

(2016) 01 KL CK 0118
In the High Court Of Kerala
Case No : W.A. Nos. 1666 and 1672 of 2015

Sajith	Vs	APPELLANT
Regional Transport Authority		RESPONDENT

Date of Decision : 28-01-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 41, Section 47, Section 48, Section 49, Section 51, Section 51(6), Section 52, Section 81

Citation : (2016) 1 KLT 653

Hon'ble Judges : Ashok Bhushan, C.J. and A.M. Shaffique, JJ.

Bench : Division Bench

Advocate : P. Santhosh Kumar (T.R.) and T.P. Sajan, for the Appellant; I. Dinesh Menon and C.R. Syamkumar, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

A.M. Shaffique, J.—1. These appeals arise out of the common judgment dated 26.6.2015 in WP.(C) Nos. 15360 and 16032/15. The short facts involved in these Writ Petitions would disclose that the appellant is the permit holder in respect of a vehicle bearing Regn. No. KL-08 W 9300 conducting service on the circular route Palakkad-Palakkad, the permit being valid till 22.12.2015. He is also the registered owner of the vehicle. The vehicle was purchased on hire purchase basis from M/s. Raja Murugan Finance, the petitioner in W.P.(C) No. 16032/2015, who is hereinafter referred to as the financier. Necessary endorsement in that regard was also made.

2. The appellant submitted an application before the Secretary, R.T.A. on 12.2.2015 for replacement of the vehicle. The Secretary, R.T.A. called upon the financier to give a no objection certificate (NOC) for enabling the appellant to replace the vehicle with another vehicle in the regular permit issued in his favour. The financier submitted an objection on 16.3.2015 refusing to grant NOC on the ground that there had been default on the part of the appellant in remitting the hire charges. The appellant had filed W.P.(C) No. 6928/2015 before this Court

raising a contention that for replacing the vehicle, no objection certificate from the financier is not required. This Court by judgment dated 6.3.2015 directed the Transport Authorities to consider the claim raised by the petitioner in the light of S. 51(6) of the Motor Vehicles Act, 1988 (hereinafter referred to as the M.V. Act). The financier took possession of the vehicle on 23.4.2015. Thereafter, the 1st respondent, the Secretary, R.T.A. allowed the application of the appellant as per order dated 12.5.2015 directing replacement of the vehicle on condition of production of NOC from the financier and remittance of tax arrears in respect of the outgoing vehicle. The financier challenged the said order by filing W.P.(C) No. 16032/2015.

3. The appellant in W.P.(C) No. 15360/2015 challenged the very same order dated 12.5.2015 which imposes on him a condition to produce the NOC from the financier and sought for a direction to allow replacement of the old vehicle with a new vehicle without producing NOC from the financier.

4. The appellant inter alia contended that when replacement of the vehicle is considered, there is no necessity to seek NOC from the financier. NOC is sought for only under circumstances enunciated under S. 51(6), which will not apply for replacement of a vehicle. He also contended that the finding of the Secretary, R.T.A. that as per Rule 174(2)(d) of the Kerala Motor Vehicles Rules, 1989 (hereinafter referred to as K.M.V. Rules), there is no mandate for the R.T.A. to reject an application for replacement on the ground that there is contravention of an agreement between the registered owner and the financier. Though in this Writ Petition, the financier was not impleaded as a party, subsequently he has been impleaded as additional 3rd respondent and filed counter affidavit supporting their stand in the matter. The learned Single Judge after evaluating the respective contentions allowed the Writ Petition filed by the financier setting aside the order dated 12.5.2015 of Secretary, R.T.A. and the Writ Petition filed by the appellant was dismissed.

5. The main contention urged by the appellant is that the vehicle was illegally taken possession by the financier. The vehicle was in his possession till 23.4.2015. He submitted application for replacement on 26.1.2015 when he was in legal possession of the vehicle and learned Single Judge of this Court in judgment dated 6.3.2015 in W.P.(C) No. 6928/15 has directed consideration of his application, but no order was passed on the application within the time as specified by the learned Single Judge. Therefore, the appellant was entitled to get replacement of the vehicle without any conditions as stipulated in Ext. P5 (in W.P.(C) No. 16032/15). It is contended that neither S. 51(6) of the M.V. Act nor Rule 174(2)(d) of the K.M.V. Rules requires that at the time of directing replacement of vehicle, the permit holder should be in possession of the vehicle. Further, it was argued that in so far as the vehicle was wrongfully taken possession from the appellant, lawful possession remains with the appellant.

6. Heard the learned counsel appearing for the appellant, learned Government Pleader appearing on behalf of the State authorities and the learned counsel

appearing on behalf of the financier.

7. It is not in dispute that the vehicle had been repossessed by the financier in terms with the agreement with the appellant on 23.4.2015. It is submitted that a complaint has been preferred by the appellant alleging wrongful repossession of the vehicle and a crime has been registered and the vehicle had been seized and is produced before the Magistrate, which is pending further orders. It is therefore not in dispute that as on the date when the order dated 12.5.2015 has been passed, the petitioner was not in possession of the vehicle. Whether repossession of the vehicle by the financier is wrongful or not are matters yet to be considered by the Court considering the issue and we do not want to dwell upon such issues and to arrive at a finding in that regard.

8. It is argued by the learned counsel appearing for the financier that though the learned Single Judge in judgment dated 6.3.2015 in W.P.(C) No. 6928/15 had directed the Secretary, R.T.A. to consider the application of the petitioner for replacement, the same was produced by the appellant before the Secretary, R.T.A. only on 20.4.2015 as evident from the impugned order itself and therefore, it is not a case where there had been delay on the part of the authority to pass appropriate orders. It is submitted that they are entitled under law to take possession of the vehicle as there was failure on the part of the petitioner in remitting the hire charges within the stipulated time and their actions are in accordance with law. The perusal of order dated 12.5.2015 would indicate that replacement of the vehicle was in fact allowed on two conditions, one is production of NOC from the financier and the other is payment of tax arrears in respect of the outgoing vehicle. S. 51 of the Act makes special provisions regarding motor vehicle subject to hire purchase agreement. S. 51(6) which we are concerned with reads as under;

"(6) The registered owner shall, before applying to the appropriate authority, for the renewal of a permit under Section 81 or for the issue of duplicate certificate of registration under sub-section (14) of Section 41, or for the assignment of a new registration mark [under Section 47, or removal of the vehicle to another State, or at the time of conversion of the vehicle from one class to another, or for issue of no objection certificate under Section 48, or for change of residence or place of business under Section 49, or for the alteration of the vehicle under Section 52, make an application] to the person with whom the registered owner has entered into the said agreement, (such person being hereafter in this section referred to as the financier) for the issue of a no objection certificate (hereafter in this section referred to as the certificate)."

A bare reading of the aforesaid provision indicates that a permission from financier is not required to replace a vehicle with a new vehicle during the pendency of the permit..

9. However, specific provision has been made under K.M.V. Rules in regard to the procedure for replacement of vehicles. R. 174 of the K.M.V. Rules deals with

replacement of vehicles. Rule 174(1) indicates that if the holder of a permit desires at any time to replace a vehicle covered by the permit with another vehicle, he shall make an application in a prescribed form to the authority which granted the permit stating the reasons for the proposed replacement. Sub-rule (2) of 174 indicates that upon receipt of the application, the Transport Authority may in his discretion, reject the application on certain grounds. The ground taken in the order dated 12.5.2015 is R. 174(2)(d). The said provision reads as under.

"174.(2). Upon receipt of the application, the Transport Authority may in his discretion, reject the application.

(a) xxxx

(b) xxxx

(c) xxxx

(d) if the holder of the permit has contravened the provisions thereof or has been deprived of possession of the old vehicle under the provisions of any agreement of hire purchase, hypothecation or lease."

10. The clause clearly indicates that the Transport Authority can reject an application for replacement if the holder of the permit has contravened the provisions thereof or has been deprived of possession of the old vehicle under the provisions of any agreement of hire purchase, hypothecation or lease. It cannot be disputed that as on the date when the impugned order was passed, the petitioner was not in possession of the vehicle. Even according to the petitioner, the vehicle has been repossessed by the financier, which according to the financier is based on the terms of the contract. The petitioner has a contention that the repossession was unlawful. We do not want to consider the said issue on merits since the matter is pending consideration before the Magistrate Court. The fact remains that the petitioner was not in possession of the vehicle.

11. It also cannot be disputed that the situation as on the date of considering the application is relevant for the purpose of grant of replacement of the vehicle and not the date on which the application was filed. When an application is submitted in terms of R. 174(1), the Transport Authority necessarily will have to consider whether the holder of the permit has contravened any of the provisions of the Act or Rules or has been deprived of possession of the vehicle under the provisions of any agreement of hire purchase. Therefore, necessarily, the financier will have to be put to notice in the matter before arriving at such a conclusion.

12. Though it is not mandatory for insisting for a no objection certificate from the financier in terms of Section 51(6) of the M.V. Act, for granting replacement of vehicle, it is necessary that the Transport Authority should ensure compliance of R. 174(2)(d). It is evident that the impugned order was passed when it was known that the vehicle was not in the possession of the appellant. In such event,

the authority could have rejected the application, but in the impugned order, an opportunity was given to the appellant to settle the matter with the financier. Hence, the learned Single Judge was justified in allowing the Writ Petition filed by the financier and dismissing the appellant's Writ Petition. The learned Single Judge had also relied upon judgment of the learned Single Judge of this Court in *Gopakumar v. State of Kerala* (1996 (1) KLT 595) to form an opinion that the appellant was not entitled for any relief.

We do not find any good ground to interfere with the judgment of the learned Single Judge and accordingly, the appeals are dismissed.