



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : **19.09.2019**

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE R.THARANI

W.A. (MD)No.948 of 2019

and

C.M.P. (MD)Nos.8571 and 8573 of 2019

R.Ganesan

... Appellant/Petitioner

Vs.

1. The Revenue Divisional Officer,
Revenue Divisional Office,
Melur, Madurai District.

2. The Tahsildar,
Madurai East,
Madurai.

3. The Assistant Director,
Tamil Nadu Mines and Minerals,
Madurai District.

... Respondents/Respondents

PRAYER: Writ Appeal is filed under Clause 15 of the Letter Patent Act, to set aside the order dated 30.08.2019 made in W.P.(MD) No.18930 of 2019 on the file of this Court for directing the respondents herein to release the vehicle of the petitioner viz., Ashok Leyland (Tipper Lorry) bearing Regn No.TN-59-U-3306 and allow the writ appeal.

Prayer in WP(MD). 18930/ 2019 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To Direct the respondents to release the petitioners Ashok Leyland (Tipper Lorry) vehicle bearing Registration No. TN -59- AU- 3306, hand over to the petitioner on the basis of the petitioners representation dated 28.08.2019.

For Appellant : Mr.K.Muthu Ganesa Pandian

For Respondents : Mr.A.Muthukaruppan
Additional Government Pleader

JUDGMENT

[Judgment of this Court was made by **T.S.SIVAGNANAM, J.**]

Heard Mr.K.Muthu Ganesa Pandian, learned counsel appearing
for the appellant and Mr.A.Muthukaruppan, learned Additional
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Government Pleader for the respondents. By consent of both parties, this writ appeal is taken up for final disposal.

2. This appeal has been filed by the writ petitioner, challenging the order made in W.P.(MD)No.18930 of 2019. The writ petition was filed by the appellant praying for a direction to the respondents to release his Ashok Leyland (Tipper Lorry), bearing Registration No.TN-59-U-3306 by considering his representation dated 28.08.2019.

3. The lorry was transporting soil and was intercepted by the respondents and according to the respondents, the appellant has illegally transported soil and therefore, the vehicle has been seized and it is in the custody of the second respondent Tahsildar, Madurai East.

4. The learned Single Bench in the impugned order referred to the decision of the Hon'ble Division Bench of this Court dated 29.10.2018, wherein comprehensive directions were issued as to how such matters have to be dealt with. On a perusal of the directions issued, we find that the directions are time bound and the authorities are bound to strictly adhere to such directions. Further, the Court directed that a Special Court be constituted by the Government for the purpose of dealing with such cases. The State Government has accordingly issued a notification in G.O.Ms.No.298, Home (Courts-II) Department, dated 13.06.2019 by designating the Court of the Principal Judge, City Civil Court, Chennai and the Principal District Courts / District Courts in each Judicial 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. The learned Single Bench directed the appellant to approach the Special Court in terms of the above notification. We find that there is no error in the direction issued by the learned Single Bench by directing the petitioner to approach the Special Court as there is an effective remedy available to the persons like the appellant. However, the case on hand appears to be factually peculiar, as admittedly the authorities have not followed the time bound directions issued by the Hon'ble Division Bench of this Court in its order dated 29.10.2018.

6. It is not in dispute that no FIR has been registered against the appellant nor any memo has been issued to the person in charge of the vehicle and mineral, as required to be issued as per the directions, dated 29.10.2018. In such



circumstances, the question is put as to what remedy would be available to the appellant.

7. The learned counsel for the appellant has drawn our attention to an order passed by the Principal Sessions Judge, Madurai exercising the jurisdiction as Special Court under the said Act, in respect of the vehicle, which was seized by the Inspector of Police, K.Puthur Police Station. Owner of the vehicle one A.Sithkhan has filed Cr.M.P.No.3088 of 2019 under Section 451 Cr.P.C., to return the vehicle. Even in the cause title in the column provided for Crime number, it is stated as 'not known'. The Special Court, after taking into consideration the facts, found that to exercise the power under Section 451 Cr.P.C., there must be an inquiry or trial and in the case of A.Sithkhan, no case is registered by the Police and therefore, the Court was not inclined to grant interim custody of the vehicle under Section 451 Cr.P.C., as no case is registered or pending in respect of the offence and accordingly, dismissed the petition. In all probabilities, if the appellant approaches the Special Court, he will also be placed with the similar order and the application will be dismissed.

8. The learned Additional Government Pleader has produced the copy of the communication sent by the Assistant Director, Geology and Mines Department, Madurai to the Revenue Tahsildar, Melur, dated 19.09.2018. On a perusal of the same, we find that there is no reference to any criminal case nor any memo issued to the petitioner, the owner of the vehicle or the owner of the mineral as required under Clause xiv of the directions issued by the Hon'ble Division Bench of this Court, dated 29.10.2018. Therefore, the facts of the present case are peculiar.

9. It is not known as to why the authorities have not adhered to the directions of the Hon'ble Division Bench of this Court, dated 29.10.2018. If there has been deliberate failure on the part the authorities, this will be well within the jurisdiction to initiate *suo motu* act of contempt on the deliberate erring officials. We can also reasonably infer that there may be collusion between the officials and the wrong doers. However, we do not wish to express anything in this regard in the present case. Considering these facts, we treat the present appeal as peculiar case and therefore, we inclined to exercise jurisdiction to release the vehicle and grant interim custody of the vehicle to the appellant subject to the following conditions:-

(1) the second respondent Tahsildar is directed to unload the sand, which has been loaded into the lorry and with the assistance of the third respondent dispose of the same in accordance with the procedure within a period of three days from the date of receipt of a copy of this order;

(2) after the sand is removed from the lorry, the second respondent is directed to produce the lorry before the learned



Judicial Magistrate Court, Melur, within a period of three days from the date on which the soil is removed;

(3) on the vehicle is being produced, the petitioner is directed to file an appropriate application before the learned Judicial Magistrate, which shall be taken on file;

(4) the petitioner shall deposit a sum of Rs.50,000/-, to the credit of the said case, within the time framed by the learned Judicial Magistrate;

(5) the original Registration Certificate of the lorry shall be kept in the custody of the learned Judicial Magistrate, Melur.

(6) upon remittance of the amount as specified namely, Rs.50,000/-, the lorry shall be released and interim custody be granted in favour of the appellant;

(7) liberty is granted to the respondent to register appropriate civil or criminal proceedings against the appellant;

10. With the above directions, this writ appeal is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar (CS)

To

1.The Revenue Divisional Officer,
Revenue Divisional Office,
Melur, Madurai District.

2.The Tahsildar,
Madurai East,
Madurai.

3.The Assistant Director,
Tamil Nadu Mines and Minerals,
Madurai District.

4. The Judicial Magistrate,
Melur

+1 CC to Mr.MUTHUGANESA PANDIAN, Advocate (SR-87870[F] dated 19/09/2019)

+1 CC to SPL GP (SR-88370[F] dated 20/09/2019)

ORDER MADE IN

W.A. (MD)No.948 of 2019

19.09.2019

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MK (24.09.2019) 4P 7C

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