IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 6TH DAY OF MARCH 2015/15TH PHALGUNA, 1936

WP(C).No. 13489 of 2014 (I)

PETITIONER :

NOOHUKANNU RAWTHER.M,
S/O.MEERA MYTHEEN RAWTHER,AGED 44 YEARS,
PUTHEN VEEDU,PAZHAKULAM P.O.,
ADOOR, PATHANAMTHITTA DISTRICT.

BY ADV. SRI.SAKIR.K.H.

RESPONDENT(S):
----

1. THE DISTRICT EXECUTIVE OFFICER,
   KERALA MOTOR TRANSPORT WORKERS WELFARE FUND BOARD,
   PATHANAMTHITTA DISTRICT-689 643.

2. THE DISTRICT EXECUTIVE OFFICER,
   KERALA MOTOR TRANSPORT WORKERS WELFARE FUND BOARD,
   PATHANAMTHITTA DISTRICT-689 643.

3. THE SUB REGIONAL TRANSPORT OFFICER,
   MOTOR VEHICLES DEPARTMENT, ADOOR,
   PATHANAMTHITTA.PIN-691 523

4. THE DEPUTY COMMISSIONER OF EXCISE,
   OFFICE OF THE DEPUTY COMMISSIONER OF EXCISE,
   PATHANAMTHITTA. PIN-691 523

R1 & R2 BY ADV. SRI.C.K.JAYAKUMAR, SC, KMTWWFB
SRI.D.SAJEEV BABU, SC, KMTWWFB
R3 & R4 BY GOVERNMENT PLEADER SRI.S.SUDHEESH KUMAR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 06-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

sts

WP(C).No. 13489 of 2014 (I)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBTI P1. TRUE COPY OF THE ORDER NO.DP3-211/12 DATED 15/11/2012 PASSED BY THE 4TH RESPONDENT.

EXHIBTI P2. TRUE COPY OF THE LETTER NO.DP3-1841/08 DATED 5/2/2013 ISSUED BY THE 4TH RESPONDENT

EXHIBTI P3. TRUE COPY OF THE REGISTRATION CERTIFICATE OF THE VEHICLE BEARING REGISTRATION NO.KL-02-R-1641.

EXHIBTI P4. TRUE COPY OF THE GOODS CARRIAGE PERMIT ISSUED TO THE PETITIONERS VEHICLE BEARING REGISTRATION NO.KL-02-R-1641.

EXHIBTI P5. TRUE COPY OF THE REQUEST LETTER DATED 20/5/2013 ISSUED BY THE PETITIONER TO THE 1ST RESPONDENT

EXHIBTI P6. TRUE COPY OF THE LETTER DATED 22/5/2013 ISSUED BY THE 1ST RESPONDENT.

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

P.A.TO.JUDGE

sts

K. VINOD CHANDRAN, J.
=======================
W.P.(C) No.13489 of 2014 - I
========================
Dated this the 6th day of March, 2015

J U D G M E N T

The petitioner is aggrieved with the proceedings taken against the vehicle, which he purchased in a public auction by the Excise Department on 14.11.2012. The vehicle, which was used for the commission of an Abkari offence was seized by the Excise Department and confiscated and later sold in public auction. The registration number of the vehicle is KL-02-R-1641. The petitioner is aggrieved with the revenue recovery proceedings initiated by the Motor Transport Workers Welfare Fund Board under the Kerala Motor Transport Workers Welfare Fund Act, 1985 (for brevity, 'the Act').

2. The learned Standing Counsel for the Welfare Fund Board, seeks to sustain the recovery on the basis of Section 8A of the Act, which provides for a charge on the

vehicle and also for the issuance of a clearance certificate for the purpose of payment of tax.

3. However, in the present case, what assumes significance is that, the petitioner's vehicle was sold in pubic auction by the Excise Department under the Kerala Abkari Act as per Ext.P1. Section 67H of the Abkari Act reads as follows:

> **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.

4. In such circumstance, on confiscation of the vehicle, it vests with State without any encumbrance. The sale effected in public auction would be without any encumbrance. The charge created under Section 8A of the Act would be of no consequence. The Board cannot seek for a recovery from the vehicle nor from the petitioner herein,

as far as the dues prior to 14.11.2002 of the vehicle, having registration No. KL-02/R-1641. The petitioner shall definitely be liable for the future dues.

5. On the facts of the case, it is also made clear that, the respondent Board would be entitled to seek recovery of the defaulted welfare fund dues from the present registered owner of the vehicle for the period till the vehicle was sold by the Excise Department. On payment of the future dues of the vehicle under the Act ie., from 14.11.2012, the Board shall issue clearance certificate of the vehicle to the petitioner.

The writ petition is disposed of.

Sd/-
K. VINOD CHANDRAN,
JUDGE

SB

// true copy //

P.A to Judge

The words “present registered owner of the vehicle” occurring in the 4th line of the 5th paragraph of the judgment are corrected and substituted as “previous registered owner of the vehicle”, vide order dated 3.8.2015 in I.A No.10837/2015 in W.P.(C) NO. 13489/2014.

Registrar (Judicial)