

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Order reserved on 01.10.2020****Order delivered on 27.10.2020****Writ Petition (Cr.) No.399 of 2020**

M/s Shree Krishna Earthmovers, through its proprietor Raj Kumar Agrawal, son of Kishanlal Agrawal, aged about 63 years, resident of Agrawal House No.31/1, Behind City Kotwali, Danipara, Raigarh, Tahsil & District-Raigarh (CG)

---Petitioner***Versus***

- 1.State of Chhattisgarh, through the Secretary, Ministry of Home, Mahanadi Bhawan, Mantralaya, Naya Raipur, District Raipur (CG)
- 2.The Collector, Raigarh, District-Raigarh (CG)
- 3.The Additional Collector, Raigarh, District-Raigarh (CG)
- 4.The Station House Officer, Police Station-Chandrapur, District Janjgir-Champa (CG)

---Respondents

For Petitioner	: Mr.Hari Agrawal, Advocate
For Respondents/State	: Mr.Jitendra Pali, Dy.A.G.

Hon'ble Shri Justice Sanjay K. Agrawal**C.A.V. Order**

1. Raj Kumar Agrawal, who is proprietor of M/s Shree Krishna Earthmovers, is registered owner of Volvo EC210D Crawler Excavator with Machine. The said vehicle was seized by respondents authorities in a proceeding initiated under Section 247 of the Chhattisgarh Land Revenue Code, 1959 (hereinafter called 'the Code'). He made an application on

01.10.2019 for grant of interim custody of the said vehicle, which was not decided by respondent No.2. Again he moved an application on 03.02.2020, which was kept pending by respondent No.3 by order dated 13.07.2020 stating that the petitioner is not party in proceeding initiated under Section 247 of the Code and Amrit Patel, who is the person involved in the illegal mining case has not deposited the fine imposed upon him.

2. Now the petitioner calls in question the proceeding initiated under Section 247 of the Code as well as in alternative sought direction to the respondents authorities to decide his application for grant of interim custody of the vehicle.
3. Mr.Hari Agrawal, learned counsel for the petitioner, would submit that the learned Collector/Additional Collector, Raigarh before whom his application is pending has not decided the application since last one year and when he moved another application that has also been kept pending by order dated 13.07.2020 stating that Amrit Patel to whom the vehicle in question was given on rent has not deposited the fine imposed upon him. He would further submit that the entire action of seizing his vehicle is totally

unauthorized, without jurisdiction and without authority of law. He would also submit that in view of the judgment of the Supreme Court in the matter of Sunderbhai Ambalal Desai V. State of Gujarat¹ followed in the matter of General Insurance Council and others v. State of Andhra Pradesh and others², appropriate direction be issued to respondents No.2 and 3 to decide his application for interim custody of the vehicle expeditiously.

4. Mr.Jitendra Pali, learned Deputy Advocate General for the respondents/State, would submit that the petitioner's vehicle was found involved not only in proceeding under Section 247 of the Code, but also in proceeding under Section 71(3) of the Chhattisgarh Minor Mineral Rules, 2015, as such, the petitioner is not entitled for interim custody of the vehicle.
5. I have heard learned counsel for the parties and considered their rival submissions made hereinabove also went through the records with utmost circumspection.
6. The petitioner's vehicle was seized by the respondents authorities on 12.04.2019 and

1 (2002) 10 SCC 283

2 (2010) 6 SCC 768

application for interim custody of the vehicle is pending since 01.10.2019. Application for urgent hearing has been kept pending by order dated 03.07.2020. The petitioner being registered owner of the vehicle is not required to be party in the said proceeding and application for interim custody of the vehicle has to be decided expeditiously in view of the judgment of the Supreme Court in the matter of Sunderbhai Ambalal Desai (supra) in which it has been held as under:-

"7. In our view, the powers under Section 451 CrPC should be exercised expeditiously and judiciously. It would serve various purposes, namely:-

1. Owner of the article would not suffer because of its remaining unused or by its misappropriation;

2. court or the police would not be required to keep the article in safe custody;

3. if the proper panchanama before handing over possession of article is prepared, that can be used in evidence instead of its production before the court during the trial. If necessary, evidence could also be recorded describing the nature of the property in detail; and

4. this jurisdiction of the court to record evidence should be exercised promptly so that there may not be further chance of tampering with the articles.

10. To avoid such a situation, in our view, powers under Section 451 CrPC should be exercised promptly and at the earliest.

17. In our view, whatever be the situation, it is of no use to keep such seized vehicles at the police stations for a long period. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicles, if required at any point of time. This can be done pending hearing of applications for return of such vehicles.

18. In case where the vehicle is not claimed by the accused, owner, or the insurance company or by third person, then such vehicle may be ordered to be auctioned by the court. If the said vehicle is insured with the insurance company then insurance company be informed by the court to take possession of the vehicle which is not claimed by the owner or a third person. If Insurance company fails to take possession, the vehicles may be sold as per the direction of the court. The court would pass such order within a period of six months from the date of production of the said vehicle before the court. In any case, before handing over possession of such vehicles, appropriate photographs of the said vehicle should be taken and detailed panchnama should be prepared."

7. The above-stated decision Sunderbhai Ambalal Desai (supra) has been followed by the Supreme Court in the matter of General Insurance Council (supra).
8. Since the petitioner's application for grant of interim custody of the vehicle is pending

consideration before respondent No.2/3, it ought to have decided in light of the judgment of the Supreme court in the matter of Sunderbhai Ambalal Desai (supra).

9. In view of that, respondent No.2/3 is directed to decide the application of the petitioner for interim custody of the vehicle filed on 01.10.2019 read with other application filed on 03.02.2020. The petitioner shall appear before the respondent No.2/3 on 2nd November, 2020 and his application for interim custody will be decided within 7 days from that day by respondent No.2/3 by a reasoned and speaking order.
10. With the aforesaid direction/observation, the writ petition stands finally disposed of. It is made clear that this Court has not expressed any opinion on merits of the case. No order as to cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge

B/-