



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.07.2019

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THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P. (MD) No.15214 of 2019

B.Jothi

...Petitioner

-Vs-

1.The Revenue Divisional Officer,
Tirunelveli Division, Tirunelveli.

2.The Assistant Director of Mines,
Tirunelveli District, Tirunelveli.

3.The Inspector of Police,
Puliyangudi Police Station,
Tirunelveli District.

...Respondents

Prayer: Writ Petition is filed under Article 226 of Constitution of India, to issue a Writ of Mandamus, to direct the respondents to release the petitioner's lorry bearing registration No.TN 30 AZ 7799 within time frame to be fixed by this Court.

For Petitioner : Mr.S.Kumar

For Respondents : Mrs.J.Padmavathi
Special Government Pleader

ORDER

The prayer in this writ petition is for a Writ of Mandamus, to direct the respondents to release the petitioner's lorry bearing registration No.TN 30 AZ 7799 within time frame to be fixed by this Court.

2.Heard Mr.S.Kumar, learned counsel appearing for the petitioner and Mrs.J.Padmavathi, learned Special Government Pleader 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.50,000/- (Rupees Fifty Thousand only), if it is lorry 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 Special Government Pleader 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

Read :

1. G.O. (Ms) No.355, Home (Courts-II) Department, dated 11.04.2017.

2. G.O. (Ms) No.1564, Home (Courts-II) Department, dated 14.09.2018.

3. Order of the Hon'ble Division Bench of the Madurai Bench of Madras High Court, dated



29.10.2018 and 11.1.2019 passed in W.P. (MD)No.19936 of 2017 and others.

4. From the Registrar General, High Court, Madras Roc.No.86124/A/2008/G4, dated 14.02.2019 and 26.03.2019.

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ORDER:

In the Government Order first read above, orders were issued for constitution of a Special Court in the cadre of District Judge at Madurai to deal with the complaints and cases filed for unauthorized stock of granites in Patta lands and to deal with trial of offences for contravention of the provisions of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, and notified in Government Order second read above.

2. Consequently, the Registrar General High Court, Madras in his letter fourth read above has stated that as there is some difficulty in finding accommodation for housing the Special Court at Madurai for trial of cases filed under the Mines and Minerals (Development and Regulation) Act, 1957 (as amended by Act 10 of 2015) which was sanctioned in the G.O. first read above, till such constitution of the said Court, and based on the direction of the Hon'ble Division Bench of the Madurai Bench of Madras High Court in its order third read above, he has requested the Government, among others, to issue necessary notification for designating 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 Special Courts to try the cases filed under the Mines and Minerals (Development and Regulation) Act, 1957 (as amended by Act 10 of 2015) and to cause the same published in the Tamil Nadu Government Gazette.

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



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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."

7. Therefore, the learned Special Government Pleader 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 cannot be joined in 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 29.04.2019 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.50,000/- (Rupees Fifty Thousand only) to the District Educational Officer, Tirunelveli 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, Tirunelveli District by appropriate transactions/acknowledgement and such amount to be received by the District Educational Officer from the petitioner, shall be utilized for development of infrastructures in Government Schools, wherever, it is necessary.



10. With this direction, this Writ Petition is disposed of.
No costs.

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// True Copy //

Sd/-

Assistant Registrar (CO)

Sub Assistant Registrar (CS)

To

1. The Revenue Divisional Officer,
Tirunelveli Division, Tirunelveli.
2. The Assistant Director of Mines,
Tirunelveli District, Tirunelveli.
3. The Inspector of Police,
Puliyangudi Police Station,
Tirunelveli District.

Copy to:

The District Educational Officer, Tirunelveli.

+1 CC to M/s.S.KUMAR, Advocate (SR-73789[F] dated 05/07/2019)

TS(17.07.2019) 6P 6C

W.P. (MD) No.15214 of 2019
05.07.2019