

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.BHARATHIDASAN

W.P. 2082 of 2018

S.Rengabashyam

... Petitioner

Vs

1. The Regional Transport Officer,
Dharmapuri.
 2. G.Sahadevan,
S/o. Mr.Govindan,
No.4/45, Mariamman Koil Kottai,
Naduhalli, Kadagathur Post,
Dharmapuri District.
 3. The Regional Transport Officer,
Salem (West).
- ... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue appropriate Writs, orders or Directions and in particular issue a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent in Proceedings Na.Ka.No.32854/A2/2017 dated 06.12.2017 and to quash the same and further direct the first respondent to make necessary endorsement of hire purchase in the Registration Certificate of the petitioner's vehicle bearing Registration No.TN-29/AM/4299.

For Petitioner : Ms.S.Radha Gopalan
For Respondents : Mr.R.Govindasamy,
Special Government Pleader
for R1 & R3

O R D E R

This writ petition has been filed challenging the order passed by the 1st respondent dated 06.12.2017.

2. According to the petitioner, he has purchased a Goods Carrier vehicle bearing Regn. No.TN-29/AM-4299 belongs to the 2nd respondent herein. Earlier, the 2nd respondent has entered into hire purchase agreement with M/s.Fullerton India Credit Company Ltd. and an endorsement was also made in the registration certificate. Since the 2nd respondent is

not able to pay the dues for the financier, he has approached one M/s.Vijayalakshmi Bankers to clear the dues to the finance company, who in turn cleared the entire dues and the vehicle was also given possession to M/s.Vijayalakshmi Bankers. The petitioner in turn purchased the vehicle from M/s.Vijayalakshmi Bankers paying a sum of Rs.9,75,000/-, and also a sum of Rs.50,000/- to the 2nd respondent. Thereafter, the cancellation of endorsement of hypothecation has also been made by the 1st respondent, subsequently, the ownership of the vehicle was transferred in the name of the petitioner herein by Regional Transport Officer, Salem (West), the 3rd respondent herein in and by its proceedings dated 05.07.2017.

3. After transferring the ownership, the petitioner has applied for national permit for the vehicle for the period from 20.07.2017 to 19.07.2022. Thereafter, the petitioner approached the 1st respondent herein to make necessary endorsement as regards the financier in the registration certificate of the vehicle for availing finance. At that time, it was informed by the authority that the 2nd respondent has raised objection on 21.08.2017 regarding transfer of ownership of the vehicle and refused to make endorsement. Subsequently, the 1st respondent has sent a notice for enquiry, in which, the petitioner, the 2nd respondent and M/s. Fullerton India Credit company Ltd. have appeared, and after enquiry, the 1st respondent had passed the impugned order stating that since both the parties have not settled the dispute between themselves directed the petitioner to resolve the dispute before the competent civil court. Challenging the said order, the present Writ Petition has been filed by the petitioner.

4. The 1st respondent has filed a counter affidavit stating that originally, the vehicle was registered in the name of 2nd respondent, which was hypothecated with M/s. Fullerton India Credit Company Ltd., and thereafter, the hire purchase agreement was terminated on 30.06.2017. Subsequently, the ownership of the vehicle was transferred by the Regional Transport Officer, Salem (West), the 3rd respondent herein in and by its proceedings dated 05.07.2017. Thereafter, the 2nd respondent submitted his objection through a non-judicial stamp paper before the 1st respondent, stating that, he has sold the vehicle to somebody, and the payment is yet to be completed, and all the transactions have been done without his knowledge. The above objection was entered in a black register maintained by the Regional Transport Office, Dharmapuri, and the enquiry was conducted later.

5. Since the notice could not be served on the 2nd respondent, the petitioner was directed to take substituted

service and give publication. The petitioner has also filed the proof and the name of the 2nd respondent was also printed in the cause list. But, none appeared on behalf of the 2nd respondent.

6. Mrs.S.Radha Gopalan, learned counsel appearing for the petitioner submitted that already the transfer has been effected by the 3rd respondent under Sec.50 of the Motor Vehicles Act, and if at all, the 2nd respondent has any grievance in respect of the transfer, the only remedy available to him to file an appeal under Sec.57 of the Motor Vehicles Act. Now, the petitioner only sought for endorsement of hypothecation before the 1st respondent, where the petitioner is residing under Sec.51 of the Motor Vehicles Act read with Rule 60 of Central Motor Vehicles Rules. It is mandatory on the part of the 1st respondent to make endorsement, and the 1st respondent can conduct enquiry on the veracity of the endorsement and the genuineness of the endorsement, but, the 1st respondent cannot ask the parties to approach the civil court. Hence, the impugned order has been passed without any jurisdiction.

7. Mr.R.Govindasamy, learned counsel appearing for the 1st respondent contended that since the objection has been raised by the 2nd respondent disputing the transfer of ownership, he has conducted the enquiry and tried to settle the dispute between the parties. But, there is no settlement arise between the parties. Hence, the 1st respondent has advised them to approach the competent civil court, and the order will not affect the interest of both the parties.

8. I have considered the submissions made by both the learned counsel appearing for the petitioner as well as the learned counsel appearing for the respondents 1 and 3 and perused the materials available on record.

9. It is an admitted fact that already, the registration of the vehicle has been transferred in favour of the petitioner by the 1st respondent, and thereafter, the petitioner has also obtained All India permit. Now, the petitioner only wanted endorsement of hire purchase agreement as contemplated under Sec. 51 of the Motor Vehicles Act read with Rule 60 of the Central Motor Vehicles Rules. At this stage, now the 1st respondent cannot entertain the objection filed by the 2nd respondent disputing the transfer of ownership. First of all, the 1st respondent has no power to go into the issue regarding the transfer of ownership, and the application pending before the 1st respondent only for an endorsement of hire purchase agreement, which is mandatory. If at all, the 2nd respondent has any grievance regarding the order passed under Sec.50 of the Motor Vehicles Act transferring ownership, there is an alternative remedy available to him to file an appeal before

the competent authority. In the said circumstances, the 1st respondent cannot entertain the application filed by the 2nd respondent, and pass the impugned order, for that the 1st respondent has no power or authority.

10. In the above circumstances, the impugned order is liable to be set aside and accordingly, it is set aside. The 1st respondent is directed to make endorsement of hire purchase agreement and pass suitable orders within a period of four weeks from the date of receipt of the copy of this order. In the result, this Writ Petition stands allowed. No costs.

Sd/-
Assistant Registrar(CS)
//True Copy//
Sub Assistant Registrar

rpp

To

1. The Regional Transport Officer,
Dharmapuri.
2. The Regional Transport Officer,
Salem (West).

+1cc to Mr.S.Radha Gopalan , Advocate SR.No. 76644
W.P. 2082 of 2018

ASK(10/12/2018)

सत्यमेव जयते

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