IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 30TH DAY OF JANUARY 2015/10TH MAGHA, 1936

W.P.(C).No.11353 of 2008 (B)

PETITIONER(S):-

BIJI CHACKO, S/O.JOSEPH CHACKO,
MUTTATHATTU HOUSE, PAIPPAD, CHANGANACHERRY.

BY ADV. SRI.M.P.MADHAVANKUTTY.

RESPONDENT(S):-
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1. THE DISTRICT EXECUTIVE OFFICER ,
   KERALA MOTOR TRANSPORT WORKER'S WELFARE FUND BOARD,
   KOTTAYAM.

2. TAHSILDAR, CHANGANACHERRY.

3. VILLAGE OFFICER, PAIPPAD,
   CHANGANACHERRY.

R1 BY STANDING COUNSEL SRI.K.S.MANU.
R2 & R3 BY GOVERNMENT PLEADER SRI.V.K.RAFEEQ.
R BY SRI.P.RAMAKRISHNAN, SC,KMTWF BOARD.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 30-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No.11353 of 2008-B

APPENDIX

PETITIONER(S)' EXHIBITS:-

EXT.P1 TRUE COPY OF THE PERMIT ISSUED TO THE PETITIONER.

EXT.P2 TRUE COPY OF THE DEMAND NOTICE ISSUED TO BIJU CHACKO.

RESPONDENT(S)' EXHIBITS:-
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vku/- (true copy)

K. Vinod Chandran, J.

W.P(C) No.11353 of 2008-B

Dated this the 30th day of January, 2015

JUDGMENT

The petitioner is aggrieved by the recovery proceedings initiated against the petitioner for dues of the previous owner of the vehicle, under the Kerala Motor Transport Workers' Welfare Fund Act, 1985 [for brevity “the Welfare Fund Act”].

2. The petitioner's contention is that the motor vehicle bearing registration No.KL-5-B-7398 was registered in the name of his brother, one Biju (Binu) Chacko, who had defaulted payment under the Welfare Fund Act. Subsequently the petitioner is said to have purchased the vehicle. The Board constituted under the Welfare Fund Act proceeded against such vehicle for dues under the Welfare Fund Act. The petitioner is before this Court challenging the same. The petitioner's contention is that the Board cannot proceed against the vehicle.

3. However, by the Amendment Act 23/2005, effective from 07.06.2005, Section 8A and sub-section (2) of Section 10 were introduced in the Welfare Fund Act. Section 8A mandated a clearance certificate from the Board for acceptance of motor

vehicles tax. Sub-section (2) of Section 10 created a charge on the vehicle for the arrears of tax on the vehicle. The issue of amendment and the liability prior to the amendment were considered in ***Ummer v. Joint R.T.O.*** **[2014 (4) KLT 358]**. This Court held that if the transfer is effected after the amendment, then necessarily the transferee of the vehicle would be liable to discharge the liability of the erstwhile owner of the vehicle in respect of the previous owner's dues under the Welfare Fund Act to enable payment of motor vehicle tax as also release the encumbrance by way of charge created on the vehicle. The transferee was held to be entitled to proceed against the erstwhile owner for realisation of the amounts paid on his behalf.

4. In the present case, it is not clear as to when the transfer was made. However, Exhibit P2 certificate/notice issued in the name of the earlier owner shows that the dues were for the period 2004 to 2007. Hence, necessarily the transfer would have been after the amendment. In such circumstance, the challenge raised is not sustainable. The petitioner has also not chosen to implead the alleged prior registered owner nor has even stated correctly the name of such person, who is admitted to be his brother.

5. However, if the petitioner approaches the authorities concerned, with a prayer for instalments, within a period of one month from the date of receipt of a copy of this judgment, the petitioner shall be permitted to settle the amounts covered by Exhibit P2, with interest, in six equal monthly instalments. Needless to say, the petitioner would be entitled to proceed against the previous owner for recovery of the arrears remitted by him, in appropriate proceedings.

The writ petition is disposed of with the above observations.

Sd/-
K.Vinod Chandran
Judge.

vku/-

(true copy)