



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.12.2017

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM  
and  
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.A(MD)No.1412 of 2017  
and  
CMP(MD)Nos.10428 and 10429 of 2017

T.Nithin : Appellant/Respondent/Petitioner

Vs.

1.Yesudhasan : 1<sup>st</sup> Respondent/Petitioner

2.The District Collector-cum-Regional Transport Authority,  
Kanyakumari District,  
Kanyakumari.

3.The Regional Transport Officer,  
Marthandam,  
Kanyakumari District. : R2 to R3/Respondents

Prayer:- Writ Appeal filed under Clause 15 of Letter Patent,  
against the order made in WMP(MD)No.13367 of 2017 in W.P(MD)  
No.11401 of 2017 on the file of this court, dated 22.09.2017.

Prayer in WMP(MD). 13367/ 2017 :

Writ Miscellaneous Petition is filed under Article 226 of the  
Constitution of India, praying this Court to re call the order  
dated 21.06.2017 of this Honble Court in the above Writ Petition.

Prayer in WP(MD). 11401/ 2017 :

Writ Petition is filed under Article 226 of the  
Constitution of India, praying this Court To issue a Writ of  
Mandamus directing the 1st Respondent to consider the  
Representation dated 25.04.2017 transferring the two Mini Buses  
bearing Registration Nos. TN74Y 4063 and TN74Y 2747 plying on the  
opposite route Thuckalay to Monday Market and Monday Market to  
Thuckalay based on the Settlement Deed in Document No. 48 of 2016,  
dated 22.11.2016 as a succeeding to the possession of the two mini  
buses and till the disposal of application the Respondents may  
issue temporary permit.



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For Appellant : Mrs.Radha Gopalan  
Senior Counsel  
for Mr.A.C.Saithambi  
For 1<sup>st</sup> Respondent : Mr.K.N.Thambi  
For R2 and R3 : Mr.M.Murugan  
Government Advocate

J U D G M E N T

(Judgment of the Court was made by K.KALYANASUNDARAM,J)

This Writ Appeal is directed against the order, dated 22.09.2017 made in WMP(MD)No.13367 of 2017 in W.P(MD)No.11401 of 2017.

2.The appellant filed the writ petition WP(MD)No.11401 of 2017 for issuance of Writ of Mandamus directing the 3<sup>rd</sup> respondent herein to consider his representation for transfer of permits of mini buses, based on the settlement deed bearing document No.48 of 2015, dated 22.11.2016.

3.The writ petition came to be disposed of, by an order, dated 21.06.2017 with a direction to the 3<sup>rd</sup> respondent herein to pass orders on the representation, on merits and in accordance with law, within a period of four weeks. The first respondent herein subsequently filed WMP(MD)No.13367 of 2017 to recall the order, dated 21.06.2017. The writ court, having observed that that the writ petitioner approached the court suppressing the material facts, recalled the order and also imposed cost of Rs.10,000/-.

4.Mrs.Radha Gopalan, learned counsel for the appellant submitted that there was absolutely no suppression of material facts and the appellant claimed right of transfer, based on a registered settlement deed and that as per the provisions of Motor Vehicles Act, the death of the permit-holder has to be immediately intimated to the authorities concerned and the person, who is claiming right has to submit application for transfer of permit. It is further contended that the first respondent admittedly has not approached the authorities for transfer of permit and after the order passed in the writ petition, he instituted the suit O.S.No.47 of 2017 before the District Court, Kanyakumari, challenging the settlement deed. The first respondent claims right in pursuance of the agreement, dated 25.01.2012, but he failed to mention the cancellation of agreement, dated 04.07.2016, which would show that materials facts were not suppressed by the appellant, but the first respondent.

5.Mr.K.N.Thambi, learned counsel for the first respondent submitted that the first respondent issued notice, dated 27.04.2017 to the official respondents calling upon them to desist from initiating any name transfer in favour of the appellant or



his son. Subsequently, the suit O.S.No.47 of 2017 was filed on 10.05.2017. The appellant, who had knowledge about the suit, evaded summons and filed the writ petition on 19.06.2017 and in all fairness, the first respondent should have been added as first respondent in the writ petition and he should have been given an opportunity before passing the order. It is the case of the first respondent that the cancellation of agreement, dated 04.07.2016 was done without notice to him.

6.The learned counsel in support of his contention that order obtained by fraud and without impleading the necessary party is to be recalled by citing the following judgments:-

- 1.(2004)6 SCC 126 (Pohla Singh Vs. State of Punjab)
- 2.(1996)5 SCC 550 (Indian Bank vs. Satyam Fibres (India) (P) Ltd.,
- 3.2017(2)CWC 281 (Sheik Mohammed Nizar vs. Kamal Gupta)

7.In reply, Mrs.Radha Gopalan, learned counsel for the appellant submitted that the notice, dated 27.07.2017 was issued only to the Registering Authority and the copy of the same was sent to the appellant and it was not the pre-suit notice and that there is no material to show that the appellant evaded the summons in the suit. It is further submitted that the rights of the parties could be decided only by the 3<sup>rd</sup> respondent, who has already issued notice to both the parties and therefore, he may be directed to pass orders in the transfer application.

8.We have heard both sides and perused the materials available on record.

9.It is to be noted that the appellant has approached the 3<sup>rd</sup> respondent seeking transfer of permits for two mini buses bearing registration Nos.TN74-Y-4063 and TN-74-Y-2747 based on the settlement deed, dated 22.11.2016. Indisputably, when the applications were pending consideration, the appellant approached this court for appropriate directions.

10.It is not in dispute that the first respondent issued notice to the respondents 2 and 3, dated 27.05.2017 raising objections for transfer of the vehicles in the name of the appellant. In view of the objections raised by the first respondent, the 3<sup>rd</sup> respondent has issued notice on 25.10.2017 to both the parties for conducting enquiry on 30.10.2017. Though the first respondent filed the suit challenging the settlement deed, dated 10.05.2017, the summon was served on the appellant only in



11. In the writ petition, the rights of the parties have not been decided and it was disposed of with a direction to the authorities to consider the representation of the appellant. In the light of the above facts, this court is of the considered opinion, the disputed question of fact whether there was any suppression of material facts at the time of filing of the writ petition need not be decided in this writ appeal.

12. Since, the 3<sup>rd</sup> respondent/competent authority has already issued notice to the appellant as well as the first respondent, this court directs the 3<sup>rd</sup> respondent to pass orders on the transfer application of the appellant, dated 27.04.2017 and 04.05.2017 in accordance with law, after affording an opportunity to both parties. The said exercise shall be done within a period of four weeks from the date of receipt of this order copy.

13. Accordingly, the writ appeal is disposed of. Taking note of the above fact, the cost imposed by the writ court is set aside. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-  
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

1. The District Collector-cum-Regional Transport Authority,  
Kanyakumari District,  
Kanyakumari.

2. The Regional Transport Officer,  
Marthandam,  
Kanyakumari District.

+1cc to M/S.A.C.Saithambi, Advocate SR.No. 91522  
+1cc to M/S.K.N.Thambi, Advocate SR.No. 91727  
+1cc to Special Government Pleader, SR.No. 92124

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07.12.2017

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JM/JC/SAR 1/15.12.2017/4P/6C