

**Kumar Vs. The Assistant Director, Geology and Mining Department,
Thoothukudi District and Others**

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Thoothukudi District and Others**

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Court : Chennai Madurai

Decided On : Aug-16-2016

Judge : M. Venugopal

Appeal No. : W.P.(MD)No. 14980 of 2016

Appellant : Kumar

Respondent : The Assistant Director, Geology and Mining Department,
Thoothukudi District and Others

Judgement :

(Prayer: Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the respondents to release the petitioner's lorry bearing Registration No.TN-76-J-8892 seized on 12.06.2016 by the 4th respondent to the petitioner.)

1. Heard both sides.
2. By consent, the main Writ petition itself is taken up for final disposal.
3. No counter is filed on behalf of the Respondents.

4. According to the petitioner, he is the owner of the lorry bearing registration No.TN-76-J-8892 and the said lorry was engaged by Sri Maruthi Lorry Booking Office, Piranoor, Tirunelveli District to load sea shell grit from an authorised merchant for salt, dry fish and sea shell grit viz., Sri Mahalakshmi Traders, Thoothukudi. On 22.06.2016, at about 05.00 pm, when the petitioner was loading sea shell grit from Sri Mahalakshmi Traders at Keela Arasaradi, Ottapidaram Taluk, the 4th Respondent seized his vehicle by saying that his lorry was utilized to load shell grit without any valid permit.

5. In fact, the seizure was reported before the Third Respondent/Tahsildar, Ottapidaram Taluk, Thoothukudi District by the Fourth Respondent/Inspector of Police, Thalamuthu Nagar Police Station, Thoothukudi District. In the meanwhile, on 15.06.2016, on behalf of the owner of the said Sri Mahalakshmi Traders, a representation was made before the Third respondent/Tahsildar, Ottapidaram Taluk, Thoothukudi District, mentioning that there is a valid permission to procure shell grit and therefore, the seizure of the lorry by the Fourth Respondent is not legally correct and therefore prayed for release of the lorry by the Third Respondent.

6. When that be the facts situation, on 20.06.2016, the Third Respondent/Tahsildar, Ottapidaram Taluk, Thoothukudi District vide his proceedings in Na.Ka.A2/3774/2016 sent a communication to the Second Respondent/Revenue Divisional Officer, Kovilpatti Division, Thoothukudi District. Through the said communication, the Third Respondent informed the Second Respondent about the seizure of the shell grit and requested the Second Respondent to take action as per Tamil Nadu Mines and Minerals Rules. However, in turn, the Second Respondent, as per proceedings in Na.Ka.No.Aa2/4101/2016 dated 30.06.2016 sought for a preparation chart of value for the seized shell grit along with the lorry from the First Respondent. Thereafter, the First Respondent, as per proceedings, in Na.Ka.G.M.1/325/2016, dated 01.07.2016 informed the Second Respondent stating that the shells are under the Gulf of Manner Marine National Park and therefore directed the Second Respondent to get clarification from the concerned Forest Department regarding the valuation. In this regard, it is the specific stand of the petitioner that the First

Respondent had admitted that the shell grit is not a mineral coming under the Mines and Minerals Act.

7. It comes to be known that the Third Respondent made a request in his proceedings in Na.Ka.A2/3774/2016, dated 06.07.2016 addressed to the District Forest Officer, Thoothukudi, informing about the seizure of shell grit along with lorry and the direction of the First Respondent for taking necessary penal action. On 22.07.2016, the Forest Department sent a reply to the Third Respondent/Tahsildar, Ottapidaram Taluk, Thoothukudi District stating that the shell grits are in unidentifiable position and therefore, the Forest Department cannot initiate any action. Also, it was clarified by the Forest Department that it is for the Respondent Nos.1 to 3 to proceed in accordance with the Tamil Nadu Mines and Minerals Rules. After intimating the stand of the Forest Department, the Third Respondent sent a communication to the Second Respondent on 25.07.2016. In fact, the Third Respondent/Tahsildar, Ottapidaram Taluk, Thoothukudi District requested to intimate the stand of the Second Respondent for releasing the petitioner's lorry along with the seized shell grit. Even thereafter, the Second Respondent, in stead of passing any orders for releasing his lorry, again, sent a communication dated 27.07.2016 to the First Respondent seeking clarification to proceed further.

8. The real grievance of the petitioner is that his lorry was seized on 12.06.2016, is being kept under the custody of the Fourth Respondent/Inspector of Police, Thalamuthu Nagar Police Station, Thoothukudi District, that too, in open place. It cannot be gain-said that if the seized lorry bearing Regn.No.TN-76-J-8892 is kept in an open place, under the very hot sun, rain, then, there is every possibility of the parts of the lorry getting rusted. Also, the lorry would also be in a rotten position, within a passage of time, as opined by this Court.

9. At this stage, it comes to be known that this Court on 17.05.2013 in W.P.(MD)No.14224 of 2013 at paragraph Nos.8 to 10 had observed as follows:

8. In the instant case, the petitioner is said to have submitted his representation dated 02.05.2013 addressed to the 2nd respondent praying for handing over of the Pick up Mini Van bearing Registration No.KL 9 AD 3334 in question.

9. One cannot ignore an important fact that a Judicial Magistrate can pass an order under Section 451 Cr.P.C. only after physical or symbolical production of seized material before the Court and that too only after hearing both sides. It cannot be gainsaid that such an order is final as between the parties. A party affected by such an order is entitled to file a Revision before the Competent Forum. For disposal of property under Section 451 of Cr.P.C., it is necessary that the property should be in the control of Magistrate. The orders to be passed by the Competent Judicial Magistrate are under Sections 451 and 457 of Cr.P.C., which are during the pendency of trial or enquiry.

10. Be that as it may and taking note of the fact that the seized vehicle cannot be kept either in the Police Station or within a precincts of R.D.Os. office etc., and also bearing in mind an important fact that such keeping of seized vehicle for a long time will be detrimental to the interest of the Petitioner, this Court, in the interest of justice, directs the 1st respondent to release the Ashok Leyland Mini Pick up Van bearing Registration No. KL 9 AD 3334, subject to the petitioner fulfilling the following conditions:

(a) The petitioner is directed to deposit a sum of Rs.25,000/- (Rupees twenty five thousand only) in cash before the 1st respondent;

(b) The petitioner is directed to produce all the documents pertaining to the ownership of the seized vehicle;

(c) The petitioner is to file an affidavit of undertaking that he will cause production of the vehicle in question before the competent / concerned Respondents (as the case may be) as and when called for and further, he will not alienate the vehicle in question till the appropriate proceedings initiated are completed;

(d) On compliance of the above conditions, the 1st respondent is directed to release the seized vehicle bearing Registration No. KL 9 AD 3334 to the petitioner (if he is in custody and possession), within three days from the date of receipt of a copy of this order;

(e) The 1st respondent is directed to pass final orders in the adjudication proceedings within a period of 45 days;

(f) This order for the release of the vehicle can be pressed into service by the petitioner only if the vehicle is not in the custody of the criminal court. If the vehicle is in the custody of concerned criminal court of appropriate jurisdiction, then, option is given to the Petitioner to approach the concerned Judicial Magistrate to get release of the vehicle, by filing necessary Application in the manner known to law and in accordance with law; and

(g) Inasmuch as the vehicle Ashok Leyland Mini Pick up Van bearing Registration No. KL 9 AD 3334 is seized by the 2nd respondent on 25.04.2013, the above order is to be complied with, within three days, if no order of adjudication is passed or confiscation is passed as on today.

10. Considering the fact that the petitioner's lorry bearing Regn.No.TN- 76-J-8892 is now under the custody of the third respondent/Tahsildar, Ottapidaram Taluk, Thoothukudi District , after the lorry being handed over by the Fourth Respondent, on 13.06.2016 itself, as per the version of the Learned Government Advocate, appearing for the Respondent Nos.1 to 3, this Court, to prevent an Aberration of Justice and in furtherance of Substantial Cause of Justice, is inclined to release the lorry bearing Regn.No. TN-76-J- 8892, subject to the following conditions:

(a) The petitioner is directed to deposit a sum of Rs.25,000/- (Rupees twenty five thousand only) in cash before the 3rd respondent;

(b) The petitioner is directed to produce all the documents pertaining to the ownership of the seized vehicle;

(c) The petitioner is to file an affidavit of undertaking that he will cause production of the vehicle in question before the competent / concerned Respondents (as the case may be) as and when called for and further, he will not alienate the vehicle in question till the appropriate proceedings initiated are completed;

(d) On compliance of the above conditions, the 3rd respondent is directed to release the seized vehicle bearing Registration No. TN-76-J-8892 to the petitioner

(if he is in custody and possession), within three days from the date of receipt of a copy of this order;

(e) The 3rd respondent is directed to pass final orders in the adjudication proceedings within a period of 45 days;

(f) This order for the release of the vehicle can be pressed into service by the petitioner only if the vehicle is not in the custody of the criminal court. If the vehicle is in the custody of concerned criminal court of appropriate jurisdiction, then, option is given to the Petitioner to approach the concerned Judicial Magistrate to get release of the vehicle, by filing necessary Application in the manner known to law and in accordance with law; and

g) In view of the fact that the vehicle bearing registration No. TN-76-J-8892 was seized by the 4th respondent on 12.06.2016, the above order is to be complied with within one week, if no order of adjudication is passed or confiscation is passed as on today.

11. With the aforesaid direction(s), the Writ petition is disposed of. No costs.

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