IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

MONDAY, THE 28TH DAY OF SEPTEMBER 2015/6TH ASWINA, 1937

WP(C).No. 11561 of 2014 (U)

PETITIONER:

THE MANAGER,
M/S.MACRONET PRIVATE LIMITED, A & P ARCADE,
SAHODARAN AYYAPPAN RAOD, KADAVANTHARA, ERNAKULAM
KOCHI-682 016.

BY ADV. SRI.I.DINESH MENON

RESPONDENTS:
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1. THE REGIONAL TRANSPORT OFFICER/TAXATION OFFICER,
   OFFICE OF THE REGIONAL TRANSPORT OFFICER, KAKKANAD,
   ERNAKULAM, KOCHI-682 030.

2. THE DEPUTY TAHSILDAR [RR],
   KANAYANNUR TALUK, ERNAKULAM, KOCHI-682 011.

3. BASANT AUTOMOBILES,
   SHOP NO.A-1, USMAN COMPOUND, ST ROAD,
   NEAR R.K.STUDIO, CHEMBUR, BOMBAY-400 071.

R1 & R2 BY SENIOR GOVERNMENT PLEADER : SRI. T.J. MICHAEL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 28-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 11561 of 2014 (U)

APPENDIX

PETITIONER(S)' EXHIBITS :

EXHIBIT P1: COPY OF THE RC BOOK OF KL-7 BJ 8854.

EXHIBIT P2: COPY OF THE RECOVERY NOTICE OF KL-7 BJ 8854 DATED 30.7.2013.

EXHIBIT P3: COPY OF THE COMMUNICATION ISSUED BY THE 3RD RESPONDENT

EXHIBIT P4: COPY OF THE LETTER SHOWING TAKEN POSSESSION OF VEHICLE BY 3RD RESPONDENT DATED 26.02.2011.

EXHIBIT P5: COPY OF THE DISPUTE PREFERRED BY THE PETITIONER.

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

PA TO JUDGE

skr

ANIL K.NARENDRAN, J.

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W.P.(C). No.11561 of 2014

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Dated this the 28th day of September, 2015

J U D G M E N T

The petitioner who is the registered owner of a vehicle bearing registration number KL-7/BJ 8854 has approached this Court in this writ petition seeking a writ of certiorari to quash Ext.P2 demand notice issued under the Revenue Recovery Act and seeking a writ of mandamus commanding the respondent to consider Ext.P5 request made by him to adjudicate the matter and to find out as to who is in possession of the vehicle during the relevant period for which tax is demanded in respect of the aforesaid vehicle.

2. Going by the averments in the writ petition, the petitioner is the registered owner of a Light Motor Vehicle bearing registration number KL-7/BJ 8854, covered by Ext.P1 certificate of registration. The petitioner would contend that the fitness certificate of the vehicle in question expired on 21.05.2009 and thereafter it was never used on

the road. According to the petitioner, the vehicle was handed over to the 3rd respondent who scrapped it, which is evident from Ext.P3 communication. Relying on Ext.P4 tax invoice, the petitioner would contend that the vehicle was scrapped on 26.02.2011. The petitioner would also contend that while handing over possession of the vehicle to the 3rd respondent, the said respondent was instructed to surrender the registration certificate and other particulars of the vehicle to the authorities concerned. On receipt of Ext.P2 demand notice demanding the Motor Vehicle Tax in respect of the said vehicle, the petitioner submitted Ext.P5 representation before the respondent, but no reply was received. It was in such circumstances, the petitioner has approached this court in this writ petition seeking various reliefs.

3. By order dated 25.04.2014, this Court granted an interim stay of recovery proceedings pursuant to Ext.P2 demand notice on the petitioner depositing one half of the

amount demanded in the said notice with the 2nd respondent within a period of one month. The interim order was granted for a period of 2 months, which was not extended thereafter.

4. A counter affidavit has been filed by the 1st respondent contending that the vehicle in question is not a light motor vehicle as stated in the writ petition and it is a heavy goods vehicle. The tax in respect of the said vehicle fell in arrears with effect from 01.01.2011. Inspite of repeated demand notices, the petitioner, who is the registered owner of the vehicle, failed to remit tax. On 12.12.2012, demand notice was issued to petitioner to remit an amount of Rs. 29,040/- together with additional tax for the period from 01.01.2011 to 31.12.2012. Though the petitioner acknowledged the said demand notice on 28.12.2012, he failed to remit the tax demanded. It was in such circumstances, the revenue recovery requisition was forwarded to District Collector, Ernakulam for recovering

the arrears of tax amounting to Rs.43,560/- for the period from 01.01.2011 to 31.12.2012, which resulted in Ext.P2 demand notice being issued by the 2nd respondent. The 1st respondent would also contend that if the vehicle was in a dilapidated condition the registered owner should have intimated the said fact to the Registering Authority and should have filed 'G' form as stipulated in Section 5 of Kerala Motor Vehicle Taxation Act, so as to exempt the vehicle from payment of tax. The 1st respondent would also pointed out that the vehicle in question was issued with a permit bearing No.7/3806/2008 which was valid upto 23.10.2013. As per Section 82(1) of the Motor Vehicles Act, 1988, a permit shall not be transferable from one person to another except with the permission of the Transport Authority which granted the permit and shall not without such permission, operate to confer on any person to whom a vehicle covered by the permit is transferred or any right to use that vehicle in the manner authorised by the permit. Relying on Section 55(1) of Motor Vehicles Act, 1988, the 1st respondent would contend that, if the vehicle in question has been destroyed, the petitioner should have within 14 days reported that fact to the Registering Authority.

5. I have considered the contentions raised in the writ petition and also heard the learned Government Pleader appearing for the respondent.

6. The sole issue that arises for the consideration in this writ petition is as to the legality or otherwise of the demand for vehicle tax made in Ext.P2 demand notice.

7. As evident from Ext.P1 certificate of registration, the petitioner is the registered owner of a heavy goods vehicle bearing registration number KL-7/BJ 8854. The pleadings on record would indicate that the aforesaid vehicle was covered with a permit which was valid upto 23.10.2013. Ext.P2 demand notice was issued under the provisions of the Revenue Recovery Act, when there was

arrears of Motor Vehicle Tax for the period from 01.01.2011 to 31.12.2012. Though the petitioner would contend that he has already handed over the vehicle to the 3rd respondent who has scrapped the vehicle on 26.02.201, the documents produced along with the writ petition are not at all sufficient to draw such a conclusion. Further the provisions under the Motor Vehicles Act as well as the Motor Vehicle Taxation Act referred to in the counter affidavit filed by the 1st respondent make it explicitly clear that in order to escape from the liability of payment of Motor Vehicle Tax, the petitioner should have either filed 'G' form before the authority concerned or should have reported the dismantling of the vehicle to the Registering Authority in terms of Section 55 of the Motor Vehicles Act, so as to enable the said authority to cancel Ext.P1 certificate of registration. Having fail to do so, the petitioner cannot challenge the demand for Motor Vehicle Tax made in Ext.P2 demand notice for the period from

01.01.2011 to 31.12.2012. Therefore the petitioner is not entitled for any of the reliefs prayed for.

In the result the writ petition fails and the same is dismissed. No order as to costs.

Sd/-
ANIL K.NARENDRAN,
JUDGE.

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