

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 05.03.2015

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.Nos.33034 and 33035 of 2014
and
M.P.Nos.1 and 1 of 2014

K.R.Duraisamy
Ward 8, Kattukottai,
Keereipatti Post,
Attur Taluk,
Salem District.

.... Petitioner in both W.Ps.

vs.

(*) 1. Regional Transport Authority,
Attur, Salem District.

2. Ettikkan Shanmugam,
represented by Power Agent Vanavil,
T.V.Sound Systems,
Near Bus Stand,
Attur Town, Salem District.

... Respondents in both W.Ps.

Prayer:

W.P.No.33034 of 2014:

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the orders passed by the first respondent in his proceedings A.Thi.Mu.No.44676/A1/2014 dated 04.12.2014 and quash the same and direct the first respondent to permit the petitioner to re-submit the Application for Renewal of Permit for the period from 01.01.2015 to 31.12.2019 in respect of the vehicle bearing Registration No.TN-27-Z-2999 on the route from Sentharapatti to Thirumandurai without insisting the signature of the second respondent.

W.P.No.33035 of 2014:

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the orders passed by the first respondent in his proceedings A.Thi.Mu.No.26201/A1/2014 dated 04.12.2014 and quash the same and direct the first respondent to consider the

Application for Transfer of Permit in respect of the vehicle bearing Registration No.TN-27-Z-2999 on the route from Sentharappatti to Thirumandurai without insisting the signature of the second respondent.

For Petitioner : Mr.C.Selvaraj
for M/s.C.S.Associates

For Respondents : Mr.Dig Vijaya Pandian,
Additional Government Pleader [R1]
Mr.D.Shivakumaran, No appearance [R2]

C O M M O N O R D E R

W.P.No.33034 of 2014 has been filed challenging the order of the first respondent passed in proceedings A.Thi.Mu.No.44676/A1/2014 dated 04.12.2014 and for a direction to the first respondent to permit the petitioner to re-submit the Application for Renewal of Permit for the period from 01.01.2015 to 31.12.2019 in respect of the vehicle bearing Registration No.TN-27-Z-2999 on the route from Sentharappatti to Thirumandurai without insisting the signature of the second respondent.

2. W.P.No.33035 of 2014 has been filed challenging the order of the first respondent passed in proceedings A.Thi.Mu.No.26201/A1/2014 dated 04.12.2014 and for a direction to the first respondent to consider the Application for Transfer of Permit in respect of the vehicle bearing Registration No.TN-27-Z-2999 on the route from Sentharappatti to Thirumandurai, without insisting the signature of the second respondent.

3. Heard learned counsel for petitioner and learned Additional Government Pleader.

4. It is not in dispute that the petitioner has purchased a Stage Carriage bearing registration No.TN-27-Z-2999. According to the petitioner, he borrowed money from one S.R.Madheswaran and purchased the said vehicle. Since the said Madheswaran demanded money, he approached one Ettikkan Shanmugam, second respondent herein, borrowed Rs.14 lakhs and settled the dues of Madheswaran. The permit to the said vehicle was transferred in the name of Ettikkan Shanmugam, who is a Singapore citizen hails from Namakkal. Since the second respondent settled in Singapore, he started threatening the petitioner through his relative one Vanavil, who is his Power of Attorney. The said Vanavil gave a complaint that a bus was stolen and he has also claimed ownership. The petitioner filed C.M.P.No.2473 of 1997 before learned Judicial Magistrate, Attur, for return of vehicle and under judgment dated 16.12.1997, the Court below allowed the same. Against that, the second respondent

preferred a criminal revision before this Court and the same was dismissed. In the mean while, the first respondent refused to issue Fitness Certificate for the vehicle. Challenging the same, petitioner preferred W.P.No.4857 of 1999 before this Court and the said petition was dismissed. There against, the petitioner preferred W.A.No.984 of 1999. While disposing of the writ appeal, the Division Bench of this Court has observed that the petitioner is in lawful possession of the vehicle and directed the petitioner to approach the first respondent for issuance of Fitness Certificate. The second respondent also filed a civil suit in O.S.No.150 of 1999 on the file of Sub Judge, Attur, which subsequently was renumbered as O.S.No.522 of 2001 on the file of learned Additional Sub Judge, Salem, for declaration of title to the vehicle with route permit. Under judgment dated 17.04.2006, the Court below while dismissing such suit, has held thus:

"25. From the above facts and circumstances the plaintiff failed to establish that he purchased a bus from S.R.Madeswaran and also appointed this defendant as power holder to manage the suit bus. The plaintiff also failed to establish that the bus was forcible taken by the defendant. On the other hand that the defendant established that he transferred the permit in the name of the plaintiff as a security for the loan borrowed by him and also established that he purchased the bus from one Balagangadharan. As a real owner, the defendant is entitled to operate the suit bus. But all these years the defendant was struggled to operate the bus due to the hurdles caused by the plaintiff and others for unlawful gain. So, the plaintiff is not entitled for an relief in the suit as he is not the real owner of the suit bus. But the defendant proved that he is the real owner of the bus. Hence, the issue Nos.1, 2, 4, 5, 6 are answered against the plaintiff and issue No.2 is answered in favour of the defendant, thereby the plaintiff is not entitled to any relief as prayed for in the plaint and hence, the issue No.7 is also not favoured to the plaintiff and the suit is dismissed with costs."

5. The Court below has also held that the plaintiff/second respondent failed to establish that the vehicle was forcibly taken from him. Aggrieved by the said judgment and decree, the second respondent has filed A.S.No.3 of 2007 on the file of learned Additional District Sessions Judge, Salem. The lower appellate Court, under judgment dated 20.12.2013, has held as follows:

"58. In the result, the appeal is partly allowed and the judgment and decree passed in O.S.No.522 of 2001 of Additional Subordinate Judge, Salem, is modified to the effect that the defendant is directed to pay

Rs.11,33,734/- with interest at the rate of 6% from the date of this judgment till the date of realization to the plaintiff."

6. Pursuant to the modification order, when the amount was tendered by the petitioner to the second respondent, the same was not accepted and hence, the petitioner filed a schedule of lodgment before I Additional District Judge, Salem and deposited the amount together with interest as per order dated 20.12.2013. The petitioner thereafter sought for transfer of permit and renewal of permit which was declined by the first respondent on the ground that as per the Motor Vehicles Act r/w rules, the petitioner will have to make necessary application and the signature of the present owner as well as the erstwhile owner will have to be there. That apart, it has been stated by the first respondent that the petitioner has not produced any document to show that he is the owner of the vehicle and that the owner has not legally authorized the petitioner. Challenging the said order, the petitioner has preferred W.P.No.33034 of 2014 apart from other W.P.No.33035 of 2014.

7. The second respondent did not refute the contention in the counter. However, he stated that he is challenging the order of the civil Court before this Court by filing a second appeal. The judgment and decree in A.S.No.3 of 2007 was passed on 20.12.2013 and the second respondent did not produce the SR Number or the second appeal number. In paragraph No.11 of the counter of the second respondent, it has been stated that the second respondent has already filed a second appeal viz., S.A.S.R.No.38856 of 2014. The counter affidavit has been filed on 17.01.2015. The contention is that since the second respondent has preferred a second appeal and unless and until the second appeal is decided, the prayer sought for by the petitioner cannot be granted. When the petitioner had the benefit of the order of the civil Court which has been modified by the appellate Court and when the petitioner has complied with the conditions therein by paying the amount by means of a lodgment schedule, without getting an interim order in the second appeal and furnishing the same before this Court, it cannot be contended that the petitioner can await the orders in the second appeal. It is true that the document should contain the signature of the erstwhile owner and the present owner when there is a transfer of ownership and permit. In this case, the civil Court has categorically held that that petitioner is the owner of the vehicle, that the petitioner has borrowed loan from the second respondent in order to settle the dues of one S.R.Madheswaran, that there is a dispute between the petitioner and the second respondent and in the above circumstances, nothing prevents the first respondent from proceeding with the request of the petitioner. Unless and until the order of the civil Court is set aside by the High Court or if the document produced by the

petitioner is not genuine, the first respondent is bound to act on the judgment and decree passed by the civil Court as modified by the appellate Court.

8. Learned Additional Government Pleader has relied upon the provision of Section 86(1)(c) of the Motor Vehicles Act to contend that there can be cancellation of permit or suspension if the holder of the permit ceases to own the vehicle covered by the permit.

9. Firstly, the provision will not be applicable here. Even assuming it is applicable when there is an order of the civil Court which bind the parties, the duty cast upon the first respondent authority is to act on the judgment and decree passed by the civil Court as modified by the lower appellate Court.

For the aforesaid reasons, these Writ Petitions stand allowed. The impugned proceedings stand set aside. The first respondent is directed to comply with the request of the petitioner within a period of one month from the date of receipt of a copy of this order. If the second respondent produced any interim order of this Court in the second appeal then he can act in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst. Registrar

/true copy/

Sub Asst. Registrar.

gm

(*) Amended and corrected as per order of the the Court dated 24.3.2015 in M.P.Nos.1 & 1 of 2015 in WP.Nos.33034 & 33035 of 2014.

-s/d-
Assistant Registrar(CS-II)
Dt:7/4/2015

True Copy

Sub-Assistant Registrar

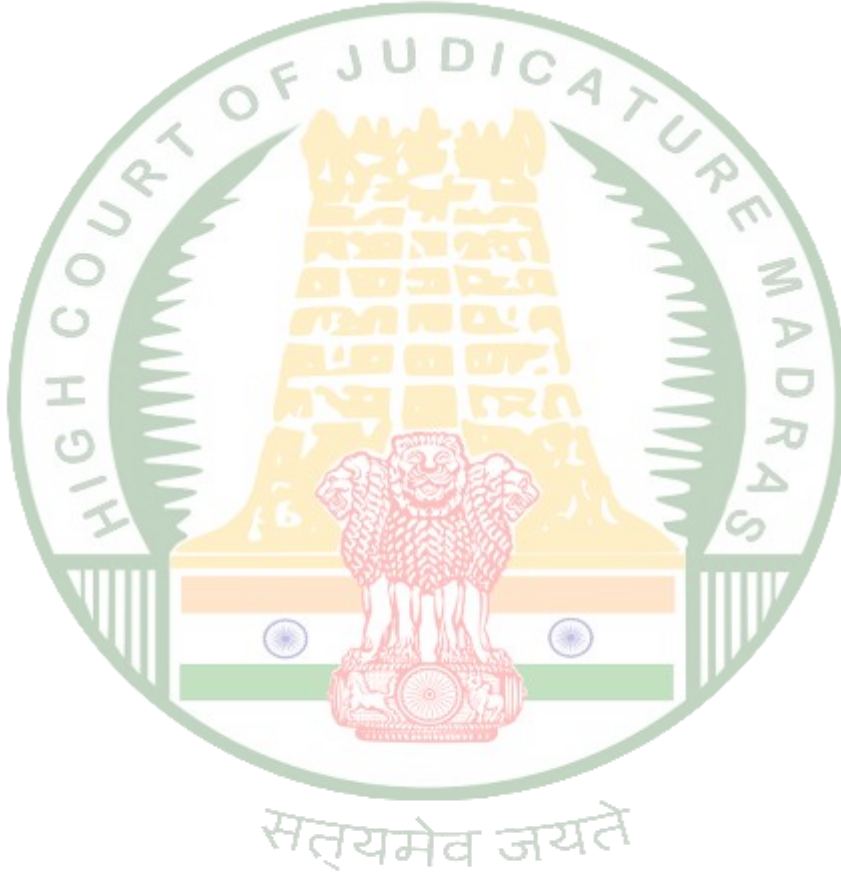
To

The Regional Transport Authority,] Corrected order to be
Attur, Salem District.] substituted to the order already
despatched on 12/3/2015.

+1cc to M/s.C.S.Associates, Advocate, S.R.No.16590

W.P.Nos.33034 and 33035 of 2014
and M.P.Nos.1 & 1 of 2014

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