



WEB COPY



W.P.Nos.162 and 6041 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :25.07.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

W.P Nos.162 and 6041 of 2022

and

W.M.P.Nos.191, 195, 6126 & 6128 of 2022

K.Kumaresan

...Petitioner in W.P.No.162 of 2022

C.K.Raja

... Petitioner in W.P.No.6041 of 2022

Vs.

1.The Regional Transport Authority,
Tiruvannamalai.

2.C.K.Raja

3.A.Punitha

4.K.Nivethitha

...Respondents in W.P.No.162 of 2022

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

2.K.Kumaresan

3.A.Punitha

4. K.Nivethitha

....Respondents in W.P.No.6041 of 2022



W.P.Nos.162 and 6041 of 2022

Prayer in W.P.No.162 of 2022: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus or any other appropriate writ order or direction in the nature of writ calling for the records of the 1st respondent in No.R.NO.A2/37919/2021 dated 14.12.2021 rejecting the application for transfer of permit in respect of Stage Carriage bearing Registration No.TN-19/C-2260 plying on the route “Vallivagai to Kottapatti” along with the Spare Bus bearing Registration No.TN-63/R-2599 and to quash the same and further direct the 1st respondent to grant the transfer of permits along with the Vehicles in favour of the petitioner.

Prayer in W.P.No.6041 of 2022: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus or any other appropriate with order or direction in the nature of writ calling for the records of the 1st respondent in R.No.A2/19692/2021 dated 17.02.2022 rejecting the application for transfer of permit in respect of Stage Carriage bearing Registration No.TN-18/AJ-0915 plying on the route “Tiruvannamalai to Sankarapuram” and to quash the same and further direct the 1st respondent to grant the transfer of permit along with the vehicle.

In Both W.P's:

For Petitioners : Mrs.S.Radha Gopalan
for M/s.Bhargavi Gopalan

For Respondents : Mr.N.Naveen Kumar,
Government Advocate for R1

: Mr.K.Narayanan for R3 and R4



W.P.Nos.162 and 6041 of 2022

COMMON ORDER

WEB COPY

These writ petitions are filed by the petitioners challenging the order passed by the first respondent rejecting the application filed by the petitioners seeking transfer of permit in respect of stage carriage bearing registration Nos.TN-19/C-2260 along with spare bus bearing registration No.TN-63/R-2599 and TN-18 /AJ- 0915.

2. The petitioner in W.P.No.162 of 2022 is the son of one Mr.C.Kannan, who died on 01.06.2021. The said Mr.C.Kannan held a permit for plying the stage carriage in the route Vallivagai to Kottapatti and he also held a separate permit for spare bus in respect of vehicle bearing Registration No.TN 63/ R-2599. The petitioner succeeded to the possession of the above said stage carriage vehicles after death of his father.

3. The writ petitioner in W.P.No.6041 of 2022 is another son of said Mr.C.Kannan. He succeeded to the possession of the stage carriage vehicle bearing registration No.TV-18/ AJ -0915 plying on the route Tiruvannamalai to Sankarapuram after death of his father.



W.P.Nos.162 and 6041 of 2022

4. As both the petitioners succeeded to the possession of the respective vehicles, they filed an application before the first respondent for transfer of permit in their name. The said application came to be dismissed by the first respondent by impugned order mainly on the ground that the petitioners failed to produce no objection certificate from their sisters namely the third and fourth respondents.

5. Aggrieved by the said order of rejection, the petitioners are before this Court.

6. Heard the arguments of learned counsel for petitioners, learned Government Advocate for first respondent and arguments of the learned counsel for the third and fourth respondents.

7. The learned counsel appearing for the petitioners submits that the third and fourth respondents already filed a Civil Suit for partition wherein the bus permits referred above were already shown as properties available for partition. It is the submission of the learned counsel that the rights of the parties have to be decided finally only by the Civil Court and pending decision



W.P.Nos.162 and 6041 of 2022

by the Civil Court, if the permit is allowed to be canceled, it will not advance the cause of any of the legal representatives. In this connection, the learned counsel relied on the following judgments:

1. Unreported judgment of this Court in ***P.N.Thandava Chetty vs. the Regional Transport Authority Salem Region of Dharmapuri***, made in Writ Petition No.9633 of 1984.

2. ***K.Vediammal and others vs. the Regional Transport Authority, Dharmapuri and others***, reported in 1989 Writ L.R. 391.

3. ***E.Kumuda vs. the Regional Transport Authority, Salem***, unreported judgment made in W.P.No.620, 621 & 1411 of 2007.

8. Per contra, the learned counsel appearing for the contesting third and fourth respondents, opposed this writ petition on the ground that against the rejection of transfer request made by the petitioners, an appeal will lie to State Appellate Tribunal under Section 89(C) of the Motor Vehicle Act, therefore, the writ petition is not maintainable. The learned counsel further submitted that if the petitioners are permitted to ply the vehicle, pending final decision by the Civil Court, the petitioners shall be directed to pay proportionate share to the third and fourth respondents in the profits.



W.P.Nos.162 and 6041 of 2022

9. The learned Government Advocate appearing for the first respondent also tried to sustain the order passed by the first respondent on the ground that without availing alternative remedy before the Tribunal, the petitioners are not entitled to rush to this Court.

10. In the case on hand, as per the admitted facts, originally the father of the petitioners Mr.C.Kannan was the permit holder and he died on 01.06.2021. The petitioners herein claim that after death of their father, they succeeded to the possession of the respective vehicles mentioned in their affidavit. Therefore, by relying on Section 82(2) of the Motor Vehicles Act, the petitioners claim that they are entitled to ply the vehicle. The third and fourth respondents are daughters of the deceased Mr.C.kannan. Admittedly, they filed a Civil Suit for partition claiming share in the estate of deceased in O.S.No.120 of 2022 on the file of the Principal District Court, Thiruvannamalai and the same is pending. There is no doubt, the permit stood in the name of the deceased is also part of the estate and the legal representatives are entitled to claim their share in it. Ultimately, allotment of permit has to be decided in the final decree proceedings by taking into consideration the equity and other considerations. Pending disposal of the Civil Suit, if transfer of permit is refused, it will result



W.P.Nos.162 and 6041 of 2022

in loss of permit to the estate. In such circumstances, it is better to permit any one of the legal representative to ply the vehicle as a trustee for other legal representatives.

11. This Court while considering similar question in ***P.N.Thandava Chetty vs. the Regional Transport Authority Salem Region of Dharmapuri***, made in Writ Petition No.9633 of 1984 has observed as follows:

“Therefore, the petitioner, if his right to an one-fifth share in the “C” schedule properties is declared by the trial Court or the second respondent, whose right has already been declared under the preliminary decree passed by this Court, is further directed to move the Trial Court on or before 15th August, 1985, for the passing of an interim final decree restricted, only to the “C” schedule properties in the suit. The Trial Court, if such an application is made, will given notice thereof to all the interested parties and to proceed to pass on or before 30.09.1985 on interim final decree restricted to the “C” Schedule properties only so that on the strength of such a decree, it would be open to the parties again to apply to the Regional Transport Authority for effecting the transfer of the permits in favour of those parties to whom the buses and permits have been respectively allotted. Thereupon, the Regional Transport Authority will proceed to dispose of the



W.P.Nos.162 and 6041 of 2022

WEB COPY

application in accordance with law after issuing notice and inviting objection, if any. Since the “C” schedule properties are buses and route permits, it is necessary that the declaration of the right of the petitioner therein as well as the passing of the final decree with reference to those buses and permits should be done with the utmost speed as otherwise, the assets in the shape of buses as well as route, permits are liable to be lost on account of lack of attention and non-performance and if that is allowed to happen, the very properties would be a loss to the parties. Thus on a consideration of the rights of parties as they stand at present and the need to preserve and protect the buses and permits and above all, to minimize the inconvenience that is likely to be caused to the travelling public, the ends of justice require that the permits should be immediately transferred in favour of respondents 3 to 6, subject to the directions given earlier.”

This Court while considering the similar question in ***K.Vediammal and others vs. the Regional Transport Authority, Dharmapuri and others***, reported in 1989 Writ L.R. 391, has observed as follows:

“15. I am not able to agree with the learned counsel for the third respondent that the word “succeeding which occurs in



W.P.Nos.162 and 6041 of 2022

WEB COPY

*S.61 of the Motor Vehicles Act, has to be read with personal law, say Hindu Law in this case. A plain reading of that section clearly shows that what all required is, the applicant should establish that he or they have succeeded the possession of the vehicles. I am not able to read into that section as Mr.Krishnan the learned counsel for the third respondent wants me to read, i.e, the personal law of Hindus. It is to be noted that if the permit is not transferred within the prescribed time, there is possibility of losing the permit itself. It may not help either the petitioners or the third respondent. It is open for the third respondent and his brothers to raise the issue in the Civil Court and if they prove, they are entitled to a share of the property and there is time enough to work out their share that may be decreed in the suit. In my view, the observation of the Division Bench of this Court in *Sahib Transport Service v. Balasubramaniam* also supports this conclusion. It is observed in the above mentioned case, after referring to S.61 of the Motor Vehicles Act, the learned Judge held as follows:*

“This section may be in a restricted manner, recognises the heritable character of a permit, the beneficial interest which the person 'succeeding to the possession of the vehicles has in the permit. Having regard to modern concepts of property, the right is certainly proprietary and descends on the person who takes possession of the vehicles and the permit goes with the possession of the vehicles.’”



W.P.Nos.162 and 6041 of 2022

Following the unreported decision of the single judge of the Karnataka High Court and also the observations made in the judgment of the Division Bench of this Court, as cited supra I hold that the petitioners in these writ petitions are entitled to succeed in the writ petitions.”

16. However, as observed by Ratnam, J. in the unreported decision in Thandava Chetty v. the Regional Transport Authority, Salem Region at Dharamapuri, it is made very clear that this transfer is only with a view to preserve the buses as well as to protect the permits so that they may not be lost or cancelled for non-performance. The respondents 1 and 2 are directed to communicate the order passed by the first respondent on 19.02.1988 and effect the transfer so far as Writ Petition Nos.1519 and 1520 of 1989 are concerned and pass orders in W.P.No.1397 and 1398 of 1989 within four weeks from to-day. I direct the petitioners also to keep separate accounts and file the same in O.S.No.42 of 1988 on the file of the Sub Court, Krishnagiri, once in three months, as I feel it is necessary in the interests of justice, especially when the matter is pending before the Civil Court with regard to the succession of the property itself. It is open to the Subordinate Judge, Krishnagiri to take any view in any matter filed in O.S.No.42 of 1988. Any observation made in this order should not be taken as a binding one on the Civil Court. It is open to the parties also to raise all the contentions which are open to them in law, before the Court,



W.P.Nos.162 and 6041 of 2022

where the suit is pending.”

WEB COPY

12. In the present case also the father of the petitioner who was the original permit holder died and a Civil Suit is pending with regard to the partition of the estate. The petitioners herein seeks transfer of permit in their name. However, the petitioners are not in a position to furnish no objection certificate from their sisters namely third and fourth respondents. If the permit is not transferred in the name of the petitioners, there is possibility of losing the permit itself. Therefore, in order to preserve the rights of all the parties, this Court deems it appropriate, to direct the respondent to transfer the permit to the name of the petitioners temporarily pending disposal of the Civil Suit filed by the third and fourth respondents. It is made clear that transfer of permit in favour of the petitioners is only for the benefit of all the legal representatives of the deceased Mr.C.Kannan. The petitioners are permitted to ply the vehicle as a trustee of the entire estate of the deceased. In order protect the rights of the third and fourth respondents, the petitioners are directed to keep a separate account of the profits earned by them by plying the vehicle and submit the same before the Civil Court in O.S.No.120 of 2022 pending on the file of the Principal District Court, Thiruvannamalai, once in three months. It is brought



W.P.Nos.162 and 6041 of 2022

to the notice of this Court, petitioners are permitted to ply the vehicle on the strength of the interim order passed by this Court and they have been plying the vehicles from the date of death of their father. Therefore, the petitioners are directed to file the account of profits from 01.06.2021 to 31.07.2023 on or before 31.08.2023. Thereafter, the account shall be filed before the Civil Court once in three months. In order to workout the equity between the parties, the petitioners are also directed to deposit 50% of the profits earned by them as per the account to the Credit of O.S.No.120 of 2022, on the file of the Principal District Court, Tiruvannamalai, once in three months. The deposit of profit shall start from 01.07.2023. The first respondent is directed to effect temporary transfer of the permit as mentioned above within a period of eight weeks from the date of receipt of copy of this order. It is made clear the Civil Court shall decide the suit for partition on merits, without in any way influenced by any thing said in this order. The transfer of permit in the name of petitioners is subject to result of the Civil Suit in O.S.No.120 of 2022. In case the petitioners failed to file accounts and deposit 50% profits earned to the credit of Civil Suit as directed, it is open to the third and fourth respondents move appropriate application before first respondent for cancellation of transfer of permit in the name of petitioners.



W.P.Nos.162 and 6041 of 2022

WEB COPY

13. With these observations, the writ petitions are allowed. No costs.

Consequently, connected miscellaneous petitions are closed.

Jai

25.07.2023

Index : Yes/No

Speaking Order/Non-Speaking Order

Neutral Citation Case : Yes/No

To

1. The Principal District Court, Thiruvannamalai

2. The Regional Transport Authority,
Tiruvannamalai.

3. The Regional Transport Authority,
Villupuram District,
Villupuram.



WEB COPY



W.P.Nos.162 and 6041 of 2022

S.SOUNTHAR, J.
jai

W.P Nos.162 and 6041 of 2022

25.07.2023