



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.03.2019

CORAM:

THE HONOURABLE **MR. JUSTICE. N. SESHASAYEE**

W.P.(MD)No.5093 of 2019

M.Sivakumar

: Petitioner

/Vs./

1.The Commissioner of Police,
Madurai City, Madurai.

2.The Inspector of Police,
Economics Offence Wing - II, Madurai.

3.The Thasildar,
North Taluk, Madurai.

4.The Village Administrative Officer,
Aanaiyur, Madurai.

5.Mariya David

6.Gnanajothi

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents 1 to 4 to remove the seal put on the lock in the house property bearing Door No.41, Seethalakshmi Nagar, Kalai Nagar Extension, Madurai belongs to the petitioner based on the representation dated 01.02.2019 preferred by the petitioner.

For Petitioner : Mr.V.P.Rajan

For R-1 to R-4 : Mrs.S.Bharathi

Government Advocate (Crl. Side)

For R-6

: Mr.V.Suresh Kanna

ORDER

This matter came up on 20.03.2019 and since the case is posted today i.e., 21.03.2019 only to enable the learned Government Advocate (Crl. Side) to obtain instructions from the investigating officer, the matter is posted today. Therefore, the order dictated yesterday i.e., on 20.03.2019 is reproduced as below:

For a case registered against the fifth and sixth respondents, the Investigating Agency has searched the said premises in which the fifth and



sixth respondents are tenants and thereafter, the premises was sealed by the Police. This case is coming up repeatedly before this Court.

2. Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Crl. side) appearing for the respondents 1 to 4.

3. The learned counsel appearing for the petitioner submits that there is no power vested with the Police to seal the premises and deny him the right to enjoy his property.

4. Admittedly, the petitioner is not an accused in any of the criminal case and necessarily the act of the Investigating Agency shall not go beyond what is required for the purpose of investigation and that at any rate, it cannot transgress into the proprietrix rights of the petitioner to enjoy his property as its owner.

5. Today (20.03.2019), the learned counsel appearing for the sixth respondent files a counter affidavit and states that he is no more interested in continuing his tenancy under the petitioner and wants to collect his house hold articles, which has got nothing to do with the acquisition made in the First Information Report.

6. The keys are said to be with the fourth respondent / Village Administrative Officer, Aanaiyur, Madurai.

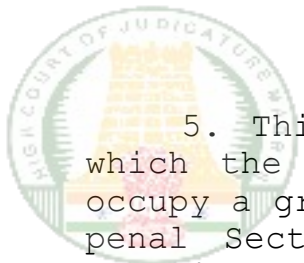
7. The second respondent / Inspector of Police, Economics Offence Wing-II, Madurai, is directed to be present to assist the Court on 21.03.2019 at 10.30 a.m.

8. Post the matter on 21.03.2019 at 10.30 a.m. "

2. Heard the learned Government Advocate (Crl. Side).

3. It is conceded by the learned Government Advocate (Crl. Side) that the property has been seized and it is under lock, and the keys are entrusted by the investigating officer namely, second respondent, who has entrusted the case to the Deputy Thasildar.

4. It appears that the investigating agency has obtained warrant for searching the premises of the respondents 5 and 6 from concerned officer and warrants have been executed. In other words, the intended search operation is completed. Any such justice / explanation now offered by the prosecution for getting the tenanted premises that of the respondents 5 and 6 and owned by the petitioner is that sight of occurrence is the said premises and hence it is to be preserved.



5. This explanation amuses this Court as how the building in which the financial institution carrying out of its business can occupy a greater possession than what the law contemplates. But the penal Section 5 of the TANPID Act merely makes non payment of deposit of amounts to the depositors by the financial institution as an offence and it has got very little to do with the place where the business is done. There may be any number of documents which the investigating agency may have to gather to substantiate the allegation made in the FIR, but then the process is over when the search warrants are executed. It appears that the investigating agency has misconceived or misconstrued the provisions of law and has unconsciously stepped into the zone of patent error in believing that the building could be sealed. This Court therefore directs that the buildings should be opened and the keys are directed to be handed over to the petitioner.

6. The learned counsel appearing for the sixth respondent submitted that there are two bureaus and steel almirah and a car alone in the premises which he wants to remove and inventory may be obtained.

7. The investigating officer may oversee and also see that if the objects are required to be attached and accordingly, they may be allowed to be removed either by the investigating officer or by the sixth respondent after taking necessary inventory and giving receipt of the same to the petitioner, within a period of two weeks from the date of receipt of a copy of this order.

8. With the above direction, this writ petition is disposed of. No costs.

Sd/-

Assistant Registrar (W)

/ True Copy /

Sub Assistant Registrar (CS)

sm
To

1. The Commissioner of Police,
Madurai City, Madurai.

2. The Inspector of Police,
Economics Offence Wing - II, Madurai.

3. The Thasildar,
North Taluk, Madurai.

<https://hcservices.ecourts.gov.in/hcservices/>

4. The Village Administrative Officer,
Aanaiyur, Madurai.



+1 CC to M/s.V.SURESH KANNA, Advocate (SR-55570[F]dated 21/03/2019)

WEB COPY

W.P. (MD) No. 5093 of 2019
21.03.2019

ES/KK/15.04.2019/4P/6C