IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

FRIDAY, THE 3RD DAY OF JUNE 2015/8TH JYAISHTA, 1937

WA.No. 1627 of 2012 () IN WP(C).16306/2012

AGAINST THE ORDER/JUDGMENT IN WP(C) 16306/2012 of HIGH COURT OF KERALA DATED 19-07-2012

APPELLANT/PETITIONER :

KRISHNAKUMAR
S/O.GOPALAKRISHNAN, CHAKKUNKIL HOUSE,
KRISHNA NIVAS
KAKKAD, KUNNAMKULAM, THRISSUR DISTRICT.

BY ADV. SRI.SANTHEEP ANKARATH

RESPONDENTS:
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1. THE JOINT REGIONAL TRANSPORT OFFICER
(ADDITIONAL REGISTERING AUTHORITY), GURUVAYOOR
PIN - 680 103.

2. THE JOINT REGIONAL TRANSPORT OFFICER,
IRINJALAKUDA,
PIN - 680 121.

BY SENIOR GOVERNMENT PLEADER SRI. LIJU STEPHEN

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 29-05-2015, THE COURT ON 03-06-2015 DELIVERED THE FOLLOWING:

smv

ANTONY DOMINIC
&
SHAJI P. CHALY, JJ.

W.A. No.1627 of 2012

Dated this the 3rd day of June, 2015

JUDGMENT

Shaji P. Chaly, J.

This appeal is filed by the petitioner in W.P.(C) No.16306 of 2012 challenging the judgment of the learned Single Judge dated 19.07.2012, by which the learned Single Judge has dismissed the writ petition.

2. Heard the learned counsel for the appellant and the learned Government Pleader appearing for the respondents.

3. The writ petition was filed by the appellant contending that when he approached the Transport Authority for remitting tax for the quarter, the same was refused to be accepted stating that the seating capacity of the vehicle was illegally reduced from 15 to 13, that, thereafter the appellant was served with Ext.P6 notice dated 2.6.2012, directing the appellant to surrender the original registration certificate of the vehicle within 7 days, failing which, appropriate action would be initiated against the appellant. To the notice issued by the Joint

Regional Transport Officer, Guruvayoor the appellant has given Ext.P7 reply, contending that he had purchased the vehicle on 12.7.2010 and from then onwards, as per the records available, seating capacity of the vehicle is shown as 13 and the previous owner has remitted the welfare fund as well as the tax on the premise that the seating capacity of the vehicle as 13. Further he has contended that he is a bona fide purchaser of the vehicle and he has not subscribed to any malpractice that are alleged by the Transport Authority in Ext.P6 and therefore, requested the authority to consider his objections and do the necessary so as to exonerate him from the liabilities that are proposed to be contemplated under Ext.P6 notice.

4. But declining the objections raised by the appellant to Ext.P6 notice, the Transport Authority has passed Ext.P8 order dated 23.6.2012 and confirmed the demands made in Ext.P6. Appellant was also directed by the said authority to surrender the registration certificate and permit of the vehicle. Apart from this, in the order, the appellant was informed that if he is aggrieved by Ext.P8 order he can prefer an appeal to the Deputy Transport Commissioner, Central Zone.

5. Appellant, instead of pursuing his remedies before the appellate authority, has chosen to file the writ petition challenging Exts.P6 and P8 mainly contending that he is a bona fide purchaser of the vehicle, that at the time of his purchase the seating capacity of the vehicle was 13 and all other documents pertaining to the vehicle and its user establish that the seating capacity of the vehicle is 13 and therefore, he is liable to pay tax, taking into account the seating capacity of the vehicle as 13. On this basis, he sought to quash Exts.P6 notice and P8 order.

6. The learned Single Judge after taking into account the submissions made by the appellant and the learned Government Pleader has found that there is no justification in pursuing any criminal action against the appellant but held that the appellant is liable for payment of tax in accordance with the actual seating capacity of the vehicle and nothing less. That is to say the contention raised by the appellant that he is liable to pay tax for the vehicle treating it as a 13 seater vehicle was negatived and accordingly the writ petition was dismissed.

7. We have gone through contentions raised in the writ petition, perused the documents and appreciated the arguments

advanced by the learned counsel for the appellant and the learned Government Pleader and are satisfied that the findings entered into by the learned Single Judge do not suffer from any infirmity or illegality and that therefore the same do not warrant any interference in this appeal.

8. But the learned counsel for the appellant at that point of time has made a request to confine his liability for payment of tax from the date of purchase of the vehicle by the appellant. We have found that a Division Bench of this Court has passed an interim order in this writ appeal on 12.9.2012 directing respondents to provisionally accept tax in respect of the vehicle of the appellant taking it as 15 seater from the date of purchase of the vehicle by the appellant.

9. On an evaluation and consideration of such request made by the appellant and particularly having regard to the findings in the judgment itself we feel that his liability to pay tax of the vehicle should be only from the date of purchase of the vehicle by him from the previous owner. Because even accepting that manipulations in the matter of alteration of the seat has taken place, the appellant cannot be made liable for the illegalities

committed by the previous owner. Therefore he shall be liable to pay tax as ordered by the authorities only from the date of purchase of the vehicle only. In such circumstances, we feel that such a request made by the appellant is only reasonable and therefore, we dispose of this writ appeal permitting the appellant to pay tax taking into account the seating capacity of the vehicle as 15 from the date of his purchase and the respondents are directed to accept the tax from the appellant with effect from the date of his purchase treating the vehicle as a 15 seater one. This shall be without prejudice to the right of the respondents to recover tax, if any, for the previous period from any one who is liable for the same.

Writ Appeal is disposed of as above.

Sd/-
ANTONY DOMINIC
JUDGE

Sd/-
SHAJI P. CHALY
JUDGE

//true copy//

P.A. to Judge

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