

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 11TH DAY OF NOVEMBER 2015/20TH KARTHIKA, 1937

WP(C).No. 28262 of 2014 (G)

PETITIONER(S):

**K.M. ABDULKARIM,
S/O.MUHAMMAD HUSSAIN, THEMPALLIKUDIYIL HOUSE,
MUVATTUPUZHA, ERNAKULAM DISTRICT.**

**BY ADVS.SRI.T.A.UNNIKRISHNAN
SRI.K.S.PRAVEEN
SRI.K.K.AKHIL
SRI.T.R.KANNAN**

RESPONDENT(S):

- 1. THE SUB REGIONAL TRANSPORT OFFICER,
MUVATTUPUZHA. PIN. 686 661.**
- 2. TATA MOTORS FINANCE LIMITED, KOCHI,
REPRESENTED BY ITS AUTHORIZED SIGNATORY, PIN - 682 025.**
- 3. SAJUKUMAR S.,
5/384 A (14/384) THAPASYA, ANAKUDY, VAMANAPURAM,
THIRUVANANTHAPURAM PIN - 695 606.**

R1 BY GOVERNMENT PLEADER SMT.ANITHA RAVEENDRAN

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
19-08-2015 THE COURT ON 11-11-2015, DELIVERED THE FOLLOWING:**

msv/

WP(C).No. 28262 of 2014 (G)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P-1: TRUE COPY OF THE SALES CERTIFICATE IN FORM NO.21 ISSUED BY THE DEALER DATED 27.3.2012.

EXT.P-2: TRUE COPY OF THE ROAD WORTHINESS CERTIFICATE ISSUED BY THE MANUFACTURE IN FORM NO.22.

EXT.P-3: TRUE COPY OF THE TEMPORARY REGISTRATION CERTIFICATE.

EXT.P-4: TRUE COPY OF THE RECEIPT DATED 24.11.12 SHOWING THE PURCHASE OF THE VEHICLE.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

MsV/

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 28262 of 2014

Dated this the 11th day of November, 2015

J U D G M E N T

The petitioner, who is a purchaser of a motor vehicle which was validly repossessed by the 2nd respondent financier as the registered owner committed default in repayment, is seeking transfer of registration of vehicle to the petitioner's name.

2. The petitioner alleges that the 2nd respondent was the financier in respect of a Tata Nano Car purchased by the 3rd respondent on 10.10.2011. After taking temporary registration, as the 3rd respondent failed to take permanent registration and committed default in repayment, the vehicle was repossessed by the the 2nd respondent, who was the financier. The petitioner further alleges that he purchased the said vehicle from the 2nd respondent. The petitioner's grievance is that the 1st respondent refused to register the vehicle in his name.

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Hence, this writ petition.

3. In the counter affidavit filed by the 1st respondent, it is contended as follows;

The 3rd respondent purchased a new Tata Nano Car on 27.03.2012 under hypothecation agreement with Tata Motors Finance Ltd., Kochi. The said vehicle was temporarily registered at RTO, Thiruvananthapuram; and due to failure in repayment of finance instalments, the financier repossessed and sold the vehicle to the petitioner along with its documents required for permanent registration. Now, the petitioner wants to get permanent registration at the RTO, Muvattupuzha with the documents said to be handed over to him by the financier. The claim of the petitioner is that he is residing within the jurisdiction of RTO, Muvattupuzha and having the right to get the vehicle registered at the office of the 1st respondent.

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According to the 1st respondent, from the allegations in the writ petition, it is clear that the vehicle is an unregistered one. The perusal of the sale certificate (Form No.21) attached as Ext.P1 discloses that the vehicle was sold to one Sri.Sajukumar S., 5/383 A (14/384), Thapasya, Anakudy, Vamanapuram, Thiruvananthapuram, Pin - 695608 under finance with Tata Motors Finance Ltd., Kochi. Thus, according to them, it is clear that the above vehicle has to be permanently registered by the first purchaser from the Joint Regional Transport Officer (Additional Registering Authority, Nedumangadu by filing a joint application in Form No.20 duly signed by the financier under Section 39, 40 & 41 of the Motor Vehicles Act read with Rule 47 of CMV Rules.

According to the 1st respondent, they are not aware whether such an application was filed

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before the Additional Registering Authority, Nedumangad for permanent registration of the vehicle and also what are the reasons for not registering the vehicle in the said office.

The failure on repayment of finance instalments at initial stages and the failure to get permanent registration is a matter to be enquired in detail. The legal repossession of a registered vehicle can be possible by invoking Proviso 51(5) of the Motor Vehicles Act. It is further contended that how the repossession and auction sale of an unregistered vehicle was done, is not known to the 1st respondent.

4. Though notice has been served on the 3rd respondent, he did not turn up.

5. Arguments have been heard.

6. As per Section 2(3) of the Motor Vehicles Act, 1988, "owner" means, a person in whose name a motor vehicle stands registered and where such person is a

minor, the guardian of such minor and in relation to a motor vehicle which is the subject matter of a hire purchase agreement or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement.

7. The case of the petitioner is that he has purchased the vehicle from the person, who has repossessed the vehicle. Therefore, at present, the person in possession is the petitioner. Therefore, as per the definition referred to above, the petitioner is the owner of the vehicle. The vehicle has to be registered by the registering authority under Section 40, in whose jurisdiction, he has the residence or place of business, where the vehicle is normally kept. As the petitioner has purchased the repossessed vehicle, he has to make an application before the registering authority, within whose jurisdiction, the petitioner resides.

Therefore, the writ petition is disposed of as follows;

- The petitioner is permitted to approach the registering

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authority, within whose jurisdiction, the petitioner resides, with a proper application in this regard within a period of two weeks;

- In the event of submitting such an application and on production of the originals or copies of the relevant documents in support of the claim, the vehicle shall be re-registered in the name of the petitioner within a period of one month thereafter.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

bka/-