

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 10TH DAY OF FEBRUARY 2015/21ST MAGHA, 1936

W.P.(C).No.13364 of 2008 (N)

PETITIONER(S):-

RICHARD DAVID, EMMANUEL VILLA,
HOUSE NO.26, B.R.N.NAGAR, THEKKEVILA P.O., KOLLAM-16,
REPRESENTED BY HIS POWER OF ATTORNEY HOLDER
BEATRICE DAVID, PRINCY COTTAGE, HOUSE NO.147A,
B.R.N.NAGAR, VADAKKEVILA P.O., KOLLAM.

BY ADVS.DR.K.P.SATHEESAN [SENIOR ADVOCATE]
SRI.K.K.GOPINATHAN NAIR.

RESPONDENT(S):-

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1. KERALA MOTOR TRANSPORT WORKERS WELFARE FUND INSPECTOR,
KOLLAM.
 2. THE DEPUTY TAHSILDAR (R.R.), KOLLAM.
 3. FERROZ KHAN, SHABANIZ MANZIL, KANNANALLOOR, KOLLAM.
 4. VIJAYARAJ,
BROTHERS NIVAS, THAZHUTHALA, KANNANALLOOR, KOLLAM.

R1 BY STANDING COUNSEL SRI.D.SAJEEV BABU.
R2 BY GOVERNMENT PLEADER SRI.R.RANJITH.
R3 BY ADVS. SRI.R.KISHORE
SRI.ARUN BABU.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
10-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C).NO.13364 OF 2008-N

APPENDIX

PETITIONER(S) EXHIBITS:-

- EXT.P-1 TRUE COPY OF THE ORDER DATED 25.2.2003 IN
 C.M.P.NO.11464/2003 IN O.P.NO.6494/2003.
- EXT.P-2 TRUE COPY OF THE COMMON JUDGMENT DTED 2.4.2003 IN
 O.P.NO.6494 OF 2003.
- EXT.P-3 ORIGINAL OF THE REVENUE RECOVERY NOTICE
 NO.D2-728/03 DATED 23.01.2003 ISSUED BY
 THE 2ND RESPONDENT.

RESPONDENTS' EXHIBITS:-

NIL.

Vku/-

(true copy)

K. Vinod Chandran, J.

W.P(C) No.13364 of 2008-N

Dated this the 10th day of February, 2015

JUDGMENT

The petitioner is aggrieved with the revenue recovery notice issued at Exhibit P3, for realization of the amounts due under the Kerala Motor Transport Workers' Welfare Fund Act, 1985 [for brevity "Welfare Fund Act"], for the period 1999-2000. The petitioner allege that the vehicle was sold on 25.01.1999, though the registration remained in the name of the petitioner.

2. In fact, there was an earlier proceeding, when this Court was approached by the petitioner and one another, with respect to the dispute on the claim made by the Motor Transport Workers' Welfare Fund Board, which is evident at Exhibit P2. The petitioner was aggrieved with the demand for welfare fund contributions, against which O.P.No.6494 of 2003 was filed. This Court had directed detention of the vehicle in the said Original Petition. Subsequently one Vijaya Raj filed O.P.No.8909 of 2003, contending that he is the present holder of the vehicle as per a valid agreement and, hence, he should be given release of the

vehicle. This Court considered the issue and found that the release of the vehicle would be granted to Vijaya Raj only on his complying with the contributions to the Motor Transport Workers' Welfare Fund from the period he commenced operation of the bus. With respect to the prior period, it was also directed that the authority would consider the matter afresh and proceed against the actual defaulter.

3. When the above Original Petition was filed, it was found that no final determination orders were passed pursuant to Exhibit P2 judgment. There was an obligation on the 1st respondent to conduct an enquiry and demand contribution within a period, as per Exhibit P2, which was found to have not been complied with. The officer of the Board was directed to be present and by a separate interim order, the 1st respondent was directed to file a counter affidavit, disclosing the entire relevant facts.

4. A counter affidavit has been placed on record by the 1st respondent, dated 09.02.2015. The 1st respondent has categorically stated in the counter affidavit that the transfer of the vehicle has occurred on 25.01.1999 despite the registration

remaining in the name of the petitioner herein. However, a claim is raised with respect to the period from 04/1998 to 12/1998, which is said to be Rs.13,035/- [Rupees thirteen thousand and thirty five]. Neither is there a final determination order produced nor is the said demand covered by the impugned recovery certificate.

In the above circumstances, the writ petition would stand allowed. Exhibit P3 revenue recovery notice would stand set aside. The petitioner could either satisfy the liability now stated in the counter affidavit or challenge the same in accordance with law, in appropriate proceedings. There shall be no order as to costs.

Sd/-
K. Vinod Chandran,
Judge

vku/

(true copy)