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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 29 OF 2021

Sachin Dhondiram Waghmode	]	..	Petitioner
vs.			
State of Maharashtra & Ors.	]	..	Respondents

Mr.Anvil S. Kalekar, for Petitioner.

Mrs.P.J. Gavhane, AGP for State.

Mr.Deepak Shinde, SDO-2, Solapur present.

**CORAM : K.K.TATED &
N.R.BORKAR, JJ.**

DATE : 8th JANUARY, 2021.

P.C.

1] Heard learned counsel for parties.

2] By this Petition under Article 226 and 227 of the Constitution of India, Petitioner is challenging order dated 10th July, 2018 passed by Respondent No.3- Sub Divisional Officer No.2, Solapur and seeking direction against the Respondents to release the seized vehicle i.e. Tata LPK 1618 Tipper bearing registration No.MH-13 AX 4767, Chasis No. 2D06074 and Engine No.63433907.

3] It is the case of Petitioner that in the present proceeding, Respondent No.3-SDO issued show cause notice dated 10th July, 2018 stating as to why sum of Rs.12,00,000/- should not be recovered from the Petitioner on the basis of earlier indemnity bond dated 28th June, 2016 and kept it's hearing on 16th July, 2018.

4] Learned counsel for Petitioner submits that without hearing the Petitioner, Respondent No.3 passed the order on 10th July, 2018 itself. He further submits that Respondent has filed Affidavit-in-Reply in the present proceeding on 12th October, 2020. It is submitted that in the reply, they came with another order dated 31st July, 2018. He submits that order dated 10th July, 2018 was passed without hearing Petitioner and that too before the date of hearing. Therefore, same is required to be set aside.

5] Learned AGP for State submits that the concerned Officer Mr. Deepak Shinde (Sub Divisional Officer-2) is present before this Court. She submits that after considering the entire matter, they are ready and willing to hear the matter afresh. Learned AGP submits that they will decide the matter pursuant to show-cause notice dated 10th July, 2018 after hearing the Petitioner according to law. She further submits that they have no objection to release the vehicle in question in favour of

the Petitioner, subject to the undertaking from the Petitioner that he will not create any third party right, title or interest qua the said vehicle till the matter is decided. To that effect, she has given in writing with the signature of concerned officer. The same is taken on record and marked as x- for identification.

6] In view of this fact, by consent of both the sides, following order is passed :

a] Orders dated 10th July, 2018 and 31st July 2018 passed by Respondent No.3-SDO are set aside.

b] Liberty is granted to the Respondent No.3 to pass fresh orders pursuant to the show cause notice dated 10th July, 2018 after hearing the Petitioner on its own merits, according to law.

c] Liberty is granted to the Petitioner, if he so desires, to file additional reply to the show cause notice dated 10th July, 2018 on or before 16th January, 2021.

d] Petitioner is directed to submit his undertaking before Respondent No.3 that he will not create any third party right, title or interest qua the vehicle in question till hearing and final disposal of the matter by the respondent No.3 and after filing of said undertaking, the respondent No.3 shall release vehicle in question without any condition.

e] All contentions of both the parties are kept open.

- f] Writ Petition stands disposed of, accordingly.
- g] No order as to costs.

[N.R.BORKAR, J]

[K.K.TATED, J]