



2024/KER/10224

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR. A.J.DESAI

&

THE HONOURABLE MR.JUSTICE V.G.ARUN

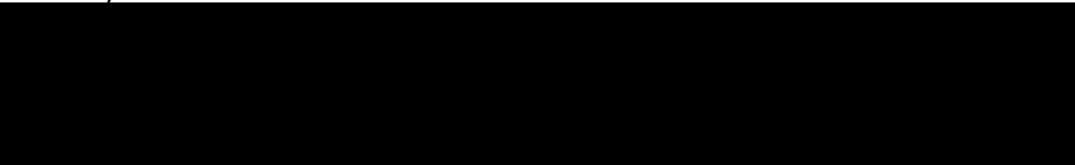
MONDAY, THE 5TH DAY OF FEBRUARY 2024 / 16TH MAGHA, 1945

WA NO. 2241 OF 2023

AGAINST THE JUDGMENT IN WP(C) 22556/2023 DATED 07.12.2023 OF HIGH
COURT OF KERALA

APPELLANT(S)/PETITIONER:

MEENA,



BY ADVS.
G.HARIHARAN
PRAVEEN.H.
K.S.SMITHA
V.R.SANJEEV KUMAR

RESPONDENT(S)/RESPONDENTS:

- 1 JOINT REGIONAL TRANSPORT OFFICER,
SUB REGIONAL TRANSPORT OFFICE, MINI CIVIL STATION,
KARUNAGAPPALLY, KOLLAM DISTRICT, PIN - 690518
- 2 M/S MAHINDRA AND MAHINDRA FINANCIAL SERVICES LTD.,
1ST FLOOR, AMBADI TOWER, EDAPPALLY TOLL JUNCTION,
PUKKATTUPADY ROAD, EDAPPALLY, ERNAKULAM, KERALA, PIN -
682024
- 3 NATIONAL INFORMATICS CENTRE,
CIVIL STATION, THRIKKAKARA, KAKKANAD, ERNAKULAM- 682
030, REPRESENTED BY ITS DIRECTOR, PIN - 682030
BY ADVS.
SRI.V.TEKCHAND, SENIOR GOVERNMENT PLEADER (B/O)
SRI.DEVAPRASANTH P.J. (B/O)
CENTRAL GOVERNMENT COUNSEL (B/O)
ADV. SMINI JOSE FOR R2
SRI. SUVIN R.MENON, CGC

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 05.02.2024,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



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'CR'

JUDGMENT

A.J.DESAI, CJ.

By way of the present appeal filed under Section 5 of the Kerala High Court Act, 1958, the original petitioner has challenged the judgment dated 07.12.2023, delivered by the learned Single Judge in the captioned W.P.(C)No.22556/2023, by which, the learned Single Judge refused to entertain the prayer made by the appellant to issue a writ of mandamus to transfer the ownership of vehicles bearing registration Nos. KL-23N-1762, KL-23P-7475 and KL-23R-321 in the name of the appellant, she being the widow of the original owner of the vehicles. The petition was dismissed on the ground that the amounts due to the financier of the vehicles is outstanding and fines/penalty imposed through e-challans, for breach of Motor Vehicles Act / Rules, were not remitted by the deceased owner. Short facts arising out of the appeal are as under.

2. The appellant's husband Sri. Saji P.K. was the registered owner of the aforesaid three Heavy Goods Carriage Vehicles, issued

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with Goods Carriage permits by the RTA, Karunagappally. Sri. Saji P.K. passed away on 16.11.202, and thereupon, his widow, the present appellant, requested the 1st respondent RTO to transfer the ownership of all three vehicles in her name. In support of the request, the affidavit jointly sworn to by the mother and son of deceased Saji was also produced. But, the Regional Transport Officer refused to accept the application citing blacklisting of the vehicles. Aggrieved, the writ petition was filed. The learned Single Judge found the reason for not accepting the application to be correct and dismissed the petition. Hence this appeal.

3. The learned Counsel appearing for the appellant would submit that the authority as well as the learned Single Judge have committed error in rejecting the application filed by the appellant for transfer of the vehicles. He would submit that as per Rule 56 of the Central Motor Vehicles Rules, 1989, on the death of the registered owner, the ownership of the vehicle is required to be transferred to the nominee of the owner or the person succeeding to the possession of the vehicle. He, therefore, would submit that the pendency of liability due to the financier or non-payment of



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amounts due under the e-challans would not stand in the way of the ownership being transferred to the successor.

4. On the other hand, learned Government Pleader would submit that, as per Section 51(4) of the Motor Vehicles Act, 1988, unless written consent is received from the person to whom the vehicle has been hypothecated, the authority cannot transfer the vehicle. He would further submit that, as per Ext.P7 communication dated 03.04.2023, issued by the Government of India, Ministry of Road Transport and Highways (MVL Section), New Delhi, certain vehicles are flagged on the Vahan Portal as “Not to be transacted”. As per item No.9 of the Appendix to the above mentioned communication, vehicles with respect to which challan is pending beyond 90 days, are flagged and cannot therefore be transacted. As the vehicles for which transfer of registration is requested by the petitioner falls under the above category, transfer of ownership is barred. Moreover, Rule 167 of the Central Motor Vehicles Rules also prohibit the processing of application in cases where challans are pending without payment for more than ninety days.

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5. Learned Counsel appearing for the financier would submit that, since huge amount is due towards the finance extended for purchasing the vehicles, the authority is justified in refusing to transfer the ownership of the vehicles without the consent of the financier.

6. We heard the learned Counsel appearing for respective parties. It is not in dispute that the husband of the present appellant was the registered owner of the three vehicles, which were hypothecated with the second respondent finance company. It also appears that several challans had been issued to the owner for breach of Motor Vehicles Act and Rules and the amounts due under the challans are remaining unpaid. There is dispute to the fact that the present appellant, who is the widow of the deceased owner of the vehicles, would succeed to the possession of the vehicles. Transfer of ownership in such case is governed by Rule 56 of the Central Motor Vehicles Rules, extracted hereunder for easy reference;

“56. Transfer of ownership on death of owner of the vehicle.—(1) Where the owner of a motor vehicle dies, the person nominated by the vehicle owner in the certificate of registration or the



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person succeeding to the possession of the vehicle, as the case may be, may for a period of three months from the death of the owner of the motor vehicle, use the vehicle as if it has been transferred to him:

Provided that such person has, within thirty days of the death of the owner, informed the registering authority of the occurrence of the death of the owner and of his own intention to use the vehicle.

(2) The nominee or person succeeding to the possession of the vehicle, as the case may be, shall apply in Form 31 within the period of three months from the death of the owner of the motor vehicle, to the registering authority for the transfer of ownership of the vehicle in his name, accompanied by—

- (a) the appropriate fee as specified in Rule 81;
- (b) the death certificate in relation to the registered owner;
- (c) the certificate of registration;
- (d) the certificate of insurance;
- (e) driving license and permit in case of e-rickshaw and e-cart; and
- (f) proof of identity of the nominee to be mentioned in the certificate of registration.

(3) Where the nominee is a minor, the registration of the motor vehicle be made in case—

- (i) where a person has been authorised to receive it, in name of that person;
- (ii) where there is no such person, in name of any natural guardian, testamentary guardian or guardian of the property of the minor appointed by a competent court.

(4) At the time of death of the owner of a motor vehicle, if there is no nomination in force , and probate of his will or letters of administration of



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his estate or a succession certificate granted under the Indian Succession Act, 1925 (39 of 1925) is not, produced to the specified authority within three months of the death of the holder, then the registering authority may register the vehicle in the name of any legal heir of the owner appearing to it to be entitled to get the vehicle registered in his name.”

7. The Rule does not mandate the production of written consent from the person with whom the registered owner has entered into an agreement of hypothecation (financier). On the other hand, it is stipulated in Form 31 that a duplicate of Form 31 in which the application for transfer of ownership under Rule 56 is submitted, has to be returned to the financier after making the entry of ownership in the certificate of registration. As such, there cannot be any insistence on the successor, who is seeking transfer of ownership of the vehicle, to produce consent letter from the financier.

8. The second reason for not processing the application for transfer of ownership is the pendency of e-challans and flagging of such category of vehicles as per Ext.P7 communication. In this regard it is essential to note that as per Ext.P7, certain categories of vehicles are flagged as “Not to be transacted”. The term 'transact'

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means 'to undertake negotiation', 'to carry on business', 'to have dealings', 'to carry on or conduct' etc. (see Black's Law Dictionary, 6th Edition). As far as the case at hand is concerned, the petitioner is seeking transfer of ownership through succession, she having inherited the vehicles on the death of her husband. The right to get the vehicle transferred to the appellant's name, consequent to the death of her husband, is not a transaction. Being so, Ext.P7 communication can have no impact on the application submitted by the petitioner.

9. Although Rule 167(7) interdicts the processing of applications for registration in cases where challans are pending beyond 90 days, that prohibition would apply only when the violator, i.e.; the person to whom the challan is issued seeks transfer of registration or issuance of licence. In the case at hand, the challans were issued to the deceased husband of the petitioner. The pendency of those challans beyond 90 days does not restrain the authorities from processing the application for change of ownership submitted by the person succeeding to the possession of the vehicle.

10. For the aforementioned reasons, we allow the appeal and



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set aside the orders passed by the authority as well as the learned Single Judge. The authority is hereby directed to transfer the ownership of the vehicles in the name of the present appellant, within a period of two weeks from today. Needless to say that the appellant, after getting the ownership changed, is bound to pay off the dues against the vehicles. The State is at liberty to take appropriate steps for realising the amounts due under the pending challans. The financier can also take steps, in accordance with law, for realising the liabilities outstanding to the financier.

The writ appeal is allowed accordingly.

Sd/ -

**A . J . DESAI
CHIEF JUSTICE**

Sd/ -

**V . G . ARUN
JUDGE**

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05.02.2024



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APPENDIX OF WA 2241/2023

PETITIONER ANNEXURES

Annexure - I TRUE COPY OF THE JUDGMENT IN THE MATTER
OF AMBIKADEVI VS. JOINT RTO, REPORTED
IN 1998 (1) KLT 747