



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 19.12.2024

CORAM

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P (MD).No.3647 of 2021

S.Kesavaraj

... Petitioner

Vs.

1.The Assistant Director,
Mines and Minerals,
Thanjavur District.

2.The Revenue Divisional Officer-cum-Executive Magistrate
Thanjavur,
Thanjavur District.

3.The Inspector of Police,
Kallaperumbur Police Station,
Thanjavur District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India
praying to issue a Writ of Mandamus directing the respondents to release the
Petitioner's vehicle namely, Bullock Cart forthwith

For Petitioner : Mr.S.Elumalai

For Respondents : Mr.M.Senthil Ayyanar
1 and 2 Govt.Advocate

For Respondent-3 :M/s.M.Aasha
Govt.Advocate(Crl.side)



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ORDER

This writ petition has been filed for a direction, to release the Petitioner's vehicle namely, Bullock Cart forthwith

2. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

3. The issue in respect of release of Vehicle has been already dealt with by the Division Bench of this Court in **W.P.SR.No.49596 of 2020, dated 20.08.2020 (G.Elangovan .vs. The District Collector, District Collectorate, Tiruvarur District)** and directed to submit an application for release of vehicle when the offence committed under the Mines and Minerals (Development and Regulation) Act, 1957 and the Rules framed thereunder before the designated Court under the Act. The relevant portion of the order reads as under:

*“5. From the aforesaid orders passed, it has been made clear by the Division Bench in which one of us was a party (**Justice M.M.Sundresh**) to the effect that any application for release of the vehicle when an offence mentioned under the Mines and Minerals (Development and Regulation) Act, 1957 or*



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the Rules framed thereunder is indicated, the remedy open to the party is to approach the designated Court. Applying the same logic, even in a case where an FIR has been registered on the basis of a private complaint and when the allegation indicates an offence punishable under the Mines and Minerals (Development and Regulations) Act, 1957 or the Rules framed any request for release of vehicle will have to be made before the designated Court alone. This is for the reason that the allegation would constitute an offence under the Mines and Minerals (Development and Regulation) Act and Rules framed thereunder and therefore notwithstanding the non mentioning of the violation committed under the provisions of Indian Penal Code, it is only the designated Court which will have jurisdiction.

6. In the Judgment referred above, the Division Bench has clearly indicated the difference between the seizure and confiscation, particularly, in the light of the provisions governed under the enactment. Therefore, the power to release is only available to the designated Court. This is for the reason that confiscation involves a process and a release is not a matter of course being one of the options open to the Court by considering the facts governing. If that is the position, this Court cannot interdict the same without going into the role assigned to the designated Court and without taking note of the relevant provisions governing.



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7. Before the learned Single Judge, unfortunately, the order of the Division Bench has not been brought to the notice. Perhaps, that is the reason why the scope and ambit of the provisions concerned available with the Mines and Minerals (Development and Regulation) Act, 1957 has not been taken note of. As stated, the Division Bench has clearly mentioned in one of its directions that the only remedy open to a person seeking release of vehicle, which is allegedly involved in an offence attracted under the provisions of the Mines and Minerals (Development and Regulation) Act, 1957 and the Rules is before the designated Court. In such view of the matter, the objection raised by the Registry stands upheld.

8. There is a thought process which was gone into at the time of passing the order by the Division Bench. One of the reasons is that the designated Court is expected to apply its mind on the merits and facts of the case before exercising its power either for confiscation or release, as the case may be. We have already held that even the revenue authority does not have the power to release the vehicle on compounding. Once such a power is not available, power under Article 226 of the Constitution of India being discretionary and directory also cannot be invoked in a given case where the vehicle is also with the custody of the Police. The designated court can exercise the power of release or confiscation irrespective of the fact that the vehicle is with the Police or with the judicial custody. This will also solve the problem of delay that may occur. “



4. In view of the above, the prayer sought for in this Writ Petition cannot be maintained and the Writ Petition is dismissed. There shall be no order as to costs. However, if the vehicle is still under the custody of the third respondent, the Petitioner is at liberty to file an application before the designated Court, in the manner known to law.

19.12.2024

NCC : Yes/No
Internet : Yes/No
Index : Yes/No

vsn

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G.K.ILANTHIRAIYAN, J.

vsn

ORDER MADER IN

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