Anthroyose Vs. R.T.O.

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Court : Kerala

Decided On : Sep-07-2005

Reported in : I(2006)ACC224; 2005(4)KLT659

Judge : K. Balakrishnan Nair, J.

Acts : Motor Vehicles Act, 1988 - Sections 82, 82(1), 82(2) and 82(3); Motor Vehicles Rules, 1989 - Rules 164, 178, 178(1) to 178(3), 178(4) and 178(7); Kerala Motor Vehicles Taxation Act, 1976 - Sections 14

Appeal No. : W.P. No. 23186 of 2005

Appellant : Anthroyose

Respondent : R.T.O.

Advocate for Def. : M.A. Fayaz, Government Pleader

Advocate for Pet/Ap. : P. Ravindran, Adv.

Judgement :

K. Balakrishnan Nair, J.

1. The petitioner is the owner of the stage carriage KL-5/N 902, operating on the route Kalkoonthal Kottayam. He proposes to transfer the said vehicle, along with its regular permit, in favour of the 3rd respondent herein. A joint application was

filed for the transfer of the permit before the R.T.A., Idukki. The said application was allowed by the R.T.A., by Ext.Pl decision, subject to clearance of tax arrears in respect of the stage carriage KL-06/A 3299. The said order reads as follows:

'Heard the applicants. Transfer allowed subject to the clearance of tax arrears in respect of S/C KL-06/A 3299 which is owned by the first applicant.'

The stipulation in the above order, regarding clearance of tax arrears concerning another vehicle, is challenged in this Writ Petition.

2. The petitioner submits, the vehicle KL -06/A 3299 has been sold by him to one Mr. Moidu, S/o. Bava, Moolayil House, Pezhakkappilly, Mulavoor, Muvattupuzha. The arrears of tax relates to the period, after the vehicle was sold. When he was called upon to pay the tax in relation to the said vehicle, the petitioner approached this Court and this Court, by Ext.P2 order, directed the R.T.O., Idukki and the Deputy Tahsildar (Revenue Recovery), Kottayam to seize the vehicle and sell it in public auction, to realise the tax arrears of that vehicle. The petitioner submits, in view of the above position, there is no justification for imposing the impugned condition in Ext.P1. According to him, none of the provisions of the Motor Vehicles Act or the Rules framed thereunder, governing transfer of permits, authorises the R.T.A. to impose such a condition. The learned Counsel for the petitioner, in support of his submissions, relied on the decisions of this Court in Santakumari v. R.T.O., Kozhikode (1975 KLT 580) and Padmanabhan v. R.T.A., Kannur (1993(1) KLT 75). Though, those decisions relate to transfer of ownership of motor vehicles, the principles-laid down therein will apply to transfer of permits also, it is contended.

3. I heard the learned Government Pleader for the official respondents also. It is submitted by him that the vehicle KL-06/A 3299 could not be traced. The petitioner continues to be the registered owner of that vehicle. Therefore, he is liable to pay the tax. If the joint application for transfer is allowed, the same will have the effect of transferring one of the assets of the defaulter to a stranger. So, in public interest, the impugned condition was imposed, it is submitted.

4. The provisions concerning transfer of permit are contained in Section 82 of the Motor Vehicles Act, 1988. The relevant portion of the said section reads as follows:

'82. Transfer of permit:-- (1) Save as provided in Sub-section (2), a permit shall not be transferable from one person to another except with the permission of the transport authority which granted the permit and shall not, without such permission, operate to confer on any person to whom a vehicle covered by the permit is transferred any right to use that vehicle in the manner authorised by the permit.'

Sub-sections (2) and (3) of Section 82 deals with transfer of permit on the death of a permit holder. The Rule which governs the transfer of permit is Rule 178 of the Kerala Motor Vehicles Rules, the relevant portion of which reads as follows:

'178. Permit-Transfer of:--

(1) When the holder of a permit desires to transfer the permit to some other persons under Sub-section (1) of Section 82 of the Act, he shall, together with the person to whom he desires to make the transfer, make a joint application in writing to the Transport Authority by which the permit was issued setting forth the reasons for the proposed transfer. The fee for transfer of permit shall be the same as prescribed for the grant or renewal of permits under Rule 164.

(2) On receipt of an application under Sub-rule (1) the Transport Authority may require the holder of the permit and the other party to state in writing whether any premium, payment or other consideration arising out of the transfer is to pass or has passed between them and the nature and amount of any such premium, payment or other consideration.

(3) Without prejudice to any other penalty to which the parties may be liable, any transfer of a permit ordered upon an application which the Transport Authority is subsequently satisfied as false in respect of the matter specified in Sub-rule (2) or in respect of any other material particular shall be void. What is a material particular for purposes of this sub-rule be decided by the Transport Authority in its

discretion.

(4) The Transport Authority may summon both the parties to the application for the transfer of a permit to appear before it and may, if it deems fit, deal with the application as if it were an application for a permit.

(5) (a) If the Transport Authority is satisfied that the transfer of a permit may properly be made it shall call upon the holder of the permit in writing to surrender the permit within seven days of the receipt of the order:

Provided that a stage carriage permit for a route of 50 Kms. or less held by an individual is transferable only to an individual,(b) Upon receipt of the permit, the transport authority shall cancel the particulars of the holder thereon and endorse particulars of the transferee and shall return the permit to the transferee.

xxx xxx xxx xxx(7) Before ordering transfer under this rule, the Transport Authority shall make such enquiries as it may consider necessary to satisfy itself that the transfer is bona fide. If after the enquiry Transport Authority finds that the transfer asked for is not bona fide, it shall not order the transfer.'

(Emphasis supplied)

Sub-rules (1) to (3) deal with the conditions to be satisfied for ordering a transfer. Sub-rule (4) enables the R.T.A. to treat the application for transfer as a fresh application for permit. Sub-rule (7) enables the R.T.A. to reject the application for transfer of permit, if the same is found to be not bona fide. The above provisions would show that the application for transfer of permit cannot be granted automatically. If it is found that the transfer of permit is not made in good faith, the application to allow the same, can be rejected. In this context, it is apposite to refer to Section 14 of the Kerala Motor Vehicles Taxation Act. The said section reads as follows:

'14. Transfers to defeat or delay recovery of tax and other amounts:-- Where during the pendency of any proceedings under this Act for the recovery of the tax or other amount due in respect of any motor vehicle, the registered owner or the person having possession or control of that motor vehicle creates a charge on, or transfers, whether by way of sale, mortgage, exchange or any other mode of transfer whatsoever, and of his assets in favour of any other person with intent to defeat or delay the recovery of such tax or other amount from him, such charge or transfer shall be void as against any claim in respect of the tax or other amount found payable by him on completion of the said proceedings:

Provided that nothing in this section shall impair the rights of a charge-holder or transferee in good faith and for consideration.'

(Emphasis supplied)

5. In view of Ext.P2, it is evident that revenue recovery proceedings are pending against the petitioner, to recover the arrears of Motor Vehicles Tax due from him in relation to the vehicle KL-06/A 3299. Exts.P3 and P3(a) mentioned in Ext.P2 are revenue recovery notices. So, by virtue of Section 14 of the Kerala Motor Vehicles Taxation Act, the transfer can be treated as one, for defeating the revenue recovery proceedings. In other words, it can be treated as a transfer not made in good faith. Therefore, by virtue of Sub-rule (7) of Rule 178, the application for transfer can be rejected. But, the R.T.A. has given a chance to the petitioner to prove his bona fides, by remitting the arrears of motor vehicles tax. So, I feel that it is not proper for this Court to interfere with the condition imposed in Ext.P1, invoking its power under Article 226 of the Constitution of India. The decisions cited by the learned Counsel for the petitioner are dealing with the transfer of ownership of the vehicle. As per the provisions of the Motor Vehicles Act, 1939 and the Motor Vehicles Act, 1988, transfer of ownership is automatic, subject to satisfying certain conditions. In the above said decisions of this Court, it was held that insistence for no objection from other authorities, for transfer of ownership of the vehicle, is not supported by the provisions of the Motor Vehicles Act. But, transfer of permit stands on a different footing. Therefore, the principles laid down in those decisions cannot be made applicable to a case of transfer of permit.

In the result, the Writ Petition fails and it is accordingly dismissed.