

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on 07.03.2019	Orders pronounced on 30.04.2019
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CORAM

THE HON'BLE Dr. JUSTICE ANITA SUMANTH

W.P.No.39364 of 2016

W.P.No.25203 of 2017

and

W.M.P.No.26641 of 2017

M.Murali

....Petitioner in W.P.No.25203 of 2017
& R3 in W.P.No.39364 of 2016

V.Premavathi

....Petitioner in W.P.No.39364 of 2016
& R3 in W.P.No.25203 of 2017

--Vs--

1.The State Transport Appellate Tribunal
Chepauk, Chennai

... R1 in W.P.No.25203 of 2017

2. The Regional Transport Authority
Dharmapuri .

... R2 in W.P.No.25203 of 2017 &
R1 in W.P.No.39364 of 2016

3. Regional Transport Officer,
Dharmapuri

...R2 in W.P.No.39364 of 2016

PRAYER in W.P.Nos.25203 of 2017: Writ Petitions filed under Article 226 of the Constitution of India praying for a writ of Certiorari calling for the records of the 1st respondent made in M.V.Appeal No.132/2016 dated 29.06.2017 modifying the order of the 2nd respondent in proceedings R.No.A3/16974/2015 dated 29.07.2016 and dismissing the appeal with regard to the transfer of permit is concerned and to quash the same.

PRAYER in W.P.Nos.39364 of 2016: Writ Petitions filed under Article 226 of the Constitution of India praying for a writ of mandamus directing the 1st respondent to consider the petitioner's application dated 03.10.2016 and 13.10.2016 to issue a permit for replacement of new vehicle in accordance of Section 83 of the Motor Vehicles Act on the route the Dharmapuri to Aiyur via-Pulikarai, Palacode, Rayakottai, Kelamangalam,

Denkanikottai in accordance with the permit issued on 18.03.2015 bearing no.R.No.A3-40713.2014 PSC/21/DPI/2014 pending disposal of the above writ petition.

For Petitioner : Mr.Radha Gopalan for
Mr.K. Hariharan
in W.P.No.25203/17
& R3 in W.P.39364/2016

Petitioner : Ms.Susanna Prabhu in W.P.No.39364/2016 &
3rd Respondent in W.P.25230/2017.

Respondents : Ms.R.Janaki, AGP for R1 & R2 in both
W.Ps

C O M M O N O R D E R

W.P.No.25203 of 2017 is filed by Mr.M.Murali/R3 in W.P.No.39364 of 2016 (henceforth 'Mr.Murali'), and W.P.No.39364 is filed by V.Premavathi/3rd respondent in W.P.No.25203 of 2017 (henceforth 'Mrs.Premavathi').

2. Heard Mrs.Radha Gopalan, learned Senior Counsel for Mr.K. Hariharan, learned counsel for Mr.Murali and Mrs.Susanna Prabhu, learned counsel for Mrs.Premavathi as well as Mrs.R.Janaki, Additional Government Pleader for respondents 1 and 2.

3. Mrs.Premavathi states that her husband, Mr.Vimalan, was holding a permit in respect of a stage carriage 'TN 45 BB 3789', issued by the Secretary, Regional Transport Authority, (in short the 'RTA'), that was plying on the route from Dharmapuri to Aiyur via-Pulikarai, Palacode, Rayakottai, Kelamangalam, Denkanikottai effective from 30.10.2014 till 06.07.2019. Mr.Vimalan passed away on 30.10.2014. Mr.Murali had been permitted, during the lifetime of Mr.Vimalan, to run the bus service.

4. Mrs.Premavathy lost both her son as well as husband in close succession in October 2014, and the permit stood automatically vested in her as the legal representative of the deceased permit holder. According to Mr.Murali, she thereafter executed and filed an application for transfer of ownership of the permit to Mr.Murali on 08.05.2015. This is not denied by Mrs.Premavathy though she counters that she was unaware of the nature of the application filed by Mr.Murali. Enquiry upon the transfer application was commenced and, according to Mr.Murali, Mrs.Premavathy also appeared before the officer on a few

occasions. According to Mrs.Premavathy, it was only when she appeared before the officer that she came to be aware that Mr.Murali was attempting to have the licence transferred in his name for no consideration, totally gratis, which she had no intention to do at any juncture. Thus, and also since various misunderstandings had arisen between both of them by that time, Mrs.Premavathi proceeded to withdraw the application for transfer on 28.06.2016 stating that she wished to transfer the permit to her grand son, V.J.Sabarish Aditya.

5. While his was so, Mr.Murali approached this Court in WP.No.20371 of 2016 praying for a direction against the 1st respondent/the Regional Transport Authority, Dharmapuri, to pass orders on the joint application dated 08.05.2015 for transfer of stage permit in his name. An order was passed on 25.07.2016 by this Court directing the RTA to consider the application, afford opportunity to the parties and pass orders on merits and in accordance with law within a period of six (6) weeks from the date of receipt of the order.

6. Pursuant to the aforesaid order, personal hearing was conducted and an order was passed on 29.07.2016 by the RTA rejecting the joint application for permit transfer.

7. Mr.Murali then approached the District Munsif Court, Dharmapuri filing OS.No.97 of 2016 praying for specific performance of a Sale Deed for transfer of permit and bus inter se himself and Mr.Vimalan. An interim stay restraining Mrs.Premavathy from transferring the permit was sought, but admittedly, no interim orders have been obtained and the suit is pending till date. Mr.Murali also challenged the orders of the RTA dated 29.07.2016 before the State Transport Appellate Tribunal (in short the 'STAT').

8. While all this was on-going, the stage carriage bus was, admittedly, being run and managed by Mr.Murali, and met with a serious accident on 29.08.2016 injuring twenty persons. According to Mrs.Premavathi, the accident was occasioned by virtue of non-maintenance of the bus in proper condition and non-compliance of various statutory measures to be taken to ensure the safety of the passengers. The bus was impounded for one day. Mrs.Premavathi thereafter filed applications on 03.10.2016 and 13.10.2016, for replacement of bus number in the permit, in her name.

9. In the meanwhile, the Tribunal has disposed of the appeal confirming the conclusion of the RTA vide its order dated 29.06.2017, which is challenged by Mr.Murali in his writ petition. The stress in W.P.No.25303 of 2017 filed by Mr.Murali,

is on various financial transactions inter se himself and Mr.Vimalan as per which the latter owed him a substantial sum of money. Mrs.Premavathy admits knowledge, in general, of some financial transactions between the two, however, stating that the full details are unknown to her. In any event, the allegations and averments in regard to the financial transactions as presented by Mr.Murali are denied in toto and are matters raised in civil suit to be decided after leading and considering evidence led by the parties. Mr.Murali relies upon a lease agreement dated 26.12.2007 pursuant to which he has, according to him, paid a sum of Rs.30,00,000/- to Mr.Vimalan for leasing and running the bus, as well as a sale deed styled as a 'Vehicle, Permit Sale Deed' dated 21.03.2008 for sale of the vehicle and the permit to him for a total consideration of Rs.1,72,00,000/-. He specifically points out that Mrs.Premavathy is a witness to the aforesaid deed. According to him, a sum of Rs.1,57,00,000/- has been paid by him and a joint application filed by himself and Mr.Vimalan before the RTA. The balance consideration of Rs.15,00,000/- has been paid, according to him, on the same date when the joint application was filed before the RTA.

10. The aforesaid application, though filed as early as on 21.03.2008 could not be considered as an objection was filed for transfer as well as renewal of permit by one of the workers and a revision petition was filed. While the application awaited closure of the litigation, Mr.Vimalan passed away on 13.10.2014, as a result that the joint application filed by him and Mr.Murali could not be proceeded with.

11. The provisions of the Motor Vehicles Act (in short the 'Act') provide for transfer of permit in the name of the legal representative, Mrs.Premavathi. According to Mr.Murali, the joint application for transfer of permit was filed by her only because she was well aware of the financial transactions between himself and Mr.Vimalan, particularly seeing as she was herself a witness to the sale deed. This being the case, the withdrawal of the joint application invoking the entitlement under Rule 212 of the Tamil Nadu Motor Vehicles Rules (in short the 'Rules') by Mrs.Premavathy and the order of the STAT are challenged by Mr.Murali on the grounds that they are not in line with the prescription of the Rule, are unilateral and are contrary to the principles of natural justice.

12. The withdrawal of the joint application for transfer of permit by Mrs.Premavathy is in the following terms:

Respected Sir,

Sub:-transfer of Bus Route Permit to my Grandson

I Mrs.Premavathi W/O Late Mr.A.Vimalan owner of K.R.M.S.Bus, After my Husbands death (30-10-2014) The Route Permit R.No.A3/15461/2014,P.No.56/SC/2009,SC.No.21/SC/DPI/2014 from Dharmapuri to Aiyur-Via-Denkanikottai was Transferred in my name, Due to my Age Factor I had decided Mr.M.Murali S/o Late K.M.Munusamy from Anasagram to Look after the bus, But looking at his performance and behavior which was UNSATISFACTORY for me I had decided to Withdraw the Application which he gave and now I have decided to transfer this Permit to my Younger Grandson M.V.J.Sabarish Adiitya, who has the experience in Transport Busniess for three Years as he is looking after his Mother's Bus Dharmapuri-Hogeinakal via Pennagaram. Kindly Accept My Request and Withdraw the previous Application From of Mr.M.Murali, Kindly accept my Request and kindly do the needful.

13. The withdrawal is based on Rule 212 of the Rules, extracted below:

212. Withdrawal of consent for transfer.- When the consent of either or both the parties to the transfer of a permit is withdrawn before transfer is sanctioned, the Transport Authority shall drop further proceedings in regard to the transfer of that permit:

Provided that, when either of the parties withdraws such consent, the Transport authority shall, before dropping such proceedings inform the other party of the withdrawal of consent.

14. The relevant portion of the order of the RTA (original authority) dated 29.07.2016 is extracted below:

I have carefully considered all the material evidences placed before me. After the demise of the permit holder Thiru.A.Vimalan, the permit in respect of the route bus

TN45/BB3789, permitted to ply on the route: Dharmapuri to Ayyur, was transferred to the name of his wife and legal heir Tmt.V.Premavathi, as per sec 82(2) of the Motor Vehicles Act, 1988. I find that all the records such as registration certificate and permit are stands in the name of Tmt.V.Premavathi. Even though the joint application made by the transferor and transferee, now the Transferor Tmt.V.Premavathi willing to withdraw the same. At the time of the personal hearing both the transferor Tmt.Premavathi, Dharmapuri and Transferee Thiru.M.Murali, Annasagaram with his counsel Thiru.R Srinivasan were appeared before me and put forth their statement. I am of the view that, the transferor is willing to withdraw her joint application and there is no amicable decision attained. Hence the application for transfer of permit liable to be rejected.

Hence I, the Regional Transport Authority, Dharmapuri under per the powers conferred on me U/s.82 of M.V.Act, 1988 read with rule 213 of the T.N.M.V.R.1989, do hereby reject the above said application for transfer of permit for the reasons stated above.

15. In appeal, the STAT confirms the reasoning of the RTA that the joint application has been withdrawn and hence the application for transfer will not be considered, but modifies the conclusion to state that the application must be held to be only 'dropped' by virtue of the language of Rule 212 and not 'rejected' as the Rule does not provide for such categoric rejection. The operative portion of the order is in the following terms:

'7.Before analysing the order of the Regional Transport Authority, it is pertinent to understand the relevant rule 212, which is provided under the Act for the procedure to be followed in the case of withdrawal of consent in transfer applications. The said Rule 212 reads as follows;

212.Withdrawal of consent for transfer: When the consent of

either or both the parties to the transfer of a permit is withdrawn before transfer is sanctioned, the Transport Authority shall drop further proceedings in regard to the transfer of that permit.

Provided that, when either of the parties withdraws such consent, the Transport Authority, shall before dropping such proceedings inform the other party of the withdrawal of consent.

From the records, it is understood that no transfer has been sanctioned. While so, from the above Rule 212, it is very clear that when either of the party has withdrawn the consent before sanction, the transport authority shall drop further proceedings with regard to the proper transfer. On applying the above Rule, when the instant appeal is taken into consideration, it is seen that on the date of hearing (i.e.) 25.07.2016, both the parties were appeared before the authority and it is seen that the 2nd respondent has stated that after making the joint application on 08.05.2015, the performance and behaviour of the transferee was unsatisfactory and hence, she decided to withdraw her joint application, which was already made, whereas the appellant denied and filed a written submission stating to consider the transfer application as per Section 82(2) of the Motor Vehicles Act. Thereafter, the Regional transport Authority had passed the impugned order rejecting the application for transfer of permit. On perusal of the impugned order, it is seen that though the Authority followed the procedure contemplated for transfer of permit till Rule 211, yet, it passed order rejecting the joint application under Section 82 of the Motor Vehicles Act, 1988 read with 213 of Tamil Nadu Motor Vehicles Rules, 1989, for transfer of permit instead of dropping of further proceedings is neither discharged nor made absolute and is said to be given up whereas, 'reject' means passing of the order on consideration of the

facts. Hence, in the circumstance of this case, when on of the party withdraws consent, it is not for the transport authority to decide whether such withdrawal is valid or not. But, as per Rule 212, when such objection is raised, then the authority has to necessarily drop further proceedings in respect of the transfer application. Hence, this Tribunal is of the view that the 1st respondent authority has passed an erroneous order rejecting the transfer of permit application instead of dropping the proceedings and thus, needs an interference from this Tribunal. As far as the civil suit for permanent injunction and specific performance alleged by the appellant in the grounds of appeal is concerned, it is open to the parties to work out their remedy before the competent court. Furthermore, with respect to the grant of permission for transfer of permit concerned, this Tribunal finds it relevant to cite the case of N.A.Thangavelu Vs. The State Transport Appellate Tribunal in W.A. No.1590 of 2004, wherein our Hon'ble High Court has observed as "The grant/transfer of permit is entirely within the discretion of the transport authorities and it is not for this Court to take over this function". In the backdrop the above said observation, this Tribunal is of the view that the prayer made seeking permission for transfer of permit as applied for by the appellant has to be dismissed.

In the result, this appeal is disposed off thereby, modifying the order of the Regional Transport Authority, Dharmapuri made in Proceedings R.No.A3/1697/2015, dated 29.07.201 as 'dropped further proceedings' with regard to the transfer of permit application instead of rejection of application for transfer of permit. As far as the transfer of permit is concerned, the appeal is dismissed.'

16. Mrs.Gopalan points out that the proceedings are in gross violation of the principles of natural justice. It was only when Mr.Murali had appeared before the RTA on 25.07.2016 that the letter of withdrawal was shown to him for the first time. He had thus absolutely no opportunity in regard to the

said letter. The proviso to the said Rule mandates that when the consent of one of the parties to an application is withdrawn, the Authority shall inform the other applicant about such withdrawal. In the present case, Mr.Murali had neither been sent a copy of the letter by Mrs.Premavathy nor by the Authority. Moreover, since the Authority had been informed that a civil suit had been filed and was pending, the application ought to have been kept pending and not rejected/dropped.

17. At the outset, the position that the permit for the stage carriage vests in the legal heir, upon demise of the permit holder, is unambiguous and clear. Thus, the permit has rightly been transferred to Mrs.Premavathy upon the demise of her husband. It is also her discretion to seek transfer of the permit to any other person which also, she has, admittedly, done. It is thereafter that she seeks to withdraw the joint application filed. The act of withdrawal is also within her domain of discretion and cannot be questioned in the light of Rule 212 except to the extent that the proposed transferee ought to be informed of such withdrawal of consent prior to the dropping of the application itself by the Authority.

18. In the light of the admitted position that her entitlement, both to exploit the permit as well as withdraw an application for transfer are absolute, I find no legal infirmity in the impugned order. The letter of withdrawal was brought to the notice of Mr.Murali in the course of proceedings before the RTA and his objections solicited, received and considered. This is reflected in the orders of the respondents and is not disputed by Mr.Murali. This, in my view, constitutes sufficient compliance with the principles of natural justice. No doubt, the factum of her withdrawal might have come as a surprise to Mr.Murali, but there is no violation of the principles of natural justice seeing as the proviso to Rule 212 only requires the authority to inform the other party, when the permit holder withdraws consent, about such factum of withdrawal before dropping the application. This has admittedly been done in this case. The argument as regards violation of principles of natural justice is thus rejected.

19. Yet another argument advanced is that the vehicle and licence have already been transferred for valuable consideration. This is an issue for the appreciation of the civil courts. The signature of Mrs.Premavathi in the sale deed as a witness, the veracity or otherwise of the agreement and deed relied upon by Mr.Murali and the averments regarding the sale of the assets to him by Mr.Vimalan and remittances of payments by Mr.Murali are disputed facts and cannot be relied upon in proceedings under article 226 of the Constitution of India.

20. As regards the conclusion of the STAT that the RTA ought to have 'dropped' proceedings and not 'rejected' the application, nothing really turns on this point as the consequence and end result of the proceedings would be one and the same in either case.

21. Ms.Prabhu has circulated a decision of a Division Bench of this Court in the case of N.A.Thangavelu Vs. State Transport Appellate Tribunal and Others [W.A.No.1590 of 2004], where this Court has categorically held that the granting of permit or licences or transfer of the same is the function of the statutory authority and will not be arrogated by the Court. I extract below paragraphs 7 to 10 of the decision:

7. Granting of permits or licences or transferring the same is the function of the statutory authority under the relevant statute and it is not for this Court to arrogate to itself this function. The High Court cannot issue permits or licences or transfer the same, which is the function of the statutory authority, but this is precisely what in substance the interim order dated 21.04.2004 amounts to have done. The High Court can at best direct the statutory authority to consider the application for grant/transfer of permits or licences in accordance with law within a reasonable period, but the High Court cannot itself perform this function.

8. In G.Veerappa Pillai Vs. Raman & Raman Ltd., (AIR 1952 SC 192 para 24) the Supreme Court observed that the direction of the High Court to the Regional Transport Authority to grant permits to the petitioner was clearly in excess of its powers and jurisdiction.

9. The grant/transfer of permit is entirely within the discretion of the transport authorities and it is not for this Court to take over this function.

10. In Union of India Vs. S.B.Vohra ((2004) 2 SCC 150) vide in paragraph 33 the Supreme Court observed as follows:

It is, however, trite that ordinarily the Court will not exercise the power of the statutory authorities. It will at the first instance allow the statutory authorities to perform their own functions and would not usurp the said jurisdiction itself.

22. Applying the ratio of the above decision to the present case, the only question that could have been considered by me is the purported violation of the principles of natural justice. I have done so and have not found any merit in the same. The other grounds urged touch upon, in fact, rely substantially upon, disputed questions of facts with which this court will not concern itself in the present proceedings.

23. Mr.Murali has relied on a decision of the Orissa High Court in the case of Purusottam Mishra Vs. Balaji Sahi [1994 (2) ACJ 1107] to state that in the light of the sale deed inter se himself and Mr.Vimalan, the transfer of the vehicle and the licence in his name is complete and does not require confirmation by the Registering Authority. In the light of my observation earlier to the effect that the sale deed is a disputed document to be established in the original suit and not in the proceedings before me, this case has no further relevance in the matter.

24. After conclusion of hearing, learned counsel for the Mr.Murali has circulated a judgment of this Court in O.S.No.46 of 1961 for my perusal. The highlighted paragraphs at pages 58 and 59 of the judgment refer to Section 60 of the Act. The point canvassed in that case was that Section 60 cannot be construed as re-vesting in a party, permits, which have been ordered to be transferred to another party and that the Act and Rules should not be construed in such a manner that will destroy contractual rights of the parties. I do not see how this judgment advances the case of Mr.Murali. In my view, it reiterates and supports the position that the rights flowing from contracts and agreements between the parties as in the present case, would have to be established only by the competent civil courts and not in writ proceedings.

25. My attention is drawn to a communication issued by the (Road Transport Authority) dated 03.01.2017 stating as follows:

பார்வையில் காணும் தங்கள் மனுவில், தடப்பேருந்து கூகு
45.0003789ன் அசல் ஆவணங்களை திரும்ப வழங்கக் கோரப்பட்டுள்ளது,

மேற்குறிப்பிட்ட தடப்பேருந்தின் அனுமதி உரிமை மாற்ற மனு நிராகரிக்கப்பட்டதை தொடர்ந்து திரு.மு.முரளி, அன்னசாகரம் என்பவரால் தருமபுரி மாவட்ட உரிமையியல் நீதிமன்றம் மற்றும் மாநிலப் போக்குவரத்து மேல்முறையீட்டு தீர்ப்பாயம், சென்னை ஆகியவற்றில் வழக்கு தொடுக்கப்பட்டு நிலுவையில் உள்ளது. மேலும் திரு.மு.முரளி, அன்னசாகரம் என்பவரால் சென்னை உயர் நீதிமன்றத்தில் ஐ.ரு.சூடி,358 டிக 2016 டி.எ.ரு.சூடி,97 டிக 2016 (டி.எ. வான் கடைந டிக னுளைவசனைவ ஆரளேகைக ஊடிரசவதி னுாயசஅயிரசை)ல் கேவட் மனு தாக்கல் செய்யப்பட்டுள்ளது. அதில் கேவட் மனுதாரருக்கு தெரியாமல் இவ்வழக்கு தொடர்பாக எந்தவொரு நடவடிக்கையும் எடுக்கக் கூடாது எனத் தெரிவிக்கப்பட்டுள்ளது. நீதிமன்றங்கள் கோரும் போது ஆவணங்கள் சமர்ப்பிக்கப்பட வேண்டிய நிலை உள்ளதால், ஆவணங்கள் இவ்வலுவலகத்திலேயே இருப்பது அவசியம் ஆகிறது. எனவே, மேற்குறிப்பிட்ட நீதிமன்றங்களில் வழக்குகள் முடிவடைந்த பின்பு, தங்கள் வாகனத்தின் ஆவணங்கள் திரும்ப வழங்கப்படும் எனத் தெரிவிக்கப்படுகிறது.'

26. As per the above communication, the only hurdle in the way of the RTA for the return of the original documents relating to the bus and the permit is the representation of Mr.Murali to the effect that a Caveat has been filed before the High Court in relation to I.A. No.358 of 2016 in O.S. No.97 of 2016 on the file of District Munsiff court, Dharmapuri. The RTA also appears to have been informed by Mr.Murali that the original documents in relation to the vehicle might be summoned or required by the Court at any time and that the RTA should thus hold on to the same. This is the basis upon which the RTA is yet holding on the original documents and permit despite the conclusions of the proceedings in favour of Mrs.Premavathy, by both the original as well as appellate Authorities. I am of the categoric view that there is no justification for this delay in handing over the original documents and the stage carriage permit. It seems quite apparent that Mr.Murali is using the proceedings before the civil court as a smoke screen to thwart the legitimate return of the documents and permit and to pursue and recover his monetary claim, which cannot be acceded to.

27.In the light of my decision above rejecting the challenge to the impugned order by Mr.Murali, the RTA shall return the originals documents and stage carriage permit to Mrs.Premavathy forthwith and in any event within two weeks from date of receipt of this order to enable her to ply the vehicle upon the permitted route.

28.W.P.No.25203 of 2017 is dismissed on merits. W.P.39364 of 2016 is dismissed as infructuous. No costs.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

Ska

To

1.The State Transport Appellate Tribunal
Chepauk, Chennai.

2. The Regional Transport Authority
Dharmapuri .

3. Regional Transport Officer,
Dharmapuri.

4.The District Munsif
Dharmapuri.

+1 CC to Mr.K.Hariharan, Advocate sr 42742.

+1 CC to Govt. Pleader sr 43177.

W.P.No.39364 of 2016
W.P.No.25203 of 2017
and
W.M.P.No.26641 of 2017

KK(CO)
SP(18/06/2019)

सत्यमेव जयते

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