

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.K.ABDUL REHIM

FRIDAY, THE 29TH OCTOBER 2010 / 7TH KARTHIKA 1932

WP(C).No. 28062 of 2010(G)

PETITIONER(S):

1. SADIC MOHAMMED
KARIKKANAKUDIYIL HOUSE, VELLOORKUNNAM PO
MUVATTUPUZHA PO.
2. V.N.RAJESH
VRICKAKKAL HOUSE, EDAVETTY PO, THODUPUZHA.
3. JOSH Y JOHN, VADAKKEKARA HOUSE
PERUMBALLOOR PO, MUVATTUPUZHA.
4. FAISAL V.A, VELAKKOT PUTHENPURA,
ADOOPARAMBU, MUVATTUPUZHA.

BY ADV. SRI.M.A.FAYAZ

RESPONDENT(S):

1. REGIONAL TRANSPORT OFFICER,
CIVIL STATION, ERNAKULAM-30
2. REGIONAL TRANSPORT OFFICER
MUVATTUPUZHA-686 673.
3. THE RECOVERY OFFICER,
DEBTS RECOVERY TRIBUNAL, 8TH FLOOR,
K.S.H.B. BUILDING, PANAMPILLY NAGAR,
KOCHI-36.
4. STATE BANK OF TRANVANCORE,
PANAMPILLY NAGAR, KOCHI-36,
REPRESENTED BY ITS BRANCH MANAGER.
5. SUHARA BEEVI,
W/O.MOHAMMED KUNJU, 3D, AMAR SANGAMAM,
VIDYA NAGAR, PANAMPILLY NAGAR
COCHIN-36.

WP(C).No. 28062 of 2010(G)

**6. MOHAMMED SHAHEER,
S/O.MOIDEEN KUTTY, 3D, AMAR SANGAMAM,
VIDYA NAGAR, PANAMPILLY NAGAR, COCHIN-36.**

**BY ADVS. SRI.SATHISH NINAN, SC FOR R4
SRI.MATHEW GEORGE VADACKAL, GOVERNMENT PLEADER.**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 29/10/2010, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

ami/

C.K. ABDUL REHIM, J

WP(C) NO. 28062 OF 2010

Dated this the 29th day of October, 2010

JUDGMENT

The petitioners are auction purchasers of vehicles bearing Nos.KL BC 657, KL 07 AZ 7709, KL 07 BC 629 and KL 7 BC 655 respectively, purchased in an auction sale conducted by the 4th respondent. The vehicles in question were belonging to respondents 5 and 6, which were under hypothecation. It was consequent to default committed by respondents 5 and 6 in repayment of loan availed from the 4th respondent, that the vehicles were taken over possession and sold in auction. Ext.P2 series are the registration certificates of the vehicles in question. Ext.P3 series are the delivery orders issued by the 4th respondent consequent to confirmation of the sale in favour of the petitioners.

2. On finalization of the auction sale, the petitioners have approached the first respondent under Ext.P4 series requests for getting 'No-Objection

Certificate' for the purpose of transferring ownership of the vehicle, and also submitted Ext.P5 series applications for effecting transfer of ownership before the 2nd respondent.

3. But the first respondent refused to issue 'No-Objection Certificate' since there was arrears of motor vehicles tax due with respect to the vehicles in question. Contention of the petitioners is that they are not liable for payment of the arrears due for the period prior to the auction sale. According to them, the auction was conducted by the 4th respondent pursuant to orders passed by the Debt Recovery Tribunal, Ernakulam, for realizing arrears due from respondents 5 and 6. It was contended that the petitioners were never informed in any manner that they will be held liable for payment of arrears of tax amount. It is further contended that going by provisions of the Motor Vehicles Taxation Act, the petitioners could not held liable for payment of tax for the periods prior to the auction purchase. According to the petitioners, during the period

when the 4th respondent was in possession of the vehicle, they need be considered as 'operator' liable for payment of motor vehicles tax, especially since the 4th respondent was the financier. Relying on the dictum laid by this Court in **Motor and General Finance Ltd. Vs. Deputy Transport Commissioner [2010 (2) KLT 1032]** it is contended that the 4th respondent financier alone will be liable for payment of the tax due for the period during which they were in possession.

4. According to the petitioner, to the best of their knowledge there was no arrears of tax pending payment during the period when the vehicles were in possession of respondents 5 and 6. It is also pointed out by the petitioner that the legal position regarding liability of payment of motor vehicles tax in case of auction purchase, stands clarified through another judgment of this Court, **Nisamudheen Vs. Joint RTO [2009 (3) KLT 1058]**. Under the above circumstances, petitioners are seeking

directions to issue clearance certificate and for accepting motor vehicles tax due for the period from date of purchase onwards. The petitioners are inter alia seeking declaration to the effect that they are not liable for payment of the arrears.

5. By virtue of an interim order issued by this Court on 09.09.2010, the respondents 1 and 2 were directed to issue clearance certificate with respect to the vehicle subject to condition of the petitioners furnishing Bank Guarantee for the entire amount of arrears of motor vehicles tax, due till 05.03.2010. It was further directed that on furnishing such Bank Guarantee, transfer of ownership shall be effected subject to payment of tax amount due from 05.03.2010 onwards. Learned counsel for the petitioner submitted that pursuant to the interim order the transfer of ownership of the vehicles had already been effected.

6. The question now remains for consideration is

only regarding liability with respect to the arrears of motor vehicles tax with respect to which the petitioners have already furnished Bank Guarantee. It is noticed that the competent authority to decide the question primarily, is the registering authority with whom the vehicles were registered during the relevant period. It is only just and proper that such authority shall decide the question fixing the liability for payment of the arrears of tax, after affording reasonable opportunity to all parties concerned.

7. Therefore, the Writ Petition is disposed of directing the first respondent to consider and pass orders fixing the liability for payment of the arrears of motor vehicles tax due with respect to the above said 4 vehicles, after affording a reasonable opportunity of hearing to the petitioners and respondents 4 to 6.

8. Needless to say that the petitioners will be at liberty to place the relevant legal precedents upon which they are placing reliance, before the authority in order to

contend that they are not liable for payment of the arrears of tax. It is made clear that the Bank Guarantee now furnished by the petitioner shall be kept alive till finalization of the matter and the same shall be appropriated subject to outcome of the decision. it is further observed that with respect to the liability which will be fixed by the first respondent, there will be a charge on all the respective vehicles as provided under the provisions of the Kerala Motor Vehicles Taxation Act.

10. A decision in this regard shall be taken by the first respondent as early as possible, at any rate within a period of two months from the date of receipt of a copy of this judgment.

**C.K. ABDUL REHIM
JUDGE**

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