

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.6.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.13042 of 2013
and
M.P.Nos.1, 2, 4 and 5 of 2013

M.Murthy

... Petitioner

vs.

1.The Regional Transport Authority,
Nagapattinam
Nagapattinam District.

2.M.Mohamed Ali

.... Respondents

R2 impleaded as per order
dated 02.07.2015 by TRJ
in M.P.No.3 of 2013 in
W.P.No.13042 of 2013

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari, to call for the respondent's proceedings in Procs.R.No.A1/16574/2012 dated 10.08.2012 and to quash the same.

For Petitioner : Mr.Elephant G.Rajendran

For Respondents : Mr.A.Zakkir Hussain,G.A.for R1
Mr.R.KMubarak Basha for R2

ORDER

Heard Mr.Elephant G.Rajendran, learned counsel for the petitioner and Mr.A.Zakkir Hussain, learned Government Advocate, who accepts notice for the first respondent and Mr.R.Mubarak Basha, learned counsel appearing for the second respondent and with the consent of parties, the writ petition itself is taken up for final disposal.

2. The petitioner has filed this writ petition challenging the proceedings of the Regional Transport Authority, Nagapattinam, dated 10.08.2012. The petitioner filed a representation objecting to the transfer of permit of stage carriage, bearing Registration No.TN.51-B-4242 (now replaced by

TN.51-F-9444) based on certain documents. This representation has been rejected by the first respondent on the ground that for breach of agreement, the petitioner has to approach the civil Court.

3. The following facts are relevant to be taken into consideration for deciding the relief that could be granted in this writ petition:

(a) The case of the petitioner is that on 29.6.2006 he entered into an agreement with the owner of the bus Mr.Kanagarajan, who agreed to sell the bus to him along with the permit for a sum of Rs.25 lakhs and a sum of Rs.20 lakhs was said to have been paid on the same day. Thereafter, it came to the notice of the petitioner that the said Mr.Kanagaraj was taking steps to transfer the permit in favour of one Mr.R.Prabhakaran. Therefore, he submitted objection on 28.12.2006 and simultaneously filed a suit in O.S.No.44 of 2006, on the file of the District Court, Nagapattinam and said to have obtained an order of interim injunction in I.A.No.120 of 2006, dated 20.12.2006. It is not in dispute that during the pendency of the suit, the permit stood transferred in the name of Mr.R.Prabhakaran and a permit was issued in his name by the Regional Transport Authority on 25.12.2006.

(b) When the petitioner filed objections and notices were issued by the authority, Mr.R.Prabhakaran approached this Court and filed a writ petition in W.P.No.1987 of 2007 to quash the notices issued by the Regional Transport Authority, dated 11.01.2007, and to direct the authority to effect transfer of permit in his favour.

(c) The writ petition was allowed and the notices issued were quashed and it was made clear that the order will not stand in the way of the present writ petitioner, who was implead as a fourth respondent in the said writ petition, to prefer an appeal, as contemplated under the provisions of the Motor Vehicles Act, 1988 (hereinafter referred to as the 'Act' in short) and also with an observation that if an appeal is preferred, the appellate authority was directed to take into consideration the pendency of the writ petition while computing the period of limitation.

(d) Accordingly, the petitioner preferred an appeal before the State Transport Appellate Tribunal (STAT) in M.V.Appeal No.461 of 2007. This appeal was filed under Section 89(1)(a) of the Act, challenging the proceedings of the Regional

Transport Authority, dated 25.12.2006, allowing the transfer of permit from the name of Mr.Kanagarajan to the name of R.Prabhakaran. The Tribunal, after considering the case, as pleaded by the parties, dismissed the appeal. But while doing so, it was pointed out that even prior to the passing of the order of transfer of permit, proceedings were pending before the civil Court and therefore, the petitioner herein, who was the appellant before the STAT, could approach the civil Court and he cannot claim anything in the appeal.

4. The observation made by the STAT in its order dated 30.4.2010, is not inconsonance with the liberty granted by this Court in W.P.No.1987 of 2007, dated 03.10.22007 (referred supra).

5. Be that as it may. The suit filed by the petitioner was decreed on 1.2.2012 and the Court has executed the sale deed in favour of the petitioner, transferring the bus as well as the permit in his favour.

6. The learned counsel for the second respondent would submit that there was no such relief prayed for before the civil Court; the suit itself is not maintainable, as there is an express bar of the civil Court exercising jurisdiction under the provisions of the Act and it is not known as to how the Court could have executed a sale deed and registered the same before the Sub-Registrar.

7. These issues cannot be raised by the second respondent at this juncture, when admittedly the second respondent has not questioned the decree passed by the civil Court nor challenged the sale deed executed by the Court in favour of the writ petitioner, dated 29.2.2012, registered as Document No.33 of 2012, on the file of the District Registrar, Nagapattinam. However, one issue which has been lost sight of by all the parties is that the challenge should have been to the transfer effected in favour of Mr.Prabhakaran, because, the petitioner claims to hold an agreement with the original permit holder, namely, Kanagarajan, from whom he is said to have purchased the bus along with the permit. The second respondent herein is a subsequent transferee, who is said to have purchased the permit from Prabhakaran. Therefore, in the objections, which are being raised by the petitioner before the authority, the first issue that has to be considered is as to whether the transfer effected in favour of Mr.Prabhakaran was a valid transfer. Then only it can be seen as to whether Mr.Prabhakaran has the right to transfer the permit in favour of the second respondent herein. However, the fact remains that the second

respondent is operating the stage carriage and the permit as on date stands in his name. Therefore, at this stage, this Court is not inclined to disturb the said status-quo. But nevertheless the first respondent, while passing the impugned order, did not afford a personal hearing to the petitioner. That apart, the reason assigned by the first respondent for rejecting the representation of the petitioner is not tenable in the light of the order passed by this Court in W.P.No.1987 of 2007.

8. The learned counsel for the second respondent raised an objection stating that the petitioner's appeal petition before the STAT in M.V.Appeal No.461 of 2007 was rejected on 30.04.2010 and the petitioner having not challenged the said order, cannot maintain the representation before the first respondent.

9. I am unable to agree with the said submission for the reason that the STAT, while rejecting the appeal, pointed out that the petitioner has to seek necessary remedy before the civil Court. Therefore, the question of challenging the order passed by the STAT does not arise. That apart, the second respondent herein cannot raise such an objection, because, the dispute was between the petitioner, Mr.Kanagarajan and Mr.Prabhakaran and the second respondent, being the subsequent transferee, is precluded from raising such a contention.

10. For all the above reasons, the impugned order calls for interference. Accordingly, the writ petition is allowed and the impugned order is quashed. The matter is remitted back to the first respondent for fresh consideration, who shall issue notice to the petitioner, Mr.Kanagarajan, Mr.Prabhakaran as well as the second respondent herein, hear the parties and thereafter proceed to pass a speaking order on merits and in accordance with law. The above direction shall be completed within a period of three months from the date of receipt of a copy of this order. Till orders are passed, the status-quo, which is prevailing as on date with regard to the permit shall continue and the second respondent shall be entitled to ply his bus, using the said permit. No costs. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

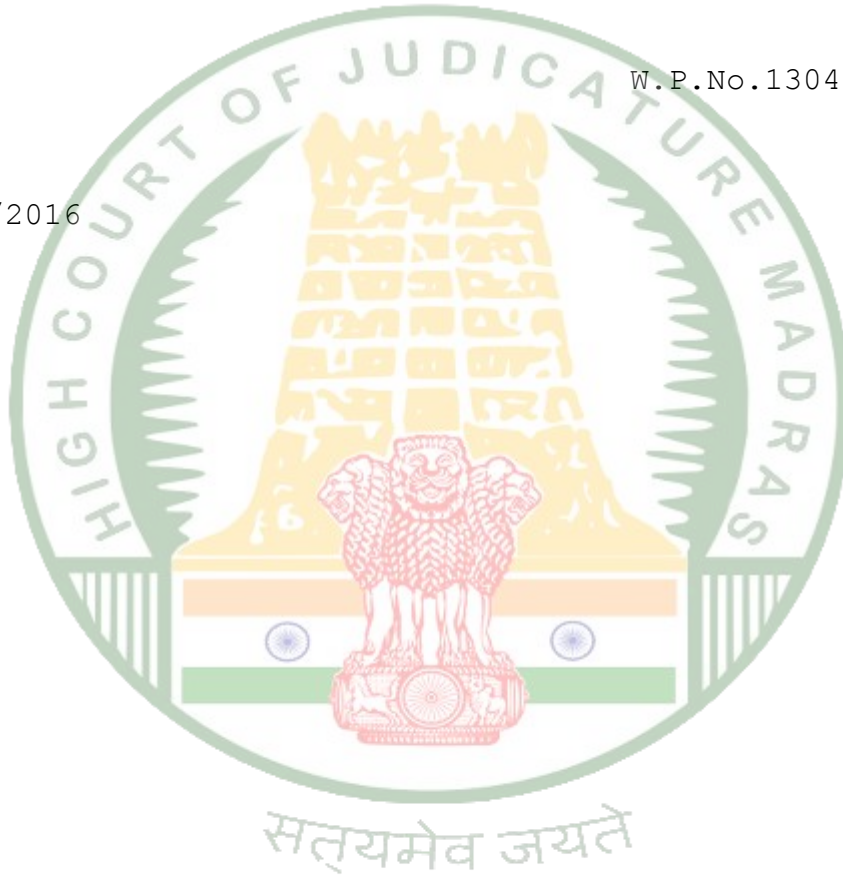
To

The Regional Transport Authority,
Nagapattinam
Nagapattinam District.

+2cc to M/S.Elephant G.Rajendran, Advocate SR.34826
+2cc to M/S. R.Mubarak Basha, Advocate sr.34530
+1cc to the Government pleader Sr.34936

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