



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

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W.P(MD)No15044 of 2019

Thangam

... Petitioner
Vs.

1.The Revenue Divisional Officer,
Aruppukotai Taluk,
Virudhunagar District.

2.The Tahsildar,
Taluk Office,
Kariyapatti Taluk,
Virudhunagar District.

3.The Inspector of Police,
Mallankinary Police Station,
Virudhunagar District.

4.The Assistant Director,
Geology and Mines & Minerals
Department,
Virudhunagar District.

... Respondents

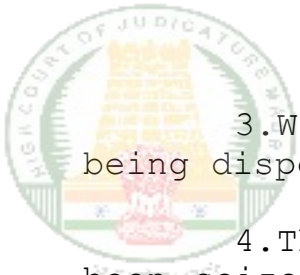
Prayer:- Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to release the petitioner's Two Wheeler Regn.No.TN 67 AD 7285 Hero Splendor Plus which was seized on 15.05.2019 on the basis of the representation given by the petitioner dated 29.06.2019 submitted to the 1st respondent.

For Petitioner : Mr.AD.Farjana Ghoushia
For Respondents : A.Thiagarajan

ORDER

The prayer in this writ petition is for a Writ of Mandamus, directing the respondents to release the petitioner's Two Wheeler Regn.No.TN 67 AD 7285 Hero Splendor Plus which was seized on 15.05.2019 on the basis of the representation given by the petitioner dated 29.06.2019 submitted to the 1st respondent.

2.Heard Ms.D.Farjana Fhoushia, learned counsel appearing for the petitioner and Mr.S.Angappan, learned Government Advocate appearing for the respondents.



3. With the consent of both sides, this writ petition is being disposed of at the admissions stage itself.

4. The vehicle in question belongs to the petitioner has been seized by the respondents for the alleged offence of illicit transportation of sand and in order to release the vehicle, the present writ petition has been filed.

5. The learned counsel appearing for the petitioner submits that in similar circumstances, number of orders have been passed by this Court, where a direction has been given to the respondents to release the vehicle on payment of a sum of Rs.5,000/- (Rupees five thousand only), if it is two wheeler like the present one. Following the said orders, the learned counsel seeks indulgence of this Court for issuance of similar direction.

6. In this regard, the learned Government Advocate brought to the notice of this Court that pursuant to the order of the Division Bench of this Court, the Government issued G.O.(Ms) No.298, Home (Courts-II) Department, dated 13.06.2019, constituting Special Courts to try the offence under Section 30B of the Mines and Minerals (Development and Regulation) Act, 1957 pertaining to illicit mining/transportation activities. After having taken note of the Government Order issued, the learned Judge of this Court has passed the following order dated 02.07.2019 in W.P.(MD) No.14071 of 2019 in **John Vs. The Revenue Divisional Officer, Thanjavur, Thanjavur District and two others**, which reads thus:

"4. Now, the State has issued a notification in G.O.(Ms)No.298, Home (Courts-II) Department, dated 13.06.2019, extracted hereunder:

"ABSTRACT

Courts - Criminal - Designating the Principal Judge, City Civil Courts, 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 - Notification - Issued

Home (Courts-II) Department

G.O. (Ms) No.298

Dated 13.06.2019

விகாரி வருடம்

வைகாசி திங்கள் 30-ஆம் நாள்
திருவள்ளூர் ஆண்டு 2050



3. The Government after careful examination decided to accept the proposal of the Registrar General, High Court, Madras. Accordingly, the following Notification will be published in the Tamil Nadu Government Gazette:-

WEB COPY

NOTIFICATION

In exercise of the powers conferred by section 30B of the Mines and Minerals (Development and Regulation) Act, 1957 (Central Act 67 of 1957) and in supersession of Home Department Notification No.II(2)/HO/879/2018 published at page-926 of part-II Section 2 of the Tamil Nadu Government Gazette dated the 10th October, 2018 the Governor of Tamil Nadu, with the concurrence of the High Court, Madras hereby designates the Court of Principal Judge, City Civil Court, Chennai and the Principal District Courts/District Courts in each Judicial District in the State of Tamil Nadu as the Special Courts, specifying the entire territorial limits of the Judicial District concerned as the local limits of the area to which the jurisdiction of the respective Court shall extend and also appoints the Principal Judge, City Civil Court, Chennai and the Principal District Judges/District Judges of the respective Judicial District as the Judge of the respective Special Court to try the offences under the said Act.

(BY ORDER OF THE GOVERNOR)

..."

5. It has been ascertained that pursuant to the aforesaid G.O., the Special Courts have commenced receiving and dealing with the applications for release. This Court will thus refrain from entertaining any application for release of vehicle seized, or in respect of which an FIR has been lodged post 13.06.2019, from 28.06.2019. The concerned District Court shall dispose of the application seeking release of vehicle, within a period of seven (7) days from the date of numbering of the application."

<https://hcservices.ecourts.gov.in/hcservices>
7. Therefore, the learned Government Advocate appearing for the respondents submitted that following the said analogy as adopted by the learned Judge of this Court in the order referred



to above, if FIR filed before 13.06.2019, that is the date on which the Government Order above referred to was issued, this Court can entertain the writ petition, where, usual order of direction can be given, of course, on imposing of fine. But, in other case, where FIR is filed on or after 13.06.2019, the parties can be driven to the Special Court so constituted to file proper petition, where direction also given to expeditiously decide those applications, at any rate, within a period of 7 days as has been set out above.

8.I have considered the said submissions made by both sides and have perused the materials placed before this Court.

9.Applying the said principle in the facts of the present case, where FIR in this case has been filed on 15.05.2019 i.e. prior to 13.06.2019, the plea raised by the petitioner herein can be entertained by this Court and accordingly, there will be a direction to the following effect:

"The respondents are directed to release the said vehicle subject to the following conditions:-

- a) The petitioner shall deposit a sum of Rs.5,000/- (Rupees Five Thousand only) to the District Educational Officer, Virudhunagar District;
- b) the petitioner shall execute an affidavit of undertaking that, he shall not involve in any offence in future that may lead to the seizure of the vehicle in question. The petitioner shall not alienate/encumber the vehicle in question till the proceedings are completed;
- c) The petitioner shall produce all the documents pertaining to the ownership of the seized vehicle;
- d) This order for release of the vehicle can be pressed into service by the petitioner 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 petitioner to approach the concerned Judicial Magistrate to get release of the vehicle, by filing necessary application in the manner known to law;
- e) As and when the respondents call for the vehicle for enquiry, the petitioner has to produce the vehicle in question and he shall co-operate with the enquiry to be conducted by the respondents;
- f) The amount, so directed to be deposited shall be deposited before the District Educational Officer, Virudhunagar District by appropriate transactions/acknowledgement and such amount to be



No costs.

Assistant Registrar ()

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Sub Assistant Registrar (CS)

1.The Revenue Divisional Officer,
Aruppukotai Taluk,
Virudhunagar District.

2.The Tahsildar,
Taluk Office,
Kariyapatti Taluk,
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3.The Inspector of Police,
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4.The Assistant Director,
Geology and Mines & Minerals
Department,
Virudhunagar District.

Copy to

The District Educational Officer,
Virudhunagar District.

+1 CC to M/s.D.FARJANA GHOSHIA, Advocate (SR-73367[F] dated 04/07/2019)

+1 CC to M/s.SPL GP (SR-73697[F] dated 05/07/2019)

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Common order made in
W.P (MD) No.15044 of 2019
04.07.2019