

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.CHITAMBARESH

THURSDAY, THE 19TH DAY OF NOVEMBER 2015/28TH KARTHIKA, 1937

WP(C).No. 34373 of 2015 (V)

PETITIONER(S):

SANEESH A.S, AGED 29 YEARS
AMMUPPILLY HOUSE, YOUDHAPURAMM, KALADY
ERNAKULAM.

BY ADV. SRI.SAJEEV KUMAR K.GOPAL

RESPONDENT(S):

1. THE SECRETARY
REGIONAL TRANSPORT AUTHORITY,
ERNAKULAM - 682 030.
2. BOBY GEORGE,
PARAKKA HOUSE,
EZHATTUMUGHAM, ANGAMALY P.O.,
ERNAKULAM - 683 577.

R2 BY ADV. SRI.O.D.SIVADAS
R BY SRI.G.PRABHAKARAN
R BY SR.GOVERNMENT PLEADER SMT.SANJEETHA.K.A.

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

APPENDIX IN W.P.(C) No.34373 OF 2015

PETITIONER(S) EXHIBITS

- EXHIBIT P1 : TRUE COPY OF THE JUDGMENT IN W.P.(C) NO.26036/2015 OF THIS HON'BLE COURT DATED 31.8.2015.
- EXHIBIT P2 : TRUE COPY OF THE ORDER NO.C3-8709/2015 PASSED BY THE FIRST RESPONDENT DATED 11.9.2015.

RESPONDENT(S) EXHIBITS

- EXT.R2(a) TRUE COPY OF THE CHECK REPORT ISSUED TO THIS RESPONDENT.
- EXT.R2(b) TRUE COPY OF THE FIR IN CRIME NO.1650/2015 REGISTERED BY THE POLICE AGAINST THE WRIT PETITION.
- EXT.R2(c) TRUE COPY OF THE PLAINT IN O.S.NO.620/2015 ON THE FILE OF MUNSIF COURT ALUVA.

//TRUE COPY//

P.S. TO JUDGE.

V.CHITAMBARESH, J.

W.P (C) No.34373 of 2015

Dated this the 19th day of November, 2015

J U D G M E N T

The petitioner is admittedly the registered owner of the vehicle KL-60-A-5324 earlier leased to the second respondent. The second respondent was operating service by use of the vehicle in terms of the regular permit granted to him. It is now practically conceded that the vehicle is again now in the control and custody of the petitioner.

2. The second respondent contends that the petitioner has stolen the bus in question leading to the registration of a crime pursuant to a protest complaint filed. The petitioner on the other hand contends that he has re-possessed the vehicle on breach of the terms of the lease agreement by the second respondent. Whether the registered owner could himself commit theft is pending consideration in Crime No.1650/2015 on the file of the Angamaly Police Station. Whether the second respondent has committed breach of the terms of the lease agreement is pending adjudication in O.S.No.620 of 2015 on the file of the court of the Munsiff of Aluva.

3. The vehicle cannot be allowed to remain stationed till the culmination of the civil and criminal proceedings. This was precisely why the petitioner sought clearance certificate in respect of the vehicle to keep the permit under suspended animation. This Court by judgment in W.P.(C) No.26036/2015 directed the first respondent to hear both the petitioner as well as the second respondent on the issue.

4. The first respondent has by Ext.P2 order deferred the decision 'till the case is settled before the Court of law'. The relevant finding in this regard is extracted herein below:-

The dispute between the above parties was derived out of the breach of the conditions contained in the Lease Agreement entered into between them. Such disputes would have to be necessarily adjudicated before the appropriate Civil Forum. Sri.Boby George also stated that a petition about the incident was filed before the Hon'ble Judicial First Class Magistrate, Angamaly. Hence it is decided to await till the case is settled before the Court of Law."

5. No prejudice would be caused to the second

respondent in issuing the clearance certificate to the petitioner. This is because the second respondent can replace the vehicle by another to operate service by virtue of the regular permit in his favour. Refusal to issue the clearance certificate would force the parties to ground the vehicle. The first respondent has obviously failed to exercise the jurisdiction vested in him in the matter of issuing the clearance certificate.

6. I quash Ext.P2 order and direct the first respondent to issue the clearance certificate in respect of the vehicle KL-60-A-5324 as sought. I however make it clear that such issue of clearance certificate will not affect the contentions of either parties in the civil suit or in the criminal case pending. The clearance certificate shall be issued within a period of one week from the date of receipt of a copy of this judgment.

The Writ Petition is allowed. No costs.

Sd/-
V.CHITAMBARESH,
Judge.

nj/20.11.15