT. ..RESPONDENT in WP No.26949 of 2019

1. THE REVENUE DIVISIONAL OFFICER
CUDDALORE DISTRICT.

2 THE THASILDAR,
PANRUTI, CUDDALORE DISTRICT.

3 THE INSPECTOR OF POLICE
PUDUPET POLICE STATION,
CUDDALORE DISTRICT. ..RESPONDENTS in WP No.26983 of 2019

THE INSPECTOR OF POLICE,
BERIGAI POLICE STATION,
KRISHNAGIRI DISTRICT ..RESPONDENT in WP No.26985 of 2019

1 THE REVENUE DIVISIONAL OFFICER
OFFICE OF THE REVENUE DIVISIONAL OFFICER, THIRUVARUR.

2 THE INSPECTOR OF POLICE
PERALAM POLICE STATION,
THIRUVARUR DISTRICT ..RESPONDENTS in WP No.26990 of 2019

1 THE REVENUE DIVISIONAL OFFICER
TIRUPUR DISTRICT, TIRUPUR.

2 THE ASSISTANT DIRECTOR OF GEOLOGY AND MINING,
COLLECTORATE, TIRUPUR DISTRICT, TIRUPUR.

3 THE SPECIAL REVENUE INSPECTOR,
GEOLOGY AND MINING DEPARTMENT
COLLECTORATE, TIRUPUR DISTRICT, TIRUPUR.

4 THE VILLAGE ADMINISTRATIVE OFFICER,
KARANAMPETTAI,
TIRUPUR DISTRICT.

..RESPONDENTS IN WP.No.26994 of 2019

1 THE DISTRICT COLLECTOR
TIRUVANNAMALAI DISTRICT,
TIRUVANNAMALAI.

2 THE DISTRICT REVENUE OFFICER
DISTRICT REVENUE OFFICE,
TIRUVANNAMALAI DISTRICT,
TIRUVANNAMALAI.

3 THE REVENUE DIVISIONAL OFFICER,
CHEYYAR REVENUE DIVISION,
TIRUVANNAMALAI DISTRICT.

4 THE ASSISTANT DIRECTOR,
GEOLOGY AND MINES, TIRUVANNAMALAI DISTRICT
TIRUVANNAMALAI.

5 THE TAHSILDAR
CHETPET TALUK,
TIRUVANNAMALAI DISTRICT.

..RESPONDENTS in WP No.26998 of 2019

1 THE STATE REP BY
THE DISTRICT REVENUE OFFICER,
VELLORE DISTRICT, VELLORE.

2 THE STATE REP BY
THE THASILDHAR, VANIYAMBADI,
VELLORE DISTRICT.

3 THE INSPECTOR OF POLICE
THIMMAPET POLICE STATION,
VELLORE DISTRICT, VELLORE.

..RESPONDENTS in WP.No.27000 of 2019

STATE REP. BY
THE INSPECTOR OF POLICE,
KADAMPULIYUR POLICE STATION,
CUDDALORE DISTRICT.

..RESPONDENT in WP No.27106 of 2019

STATE REP.BY
THE INSPECTOR OF POLICE
ANAIKKARANCHATHRAM POLICE STATION
NAGAPATTINAM DISTRICT.

..RESPONDENT in WP No.27143 of 2019

STATE REP.BY
THE SUB INSPECTOR OF POLICE
MUTHUPETTAI POLICE STATION,
TIRUVARUR DISTRICT.

..RESPONDENT in WP No.27144 of 2019

1 THE REVENUE DIVISIONAL OFFICER
VELLORE VELLORE DISTRICT

2 THE TAHSILDAR
VELLORE VELLORE DISTRICT

3 THE INSPECTOR OF POLICE
SATHUVACHERI POLICE STATION
VELLORE DISTRICT

..RESPONDENTS in WP Nos.27228 of 2019,
WP.Nos.27235 and 27244 of 2019

1 THE DISTRICT COLLECTOR
THIRUVALLUR AND DISTRICT.

2 THE REVENUE DIVISIONAL OFFICER,
THIRUVALLUR AND DISTRICT.

3 THE INSPECTOR OF POLICE,
C-2 PERIYAPALAYAM POLICE STATION,
PERIYAPALAYAM.

..RESPONDENTS in WP.No.34803 of 2018

Prayer in W.P.No.26931 of 2019: Petition filed under Article 226 of the Constitution of India seeking to issue a writ of mandamus directing the respondent to release the Ashok Leyland Tipper Lorry bearing Regn.No.TN 22 CZ 4789 Chassis No.MB1G3DYCOBRYD589 and Engine No.YBH679236 forthwith by considering the petitioner's representation dated 18.08.2019.

Prayer in W.P.No.26934 of 2019: Petition filed under Article 226 of the Constitution of India seeking to issue a writ of mandamus directing the respondents to herein to release the petitioner's vehicle namely Bullock Cart fitted with Tyre wheels based on petitioner's representation dated 22.03.2019 and handover the vehicle to the petitioner forthwith.

Prayer in W.P.No.26949 of 2019: Petition filed under Article 226 of the Constitution of India seeking to issue a writ of mandamus directing the respondents to herein to release the petitioner's vehicle namely Bullock Cart fitted with Tyre Wheels based on petitioner's representation dated 20.07.2019 and handover the vehicle to the petitioner forthwith.

Prayer in W.P.No.26983 of 2019: Petition filed under Article 226 of the Constitution of India seeking to issue a writ of mandamus directing the 3rd Respondent herein to consider the representation of the Petitioner dated 24.08.19 and to release the Bullock cart with Tyre which was seized on 06.07.2019.

Prayer in W.P.No.26985 of 2019: Petition filed under Article 226 of the Constitution of India seeking to issue a writ of mandamus directing the respondent to release the petitioner Tipper Lorry bearing Reg. No. KA 32 B 8926, Chassis No. MB1G3DYC8CRDH1300 and Engine No.CNHZ421690 forthwith by considering the petitioner representation dated 30.8.2019.

Prayer in W.P.No.26990 of 2019: Petition filed under Article 226 of the Constitution of India seeking to issue a writ of mandamus directing the respondents herein to release petitioner's Tractor with Tipper bearing Registration No. TN 82 A 3287 now lying in the hands of the 2nd respondent herein.

Prayer in W.P.No.26994 of 2019: Petition filed under Article 226 of the Constitution of India seeking to issue a writ of mandamus directing the respondents to release the seized Tipper Lorry bearing Registration No.TN 39 AM 7598.

Prayer in W.P.No.26998 of 2019 : Petition filed under Article 226 of the Constitution of India seeking to issue a writ of mandamus directing the respondents to release the petitioners

vehicle namely "Eicher 485" Tractor, bearing Registration No.TN 25 BH 8669 forthwith.

Prayer in W.P.No.27000 of 2019 : Petition filed under Article 226 of the Constitution of India seeking to issue a writ of mandamus directing the respondents to release and return back the vehicle bearing Registration No.TN 23 BP 6959 Chassis No.9634 to the petitioner.

Prayer in W.P.No.27106 of 2019: Petition filed under Article 226 of the Constitution of India seeking to issue a writ of mandamus directing the respondent to release the vehicle being Ashok Leyland Lorry bearing Regn. No. TN 31 BF 3250 which was seized on 14.08.2019 by the Respondent in Crime No. 270/2019 and hand over the same to petitioner.

Prayer in W.P.No.27143 of 2019: Petition filed under Article 226 of the Constitution of India seeking to issue a writ of mandamus directing the respondent to release the vehicle being Ashok Leyland Lorry bearing Regn.No.TN.28- J- 4829 which was seized on 02/05/2018 by the respondent in Crime No.126/2018 and hand over the same to the petitioner.

Prayer in W.P.No.27144 of 2019: Petition filed under Article 226 of the Constitution of India seeking to issue a writ of mandamus directing the respondent to release the vehicle being Tractor bearing Regn.No.TN.63-AL-0897 which was seized on 29/06/2019 by the respondent in Crime No.224/2019 and hand over the same to the petitioner.

Prayer in W.P.No.27228 of 2019: Petition filed under Article 226 of the Constitution of India seeking to issue a writ of mandamus directing the 3rd respondent to release the Bullock Cart owned by the petitioner in Crime No. 577/2018 within a time frame as may be fixed by this Honorable Court.

Prayer in W.P.No.27235 of 2019: Petition filed under Article 226 of the Constitution of India seeking to issue a writ of mandamus directing the 3rd respondent to release the bullock cart owned by the petitioner in Crime No.404 of 2018 within a time frame as may be fixed by this Honourable Court.

Prayer in W.P.No.27244 of 2019: Petition filed under Article 226 of the Constitution of India seeking to issue a writ of mandamus directing the 3rd respondent to release the bullock cart owned by the petitioner in Crime No. 151 of 2019 within a time frame as may be fixed by this Honourable Court.

Prayer in WP.No.34803 of 2018 : Petition filed under Article 226 of the Constitution of India seeking to issue a writ of mandamus directing the 2nd respondents for the release of the Vehicle, Bearing No. TN 10 T 4707 and for the custody of the Vehicle.

For Petitioner : Mr.R.Jayaprakash
in W.P.No.26931 and
26985 of 2019
Mr.N.Sakthivel
in W.P.Nos.26934 and
26949 of 2019
Mr.K.Balasubramaniam
in W.P.No.26983 of 2019
Mr.M.Ganesh
in W.P.No.26990 of 2019
Mr.S.Gokul Raj
in W.P.No.26994 of 2019
Mr.S.B.Viswanathan
in W.P.No.26998 of 2019
M/s.Karan and Uday
in W.P.No.27000 of 2019
Mr.M.Vijaya Raghavan
in W.P.Nos.27106, 27143
and 27144 of 2019
Mr.K.Thangamani
in W.P.Nos.27228, 27235,
and 27244 of 2019
Mr.Paramasivadoss
in W.P.No.34803 of 2018

For Respondents : Mr.E.Manoharan,
Addl. Govt. Pleader
in W.P.Nos.26931, 26985,
26934, 26949, 26983, 26990 and
26994 of 2019
Mr.Akhil Akbar Ali,
Government Advocate in
W.P.Nos.26998, 27000, 27106,
27143, 27144, 27228, 27235,
27244 of 2019 & 34803 of 2018

COMMON ORDER

(Order of the Court was made by M.M.SUNDRESH,J.)

All these writ petitions have been filed seeking a writ of mandamus directing the concerned respondent to release the vehicles, which are allegedly involved in the violation of the provisions of the Mines and Minerals (Development and Regulation) Act, 1957 and Tamil Nadu Minor and Mineral Concession Rules, 1959.

2. As rightly submitted by the learned Additional Government Pleader and the learned Government Advocate appearing for the respondents, the issue involved has already been dealt with by this Court, wherein it has been held that the jurisdiction Court is the Designated Court and the Revenue Officials/Persons Authorised do have the power only to seize the vehicles but not to release.

3. Special Leave Petitions in S.L.P.Nos.33477-33479 of 2018 filed against the common order passed by the Division Bench of this Court W.P.(MD) Nos.19936 of 2017, 7595 and 21485 of 2018 dated 29.10.2018 were also dismissed. The following paragraphs of the common order passed in Review Application (MD) Nos.80 to 82 of 2019 dated 09.09.2019 would be apposite.

"9. As per these provisions, the power of seizure is certainly available with the officer or authority empowered accordingly. Such a seizure would involve the actual mineral, machinery by way of tool and equipment, vehicle or such incidental materials. As per Section 21 (4A) of the M&M Act, such seized materials are liable to be confiscated by an order of Court competent to take cognizance of the offence under Section 21(1) of the M&M Act and the seized materials are to be disposed of in accordance with the directions of such Court. Taking note of the aforesaid provisions, we have held that what is permissible to the Revenue Officials, namely the officer authorized, is only the seizure and not confiscation or disposal of such materials. The said reasoning adopted, in our considered view, does not require any re-look, though we respectfully agree with the learned Advocate General that there is a factual error in coming to the conclusion that insertion has taken place only by Act 10 of 2015 which is, in fact, only an amendment. We may note that the Act does not

specifically deal with the issue qua release. Once we hold that the power of confiscation lies with the Court alone, the question qua release shall also be decided by it alone. We are dealing with a penal provision in a regulatory statute and therefore the word 'shall' will have to be given the actual meaning. Thus, confiscation is the rule and release in the consequence, of an adjudication. The question of release would arise only on the decision as to whether confiscation is required or not.

10. The further submission made was with respect to the effect of Section 23-A of the M&M Act. We would like to quote the aforesaid provision:-

"23A. Compounding of offences.-(1) Any offence punishable under this Act or any rule made thereunder may, either before or after the institution of the prosecution, be compounded by the person authorised under section 22 to make a complaint to the court with respect to that offence, on payment to that person, for credit to the Government, of such sum as that person may specify: Provided that in the case of an offence punishable with fine only, no such sum shall exceed the maximum amount of fine which may be imposed for that offence.

(2) Where an offence is compounded under sub-section (1), no proceeding or further proceeding, as the case may be, shall be taken against the offender in respect of the offence so compounded, and the offender, if in custody, shall be released forthwith."

11. Section 23A of the M&M Act, as stated, only speaks about the compounding of offence. Such a power can be exercised by the officer authorized under Section 22 of the M&M Act taking note of the complaint to the Court with respect to the offence. It can be exercised either before or after the institution of the proceedings.

12. There is a distinction between the compounding of offence and confiscation or release. Similarly, the seizure is different

from confiscation and release. Seizure is an act which is to be done after finding that the vehicle, mineral or tool is involved in the offence and there is contravention of the provisions by way of illegal transporting. Therefore, once seizure is made there are two options open to the authorized officer - one is, he can give a complaint and leave the rest to the Court and the second is exercise of power of compounding. In both the cases, he cannot release the vehicle or the other materials seized. The effect of compounding is that the offender gets the prosecution avoided qua the offence. However, the question of release or confiscation still rests with the Court. Therefore, the collection of fine, if any, can only be relatable to the offence to be compounded. Thus, it is for the Court to decide as to whether the vehicle is to be confiscated or released."

4. Thus, in view of the common order passed in W.P.(MD) Nos.19936 of 2017, 7595 and 21485 of 2018 dated 29.10.2018 followed by the subsequent order in Review Applications Writ (MD) Nos.80 to 82 of 2019 dated 09.09.2019, all these writ petitions are dismissed. No costs. Consequently, connected miscellaneous petition is closed. However, liberty is given to the petitioners to work out the remedy before the Designated Court.

5. It is also brought to the notice of this Court that the Designated Courts have already been constituted in compliance of the order passed by this Court. The Government Order in G.O. (Ms) No.298, Home (Courts-II) Department, dated 13.06.2019, has been issued designating the Principal Judge, City Civil Court, Chennai and the Principal District Judges/District Judges in the State of Tamil Nadu to deal with the offences in contravention of the provisions of the Mines and Minerals (Development and Regulation) Act, 1957. If the earlier petitions are dismissed by the Designated Court on the ground of maintainability, the same will not stand in the way of fresh applications being dealt with by the Designated Courts on merits.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

TO

1.THE INSPECTOR OF POLICE,
THEVOOR POLICE STATION, SANKARI TALUK,
SALEM DISTRICT.

2.THE SUB COLLECTOR
OFFICE OF THE SUB COLLECTOR VIRUDHACHALAM
CUDDALORE DISTRICT.

3.THE ASSISTANT DIRECTOR
GEOLOGY AND MINING CUDDALORE,
OFFICE OF THE GEOLOGY AND MINING/DISTRICT COLLECTORATE
CUDDALORE DISTRICT.

4.THE INSPECTOR OF POLICE
VEPPUR POLICE STATION,VEPPUR,
CUDDALORE DISTRICT.

5.THE REVENUE DIVISIONAL OFFICER
CUDDALORE DISTRICT.

6.THE THASILDAR,
PANRUTI, CUDDALORE DISTRICT.

7.THE INSPECTOR OF POLICE
PUDUPET POLICE STATION,
CUDDALORE DISTRICT.

8.THE INSPECTOR OF POLICE,
BERIGAI POLICE STATION,
KRISHNAGIRI DISTRICT.

9.THE REVENUE DIVISIONAL OFFICER
OFFICE OF THE REVENUE DIVISIONAL OFFICER
THIRUVARUR.

10.THE INSPECTOR OF POLICE
PERALAM POLICE STATION,
THIRUVARUR DISTRICT

11.THE REVENUE DIVISIONAL OFFICER
TIRUPUR DISTRICT, TIRUPUR.

12.THE ASSISTANT DIRECTOR OF GEOLOGY AND MINING,
COLLECTORATE, TIRUPUR DISTRICT, TIRUPUR.

13.THE SPECIAL REVENUE INSPECTOR,
GEOLOGY AND MINING DEPARTMENT
COLLECTORATE,TIRUPUR DISTRICT,TIRUPUR.

14.THE VILLAGE ADMINISTRATIVE OFFICER,
KARANAMPETTAI,
TIRUPUR DISTRICT.

15.THE INSPECTOR OF POLICE,
KADAMPULIYUR POLICE STATION,
CUDDALORE DISTRICT.

16.THE INSPECTOR OF POLICE
ANAIKKARANCHATHRAM POLICE STATION
NAGAPATTINAM DISTRICT.

17.THE SUB INSPECTOR OF POLICE
MUTHUPETTAI POLICE STATION,
TIRUVARUR DISTRICT.

18.THE INSPECTOR OF POLICE
SATHUVACHERI POLICE STATION, VELLORE DISTRICT

19.THE INSPECTOR OF POLICE,
C-2 PERIYAPALAYAM POLICE STATION,
PERIYAPALAYAM.

20.THE REVENUE DIVISIONAL OFFICER,
THIRUVALLUR AND DISTRICT.

21.THE DISTRICT COLLECTOR
THIRUVALLUR AND DISTRICT.

22.THE INSPECTOR OF POLICE
MANGALAMPET POLICE STATION, MANGALAMPET,
CUDDALORE DISTRICT.

23.THE DISTRICT COLLECTOR
TIRUVANNAMALAI DISTRICT,
TIRUVANNAMALAI.

24.THE DISTRICT REVENUE OFFICER
DISTRICT REVENUE OFFICE,
TIRUVANNAMALAI DISTRICT,
TIRUVANNAMALAI.

25.THE REVENUE DIVISIONAL OFFICER,
CHEYYAR REVENUE DIVISION,
TIRUVANNAMALAI DISTRICT.

26.THE ASSISTANT DIRECTOR,
GEOLOGY AND MINES, TIRUVANNAMALAI DISTRICT
TIRUVANNAMALAI.

27.THE TAHSILDAR
CHETPET TALUK,
TIRUVANNAMALAI DISTRICT.

28.THE DISTRICT REVENUE OFFICER,
VELLORE DISTRICT,VELLORE.

29.THE THASILDHAR, VANIYAMBADI,
VELLORE DISTRICT.

30.THE INSPECTOR OF POLICE
THIMMAPET POLICE STATION,
VELLORE DISTRICT, VELLORE.

31.THE REVENUE DIVISONAL OFFICER
VELLORE, VELLORE DISTRICT

32.THE TAHSILDAR
VELLORE, VELLORE DISTRICT.

33.THE PRINCIPAL JUDGE,
CITY CIVIL COURT, CHENNAI.

+2CC to M/S.M.VIJAYARAGHAVAN, Advocate SR.No.79122 & 79123
+1 cc to M/s.Karan and Udai,Advocate Sr.No. 79586
+1 cc to M/s.M.Ganesh, Advocate SR.No.79443
+2cc to M/s.R.Jayaprakash, Advocate SR.No.79726 and 79727
+1 cc to The Government Pleader Sr.No.79718

AKM/15.11.19/13P-41C/

W.P.Nos.26931 of 2019 etc.,
batch.