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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.07.2019

CORAM:

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P (MD) No.15901 of 2019

AVN Construction,
Rep. by its Proprietor,
V.Israel Jeyakumar,
S/o.Vedha Sironmony,
No.4/1/A1, Ananchicode,
Karungal Post,
Kanyakumari District.

... Petitioner

Vs.

1.The Revenue Divisional Officer,
Padmanabhapuram,
Kanyakumari District.

2.The Assistant Director of Geology and Mining,
Collectorate,
Kanyakumari District,
Nagercoil.

3.The Tahsildar,
Killiyoor Taluk,
Kanyakumari District.

4.The Inspector of Police,
Karungal Police Station,
Kanyakumari District.

5.The Village Administrative Officer,
Paloor Village,
Kanyakumari District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Mandamus, directing the respondents to release the seized JCB vehicle bearing Registration No.TN-75-D-7014.

For Petitioner : Mr.T.Selvakumar

For Respondents : Mrs.J.Padmavathy Devi,
Special Government Pleader.

**ORDER**

This writ petition is filed seeking a Writ of Mandamus, directing the respondents to release the JCB vehicle bearing Registration No.TN-75-D-7014 seized by the third respondent herein on 15.06.2019 pertaining to the case in Crime No.236 of 2019 on the file of the third respondent herein and return the vehicle to the petitioner.

2. A Division Bench of this Court has, on 29.10.2018 issued a series of detailed 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."

3. Till such time the Special Courts were constituted, release of the seized vehicles were being sought before this Court in terms of Article 226 of the Constitution of India and such writ Petitions were being entertained.

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

.....

Home (Courts-II) Department

G.O. (Ms)No.298

Dated 13.06.2019



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விகாரி வருடம்
வைகாசி திங்கள் 30-ஆம்
திருவள்ளுவர் ஆண்டு 2050

நாள்

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.

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 Gazette:-

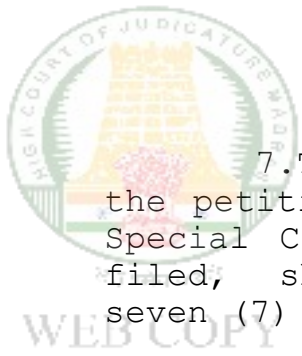
NOTIFICATION

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.

..."

5.It has been ascertained that pursuant to the aforesaid G.O., Special Courts have commenced receiving and disposing applications for release of vehicles.

6.The petitioner in this case has approached the Principal District Munsif cum Judicial Magistrate, Eraniel, for return of the vehicle in CrI.M.P.No.3577 of 2019. However, the Magistrate vide order dated 03.09.2019 has in turn directed the petitioner back to this Court and rightly so, seeing as the petitioner has not approached the Special Court constituted for the purpose.



7. This Writ Petition is thus dismissed, however, permitting the petitioner to file the application seeking release before the Special Court constituted for this purpose. Such application, if filed, shall be disposed by the Special Court within a period of seven (7) days from the date of filing of the same. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar (CS)

To

1. The Revenue Divisional Officer,
Padmanabhapuram,
Kanyakumari District.
2. The Assistant Director of Geology and Mining,
Collectorate,
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Nagercoil.
3. The Tahsildar,
Killiyoor Taluk,
Kanyakumari District.
4. The Inspector of Police,
Karungal Police Station,
Kanyakumari District.
5. The Village Administrative Officer,
Paloor Village,
Kanyakumari District.

+1CC TO MR. T. SELVAKUMARAN, Advocate Sr. No. 75806
+1CC TO THE SPECIAL GOVERNMENT PLEADER SR. No. 76011

W. P. (MD) No. 15901 of 2019
17.07.2019

SGS (CO)
TR (18.07.2019) 6P 8C