

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.10.2019

CORAM:

THE HON'BLE MR. JUSTICE M.M.SUNDRESH
and
THE HON'BLE MR. JUSTICE RMT. TEEKAA RAMAN

W.P.No. 28833 of 2019

Gopal

.. Petitioner

Vs.

1. The Tahsildar,
Tiruvavarur Taluk,
Tiruvavarur District.

2. The Inspector of Police,
Tiruvavarur Taluk Police Station,
Tiruvavarur District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking to issue a writ of mandamus directing the 1st and 2nd respondents to order for the release of the Petitioner's TATA ACE bearing No.TN-51-L-3747, which is at the custody of the 2nd Respondent since 30.08.2019 in Crime No.379 of 2019.

For Petitioner : Mr.K.Muruganantham
For Respondents : Mr.Akhil Akbar Ali,
Government Advocate

ORDER

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

This Writ Petition has been filed seeking a writ of mandamus, directing the respondents to release the vehicle, which is involved in 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 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 Authorized, 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 dated 29.10.2018 passed by a Division Bench of this Court in W.P.(MD) Nos.19936 of 2017, 7595 and 21485 of 2018, were also dismissed. Following paragraphs of the common order dated 09.09.2019, passed in Review Application (MD) Nos.80 to 82 of 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 dated 29.10.2018 passed in W.P.(MD) Nos.19936 of 2017, 7595 and 21485 of 2018, followed by the subsequent order dated 09.09.2019 passed in Review Applications Writ (MD) Nos.80 to 82 of 2019, this Writ Petition stands dismissed. No costs. However, liberty is given to the Petitioner, to work out the remedy before the Designated Court.

5. It is also brought to the notice of this Court that 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 II(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(Insp.Cell)

//True Copy//

Sub Assistant Registrar

(aeb)

To:

1. The Tahsildar,
Tiruvarur Taluk,
Tiruvarur District.

2. The Inspector of Police,
Tiruvarur Taluk Police Station,
Tiruvarur District.

+1cc to Government Pleader SR.NO. 84538

Order in
W.P.No.28833 of 2019

rk(co)
nr 01/11/2019



WEB COPY