

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFIQUE**

WEDNESDAY, THE 2ND DAY OF DECEMBER 2015/11TH AGRAHAYANA, 1937

WA.No. 2588 of 2015

AGAINST THE JUDGMENT IN W.P.(C).NO.34373/2015, DATED 19-11-2015

NAME AND ADDRESS OF THE APPELLANT(S)/RESPONDENT NO.2 :

**BOBY GEORGE,
PARAKKA HOUSE, EZHATTUMUGHAM, ANGAMALY P.O.,
ERNAKULAM- 683 577.**

BY ADV. SRI.O.D.SIVADAS

**NAME AND ADDRESS OF THE RESPONDENT(S)/PETITIONER &
1ST RESPONDENT :**

**1. SANEESH A.S,
AMMUPPILLY HOUSE, YOUDHAPURAM, KALADY,
ERNAKULAM.**

**2. THE SECRETARY,
REGIONAL TRANSPORT AUTHORITY,
ERNAKULAM- 682 030.**

**R1 BY ADV. SRI.SAJEEV KUMAR K.GOPAL
R2 BY SR.GOVERNMENT PLEADER SRI.C.R.SYAMKUMAR**

**THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 02-12-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

Msd.

ASHOK BHUSHAN, CJ

&

A.M.SHAFFIQUE, J.

W.A.No.2588 of 2015

Dated this the 2nd day of December 2015

J U D G M E N T

Ashok Bhushan, CJ

Heard learned counsel for the appellant, learned counsel appearing for the 1st respondent as well as the learned Government Pleader.

2. This writ appeal has been filed against the judgment dated 19/11/2015 in W.P.C.No.34373 of 2015. The writ petitioner is the 1st respondent herein who had filed the writ petition praying for the following reliefs:

“i) Issue a writ of certiorari calling for the records leading to Exhibit P2 and quash the same;

ii) Issue a writ of mandamus or other appropriate writs, directions or orders directing the 1st respondent to issue clearance certificate in respect of stage carriage KL-60/A-5324 without surrendering the permit covered by it enabling the petitioner to complete the sale of the vehicle;

iii) render such other orders as are deemed fit and proper in the circumstances of the case."

3. Parties are referred as described in the writ petition.
4. The brief facts of the case are:

The writ petitioner is the registered owner of the vehicle KL-60/A-5324 which was leased out to the 2nd respondent. 2nd respondent had obtained a permit from the Regional Transport Authority (for short 'RTA'), Ernakulam on the route Ezhattumugham - Angamali. The vehicle was taken away by the writ petitioner on 15/08/2015. 2nd respondent filed a complaint before the Judicial First Class Magistrate Court alleging theft of the vehicle, on which, under the orders of the learned Magistrate, Crime No.1650/2015 was registered. A suit being O.S.No.620/2015, filed by the 2nd respondent to restrain the 1st respondent from issuing clearance certificate to the writ petitioner during the period of lease agreement and also to direct handing over of the vehicle to the 2nd respondent, is also pending consideration.

5. The writ petitioner submitted an application before the Secretary, RTA on 20/08/2015 for issuance of clearance certificate. Objections were raised by the 2nd respondent to the said application and an order was passed by the RTA, Ernakulam on 11/09/2015 as per Ext.P2, which is extracted as under:

“The dispute between the above parties was derived out of the breach of the conditions contained in the Lease Agreement entered into between them. Such disputes would have to be necessarily adjudicated before the appropriate Civil Forum. Sri.Boby George also stated that a petition about the incident was filed before the Hon'ble Judicial First Class Magistrate, Angamaly. Hence it is decided to await till the case is settled before the Court of Law.

In the meantime Sri.Saneesh A.S shall clear the tax arrears of this vehicle and the permit covered with this vehicle shall be surrendered, for considering the request for clearance certificate. He may file non-use intimation in Form G for getting exemption from future tax liability. Sri.Boby George has an option to continue the permit by offering another later model vehicle for replacing the S/c KL-60-A-5324,

if so desired."

6. Being aggrieved by the said order of the RTA, the writ petitioner had filed W.P.C.No.34373/2015, praying for quashing Ext.P2 and for a further direction to the 1st respondent to issue clearance certificate in respect of the stage carriage KL-60/A-5324.

7. The learned Single Judge, by judgment dated 19/11/2015, quashed Ext.P2 order and directed the 1st respondent to issue clearance certificate in respect of the vehicle, as sought. The operative portion of the judgment contained in paragraph 6 is as follows:

"I quash Ext.P2 order and direct the first respondent to issue the clearance certificate in respect of the vehicle KL-60-A-5324 as sought. I however make it clear that such issue of clearance certificate will not affect the contentions of either parties in the civil suit or in the criminal case pending. The clearance certificate shall be issued within a period of one week from the date of receipt of a copy of this judgment."

8. Challenging the judgment of the learned Single Judge, this writ appeal has been filed by the 2nd respondent, who is the permit holder. It is submitted by the learned counsel for the appellant that, the appellant, who is the permit holder, can only ask for release of the vehicle or can offer another vehicle for replacement. Permit also cannot be cancelled or suspended at the instance of the writ petitioner. It is also submitted that the judgment of the learned Single Judge directing issuance of clearance certificate to the writ petitioner cannot be sustained.

9. Learned counsel for the writ petitioner, refuting the submission of the learned counsel for the appellant, contends that the writ petitioner had taken possession of the vehicle on valid grounds since there was breach of the terms of agreement. He submits that the vehicle as well as the documents pertaining to the permit being with the writ petitioner, the writ petitioner has rightly applied before the RTA for clearance certificate.

10. The learned Government Pleader submits that there is no provision for issuance of any clearance certificate in the Motor Vehicles Act, 1988 and the Kerala Motor Vehicles Rules framed thereunder. It is submitted that permit can be either suspended

or cancelled, in accordance with the provisions of the Motor Vehicles Act. It is also submitted that the vehicle is attached to permit and the relevancy is the running of the service.

11. We have considered the submission of the learned counsel for the parties and perused the records.

12. From the facts brought on record, it is clear that, as on date, the possession of the vehicle is with the writ petitioner, although the 2nd respondent is the permit holder. Crime alleging theft of the vehicle has been registered and pending investigation/trial. Civil suit filed by the 2nd respondent is also pending with no orders in favour of the plaintiff, as on date. All the facts pertaining to the possession of the vehicle, its permit, have been brought to the notice of the RTA. The RTA is the authority who has to ensure that services as contemplated under the M.V.Act are provided. What methods have to be taken in a particular circumstance is in the domain of the RTA. We find substance in the submission of the learned Government Pleader that there is no provision under the Motor Vehicles Act for giving clearance certificate. The vehicle, which is attached to a permit, can only be permitted to be detached on an alternate vehicle or

when the permit is cancelled. In the facts of the present case, we are of the view, in the interest of justice, that Ext.P2 is liable to be set aside, relegating the matter to the RTA to pass fresh orders, in accordance with law.

In the result,

i) This writ appeal is disposed of setting aside Ext.P2 order issued by the Secretary, RTA.

ii) The direction issued by the learned Single Judge in the judgment dated 19/11/2015 is set aside leaving it open to the RTA to take such decision, as required by law.

(sd/-)
(ASHOK BHUSHAN, CHIEF JUSTICE)
(sd/-)
(A.M.SHAFFIQUE, JUDGE)

True Copy

PA to Judge

jsr/03/12/2015