

(2000) 11 KL CK 0019
In the High Court Of Kerala
Case No : O.P. No. 9943 of 1995

Titus Benny

APPELLANT

Vs

Joint R.T.O.

RESPONDENT

Date of Decision : 20-11-2000

Acts Referred:

Motor Vehicles Act, 1988 — Section 50

Citation : (2000) 2 KLJ 995

Hon'ble Judges : K.A. Mohamed Shafi, J

Bench : Single Bench

Advocate : K. Radhakrishnan, for the Appellant; P. Gopalakrishna Menon and Subal Paul (Govt. Pleader), for the Respondent

Judgement

K.A. Mohamed Shafi

1. This Original Petition is filed by the petitioner to quash Ext.P4 memo issued by the 1st respondent and issue a writ of mandamus to the 1st respondent directing him to effect the change of ownership of Heavy Goods Vehicle KRD 6570 in the name of the petitioner from the name of the 2nd respondent and endorse the same. in the Certificate of Registration. Heard the counsel for the petitioner and the respondents..

2. It is not disputed that the vehicle in question belonged to the 2nd respondent and he sold the same to the petitioner as per Ext.Pl agreement dated 25-2-1994 for a consideration of Rs. 2,60,000/- out of which Rs,1,50,000/ - was payable to the financier as per the Hire Purchase Agreement and the balance of Rs. 1,10,000/- was payable to the 2nd respondent. The petitioner contends that from 25-2-1994, he is in possession of the vehicle and obtained and produced Ext.P2 Form No. 29 duly filled and signed by the 2nd respondent transferor and he has filed Ext.P3 report of transfer in Form No. 30 as contemplated under Rule 55(1) & 55(2) of the Central Motor Vehicles Rules. But on some objection raised by the 2nd respondent, the 1st respondent RTO did not transfer the" ownership of the vehicle to the petitioner as prayed for and instead, issued Ext.P4 memo to the

petitioner stating that the transfer of ownership of the vehicle cannot be effected till the objections raised by the 2nd respondent are not withdrawn.

3. The petitioner has contended that neither Sec. 50 of the Motor Vehicles Act nor Rule 55 of the Central Motor Vehicles Rules contemplates an enquiry by the Authority before effecting the transfer of ownership of a vehicle to the transferee. Therefore the 1st respondent is bound to transfer the ownership of the vehicle to the petitioner without resorting to any enquiry or heeding to any objection raised by the transferor. According to the petitioner, if there is any dispute with regard to the consideration or any other terms of the agreement evidenced by Ext.PI between the petitioner and the 2nd respondent, the 2nd respondent has to seek his remedy before the appropriate forum and he cannot object to the transfer of the ownership of the vehicle after duly signing the declaration in the prescribed forms.

4. In the decision reported in *Santhakumari v. Regl. Transport Authority* (AIR 1976 Ker. 18) it is observed as follows:

From this it is clear that once the transferee reports the fact of transfer within 30 days to the registering authority and certificate of registration is also submitted in order that particulars of the transfer of ownership may be entered in the certificate of registration together with the prescribed fee and a copy of the report received by him from the transferor, and the transferor also makes a report of the transfer to the registering authority, the registering authority has no option but to make the necessary entries in the registration certificate.

Therefore, it is clear that Ext.P4 issued by the 1st respondent, refusing to transfer the ownership of the vehicle to the name of the petitioner on the objections raised by the 2nd respondent, is not sustainable and therefore the same is liable to be set aside.

5. The counsel for the respondent submitted that there is Hire Purchase Agreement in respect of the vehicle and the petitioner had failed to discharge the Hire Purchase Amount to the financier as prescribed in the agreement and the petitioner is not entitled to get the ownership of the vehicle transferred to him, either without discharging the liability to the financier, the actual owner of the vehicle or getting a No Objection Certificate from the financier. The counsel for the petitioner submitted that the petitioner has obtained No Objection Certificate from the financiers to transfer the ownership of the vehicle in his name. The question whether the petitioner has discharged the hire purchase amount or obtained a No Objection Certificate from the financier to transfer the ownership of the vehicle, is a matter to be considered by the 1st respondent. Under the circumstances, Ext.P4 memo issued by the 1st respondent is set aside and the 1st respondent is directed to consider Exts.P2 and P3 and pass appropriate orders in accordance with law with regard to his claim to transfer the ownership of the vehicle, made by the petitioner. The 1st respondent is directed to dispose of Exts.P2 and.P3 within one month from the date of receipt of a copy of this

judgment.