



W.P.(MD) No.11500 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.08.2024

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.11500 of 2024

S.Hariharan

S/o.Sankaralingam (late)

... Petitioner

Vs.

1.The Regional Transport Authority,
Tenkasi District,
Tenkasi - 627 811.

2.The Regional Transport Authority,
Tenkasi,
Tenkasi District.

3.S.Kandasamy @ Srikanth
S/o.Sankaralingam (late)

... Respondents

[R3 was *suo motu* impleaded by this Court *vide*
order dated 11.06.2024]

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of Writ of Mandamus to direct the respondents to receive the petitioner's Application dated 24.05.2024 along with E-Fee Receipt for issuing Duplicate Registration Certificate (R.C. Book) to the Stage Carrier bearing Registration No.TN-76-D-4510 plying on the route 'Tenkasi to Kadayanallur' and for other reliefs.



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For Petitioner : Mr.A.C.Asaithambi
For R1 & R2 : Mr.G.Suriyananth
Additional Government Pleader
For R3 : Mr.T.S.R.Venkatramana
Senior Counsel
for Mr.N.Shylappa Kalyan

ORDER

This Writ Petition has been filed for issuance of a Writ of Mandamus to direct the first and second respondents to receive the petitioner's application dated 24.05.2024 along with E-Fee Receipt for issuing Duplicate Registration Certificate (R.C. Book) to the Stage Carrier bearing Registration No.TN-76-D-4510 plying on the route 'Tenkasi to Kadayanallur' and for other reliefs.

2. The petitioner herein is the eldest son of late Mr.Sankaralingam who was holding a carriage permit for the vehicle bearing Registration No.TN-76-D-4510. The permit was last renewed on 21.08.2019 which is valid upto 22.08.2024. The dispute arose between the petitioner and the third respondent who was subsequently *suo motu* impleaded by this Court *vide* its order dated 11.06.2024.



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3. The petitioner and the third respondent are the two sons of the late Mr. Sankaralingam. The petitioner is the eldest son, and the third respondent is the second son of late Mr.Sankaralingam and Valli. Apart from them, there are two other daughters to late Mr.Sankaralingam and Valli. It appears that the family is divided: the petitioner and the eldest sister, R. Subbulakshmi, are together, while the other children namely, the third respondent and another sister, Indira are aligned with each other. There is a power struggle between the petitioner and his other siblings over the control of the bus which was permitted to fly on the route 'Tenkasi to Kadayanallur.

4. It is noticed that after the death of the father of the petitioner and the third respondent on 28.012021, a dispute arose over who would control and who would receive the earnings from the revenue generated by operating the bus on the permitted route. The petitioner had earlier attempted to pay the tax and thus approached the Regional Transport Authority namely, the first respondent herein.

5. A show cause notice was issued on 12.09.2022 to show cause as to why the permit should not be cancelled under Section 86(1) of the



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Motor Vehicles Act, 1988 for non-payment of tax for the vehicle, within 7 days from the date of receipt of the said show cause notice. The petitioner as one of the legal heirs of the permit holder namely, the petitioner's and the third respondent's father late Mr.Sankaralingam, received the show cause notice dated 12.09.2022, but, failed to offer any explanation.

6. Hence, an order came to be passed on 01.11.2022, whereby, the permit that was renewed on 21.08.2019 was cancelled. Aggrieved by the same, the petitioner filed an appeal before the State Appellate Tribunal, Chennai in M.V.Appeal No.44 of 2022. In the appeal, the petitioner had not made any of his siblings or his mother Valli as a party. The Tribunal by its order dated 23.12.2022, set aside the order of the Regional Transport Authority dated 01.11.2022 cancelling the permit.

7. Pursuant to the above, the Regional Transport Authority passed an order dated 31.01.2023 in his proceedings bearing reference No. 7321/A3/2022. The Regional Transport Authority in the above order dated 31.01.2023 has referred to Section 82(2) & (3) of the Motor Vehicles Act, 1988, Rule 56(1) & (4) of Central Motor Vehicles Rules, 1989 and Rule 214 of the Tamil Nadu Motor Vehicles Rules, 1989 and



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concluded that the transfer of permit cannot be granted unless a succession certificate as prescribed in Sub Rule (4) to Rule 56 of the Central Motor Vehicles Rules, 1989 is produced by any one of them to prove their succeeding in possession. The relevant portion of the said order dated 31.01.2023 reads as under:-

“It is stated that no provisions has been prescribed either in the Act or Rules on the procedure when there are more than one legal heir and difference of opinion among the heirs to transfer in the name of a particular legal heir. In the absence of clarity, the expression used in section 82(3) provides the transfer of permit to the person succeeding the possession of the vehicle may be considered.

The rule 56(1) makes it clear that the right to use the vehicle of a deceased person is conferred on the person “succeeding to the possession of the vehicle”. As such the legal heir seeking transfer on his name would have to satisfy the authority by producing necessary documents that he has succeeded to the possession of the vehicle.

The report of the Motor Vehicles Inspector, Tenkasi says that the vehicle covered with the permit is in possession of the one of the Legal Heir Thiru.Hariharan. The possession contemplated in the Act is legal possession and therefore, a person can be said to have succeeded to the possession of the vehicle only if he shows that he has done so through one of the modes recognized by law.

Therefore, it is implicit in the rule itself that the person seeking such transfer would have to satisfy the



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authority that he had legally succeeded to the possession of the vehicle by producing necessary documents to support his claim. Or in other words, in order to satisfy the transport authority that he is a person entitled to transfer of the vehicle, he would have to satisfy the conditions stipulated by sub rule (4) of rule 56 of CMV Rules, 1989.

The 2nd and 5th Legal heir are claiming the transfer of permit in their name but not produced any lawful possession of the vehicle.

The 2nd legal heir is having the vehicle in his possession parked in his address, but not produced any document to show that he has legally succeeded in possession of the vehicle.

The 5th legal heir is not having any possession on the vehicle. He has stated that he was operating the vehicle after his father's death. But no documents were submitted to support his claim. He has also not submitted any application in the prescribed Form 31.

The 4th Legal Heir, though not claimed transfer of permit on her name, requires share on partition of property of the deceased. The request is well within the realm of Civil Court.

In the above situation, as the transfer of permit is found connected with partition of property among legal heir and the vehicle covered by the said permit is a valuable movable property, it may be decided to issue orders as noted below:

(1) The 2nd and 5th Legal Heirs are claiming transfer of permit in their name. The 2nd Legal Heir is in possession of the vehicle in off road condition. Succeeding to the possession of the vehicle could not be decided merely having possession of the vehicle.



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The transfer of permit cannot be granted unless a succession certificate prescribed in sub rule (4) of rule 56 of CMV Rules, 1989 is produced by any one of them to prove their succeeding in possession.

(ii) In a case between B.Poomani Vs. The State Transport Appellate, the Hon'ble High Court of Madras on 02.09.2009 in W.P.No.62 of 2009 and M.P.No.2 of 2009 has observed in Para 14 as

“This is obviously due to the reason that the right to succeed the permit which is a property right is to be decided by the competent civil Court, when such dispute is raised by one of the successors.”

Hence under the powers vested by section 82 of the Motor Vehicle Act, 1988, I, the Regional Transport Authority, Tenkasi District, hereby reject the requests of 2nd Legal Heir Thiru S.Hariharan and the request of the 5th Legal Heir Thiru S.Kandasamy @ Srikanth claiming the tranfer of permit in their names.”

8. Aggrieved by the same, the petitioner filed M.V.Appeal No.15 of 2023 before the State Transport Appellate Tribunal once again for the second time. The Tribunal by its order dated 09.10.2023 dismissed the appeal filed by the petitioner citing the decision of this Court in the case of **P.V.Kalyan Vs. State of Tamil Nadu and others**, dated 01.02.203 in W.P.(MD) Nos.10526 & 10527 of 2012.



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WEB COPY 9. Aggrieved by the same, the petitioner filed C.R.P.(MD) No.39 of 2024 before this Court. The Civil Revision Petition that was filed by the petitioner was initially allowed by an order dated 22.03.2024. At the time when the C.R.P. was allowed, the Court had noted that the third respondent herein who is the fifth respondent therein as well as the petitioner's sister Indra who is the fourth respondent therein had chosen not to appear and therefore, it is duty of the Court to protect the interest of the non-representing and non appearing parties also. Under these circumstances, the Court had passed the order dated 22.03.2024 with the following observations:-

“13.This will be the proper course to be adopted by this court, since the 4th and 5th respondents have not chosen to appear before this court and made objection. But however, as mentioned above, it the duty of this court to protect the interest of the non-representing and non appearing parties also.

14.In the light of the above said consistent stand taken by this court in the above writ petitions, this civil revision petition stands allowed. The impugned order passed by the appellate tribunal, confirming the order of the 1st respondent is set aside. There shall be a direction to the Regional Transport Authority, Tenkasi District namely the first



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respondent herein to issue permit for the petitioner herein subject the result of the competent civil court judgment.

15. With the above said direction, this civil revision petition stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.”

10. The aforesaid order dated 22.03.2024 has subsequently been recalled by this Court by an order dated 12.06.2024 in C.M.P.(MD) No. 6658 of 2024 in C.R.P.(MD) No.39 of 2024 filed by the third respondent herein. The operative portion reads as under:-

“3. When the petitioner submit that he was not heard and order has been passed allowing the petition, it is the duty of this Court to hear the petitioner herein. On that sole ground, this petition stands allowed.

4. The order passed in C.R.P.(MD).No.39 of 2024 dated 22.03.2024, is hereby Recalled. Let the papers be served upon the petitioner herein and C.R.P.(MD).No.39 of 2024 be listed before the Roster Judge for hearing, since I have lost the Roster now.”

11. Meanwhile, the Regional Transport Officer in his Proceedings R.No.7321/A3/222 dated 03.05.2024 has allowed the transfer of permit in favour the petitioner from the name of their father late Mr.Sankaralingam



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and directed the petitioner to produce the permit of the vehicle along with R.C. Book of the vehicle with valid F.C. and I.C. after duly transferring the ownership of the vehicle to his name, within period of four months. The operative portion of the said order reads as under:-

“The transferee is requested to produce the permit of the above vehicle along with R.C. Book of the vehicle with valid F.C. and I.C. after duly transferring the ownership of the vehicle to his name within four months from the date of receipt of this proceedings failing which the sanction for the transfer of permit will be revoked under section 213(1) of the Tamil Nadu Motor Vehicle Rules 1989.”

12. It appears that the originals of the R.C. Book and the permit are available with the third respondent. Therefore, the petitioner filed an application dated 24.05.2024 before the first and second respondents along with E-Fee Receipt for issuing Duplicate Registration Certificate (R.C. Book). Since the first and second respondent did not receive the said application, the petitioner has filed this Writ Petition seeking for a Mandamus.

13. This Court by an order dated 23.07.2024 had earlier referred the parties to the Mediation and Conciliation Centre attached to this



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Court, to settle the dispute amicably between them. The mediation has failed. The learned Mediator has given a failure report.

14. Under these circumstances, the prayer of the petitioner for direction to the first and second respondents to receive the petitioner's application dated 24.05.2024 along with E-Fee Receipt for issuing Duplicate Registration Certificate (R.C. Book), cannot be granted unless the petitioner settles the disputes amicably or secures an order by obtaining succession certificate to the rights over the subject vehicle in the manner known to law. Therefore, this Writ Petition is liable to be dismissed.

15. In the result, this Writ Petition stands dismissed. No costs.

02.08.2024

Index: Yes/ No
Neutral Citation: Yes / No
Speaking Order / Non-Speaking Order
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Copy To:
The State Tax Officer (Inspn.) - 4,
Office of the Deputy Commissioner (IW),
Tirunelveli District, Tirunelveli.



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C.SARAVANAN, J.

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