

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.34207 of 2018
and WP.No.32619 of 2018
and WMP.No.39740 of 2018

W.P.No.34207 of 2018:-

K.Suganthi ..Petitioner
Vs

- 1.The State Transport Authority
Salem
- 2.The Regional Transport Officer
Attur, Salem District
- 3.Smt.Sudha
- 4.Ms.Sundari ..Respondents

W.P.No.32619 of 2018:-

Sudha ..Petitioner
Vs

- 1.The Deputy Transport Commisisoner
Deputy Transport Commisisoner Office
Kanthampatty Bypass
Salem-5
- 2.The Regional Transport Officer
Regional Transport Office
Attur
Salem District

- 3.Suguna
- 4.Suganthi ..Respondents

Prayer in WP.No.34207/2018:- This Writ Petition is filed, under Article 226 of Constitution of India, to issue a writ of Mandamus, directing the 1st and 2nd respondents herein to take back the petitioner's application dated 20.11.2018 for transfer of permit in respect of stage carriage bearing Reg.No.TN-77/H-2711 plying on the route "Attur to Unathur" from the name of Thiru.Sivasubramanian, the deceased permit holder in the name of

the petitioner, which was returned by the 2nd respondent herein by Memo in Na.Ka.No.A1/048350/2018 dated 23.11.2018 and grant the transfer of permit as prayed for.

Prayer in WP.No.32619/2018:- This Writ Petition is filed, under Article 226 of Constitution of India, to issue a writ of Mandamus, directing the 1st and 2nd respondents to consider the petitioner's representation dated 08.11.2018.

In W.P.No.34207/2018:-

For Petitioner : Ms.S.Radha Gopalan

For Respondents : Mr.V.Shanmuga Sundar, Spl.G.P.
for R1 and R2
Mr.L.Rajendran for R3 and R4.

In W.P.No.32619 of 2018:-

For Petitioner :Mr.L.Rajendran

For Respondents :Mr.V.Shanmuga Sundar, Spl.G.P.
for R1 and R2

Ms.S.Radha Gopalan, for R3 and R4.

COMMON ORDER

W.P.No.34207 of 2018:-

By consent of both sides, this Writ Petition is taken up for final disposal.

2. The Petitioner's father viz., S.Kumaraswami was operating a Stage Carriage bearing Registration No.TN-77/H-2711 plying on the route "Attur to Unathur". The Petitioner is the Permit Holder and the said permit was issued by Regional Transport Authority, Salem. The Petitioner's father viz., the Permit Holder expired on 26.08.2018 leaving behind the Petitioner, her elder sister K.Suguna. According to the Petitioner in W.P.No.34207 of 2018, the Petitioner's brother Sivasubramanian left the family long back and his whereabouts are not known and he predeceased the Petitioner's father. Respondents 3 and 4 are the legal heirs of Sivasubramanian and they filed O.S.No.40 of 2013 for partition before Sub Court, Attur and the same is pending.

3. According to the Petitioner, the Permit holder viz., Kumarasamy executed a Registered Will dated 17.01.2014 bequeathing all the movable and immovable properties in favour of the Petitioner including the above mentioned vehicle to the Petitioner.

4. The Petitioner had approached the Regional Transport Authorities, Athur, to renew the fitness certificate of the vehicle. However, the same was returned. The Petitioner filed W.P.No.28124 of 2018 seeking a direction to the 2nd respondent to take back the application for renewal of fitness certificate and to renew the same. This court, by order dated 25.10.2018, directed the respondent to renew the fitness certificate, without prejudice to the rights and claim made by respondents 3 and 4 and other contesting claimants regarding the stage carriage permit. The Petitioner further submits that thereafter, the 2nd respondent renewed the fitness certificate and operating the vehicle on the road. Subsequently, the Petitioner filed Application for transfer of permit on 22.11.2018. Assailing the return of the application, the Petitioner filed the present Writ Petition.

5. Respondents 3 and 4 filed counter affidavit by opposing the transfer of permit in the name of the Petitioner for the reason that suit is pending in O.S.No.40 of 2013 before Sub Court, Attur, between the Parties.

6. it is apparent that the claiming of the ownership by the Petitioner is only through the alleged Will dated 17.01.2014 executed by the deceased Kumarasamy.

7. The learned counsel for the Petitioner relied upon the unreported decision of Madurai Bench of Madras High Court dated 10.12.2018 in W.P.(MD).No.21095 of 2018 [T.Nithin Vs.The Regional Transport Authority and others] and submitted that in respect of similar issue, this court has held that when the subject matter is pending before the Civil Court and no interim order has been granted in the said civil suit, the writ proceedings will have to abide by the outcome of the civil suit.

8. A perusal of the abovesaid order shows that in identical circumstances, this court considered the question of transfer of permits in favour of the Petitioner therein, on the basis of the settlement deed executed in favour of the Writ Petitioner. In the said order, this court directed the first respondent-Regional Transport Authority, to effect transfer on the permits in question in favour of the Petitioner. However, the learned Judge pointed out that the same will be subject to the outcome of O.S.No.47 of 2017 on the file of District Judge, Nagercoil.

9. According to the learned counsel appearing for respondents 3 and 4, following the order passed by the Madurai Bench of Madras High Court, dated 10.12.2018 in W.P(MD).No.21095 of 2018, if the Petitioner undertakes to deposit 50% of the net profits to the credit of O.S.No.40 of 2013 on the file of

Subordinate Court, Attur, Salem District, ie., on the income derived from the operation of the Stage Permit vehicle, without prejudice to the rights of the respondents 3 and 4 herein who are the parties in the civil suit, the respondents 3 and 4 are agreeable for the interim arrangement, viz., the transfer of permit in favour of the petitioner.

10. Taking note of the above submission and by consent of both parties, this court is inclined to pass the following order:-

(1) The petitioner has to resubmit the application for transfer of permit to the 2nd respondent within two weeks from the date of receipt of a copy of this order along with a copy of this order and an undertaking affidavit to be filed with the authority that the petitioner will deposit 50% of the net profits of the income derived from the stage carriage/vehicle bearing Registration Number TN-77/H-2711 plying on the route "Attur to Unathur", to the credit of O.S.No.40 of 2013 before Sub Court, Athur;

(2) In the event of said application being resubmitted, the 1st and 2nd respondents shall consider the application for transfer of permit and transfer it in the name of the Writ Petitioner, if the petitioner has complied with the other norms and rules under the Motor Vehicles Act, within four weeks, thereafter;

(3) The Petitioner shall file an application before the Sub Court, Athur, wherein, the suit in O.S.No.40/2013 is pending, seeking permission to deposit 50% of the net profits being the income derived from the stage carriage/vehicle bearing Registration Number TN-77/H-2711 plying on the route "Attur to Unathur", along with particulars and the same shall be deposited on or before 5th day of every English Calendar month;

(4) It is made clear that the aforesaid arrangement of effecting transfer of permit in favour of the Writ Petitioner, will be subject to the outcome of the judgment in the suit in O.S.No.40 of 2013. The Petitioner shall not claim any equity or right on the basis of the direction of this court, before the Civil Court.

(5) In case of any default in complying with the above directions as stated supra, it is open to the respondents 3 and 4 to take the same before the appropriate authority, to cancel the permission granted in favour of the Petitioners.

(6) The respondent authority shall also incorporate necessary conditions as stated in this order in their Proceedings of transfer of permit.

11. In the result, W.P.No.34207 of 2018 stands allowed on the above terms. No costs. Consequently, connected WMP is closed.

W.P.No.32619 of 2018:-

In view of the order passed in W.P.No.34207 of 2018, no separate order or direction need be issued in W.P.No.32619 of 2018. Accordingly, this Writ Petition is dismissed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.The State Transport Authority
Salem.
- 2.The Regional Transport Officer
Attur, Salem District.
- 3.The Deputy Transport Commisisoner
Deputy Transport Commisisoner Office
Kanthampatty Eyepass
Salem-5.
- 4.The Regional Transport Officer
Regional Transport Office
Attur
Salem District.

+1cc to Mrs.S.Radha Gopalan, Advocate Sr.32287

+1cc to to the Government Pleader Sr.33455

+1cc to M/S.C.Rajendran, Advocate Sr.32137

W.P.No.34207 of 2018
and WP.No.32619 of 2018

sj[col]
srg 09/04/2019