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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.12.2019

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.27523 of 2015
and
M.P.Nos.1 and 2 of 2015

M.Vasudevan

.. Petitioner

-vs-

1.The Secretary,
State Transport Authority,
Puducherry.

2.M.Shanmugavel
3.M.Palanivel

.. Respondents

Petition under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records that relates to the impugned orders passed by the 1st respondent herein bearing Ref.No. 09/PY/1987 dated 12.12.2014 and the order bearing Ref.No. 57/PY/1962 dated 12.12.2014 and quash the same.

For Petitioner : Ms.Gopika Nambiar
For M/s.Kamala Kumar

For Respondents: R1 - Mr.A.V.Ramalingam,
Additional Govt. Pleader (Puducherry)

: RR2 & 3 - Ms.S.Radha Gopalan

ORDER

Heard Ms.Gopika Nambiar, learned counsel representing M/s.Kamala Kumar, learned counsel for the petitioner, Mr.A.V.Ramalingam, learned Additional Government Pleader appearing for the 1st respondent, and Ms.S.Radha Gopalan, learned counsel for the second and third respondents.



2. With consent on either side, this writ petition is taken up for final disposal.

3. This writ petition has been filed to quash the order passed by the 1st respondent, dated 12.12.2014.

4. The learned counsel for the petitioner questions the correctness of the impugned order on several grounds and she has prefaced her submission by contending that the order is in gross and deliberate violation of the order and direction issued by this Court in the earlier writ petitions being W.P.Nos.9070 and 9071 of 2013. The writ petitions were filed by the second and third respondents herein praying for issuance of Writ of Mandamus to transfer the stage carriage permits plying interstate routes between 'Pondicherry and Villupuram'; and 'Pondicherry and Chennai' in their respective names pursuant to their individual application for transfer dated 26.09.2012. The stage carriage permits stood in the name of the mother of respondents 2 and 3, Tmt. Rajaveni. In both the writ petitions, the petitioner in this writ petition, M. Vasudevan, was the 3rd respondent. The writ petitions were contested. The respondents had filed counter affidavits. The official respondents were heard and the learned Single Bench after elaborate reference to the factual matrix, disposed of the writ petitions by common order dated 02.04.2014. For the purposes of disposal of this writ petition, it would suffice to refer to paragraph 12 of the order passed in the said writ petitions, which reads as follows:-

"12. Be that as it may, when both the petitioners and the third respondent have approached the first respondent asking the first respondent to consider the applications for transfer of permits from the name of Tmt. Rajaveni in respect of the vehicles bearing Registration No. PY-01/S-3993 plying on the inter-State route "Puducherry to Villupuram" via Thirukannur along with the spare bus bearing Registration No. PY-01/N-5649 and in respect of the vehicle bearing Registration No. PY-01/AB-5649 plying on the inter-State route "Puducherry to Chennai" via Thirukannur and the third and fifth respondents have made number of objections, this Court, on the basis of the order passed by this Court in W.P.Nos. 620, 621 and 14801 of 2007 dated 30.04.2010 (E. Kumuda v. The Regional Transport Authority, Salem and others), is only inclined to direct the first respondent to consider the applications filed by both the petitioners along with the objections filed by the third and fifth respondents on merits and pass appropriate orders



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in accordance with law within a period of six weeks from the date of receipt of a copy of this order. Needless to mention that the first respondent is at liberty to issue notice to all the affected parties and hear them before deciding the applications filed by the petitioners. With this observation and direction, both the writ petitions are disposed of. Consequently, M.P.Nos.1 of 2013 are closed. No costs."

5. In terms of the above direction, the 1st respondent was required to consider the applications for transfer and while doing so, he was required to consider the objections filed by the petitioner herein, who was the 3rd respondent in those writ petitions. Though it is admitted by the learned counsel for the petitioner that the 1st respondent had issued notice to the writ petitioner for an enquiry, none of the objections filed by the writ petitioner were considered. In this regard, she has referred to the order impugned dated 12.12.2014, to substantiate her submission that the impugned order is absolutely devoid of reasons.

6. Ms. Radha Gopalan, learned counsel for the second and third respondents seeks to sustain the impugned order by contending that no application for transfer was made by the writ petitioner and it is the second and third respondents who had made applications for transfer and taking note of Sections 82(2) and 82(3) of the Motor Vehicles Act, 1988, the permits stood transferred in the name of the second and third respondents. Therefore, it is submitted that the order impugned is sustainable.

7. Further, it is contended that already the petitioner has filed a suit for partition and the suit is pending, in which, both the stage carriage permits are plaint schedule properties. Therefore, the petitioner should workout his remedy in the pending civil suit.

8. The learned Additional Government Pleader for the 1st respondent does not have any instruction on the factual aspects and no counter affidavit has been filed, but would state that the petitioner has not exhausted the alternate remedy available under the Act.

9. After elaborately hearing the learned counsel for the parties, this Court is inclined to accept the first submission made by the learned counsel for the petitioner stating that the order impugned is vitiated for not following the direction issued in W.P.Nos.9070 and 9071 of 2013, dated 02.04.2014. The



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objections raised by the second and third respondents stating that there is no application filed by the petitioner for transfer of permit cannot be a ground to non suit the petitioner, because the learned Writ Court in the earlier writ petitions filed, directed the applications to be considered along with the objections filed by the petitioner. Therefore, it goes without saying that the objections need to be considered. Since the parties are all related, that is, they are brothers and sons of Tmt.Rajaveni, and suit for partition is pending in which, every plaintiff is defendant and every defendant is plaintiff, all issues can be canvassed by the petitioner before the 1st respondent.

10.With regard to the pendency of the civil suit, though the permit is one of the plaint schedule property, transfer of permit is an issue to be decided by the 1st respondent. Thus, when the 1st respondent has not complied with the earlier order passed by the Writ Court and has not dealt with the objections filed by the petitioner and no independent reasons have been given, the petitioner cannot be directed to avail the alternate remedy, as the order is in violation of principles of natural justice.

11.It is to be noted that pursuant to the orders passed by the 1st respondent, the permits stand transferred in the name of the second and third respondents. In my considered view, this status quo should be permitted to continue till the matter is re-heard by the 1st respondent by scrupulously adhering the directions issued by this Court in the earlier writ petitions. While directing the permits to remain in the name of the second and third respondents, the matter is remanded to the 1st respondent for fresh consideration. The 1st respondent shall issue notice to the petitioner, the second and third respondents and all other legal heirs of Tmt.Rajaveni, the deceased permit holder, and hear the parties and take a decision on merits and in accordance with law by passing a speaking order within a period of four weeks from the date of receipt of a copy of this order.

12.Ms.S.Radha Gopalan, learned counsel submits that in the light of the findings rendered by this Court in this order, it may tantamount to foreclosing the objections that may be raised by the second and third respondents before the 1st respondent.

13.With regard to the first objection that the petitioner cannot maintain a plea before the 1st respondent because no application for transfer was filed by him, cannot be permitted to be canvassed in the light of the order passed in the earlier writ petitions. So far as the second ground is concerned, an



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argument can be advanced stating that the stage carriage permits are also plaint schedule properties. However, this Court has observed that when it comes to transfer of permits, that issue needs to be decided by the 1st respondent for which, it is open to the second and third respondents to submit their objections in that regard.

14. In the light of the above, this writ petition is allowed, the impugned proceedings dated 12.12.2014, is set aside and the matter is remanded to the 1st respondent for fresh consideration. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

abr

To

The Secretary,
State Transport Authority,
Puducherry.

+1cc to Ms.S.Radha Gopalan, Advocate SR.100902
+1cc to Mr.R.Saravanan, Advocate SR.100831
+1cc to the Government Pleader(Puducherry), SR.100837

W.P.No.27523 of 2015

KK(CO)
CB(21/01/2020)