IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 30TH DAY OF JANUARY 2015/10TH MAGHA, 1936

W.P.(C).No.37866 of 2008 (G)

PETITIONER(S):-

A.R. BABU,
ARAKKAL HOUSE, PATTANAM KARA, VADAKKEKKARA VILLAGEm
PARAVUR TALUK.

BY ADVS.SRI.SAJEEV KUMAR K. GOPAL
SMT.AMBIKA RADHAKRISHNAN.

RESPONDENT(S):-
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1. THE DISTRICT EXECUTIVE OFFICER,
   KERALA MOTOR TRANSPORT WORKERS WELFARE FUND BOARD,
   ERNAKULAM.

2. THE TAHSILDR (RR),
   PARAVUR.

3. THE VILLAGE OFFICER,
   MOOTHAKUNNAM VILLAGE.

4. M.R. RADHAKRISHNAN,
   MANAPURATH VEEDU, ANDIPILLIKAVU.

5. K.A. SURENDRAN,
   KARAKOOTTAN HOUSE, PARAYAKKAD.PO, NORTH PARAVUR.

R1 BY STANDING COUNSEL SRI.P.RAMAKRISHNAN.
R2 & R3 BY GOVERNMENT PLEADER SRI.T.J.MICHAEL.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 30-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No.37866 of 2008-G

APPENDIX

PETITIONER(S)' EXHIBITS:-

EXT.P1	TRUE COPY OF THE REGISTRATION CERTIFICATE IN RESPECT OF THE KL-07/AP-3828.
EXT.P2	TRUE COPY OF THE PERMIT IN RESPECT OF THE KL-07/AP-3828.
EXT.P3	TRUE COPY OF THE AGREEMENT FOR SALE ENTERED INTO BERTWEEN THE 4TH RESPONDENT AND SRI.VARGHESE.
EXT.P4	TRUE COPY OF THE AGREEMENT BETWEEN SRI.VARGHESE AND SRI.SASIKUMAR.
EXT.P5	TRUE COPY OF THE AGREEMENT BETWEEN THE PETITIONER AND SRI.P.KMUHAMMED.
EXT.P6	TRUE COPY OF THE ORDER OF THE GOVERNMENT.
EXT.P7	TRUE COPY OF THE SEIZURE MAHAZAR ISSUED REGARDING THE SEIZURE OF THE VEHICLE.

RESPONDENT(S)' EXHIBITS:-
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vku/- (true copy)

K. Vinod Chandran, J.

W.P(C) No.37866 of 2008-G

Dated this the 30th day of January, 2015

JUDGMENT

The petitioner is aggrieved by the recovery proceedings initiated against the petitioner for dues of the previous owner of the vehicle, allegedly with respect to another vehicle, under the Kerala Motor Transport Workers' Welfare Fund Act, 1985 [for brevity “the Welfare Fund Act”].

2. The petitioner's contention is that the motor vehicle bearing registration No.KL-7-AP-3828 was registered in the name of the 4th respondent, who had defaulted payment under the Welfare Fund Act. Subsequently, it is averred in the writ petition, that, the vehicle was sold to several persons and on 24.09.2008 the petitioner purchased the said vehicle from one P.K.Muhammed, as per Exhibit P5 agreement and it is in possession of the petitioner. It is alleged that, in connection with welfare fund contributions of another vehicle KLH 8575 owned by the 5th respondent, in which contributions were directed to be remitted by the 4th respondent. Attachment as per Exhibit P7 is

allegedly made by the 3rd respondent, of the vehicle KL-07-AP-3828, owned by the petitioner, for the dues of the other vehicle. Thus, the petitioner was before this Court challenging the Exhibit P7. The petitioner's contention is that the Board cannot proceed against the vehicle.

3. Primarily it is to be noticed that there is nothing in Exhibit P7 to indicate that the recovery is with respect to dues of another vehicle, i.e., KLH 8575. On the contrary, Exhibit P7 seizure mahazar specifically speaks of dues of the vehicle bearing registration No.KL-08-AP-3828. Then again transfer of motor vehicles on the basis of agreements, is an accepted practice and definitely binds the parties to the agreement. However, the taxation and the welfare fund authorities are not bound by the same and they can proceed against the registered owner or the holder of the vehicle; at their option.

4. Further, by the Amendment Act 23/2005, effective from 07.06.2005, Section 8A and sub-section (2) of Section 10 were introduced in the Welfare Fund Act. Section 8A mandated a clearance certificate from the Board for acceptance of motor vehicles tax. Sub-section (2) of Section 10 created a charge on

the vehicle for the arrears of tax on the vehicle. The issue of amendment and the liability prior to the amendment were considered in ***Ummer v. Joint R.T.O.*** **[2014 (4) KLT 358].** This Court held that if the transfer is effected after the amendment, then necessarily the transferee of the vehicle would be liable to discharge the liability of the erstwhile owner of the vehicle in respect of the previous owner's dues under the Welfare Fund Act to enable payment of motor vehicle tax as also release the encumbrance by way of charge created on the vehicle. The transferee was held to be entitled to proceed against the erstwhile owner for realisation of the amounts paid on his behalf.

5. In the present case, it is admitted that the petitioner was in possession of the vehicle from 24.09.2008, though there is no averment regarding transfer of Certificate of Registration in favour of the petitioner. In such circumstance, the challenge raised is not sustainable. The liability on the vehicle continues despite Exhibits P3 to P5 agreements.

6. However, if the petitioner approaches the authorities concerned, with a prayer for instalments, within a period of one month from the date of receipt of a copy of this

judgment, the petitioner shall be permitted to settle the amounts covered by Exhibit P7, with interest, in six equal monthly instalments. Needless to say, the petitioner would be entitled to proceed against the previous owner for recovery of the arrears remitted by him, in appropriate proceedings.

The writ petition is disposed of with the above observations.

Sd/-
K.Vinod Chandran
Judge.

vku/-

(true copy)