

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Judgment: 28.04.2011*

+ **R.S.A.No. 129/2007 & CM No. 6702/2007**

GOVT. OF NCT OF DELHI & ANR Appellants
Through: Ms. Avnish Ahlawat, Advocate.

Versus

VINOD KUMAR NAGRATH & ORS Respondents
Through: None.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

INDERMEET KAUR, J. (Oral)

1. This appeal has impugned the judgment and decree dated 22.01.2007 which had endorsed the finding of the trial judge dated 12.09.2005 whereby the suit filed by the plaintiff seeking recovery of money had been decreed in the sum of Rs. 23,896/- along with the interest @ 6% per annum as also damages @ Rs. 200/- per day w.e.f. 14.07.99 to 18.08.99 which were also calculated with interest @ 6% per annum. The first appellate

court had modified the decree of the trial judge only to the extent that the damages awarded at the rate of Rs. 200/- per day for the aforementioned period had been set aside.

2. Plaintiff was the owner of medium motor vehicle (MMV) i.e. Swaraj Majda which is an open pick-up van. Vehicle was initially registered with Transport Department of Delhi on 04.06.1987. All the taxes up to 31.03.1988 had been paid. No Objection Certificate in terms of Section 29-A of the Motor Vehicle Act, 1939 had been granted in favour of the plaintiff. Plaintiff, thereafter, applied to the Regional Transport Authority, Merrut, U.P. for the assignment of new registration number for the said vehicle. For the entire period, the said vehicle was plying on road; plaintiff was paying the tax dues to defendant no. 4 and necessary endorsement to this effect had also been made. On 13.07.99, the vehicle was plying between Delhi to Agra; the vehicle was wrongly and illegally challaned and impounded at Delhi. In order to avoid inconvenience, the said challan was paid and the vehicle was released to the plaintiff. The vehicle was ordered to be released by the court of MM. This was vide order dated 14.07.99. However, the vehicle was not released. On enquiry, it was revealed that the vehicle was with the "Delhi

Registration Mark” but the permit had been obtained from UP; its clearance certificate had to be obtained from the Transport Authority of Delhi failing which vehicle could not be released. Letter dated 14.07.99 was issued to the plaintiff in this regard; the protests made by the plaintiff remained unheeded. In spite of notice, vehicle was not released. Plaintiff had accordingly filed the present suit seeking the following sums:-

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| 1. | Rs. 23,896/- | -illegally recovered from the plaintiff on 17.08.1999 |
| 2. | Rs. 42,000/-- | loss of income because of the illegal detention of vehicle for 35 days from 14.07.1999 to 18.08.1999 @ Rs. 1200/- per day. |
| 3. | Rs. 40,000/-- | damages and compensation on account of causing harassment and inconvenience to the plaintiff. |
| 4. | Rs. 1,02,896/- | Total |

3. Defendants contested the suit. It was denied that any amount was payable. It was admitted that the vehicle had been impounded on 13.07.1999 and a fine of Rs. 4,000/- had been imposed; this was because the temporary authorization of the vehicle had expired and it was without PUCC; vehicles having Delhi Registration number could not ply without paying road tax; this was as per the direction of apex court in PIL No. 13029 M.C. Mehta Vs. GNCT. The notice dated 14.07.1999 had been issued to

the plaintiff asking him to produce the tax clearance report which he had failed to produce; he produced it only on 18.08.99 on which date the vehicle was released.

4 On the pleadings of the parties, following four issues were framed:-

1. Whether the plaintiff is entitled for a decree of Rs. 1,50,000/- as claimed in the suite? OPP
2. To what interest, if any, the plaintiff is entitled to the above amount and if so, at what and for what period? OPP
3. Whether the suite is bad for non-joinder of necessary parties. If so, its effect? OPD (1&2)
4. Relief.

5 Plaintiff had proved the registration of the vehicle as also the certificate of fitness; No Objection Certificate had been proved as Ex. PW 1/12; national permit granted to the vehicle had been proved as Ex. PW 1/16; receipt of road tax and goods tax paid by plaintiff to defendant no. 4 from 15.04.88 to 31.12.91 was proved as Ex. PW 1/23; letter dated 14.07.99 was Ex. PW 1/49; the temporary permit granted to the vehicle of the plaintiff dated 07.07.99 was proved as Ex. PW 1/73; the validity to the pollution certificate w.e.f. 02.04.99 to 21.07.99 was proved as Ex. PW 1/74.

6. Defendants had also examined one witness in defense. No documentary evidence was produced. On the basis of oral and

documentary evidence, the trial judge had decreed the suit of the plaintiff on the first court i.e. the sum of Rs. 23,896/- which was illegally recovered from the plaintiff on 17.08.99 as road tax & which he had paid under protest. Damages w.e.f. 14.07.99 i.e. the date of the impounding of the vehicle up to 18.08.99 i.e. the date when the vehicle was released were also granted to the plaintiff.

7 This judgment was endorsed in first appeal. However, the damages for the aforementioned period as already noted supra had been disallowed.

8. This is a second appeal. It had been admitted and on 11.05.2007, the following substantial questions of law had been formulated. They inter alia reads as follows:-

1. When the vehicle is plying in Delhi with Delhi Registration Number, can the tax paid in another State without registering the vehicle there be construed as tax paid in Delhi, If so, its effect?
2. Whether the appellant can be asked to refund the tax with interest which the respondent has paid after the court order?

9 On behalf of the appellant, it has been urged that the impugned judgment calls for an interference as the respondent/plaintiff even as per his own showing paid the road tax to the UP Government; he had a registration of Delhi; he was

bound to pay road tax for plying the vehicle on the Delhi road to Delhi Government; plaintiff had applied for registration in Meerut after the date of impounding of the vehicle; the impugned judgment suffers from perversity in granting refund of ₹23,896/- to the respondents; it is liable to be set aside.

10 None has appeared for the respondents.

11 It is admitted that the vehicle in question was registered with the STA, Delhi. It is also not in dispute that the plaintiff had applied for the transfer of his vehicle to Meerut for registration and a 'NOC' to the said effect had been issued by the Delhi Government on 13.04.1988; this was under Section 29-A of the Motor Vehicles Act. The vehicle had been impounded on 14.07.99. On that date the vehicle was having a Delhi registration number DBL 6438. It is also not in dispute that the Meerut Government had accepted road tax from the plaintiff; these receipts of road tax by defendant No. 4 had been proved as Ex. PW-1/54 to Ex. PW-1/70 i.e. for the period intervening 01.07.1977 to 31.03.2000. The vehicle had been impounded for the reason that the plaintiff having a Delhi registration number was bound to pay road tax to the Delhi Government.

12 The evidence adduced by the plaintiff/respondent shows

that he is not a violator of law. He had admittedly paid road tax to defendant No. 4 for the period when he was caught plying the vehicle on the Delhi roads. He had also admittedly been granted a 'NOC' on 13.04.1988 by the Delhi Government wherein he had sought transfer of registration of his vehicle from Delhi to Meerut. His application seeking registration before the RTA, Meerut was also pending. The matter was under verification; on 15.04.1988, the RTA, Meerut had written to the Delhi Government to verify as to whether the NOC granted by it was genuine or not. The UP Government had not granted registration to the vehicle of the plaintiff for no fault of the plaintiff. The registration number was finally granted to the vehicle of the plaintiff in 2000. Road tax already having been paid by the plaintiff to UP Government and the registration of the vehicle not having been granted by Meerut STA was for no fault which could be attributed to the plaintiff. The impugned judgment had correctly noted that the second payment of road tax made by the plaintiff of ₹23,896/- is liable to be refunded to him. This exercise of discretion in the impugned judgment was fair. These findings do not in any manner call for any interference.

13 Substantial questions of law are answered accordingly in

favour of the respondents and against the appellants. There is no merit in this appeal. Appeal as also pending application are dismissed.

INDERMEET KAUR, J.

APRIL 28, 2011

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