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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.04.2023

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P No.3568 of 2023

R.Rani

Petitioner

vs.

The Secretary
State Transport Authority,
Puducherry.

Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the respondent herein to forthwith consider the petitioner application dated 13.02.2009 and transfer the permit No.52/PY/1992 to ply on the route “Pondicherry to Nettapakkam” along with the vehicle bearing Registration No. PY- 01/ AJ- 6789 from the name of the petitioner's husband, the deceased permit holder in the name of the petitioner and further accept the renewal application for renewal of permit in respect of the above permit for the period from 01.12.2017 and also grant the same.

For Petitioner : Mrs.S.Radha Gopalan

For Respondent : Mr.M.Nirmal Kumar
Government Advocate (Puducherry)

ORDER

This writ petition has been filed for issue of writ of mandamus directing the



wherein, the petitioner has sought for the transfer of permit from the name of her husband and further has sought for the renewal of the permit for the period from 01.12.2017 onwards.

2.Heard Mrs.S.Radha Gopalan, learned counsel appearing on behalf of the petitioner and Mr.M.Nirmal Kumar, learned Government Advocate (Puducherry) appearing on behalf of the respondent.

3.The case of the petitioner is that her husband was holding a State Carriage Permit to ply on the route "Pondicherry to Nettapakkam" in respect of the vehicle bearing Registration No.PY-01/AJ-6789. The husband of the petitioner died on 29.07.2008 leaving behind the petitioner, daughters and a son. The petitioner made an application on 13.02.2009, seeking for transfer of permit from the name of her deceased husband to the name of the petitioner.

4.A suit came to be filed in O.S.No.72 of 2016 before the learned Principal District Judge, Puduchery. One of the property that was involved in the suit was the vehicle and the permit and the suit was filed for a relief of partition. The suit came to be disposed of by a judgment and decree dated 18.04.2016 and for proper appreciation, the preliminary decree that was passed in a suit is extracted hereunder:



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34 . In the result, the suit is decreed and the preliminary decree for partition is passed on the following terms:

1) The plaintiff Nos.2,3 and 4 are entitled to an undivided 1/6 share in the suit B,C and D schedule properties.

2) The defendant Nos.6 and 7 are entitled to share along with the plaintiff Nos 2,3 and 4 in their 1/6th undivided share in the B,C, and D schedule properties only if they establish that they were born to the deceased Balasundaram which issue cannot be decided in this suit, in view of insufficient evidence available on record and consequently defendant Nos.6 and 7 have to work out their remedies separately as against the plaintiff Nos.2, 3 and 4.

3) The 1, 2, 4, and 5th defendants are also each entitled to an undivided 1/6 share in the B,C and D schedule properties.

4) The defendant Nos.8,9,10 and 11 being the legal heirs of deceased 3rd defendant are all jointly entitled to an undivided 1/6th share in the B,C, and D schedule properties.

5) The amounts paid by the plaintiffs and the defendants towards the advocate commissioner's fees and surveyor's fee are to be equally apportioned during the time of final decree proceedings with sufficient and acceptable bills which are to be produced by the parties and/or by any memo to be filed by the advocate commissioner Tmt.Devasundari, with respect to the



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fees received by her. The Advocate Commissioner has also filed an additional memo seeking additional remuneration. Since there are 50 numbers of B schedule properties regarding which she had filed report, this court in addition fixes additional fee of Rs.6000/- to be again equally apportioned by the parties.

6) The plaintiffs and the 5th defendant are entitled to file an application for final decree and on such application, another advocate commissioner may be appointed to divide the schedule B,C and D suit properties among the parties in the ratios mentioned above. While effecting such division, the advocate commissioner may also take note of the joint compromise memo recorded among the parties, so that the properties already allotted therein if agreed upon may be allotted by equitable partition. However the joint compromise memo cannot be the sole basis for division of the B schedule suit properties among the parties. The Advocate Commissioner so appointed during the final decree proceedings may take independent procedure regarding the division of B schedule properties. With respect to the C schedule business namely Balaji Wines and Balaji Bus Service, again the Advocate Commissioner may refer to the joint compromise memo entered into between the parties and exercise his/her discretion either to divide the business in the same method set out in the joint compromise memo or give his/her own equitable partition method. Similar method may also be followed with respect to D schedule movable properties.



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5.The petitioner made a subsequent representation on 06.10.2022 to consider the application for transfer of permit and also sought for the renewal of the permit from 01.12.2017 onwards. Since the same was not considered, the present writ petition has been filed before this Court.

6.The petitioner by filing an application on 13.02.2009 has sought for the transfer of permit which stands in the name of her husband to the name of the petitioner. There is no dispute with regard to the fact that the vehicle in question was also one of the property that was involved in the partition suit. At the time of passing the preliminary decree, the Civil Court has assigned specific shares to the parties and insofar as the vehicle is concerned, it came under the "C" Schedule. There is no indication in the preliminary decree that the petitioner will be entitled for the exclusive right over the vehicle for which there is a State Carriage permit. In view of the same, it will not be possible for the respondent to transfer the permit exclusively in the name of the petitioner. In the same way, the renewal of the permit also cannot be made exclusively in the name of the petitioner.

7.The learned counsel for the petitioner submitted that a joint compromise memo was entered into between the parties to divide the business and as on today, no one else is interested in plying the bus except the petitioner. In view of the same, it



is left open to the petitioner to give a fresh representation to the respondent along with a no objection from the other sharers. If the other sharers are not interested in the permit and to ply the vehicle and to get the permit and they give No Objection Certificate, it will always be open to the respondent to take that into consideration and act upon the application submitted by the petitioner for transfer of permit in her name and also for the renewal of the permit from the year 2017 onwards. If the petitioner is able to get the no objection from the other sharers and the representation is made to the respondent, the respondent shall act upon the same and take a final decision, within a period of four weeks from the date of receipt of the representation from the petitioner. To this extent, the interest of the petitioner can be safeguarded by this Court. If ultimately, the petitioner is not able to get any no objection from the other sharers, the petitioner has to necessarily wait for the final decree to be passed in which specific properties will be assigned to the sharers.

8.This writ petition is disposed of in the above terms. No Costs.

18.04.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
SSR



To

The Secretary
State Transport Authority,
Puducherry.



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N. ANAND VENKATESH, J.

SSR

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