

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 15TH DAY OF JANUARY 2015/25TH POUSHA, 1936

WP(C).No. 8656 of 2011 (F)

PETITIONER(S):

**SUDHA BANERJEE
VIJAYALAKSHMI QUARTERS, AYILAM ROAD, ATTINGAL
THIRUVANANTHAPURAM, PIN - 695 101.**

BY ADV. SRI.M.R.RAJESH

RESPONDENT(S):

- 1. STATE OF KERALA
REPRESENTED BY THE SECRETARY TO GOVERNMENT OF
KERALA, DEPARTMENT OF TRANSPORT, GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM - 695 001.**
- 2. THE REGIONAL TRANSPORT OFFICER,
ATTINGAL, THIRUVANANTHAPURAM - 691 501.**

ADDL. RESPONDENTS

**ADDL.R3 THE REGIONAL TRANSPORT AUTHORITY
ATTINGAL, THIRUVANANTHAPURAM - 695 101
(ADDL.R3 IS IMPEADED AS PER ORDER DATED 30.3.11 IN I.A NO.5166/11)**

**ADDL.R4 SUDHEER, S/O ALI AKBAR, SHAHANA MANZIL
CHEKKALA VILAKAM, ALANCODE P.O, ATTINGAL
THIRUVANANTHAPURAM DIST. 695 101.
(ADDL.R4 IS IMPEADED AS PER ORDER DT.24.6.11 IN I.A NO.9704/11)**

**R,R4 BY ADV. SRI.M.DINESH
R1 BY ADV. GOVERNMENT PLEADER
R BY GOVERNMENT PLEADER SRI. R. RANJITH**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 15-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

APPENDIX

PETITIONERS EXHIBITS:

- EXT.P1** COPY OF THE SALE AGREEMENT DATED 2.7.08 EXECUTED BY AND BETWEEN TRANSFERER SUDHEER ON THE ONE PART AND THE PETITIONER AND HER HUSBAND ON THE OTHER PART.
- EXT.P2** COPY OF THE NOTICE OF TRANSFER OF OWNERSHIP OF LORRY NO.KL-13/C-637 IN FORM NO.29 EXECUTED BY THE TRANSFERER SUDHEER AND THE TRANSFEREE THE PETITIONER.
- EXT.P3** COPY OF FIR IN RESPECT OF CRIME NO.292 ON THE FILES OF THE ATTINGAL POLICE STATION.
- EXT.P4** COPY OF THE ORDER DATED 21.10.09 IN W.P(C)NO. 28652 OF 2009 PASSED BY THIS HON'BLE COURT.
- EXT.P5** COPY OF THE APPLICATION DATED 13.2.10 SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT FOR GOODS CARRIAGE PERMIT.

RESPONDENTS EXHIBITS:

- EXT.R4(a)** COPY OF THE REGISTRATION CERTIFICATE OF THE VEHICLE BEARING REGISTRATION NO.KL-13/C-637.
- EXT.R4(b)** COPY OF THE FIR IN CRIME NO.148/2010 OF ATTINGAL POLICE STATION.

// TRUE COPY //

PA TO JUDGE.

SB

K. VINOD CHANDRAN, J.
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W.P.(C) No.8656 of 2011 - F
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Dated this the 15th day of January, 2015

J U D G M E N T

The petitioner along with her husband allegedly purchased a vehicle, which is said to be evidenced by Ext.P1 agreement; from the additional 4th respondent. The vehicle having registration No. KL-13/C-637 was a goods vehicle, which had a contract carriage permit. On the contract carriage permit expiring, the petitioner is said to have made an application for renewal, which application was refused to be accepted by the authorities on the ground that the petitioner is not the registered owner.

2. The petitioner contends that, the same is impermissible, since, the owner as defined under Section 2(30) of the Motor Vehicles Act, 1988 (for brevity, 'the MV Act') also includes a person in possession of a vehicle under a valid agreement, which position has been unequivocally declared by a Division Bench of this Court in

Raveendran v. R.T.O. Kannur [1995 (1) KLT 126].

3. The learned Counsel for the additional 4th respondent appears and submits that, in fact, the conditions of the sale were not satisfied. A reading of the agreement would indicate that the petitioner was to pay an amount as lumpsum and also pay off the instalments due to the finance company. The hypothication of the vehicle to the finance company has also been endorsed under Section 51 of the MV Act. The petitioner however, would take a stand that the amount due to the financier was paid directly to the additional 4th respondent and it was his refusal to pay of such amounts that resulted in the endorsement not being cancelled. It is also contended that the possession of the vehicle having been handed over, the additional 4th respondent could at least take proceedings for recovery if un-paid consideration.

4. These are not matters, which can be agitated under Article 226 of the Constitution of India. A proper

proceeding ought to be initiated for adjudication of such factual disputes. The agreement itself being one, which is alleged to be not one acted upon, by the petitioner herein, it is doubtful as to whether the dictum laid down in **Raveendran** (supra) would be applicable in the present case.

5. Further it is to be noticed that admittedly, there is a hypothication/hire purchase endorsed in the registration certificate. A person seeking renewal of the permit; be it the registered owner, or one having valid possession of the vehicle, necessarily has to obtain a No-Objection Certificate from the financier as has been stipulated in Section 51(6) of MV Act before applying for such renewal. There is no averment that such an NOC had been produced or even that an application had been preferred and a declaration made as stipulated in Section 51(7) and (8) of MV Act.

For all the above reasons, this Court does not find

any reason to entertain the prayers in the writ petition. The writ petition would stand dismissed, leaving open the contentions of the parties to be agitated before the appropriate forum.

Sd/-
K. VINOD CHANDRAN,
JUDGE

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// true copy //

P.A to Judge.