

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 26TH DAY OF JUNE 2015/5TH ASHADHA, 1937

WP(C).No.16032 of 2015 (D)

PETITIONER:

**M/S.RAJAMURUGAN FINANCE(REGISTRATION NO.177/2011),
G.R.COMPLEX,GROUND FLOOR,THEPPAKULAM STREET,
TIRUCHENGODE - 637211,REPRESENTED BY
PARTNER AND AUTHORISED OFFICER SRI.S. KRISHNAKUMAR.**

BY ADV.SRI.P.DEEPAK

RESPONDENT'S:

- 1. THE SECRETARY,REGIONAL TRANSPORT AUTHORITY,
PALAKKAD - 678 001.**
- 2. SAJITH C.S,S/O.SWAMINATHAN,CHERINGAL HOUSE,
ANICODE,PALAKKAD - 678 572.**

**R1 BY GOVT. PLEADER SMT.K.A.SANJEETHA.
R2 BY ADVS.SRI.P.SANTHOSH KUMAR (TR)
SRI.T.P.SAJAN**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 26-06-2015, ALONG WITH W.P(C) NO.15360/2015 THE COURT ON THE
SAME DAY DELIVERED THE FOLLOWING:**

pk

WP(C).No.16032 of 2015 (D)

APPENDIX

PETITIONER'S EXHIBITS:

**EXHIBIT-P1-A TRUE COPY OF THE CERTIFICATE OF REGISTRATION OF KL 08
W 9300.**

EXHIBIT-P2-A TRUE COPY OF THE INSTALLMENT CHART DATED 04/02/2013.

**EXHIBIT-P3-A TRUE COPY OF THE LETTER ADDRESSED TO THE S.I OF POLICE,
KONGAD POLICE STATION DATED 18/04/2015.**

**EXHIBIT-P4-A TRUE COPY OF THE LETTER ADDRESSED TO THE IST
RESPONDENT, SERVED ON THE IST RESPONDENT ON 24/04/2015.**

**EXHIBIT-P5-A TRUE COPY OF THE PROCEEDINGS OF THE IST RESPONDENT
DATED 12/05/2015.**

**EXHIBIT-P6-A TRUE COPY OF THE JUDGMENT DATED 06/03/2015 IN
W.P(C) 6928/2015.**

RESPONDENT'S EXHIBITS:

**EXT.R2(a):TRUE COPY OF THE JUDGMENT DATED 9.4.2015 IN W.P(C)
NO.10385/2015.**

**EXT.R2(b):TRUE COPY OF FIR REGISTERED BY HEMAMBIKA NAGAR POLICE
STATION BEARING NO.0338 DATED 16.5.2015.**

**EXT.R2(c):TRUE COPY OF COMMUNICATION DATED 17.12.2014 SSUED BY
INSPECTING ASSISTANT COMMISSIONER,COMMERCIAL TAXES,
CHITTUR.**

EXT.R2(d):TRUE COPY OF THE OBJECTION DATED 10.12.2013.

EXT.R2(e):TRUE COPYOF THE ORDER DATED 10.12.2013.

//TRUE COPY//

P.S. TO JUDGE

pk

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) Nos.15360 & 16032 of 2015

Dated this the 26th day of June, 2015.

JUDGMENT

The issue in these writ petitions relate to the replacement of a stage carriage held under a higher purchase agreement.

2. W.P.(C) No.15360 of 2015 is filed by the registered owner/hirer and W.P.(C) No.16032 of 2015 is filed by the financier.

3. The petitioner in W.P.(C) No.15360 of 2015 (hereinafter referred to as 'the hirer') is the permit holder with respect to the vehicle bearing registration No.KL 08 W 9300 on the route between Palakkad and Palakkad Circular. The permit was valid upto 21.12.2015. He submitted an application for replacement of the vehicle on 20.6.2015, which was not considered by the authority concerned on the ground that there was objection from the financier. The petitioner moved this Court with W.P.(C) No.6928 of 2015 and this Court by the judgment dated 6.3.2015 directed the second

respondent to consider the application looking into the Section 6 of the Section 51 of the Motor Vehicles Act within a period of two weeks from the date of the judgment. As the direction was not complied, the petitioner submitted Ext.P4 before the authority to implement the judgment. The hirer further alleges that in the meantime, the petitioner in W.P.(C) No.16032 of 2015 (hereinafter referred to as 'the financier') forcefully took possession of the vehicle and thereafter the authority issued Ext.P7 order allowing the replacement on condition that the petitioner should produce the no objection certificate from the financier within thirty days. The hirer alleges that in Ext.P7 order, the authority has found that Rule 174 (2) (d) of the Kerala Motor Vehicle Rules, permits to reject the application for replacement if the permit holder contravenes the provisions in the agreement entered between the registered owner and the financier. According to the hirer, the said finding is illegal. The hirer alleges that the authority concerned is bound to allow the replacement application within two weeks from the date of the judgment of this Court.

However, the action is delayed without any valid reason.

4. In W.P.(C) No.16032/2015 filed by the financier, it is alleged that, it is a registered firm engaged in the business of extending financial assistance for the purchase of commercial vehicles. It is alleged that the above vehicle is held by the second respondent under hire purchase agreement executed between the hirer and the financier. It is endorsed in the certificate of registration of the vehicle as required under Section 51(1) of the Motor Vehicles Act. Owing to the persistent default on the part of the hirer in remitting the hire-charges under the provisions of the hire-purchase agreement, the financier was constrained to take possession of the vehicle after due intimation to the local police. This fact was intimated to the authority also. Hirer's grievance is that now the hirer is served with Ext.P5 proceedings of the first respondent dated 12.5.2015 allowing the 2nd respondent's application for replacement of the vehicle covered by the permit conditionally subject to production of NOC from the financier. The hirer alleges that Rule 174 of the Kerala Motor Vehicles Rules

empowers the authority concerned to reject an application for replacement when the provisions of the permit are contravened or when the permit holder has been deprived the possession of the old vehicle under the provisions of any agreement of hire-purchase, hypothecation or lease.

5. Arguments have been heard.

6. The learned counsel for the hirer, referring under Section 51 of the Motor Vehicles Act, would argue that NOC from the financier is required only for the renewal of a permit or for an issue of duplicate certificate of registration or for assignment of a new registration mark. According to the learned counsel, for replacement of the vehicle, production of NOC is not contemplated by law. Therefore, according to the learned counsel for the hirer, the condition in the order directing the production of NOC from the financier within the time frame is without any sanction of law.

7. The learned counsel for the hirer invited my attention to Exts. P8 and P9 judgments produced in W.P.(C) No.15360 of 2015 which say that there is no provision in the

Motor Vehicles Act, which requires the consent from the financier or replacement of the vehicle and therefore, there will be no justification to add such a condition.

8. It is an admitted fact that the vehicle was repossessed by the financier on 23.4.2015 in terms of the default clause in the hirer purchase agreement. Ext.P4 produced in W.P.(C) No.16032 of 2015, is the intimation regarding the repossession of the vehicle to the first respondent RTO.

9. The learned counsel for the financier would submit that the order dated 15.5.2015 passed by the RTO granting replacement subject to the production of NOC from the financier was without the financier an opportunity of being heard.

10. It is crucial to note that in the writ petition filed by the hirer, originally the financier was not impleaded. However, he was subsequently impleaded on an application. The learned counsel for the financier is relying on the dictum laid down by this Court in **1996 (1) KLT 595 [Gopakumar v. State of**

Kerala] where this Court repelled a challenge to Rule 174 (2) and held that it is a salutary provision to safeguard the interests of the financiers. The dictum laid down in Exts. P8 and P9 judgments produced in W.P.(C) No.15360 of 2015 applies to the cases where the financier has not exercised its right of repossession. Once the right of repossession is exercised by the financier, he steps into the shoes of the registered owner. Once the vehicle comes into the possession of the hirer, it is always incumbent on the authority concerned to insist for a clearance from the financier in the case of replacement. Therefore, the hirer is not entitled to get the relief as prayed for in the teeth of Rule 174 (2) (d) of the Kerala Motor Vehicles Act in the dictum laid down by this Court in **1996 (1) KLT 595 [Gopakumar v. State of Kerala]**.

In the result, W.P.(C) No.16032 of 2015 is allowed and the impugned order is set aside. W.P.(C) No.15360 of 2015 is dismissed.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

Scl.