

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 2ND DAY OF FEBRUARY 2015/13TH MAGHA, 1936

WP(C).No. 13894 of 2010 (J)

PETITIONER(S):

**V.M.NAZAR, AGED 50 YEARS, S/O.MOIDEEN,
VATTAKKAVIL HOUSE, OONNUKAL P.O., KOTHAMANGALAM,
ERNAKULAM DISTRICT.**

**BY ADVS.SRI.M.G.KARTHIKEYAN
SRI.NIREESH MATHEW**

RESPONDENT(S):

- 1. STATE OF KERALA, REPRESENTED BY
CHIEF SECRETARY, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.**
- 2. THE DEPUTY COMMISSIONER OF EXCISE,
KACHERIPADY, ERNAKULAM.**
- 3. THE JOINT REGIONAL TRANSPORT OFFICER,
KOTHAMANGALAM.**
- 4. THE DISTRICT EXECUTIVE OFFICE,
KERALA MOTOR TRANSPORT WORKERS WELFARE,
FUND BOARD, ERNAKULAM.**
- 5. VARGHESE, S/O.OUSEPH, 46,
KANNAMKULAM, KOLAZHI GRAMA PANACHY,
THRISSUR DISTRICT, PIN - 680 010.**

*** ADDITIONAL R6 IMPEADED.**

- 6. THE DISTRICT EXECUTIVE OFFICER,
KERALA MOTOR TRANSPORT WORKERS WELFARE
FUND BOARD, THRISSUR.**

*** IS IMPEADED AS PER ORDER DTD.15.7.2010 IN IA.9752/2010.**

**R4 & R6 BY ADV. SRI.P.RAMAKRISHNAN, SC,KMTWF BOARD
R1-R3 BY GOVERNMENT PLEADER SRI.T.J.MICHAEL**

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

msv/

WP(C).No. 13894 of 2010 (J)

APPENDIX

PETITIONER(S)' EXHIBITS:

**EXT.P1: PHOTOCOPY OF THE ORDER NO.X7-10162/2007 DATED 13.1.2010 PASSED BY
THE 2ND RESPONDENT.**

**EXT.P2: PHOTOCOPY OF THE LETTER NO.E7-963/09 DATED 20.1.2010 SENT BY THE
2ND RESPONDENT TO THE 3RD RESPONDENT.**

**EXT.P3: PHOTOCOPY OF THE CERTIFICATE OF REGISTRATION AND
R.C.PARTICULARS IN RESPECT OF VEHICLE HAVING REG. NO.KL-6/C-7132.**

RESPONDENT(S)' EXHIBITS:

EXT.R4(a): TRUE COPY OF JUDGMENT DTD.11.2.2010 IN WP(C) NO.33579/2007.

//TRUE COPY//

P.S.TO JUDGE

Msv/

“CR”

K. Vinod Chandran, J.

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W.P.(C)No.13894 of 2010

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Dated this the 2nd day of February, 2015.

JUDGMENT

1. Petitioner is the purchaser of a vehicle, which was confiscated under the Abkari Act. So much is evident from Ext.P2, which states that, the vehicle, bearing Reg.No.KL-6/C 7132, was confiscated to the Government and sold in public auction on 16.12.2009. The sale was confirmed in the name of the highest bidder. However, when change in registration was sought for and request made for payment of tax, the taxation authorities refused to accept the tax, unless a certificate under Section 8A of the Kerala Motor Transport Workers' Welfare Fund Act, 1985 is produced.
2. Petitioner relies on Section 67H of the Abkari Act, to contend that, the petitioner, being a purchaser from the Government, and prior to the purchase, the vehicle having been vested in the Government,

there can be no further demand made on the petitioner, who is a *bona fide* purchaser in a public auction. Section 67H is extracted hereunder:

Property confiscated when to vest in Government:-

When an order for confiscation of any property has been passed under Section 67B or Section 67E or Section 67F and such order has become final in respect of the whole or any portion of such property, such property or portion thereof, as the case may be, shall vest in the Government free from all encumbrances.

3. Going by the specific provision, which vests the vehicle in the Government, if a confiscation order is passed under the Abkari Act, the confiscated vehicle, would be encumbrance free. In such circumstances, the Motor Transport Workers Welfare Fund Board, cannot proceed against the vehicle nor would there be available a charge on the vehicle for payment of contributions, prior to such confiscation and sale. Definitely, the Board will be entitled to proceed against the earlier owner for payment of contribution. But,

however, the purchaser from the Government, in any event, is not personally liable nor would the vehicle be liable for such prior liability. The vehicle, which vested in the Government, encumbrance free, is that purchased by the petitioner.

Writ petition is allowed, declaring that the petitioner is not liable for any amounts due from any prior owner of the vehicle confiscated by the Government and sold to the petitioner nor could any such liability be proceeded with against the vehicle. The Board, definitely, would be entitled to proceed against the registered owner, prior to confiscation.

K. Vinod Chandran, Judge.

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