



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.06.2019

CORAM

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P(MD)No.14003 of 2019

1.Mariappan
2.Selvalakshmi

... Petitioners

Vs.

1.The Deputy Director,
(Mines and Minerals),
Collectorate Campus,
Tirunelveli District.

2.The Revenue Divisional Officer,
Collectorate Campus,
Tirunelveli District.

3.The Inspector of Police,
Gangai Kondan Police Station,
Tirunelveli District.
(Crime No.160 of 2018)

... Respondents

PRYAER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus, to call for the records pertaining to the order in Cr.M.P.1359 of 2019 dated 16.04.2019 passed by the learned Judicial Magistrate No.III, Tirunelveli and quash the same as illegal and consequently directing the learned Judicial Magistrate No.III, Tirunelveli to reconsider the petition in Cr.M.P.No.1359 of 2019 filed before the Judicial Magistrate No.III, Tirunelveli pursuant to the order of this Court in W.P.[MD]No.3543 of 2019 dated 18.02.2019.

For Petitioner : Mr.S.M.Mohan Gandhi
For Respondents : Mr.A.Thiyagarajan
Government Advocate

O R D E R

The petitioner has approached this Court seeking a quash of order dated 16.04.2019, passed by the learned Judicial Magistrate No.III, Tirunelveli, in Cr.M.P.1359 of 2019.

2.The petitioner had approached this Court earlier in W.P.[MD] No.3543 of 2019, seeking release of vehicle bearing Registration No.TN 23 AW 5139 along with Trailer bearing Registration No.TN 72 A 8878 belonging to the second petitioner, both vehicles being the vehicles in question in the present writ petition as well (in short



'vehicles in question'). This Court, vide its order dated 18.02.2019, had directed remittance of a sum of Rs.25,000/- as well as imposed other conditions, upon satisfaction of which, the petitioner was permitted to approach the concerned Judicial Magistrate to seek release of the vehicle.

WEB COPY

3.The conditions imposed vide order dated 18.02.2019, are thus:

"a) The petitioners shall deposit a sum of Rs.25,000/- (covering both vehicles) to the concerned District Mineral Foundation Trust. They shall execute an affidavit of undertaking that they shall not involve in any offence in future that may lead to the seizure of the vehicle in question. The petitioners shall not alienate or encumber the vehicle in question till the proceedings are completed.

b) The petitioner shall produce all the documents pertaining to the ownership of the seized vehicle.

c) This order for release of the vehicle can be pressed into service by the petitioners only if the vehicle is not in the custody of the criminal Court. If the vehicle is in the custody of concerned Criminal Court of appropriate jurisdiction, then, option is given to the petitioners to approach the concerned Judicial Magistrate to get release of the vehicle, by filing necessary application in the manner known to law.

d) As and when the respondents call for the vehicle for enquiry, the petitioners have to produce the vehicle in question and they shall cooperate with the enquiry to be conducted by the respondents."

4.The petitioner has deposited a sum of Rs.25,000/- as per communication of the Deputy Director, Geology and Mining Department dated 14.03.2019 and has thereafter approached the Magistrate seeking release of the vehicles in question. The Magistrate, vide the impugned letter, has concluded that the remedy of the writ petitioner lies only by way of a Writ Petition before the High Court. Hence, this Writ Petition.

5.Heard Mr.S.M.Mohan Gandhi, learned Counsel appearing on behalf of the petitioner and Mr.A.Thiyagarajan, learned Government Advocate appearing on behalf of the respondents.

6. A Division Bench of this Court has, on 29.10.2018 issued a <https://hccservicescourts.gov.in/services/> directions to the concerned authorities targeted at containing illegal sand mining as well as measures to address and prevent such acts. The same are extracted hereunder:-



"(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 Taluk 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."

7. Directions No: (xiii) & (xvi) above provide for action to be taken before / by the Special Court, that is, as confined by the same Division Bench on 11.01.2019 in a batch of writ petitions (W.P. (MD) No. 22023 of 2018 (batch)), yet to be constituted. Till such time the Special Courts are constituted, release of the seized vehicles may be sought before this Court in terms of Article 226 of the Constitution of India.

8. In the light of the fact that the deposit of Rs. 25,000/- as directed by this Court on 18.02.2019 has been complied with, I am inclined to allow this Writ Petition. I am also conscious of the position that the writ petitioner states that the vehicles are being used to eke out a livelihood and that prejudice is caused to them by virtue of their seizure.

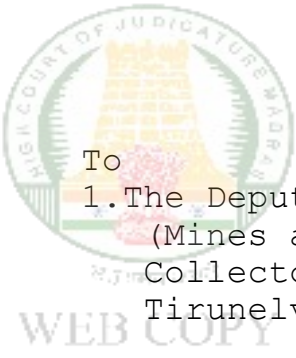
9. In the light of the aforesaid position, the writ petition is allowed, subject to the satisfaction of the conditions as ordered by this Court on 18.02.2019, extracted at paragraph 3 of this order. The Tractor and Trailer shall be released within three days thereafter. No costs.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar (CS)



To

1.The Deputy Director,
(Mines and Minerals),
Collectorate Campus,
Tirunelveli District.

2.The Revenue Divisional Officer,
Collectorate Campus,
Tirunelveli District.

3.The Inspector of Police,
Gangai Kondan Police Station,
Tirunelveli District.

+1cc to Mr.S.M.MOHAN GANDHI, Advocate, SR.No.70552

+1cc to M/s.Special Government Pleader,SR.No. 70986

W.P (MD) No.14003 of 2019

21.06.2019

MR

KK/SAR/24.06.2019/5P-6C