



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.[MD]No.22794 of 2021

and

W.M.P.[MD]No.19254 of 2021

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M.Ponraj

... Petitioner

Vs.

1.The Additional Superintendent of Police,
(Prohibition Enforcement Wing),
Sivagangai District.

2.The Inspector of Police,
Pallathur Police Station,
Sivagangai District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records pertaining to the impugned order passed by the first respondent in Na.Ka.No.16/Ku.Ka.Ka./MaVi-Va/Siva/2020, dated 09.11.2021 and quash the same as illegal.

For Petitioner
For Respondents

: Mr.P.Saravana Kumar
: Mr.M.Ramesh
Government Advocate

O R D E R

Captioned main writ petition has been filed assailing an order dated 09.11.2021 bearing reference ந.க.எண்.16/கட.கா.க/மவி-வா/சிவ/2020 [hereinafter 'impugned order' for the sake of convenience and clarity] made by the first respondent.

2.Short facts are impugned order has been made by the first respondent under Section 14(4) of Tamil Nadu Prohibition Act, 1937 [hereinafter 'said Act' for the sake of convenience and clarity] wherein and whereby, writ petitioner's four wheeler namely a Mahindra Bolero multi utility vehicle [hereinafter 'said automobile' for the sake of convenience and clarity] bearing Registration No. TN 81 A 4323 has been confiscated and ordered to be auctioned for having been used qua alleged offences under Section 270 IPC r/w. Section 4(1)(a) of said Act vide Crime No.40 of 2020 on the file of the second respondent. To be noted, the alleged occurrence date is 02.04.2020 (18:00 hours) and this is also the date of seizure of said automobile.



3. Notwithstanding very many averments and several grounds raised in the writ affidavit, Mr. P. Saravana Kumar, learned Counsel for writ petitioner in the hearing today, in his campaign against the impugned order made two focused submissions/points.

4. The first point turns on an argument that for making an order under Section 14(4) of said Act, the two provisos to Section 14(4) have to be complied. Section 14(4) of said Act with two provisos reads as follows:

'14(4). Notwithstanding anything contained in sub-sections (1) and (3), the Collector or other Prohibition Officer in-charge of the district or any other officer authorised by the State Government and in that behalf is satisfied that an offence has been committed against this Act and whether or not a prosecution is instituted for such offence, he may, without prejudice to any other punishment to which the offender is liable under this Act, order confiscation of any animal, vessel, cart or other vehicle used in the commission of such offence:

Provided that, before passing an order of confiscation, the owner or the person from whom such animal, vessel, cart or other vehicle is seized, shall be given-

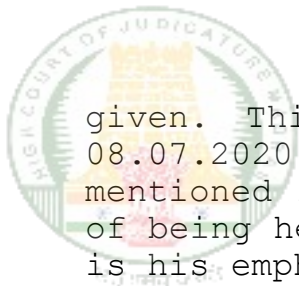
(i) a notice in writing informing him of the grounds on which it is proposed to confiscate the animal, vessel, cart or other vehicle:

(ii) an opportunity of making a representation in writing within a reasonable time, not exceeding fourteen days, as may be specified in the notice, against the grounds of confiscation; and

(iii) a reasonable opportunity of being heard in the matter.

Provided further that the owner or the person from whom such animal, vessel, cart or other vehicle is seized shall be given an option to pay, in lieu of its confiscation, an amount not exceeding the market price of such animal, vessel, cart or other vehicle.'

5. The first point urged by learned Counsel for writ petitioner is vide Clauses (i) & (ii) of first proviso, notice in writing informing the writ petitioner about the grounds on which the confiscation is proposed has been given, the writ petitioner has also given a representation vide clause (ii) of first proviso, but clause (iii) i.e., reasonable opportunity of hearing has not been



given. This notice under clause (i) of first proviso is dated 08.07.2020 and writ petitioner's representation / explanation is mentioned in the impugned order itself but a reasonable opportunity of being heard vide clause (iii) of first proviso has not been given is his emphatic say.

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6.The second point urged by learned Counsel for writ petitioner is the second proviso to Section 14(4) has been given a go-by as the writ petitioner has not been given an option to pay an amount not exceeding the market price of said automobile in lieu of confiscation.

7.Mr.M.Ramesh, learned Government Advocate accepted notice on behalf of both the respondents and an officer from the second respondent police station is present in Court instructing the learned State Counsel. The State Counsel also has the benefit of records of the proceedings *qua* impugned order.

8.Owing to the short point and simple facts on which captioned matter turns, with the consent of learned Counsel on both sides main writ petition was taken up and heard out.

9.In response to the aforementioned two points urged by learned Counsel for writ petitioner, learned State Counsel on instructions and on the basis of records *qua* the impugned order submitted that notice regarding proposed ground for confiscation has been given on 08.07.2020 but it appears that the writ petitioner has not made a representation and therefore, the impugned order does not deserve to be interfered with.

10.In response to the aforementioned submission of learned State Counsel, learned Counsel for writ petitioner submitted that the three clauses vide first proviso and the second proviso have to be complied and it cannot be gainsaid that notice informing grounds of proposed confiscation and opportunity to make a representation will suffice.

11.This Court carefully considered the rival submissions.

12.From a plain reading of the aforementioned ie., Section 14 (4) of said Act under which the impugned order has been made, it is clear that the three sub-clauses of the first proviso are connected by the conjunction 'and' likewise both the provisos are statutorily imperative.

13.Regarding writ petitioner not having responded to 08.07.2020 notice, a perusal of the impugned order reveals that the impugned order itself says that the writ petitioner has given tpsf;fk; ie., explanation. This is captured in paragraph No.2 of the impugned order. This puts an end to this argument.



14.There is nothing in the records of respondents to demonstrate that writ petitioner has been given an opportunity of being heard much less a reasonable opportunity and equally there is nothing in the records of the respondents to demonstrate that the writ petitioner was given the option to pay the market price of said automobile in lieu of confiscation. The sequitur is clause (iii) of first proviso and the second proviso have been given a go-by.

15.As already alluded to supra, both provisos are imperative and the three sub-clauses of the first proviso are conjunctive and a perusal of the same brings to light that they impact the rights of the writ petitioner. This is more so in the case on hand as the impugned order directs the auctioning of the said automobile. Therefore, this Court is of the considered view that the third clause of first proviso and second proviso to Section 14(4) being given a go-by vitiates the impugned order and calls for interference. However, as the other sub clauses of first proviso ie., sub-clauses (i) & (ii) have admittedly been complied, it will suffice if the first respondent proceeds from that stage ie., from the stage of writ petitioner having given explanation (post 08.07.2020 notice) and complete the rest of the proceedings in accordance with clause (iii) of first proviso and second proviso of Section 14(4) of said Act.

16.In the light of narrative, discussion and dispositive reasoning set out supra, the following order is made:

a) The impugned order is set aside solely on the ground that opportunity of being heard and option to pay market price in lieu of confiscation have not been given;

b) As a continuation of the above limb, though obvious it is made clear that this Court has not expressed any view or opinion on the merits of the matter and the impugned order is set aside owing to non-compliance with clause (iii) of first proviso and second proviso to Section 14(4) of said Act.

c) The first respondent shall now proceed with the matter from the stage of explanation given by the writ petitioner (which was given post 08.07.2020 notice). In other words, the first respondent shall now proceed with the matter on the basis of available records by giving a reasonable opportunity of being heard to the writ petitioner and also an option to pay market value of said automobile in lieu of confiscation, conclude the proceedings on its own merits and in accordance with law as expeditiously as his business would permit and in any event within a



fortnight from today ie., on or before **06.01.2022**;

d) The writ petitioner shall cooperate with the first respondent for completion of the proceedings as per aforementioned directives of this Court.

17. Captioned writ petition is disposed of in the aforesaid manner with the aforementioned directives. Consequently, captioned Writ Miscellaneous Petition thereat is disposed of as closed. There shall be no order as to costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

MR

NOTE: *In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.*

To

1.The Additional Superintendent of Police,
(Prohibition Enforcement Wing),
Sivagangai District.

2.The Inspector of Police,
Pallathur Police Station,
Sivagangai District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.SPL GP (SR-40483[F] dated 27/12/2021)

ORDER MADE IN

W.P.[MD]No.22794 of 2021

23.12.2021

SK (CO)

GC(31.12.2021) 5P 5C