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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.27350 of 2021
and
WMP.No.28862 of 2021

D.Naveen Kumar

...Petitioner

-Vs-

1. The Regional Transport Authority,
Vellore District, Vellore.

2. The Secretary,
Regional Transport Authority,
Vellore District, Vellore

...Respondents

Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the 1st respondent to grant temporary permit on the application dated 04.05.2021, filed by the petitioner for the grant of temporary permit in respect of the vehicle bearing Registration No.TN-23-AJ-3555 permitted to ply on the route Vellore to R.K.Pet, pending consideration of the application dated 24.12.2020 for transfer of permit filed by the petitioner.

For Petitioner : Mr.M.Palani

For Respondents: Mrs.V.Yamuna Devi
Special Government Pleader

O R D E R

The prayer sought for herein is for a Writ of Mandamus directing the 1st respondent to grant temporary permit on the application dated 04.05.2021, filed by the petitioner for the grant of temporary permit in respect of the vehicle bearing Registration No.TN-23-AJ-3555 permitted to ply on the route Vellore to R.K.Pet, pending consideration of the application dated 24.12.2020 for transfer of permit filed by the petitioner.



2. That one Dhanabakkiammal was given the stage carriage permit for the stage carriage vehicle bearing registration No. TN-23-AJ-3555 to ply the vehicle on the route between Vellore to R.K. Pet (via) Vallimalai and Sholingur.

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3. The said Dhanabakkiammal, though married one Durairaj, the couple did not have any issue. Therefore, the said Durairaj married one D. Vasantha, as 2nd wife for whom there are three children. The petitioner is the 3rd son of Durairaj Vasantha couple.

4. During the lifetime of said Dhanabakkiammal, the original permit holder, she bequeathed a Will in favour of the petitioner with regard to the properties of the Dhanabakkiammal, which include the stage carriage permit. Subsequently the said Dhanabakkiammal died on 25.11.2018. After the death of the said Dhanabakkiammal with the strength of the Will she executed to and in favour of the petitioner, the petitioner made an application to the respondents for transfer of the permit of the stage carriage.

5. During the pendency of the decision to be taken on the said Application submitted by the petitioner, temporary permit was given for 90 days period and the last such temporary permit for 90 days was given on 08.02.2021, which expired on 08.05.2021. Thereafter, even though further temporary permit was sought for by Application dated 04.05.2021, the same was not considered and granted.

6. In the meanwhile, since the application submitted by the petitioner for transfer of the permit was not considered and it was kept pending for want of production of No Objection Certificate from other legal heirs i.e., the other two sons of Durairaj Vasantha couple, who are brothers of the petitioner, the petitioner had filed a Writ Petition in W.P.No.2969 of 2021 seeking for a writ of mandamus directing the Regional Transport Authority concerned to consider the application of the petitioner dated 24.12.2020 for transfer of permit from the name of the deceased permit holder Dhanabakkiammal to the name of the petitioner.

7. The said Writ Petition came to be decided by a learned Judge of this Court by order dated 17.03.2021, wherein the learned Judge has passed the following order:

"5. The petitioner is claiming right over the vehicle based on the will executed by the owner of the vehicle Dhanabakkiammal (since deceased) and therefore, the question of legal heir certificate does not arise in this case. Therefore, the respondent shall consider the



granted, which expired on 08.05.2021 could have been considered and granted beyond 08.05.2021. However, despite the application dated 04.05.2021 was filed, the same since has not so far been considered because of which, after 08.05.2021 the petitioner could not ply the vehicle in the route, therefore the prayer sought for in this writ petition can be considered and a direction by way of a mandamus can be granted, the learned counsel for petitioner contended.

14.Per contra, Mrs.V.Yamunadevi, learned Special Government Pleader appearing for the respondents relying upon the written instructions given by the 2nd respondent dated 03.01.2022 would submit that, since the original permit holder namely Dhanabakkiammal died some time in 2018, thereafter, if at all the petitioner wants the permit to be transferred in his name, for which, he made a application, the necessary certificates as contemplated under Section 82 (2) of the Motor Vehicles Act and the Rules made thereunder should be complied with.

15.In this context, along with an application, two essential certificates have to be produced one is the legal heir certificate of the applicant, who seek for a transfer of permit and another is No Objection Certificate, if there is more than one legal heir of the original permit holder.

16.Here in the case in hand, the petitioner admittedly a son of 2nd wife of the said Durairaj. Dhanabakkiammal, the original permit holder was the 1st wife, therefore the legal heir status cannot be claimed by the petitioner and also the said Durairaj is having other two legal heirs through the second wife Vasantha along with the petitioner, they also can claim a legal heir status, therefore, from whom also No Objection Certificate should have been obtained by the petitioner and produced.

17.Since none of these requirements has been complied with or fulfilled by the petitioner along with an application he has submitted for transfer of permit it cannot be considered at the threshold. Any how in order to give a fair hearing of the petitioner, enquiry was conducted, very soon orders would be passed.

18.In this regard, it is the further stand of the respondents as stated by the learned Special Government Pleader appearing for the respondents that, the other two legal heirs had raised certain objections before the second respondent during the time of enquiry and they also further sought for one month time to have a conciliation with the petitioner and to report before the second respondent, that one month time ends on 21.01.2022 and hence that application could not be ordered or rejected otherwise, as of now.



19. When that being the position, the present application, which is sought to be considered through the prayer sought for in this writ petition, made by the petitioner dated 04.05.2021 seeking for a temporary permit for further 90 days beyond 08.05.2021 is not feasible of compliance. Therefore, the Mandamus sought for in this writ petition cannot be granted. Accordingly, the learned Special Government Pleader would submit that the writ petition is liable to be rejected.

20. I have considered the said rival submissions made by the learned counsel appearing for parties and have perused the materials placed before this Court.

21. There is no dispute that the original permit holder is one Dhanabakkiammal, who is none other than the 1st wife of the father of the petitioner. Through the 2nd wife, there are 3 children including the petitioner. However, during the lifetime of Dhanabakkiammal, who was the permit holder originally, she bequeathed a Will in favour of the petitioner, the copy of the Will has been produced by the petitioner before the respondents, therefore the claim made by the petitioner for transfer of permit in his favour is not merely on the basis of the claim of legal heirs of the said Dhanabakkiammal, but mainly on the basis of the Will executed in favour of the petitioner by the said Dhanabakkiammal.

22. Whether the Will is genuine or not, whether the Will is correct or not cannot be gone into by the Regional Transport authorities like the respondents. Therefore the Law presume under the provisions of the Indian Law of Inheritance that, once a Will is executed unless the contrary is proved the legatee or beneficiary is entitled to hold the property covered under the Will. Therefore, on that prima facie view, the authorities concerned should have considered the application submitted by the petitioner for transfer of permit and decided the same accordingly.

23. This, in fact, has been indicated by the learned Judge, who passed the order in the earlier round of litigation, where the learned Judge at para 5 of the order which has already been quoted herein above stating that the petitioner is claiming right over the vehicle based on the Will executed by the owner of the vehicle Dhanabakkiammal and therefore, the question of considering legal heir certificate does not arise in this case.

24. Since the question of filing any legal heir certificate does not arise in that case, as has been pointed out by the learned Judge, in which, I have in complete agreement, the compliance of production of legal heir certificate or No Objection Certificate from other legal heirs as insisted by the



respondents like any other cases as per the provisions contemplated under the Motor Vehicles Act and the Rules made thereunder, does not arise in this case.

25. Therefore in all fairness, the respondents shall consider the application submitted by the petitioner dated 24.12.2020 with regard to the transfer of permit in the name of the petitioner, of the stage carriage permit referred to above and that shall be decided on the basis of the merits especially in the context of the circumstances indicated above.

26. In that view of the matter this Court is inclined to dispose of this Writ Petition with the following orders:

(i) That there shall be a direction to the respondents, especially the 1st respondent, to pass orders on the application of the petitioner dated 24.12.2020, for which, the enquiry already been completed on 22.12.2021, without waiting for any other input to be supplied either by the petitioner or by the other legal heirs, as such kind of legal heir certificate or No Objection Certificate are not required in this case to be produced because of the peculiar facts and circumstances referred to above. Such order shall be passed within a period of 30 days from the date of receipt of a copy of this order.

(ii) Once an order is passed in that regard as indicated above, the question of getting any temporary permit as has been claimed by the petitioner through his application dated 04.05.2021 does not arise. Therefore, the present prayer sought for in this Writ Petition need not be gone into.

27. With the aforesaid directions and observations this Writ Petition is ordered accordingly. No costs. Consequently connected Miscellaneous Petition is closed.

Sd/-
Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar

rap/mp



To

1. The Regional Transport Authority,
Vellore District, Vellore.

2. The Secretary,
Regional Transport Authority,
Vellore District, Vellore

+1cc to Mr.M.Palani, Advocate, S.R.No.1428

+1cc to the Government Pleader, S.R.No.1607

W.P.No.27350 of 2021
and
WMP.No.28862 of 2021

SPD (CO)
RGA (22/02/2022)