

Ashokan Vs. State of Kerala

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Court : Kerala

Decided On : Jul-23-2004

Reported in : 2004(3)KLT104

Judge : K. Balakrishnan Nair, J.

Acts : [Kerala Forest Act, 1961](#) - Sections 67B and 67H; Abkari Act - Sections 67H

Appeal No. : W.P. (C) No. 19083 of 2004

Appellant : Ashokan

Respondent : State of Kerala

Advocate for Def. : Babu Cherukara and; P. Joshy Jose, Advs.; and Abdul Rash

Advocate for Pet/Ap. : K.S. Bharathan, Adv.

Disposition : Petition allowed

Judgement :

K. Balakrishnan Nair, J.

1. The petitioner was the successful bidder for auto rickshaw bearing Registration No. KL-8/L-8943 in the auction for sale conducted by the 3rd respondent Assistant Excise Commissioner. One Mr. Saji was the registered owner of that vehicle. It was purchased by him, availing the finance provided by the 4th respondent. So,

there was an endorsement of the hypothecation arrangement in the R.C. book of that vehicle. Later, the vehicle was involved in an abkari offence and the 3rd respondent confiscated the vehicle under Section 67B of the Kerala Abkari Act. Thereafter, it was sold in public auction. The petitioner purchased it and moved for registration of the vehicle in his name. The same was allowed by the 2nd respondent, but the hypothecation arrangement with the 4th respondent was also endorsed in the R.C. book. The petitioner caused to issue Ext.P4 lawyer notice to the 2nd respondent to delete that endorsement. When there was no response from the part of the said respondent, this Writ Petition was filed, seeking appropriate reliefs.

2. The 4th respondent financier has filed a counter affidavit, in which it is submitted that he was not aware of the seizure or confiscation of the vehicle. At the time of transfer of the registration, notice was issued to it. So, it informed the registering authority, the existing liability in relation to the said vehicle under the finance arrangement and therefore, in the light of Section 51(1) of the Motor Vehicles Act, the endorsement was made in the R.C. book. According to the 4th respondent, there is nothing illegal about it.

3. The official respondents have not filed any counter affidavit. The learned Government Pleader submitted that since the motion received from the petitioner was for registration of the vehicle in his name, the registering authority followed the mandate of Section 51 of the Act.

4. The property confiscated by the competent authority under Section 67B absolutely vests in the Government. The said legal position is clarified by Section 67H of the Abkari Act. Therefore the endorsement made by the 2nd respondent in the R.C. book while issuing Ext.P3 that there is a subsisting hypothecation arrangement with the 4th respondent, is plainly unsustainable. The said endorsement is quashed. The right of owner/financier in the vehicle ceases with the passing of the confiscation order. Accordingly, the Writ Petition is allowed with costs, which shall be paid by the 2nd respondent. The cost is ordered as the registering authority has ignored the lawyer notice issued on behalf of the petitioner.

