

(Judgment sheet)
IN THE PESHAWAR HIGH COURT,
PESHAWAR,
[Judicial Department].

Writ Petition No.516-P/2014

Ali Bahadar son of Baghi Shah,
 r/o Pakrari, District Swabi.

Petitioner (s)

VERSUS

Toyota Indus Motor Company (Ltd),
 Through its Chief Executive and others.

Respondents

| | |
|-------------------|---|
| For Petitioner :- | <u>Malik Muhammad Ajmal, Advocate.</u> |
| For Respondents:- | <u>Mr. Rab Nawaz Khan, AAG along</u> <u>with Nauman Akhtar (Inspector</u> <u>Litigation) and M.Iqbal ETO,</u> <u>Peshawar.</u> |
| Date of hearing: | <u>25.10.2018</u> |

JUDGMENT

ROOH-UL-AMIN KHAN, J:- By invoking the constitutional jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, Ali Bahadar, the petitioner, seeks issuance of an appropriate writ directing the respondents to hand over/return Toyota Pickup Hilux Double Cabin bearing engine No.2L-9148487, chassis No.LN85-703491 and registration No.6457 (*to be referred hereinafter as “the vehicle in question”*) to him unconditionally.

2. He averred in his writ petition that the vehicle in question, assembled by Toyoto Indus Motor Company

(Ltd)/respondent No.1, was sold to Honda Power Cars (Pvt) Ltd/respondent No.2, vide sale certificate No.11248 dated 15.05.1994. Respondent No.2 applied for its registration to Motor Registration Authority and Excise & Taxation Officer, Karachi/respondents No.10 and 11, respectively. Ultimately, registration book of the vehicle in question was issued along with original file and computerized number plates. Later, respondents No.2 sold the vehicle in question to M/S Arif Khan & brothers/respondent No.3 vide sale deed dated 07.04.1997 with its registration No.6457. The vehicle in question was then purchased by one Purdil Khan from respondent No.3 vide sale deed dated 07.04.1997, who transferred its ownership in his name. The vehicle in question was then purchased by one Mujeeb ur Rehman/respondent No.5, who also transferred its ownership in his name. Thereafter, the petitioner purchased the vehicle in question vide sale deed No.8 dated 09.01.2011. He approached respondents No.10 and 11 for its transfer in his name. In the meantime, the vehicle in question was seized by Sher Muhammad Inspector, Directorate General of Excise and Taxation, Peshawar/respondent No.8 from possession of petitioner's son; resultantly an FIR was registered against the petitioner in the year 2013 by the above named inspector, hence, this writ petition.

3. The respondents have filed their para-wise comments, wherein stance of the petitioner has been refuted. The respondents have asserted in the comments that according to FSL report, chassis number of the vehicle in question has found tampered.

4. Arguments of learned counsel for the parties heard and record perused.

5. With regard to entitlement of petitioner for custody of the vehicle, suffice to say that though according to Registration Authority, registration number of the vehicle in question is genuine, however, as per FSL report, its chassis number has been found deciphered. In this view of the matter, we, are not inclined to hand over custody of the vehicle in question to the petitioner, as it will amount to issuance of a license by the Court for plying a tampered and un-authorized vehicle on road.

6. On the other side, we have noted with great concern that the vehicle in question had been taken into custody by Sher Muhammad Khan Inspector and FIR was registered against the petitioner on 12.09.2013, but till date, no challan has been submitted against the petitioner. On 25.09.2018, when this case came up for hearing, following order was passed by this Court:-

“We have noted with great concern that the vehicle was taken into custody by the Excise Squad and FIR was registered by Inspector Sher Muhammad Khan against the petitioner

in the year 2013. Since then, the vehicle of petitioner has been kept in custody by Excise Department in their possession without any proceedings in the case. In the early hours, Inspector Nauman Akhtar present in Court was asked about the whereabouts of the vehicle, who stated that the same has been parked in the Excise Warehouse, Swabi, thus he was directed to produce the same before this Court. **After an hour, the Court was apprised that the vehicle has been brought loaded in truck, as it is not in running condition.**

Since the vehicle has been taken into custody by the Excise Department in the year 2013 and has been parked under open sky without any care or has been misused and mishandles by the officials. The learned counsel for the petitioner informed that the questioned vehicle has been gifted by the Excise authorities to the Provincial Minister of Excise Department for his personal/family use. Be that as it may, admittedly the vehicle remained in possession of Excise authorities since 2013, so they are responsible to bring it in original condition with all its tools and accessories. They are directed to produce the same on the next date of hearing in its original position before the Court on 3.10.2018, failing which the law will take its own course. In case of missing of any item in the vehicle in question, Sher Muhammad Khan, Nauman Akhtar Inspectors and Iqbal AETO, will be responsible.”

7. Photographs of the vehicle in question have been brought on file, which depict that it has been completely deteriorated/damaged because of its rough handling, therefore, is not in running condition. The Government of Khyber Pakhtunkhwa Excise and Taxation Department, under section 43 read with section 23 and sub-section (4) of section 25 of the Provincial Motor Vehicles Ordinance, 1965, has framed Khyber Pakhtunkhwa (Road Checking Seizing and Disposal of Motor Vehicles Rules, 2015, *(hereafter to be referred as the Rules of 2015)*. Rule 3 of which empower the seizing officer to seize vehicles on the grounds enumerated therein which also includes vehicles having suspicious chassis number. Rule 4 of the Rules of 2015, speaks qua safe parking of seized vehicles. It provides that soon after taking possession of the vehicle under Rule 3, the seizing Officer shall prepare inventory in Form "A" in quadruplicate. One copy of the receipt shall be given to the person from whom the vehicle is taken into possession while the second copy, along with the vehicle, shall immediately be sent to the Officer in charge of the warehouse for safe parking of the vehicle. The third copy shall forthwith be sent to the District Officer, along with a brief report, who shall inform the concerned Deputy Officer along with a brief report, who shall inform the concerned Deputy Director and such Deputy Directory shall further inform the Director

General, accordingly. The fourth copy of the receipt shall be kept by the Seizing Officer for his own record. According to rule 4(2) of Rules 2015, the Officer incharge of the warehouse shall enter Form “A” and other particulars of the vehicle in a separate register to be maintained by him in “Form B” as well as in the database specially designed for the purpose and **such officer shall be responsible for the safe custody of the vehicle till its disposal in accordance with these rules.** (The bold and underlines are supplied for emphasis). As per law and Rules, on receipt of report, the District Officer was under laden duty to issue a notice to the owner of last possessor/keeper of the vehicle through registered post with acknowledgement due, asking him to appear before the District Officer and establish his bona fide ownership and possession within two weeks. In case of appearance of the owner or keeper, the District Officer **shall** decide the case within two weeks, failing which, the case shall be referred to the Director Excise and Taxation for extension of time, who may grant extension for a period not more than thirty days. In the case in hand, a notice under Rule 6 (c) of the Rules *ibid*, has been shown issued to the petitioner, but without acknowledgment due, whereas, there is manifest tampering in the date of its issuance, which is sufficient to disclose that the alleged notice has not been issued at all, rather prepared later on to fill-up the

lecuna of file, after taking cognizance of matter by this Court.

8. Nothing is available on record to show that in pursuance of above mentioned so called notice, the petitioner/owner has not attended the office of District Officer, even then, the Officer Incharge Warehouse made recourse to Rule 7, as a result, publication was issued in daily Mashirq dated 06.03.2014, however, thereafter unnecessarily, the vehicle was kept in custody. The District Officer Excise & Taxation was bound under Rule 8 of Rules ibid to proceed with the case and should have been confiscated the vehicle through a speaking order, followed by an open auction through an “Auction Committee”. It is a pity that in a case like this, the vehicle has been seized on 12.09.2013, but proceeding has not yet been completed. Since 2013, till date, the Seizing Officer along with Warehouse officials, have not move a step ahead in the case. The fate of the vehicle in question has purposely been left undecided. Neither it has been parked in safe place nor dealt with in accordance with the mandatory provision of Rules referred to above.

9. For what has been discussed above, the writ sought by the petitioner is declined. However, we are of the considered view to hold that respondents/ Excise and Taxation Department has not dealt with the vehicle in question in accordance with the mandatory provisions of

the Rules referred to above, therefore, a copy of this order be placed before the Secretary Excise and Taxation, Khyber Pakhtunkhwa with the direction to probe into the matter as to why disposal of case has unnecessarily been delayed and as to why the vehicle in question has not been kept in safe place and to take legal action against the delinquent Official(s), under intimation to this Court through the Additional Registrar (Judicial) of this Court, positively. The Additional Registrar (Judicial) shall pursue the matter with the worthy Secretary Excise and Taxation Department, Peshawar, and apprise the Court about the progress.

Announced:
25.10.2018

Siraj Afridi P.S.

JUDGE

JUDGE