

Kerala High Court

K.Surendran vs District Collector Trichur on 11 July, 2008

IN THE HIGH COURT OF KERALA AT ERNAKULAM

AS.No. 162 of 1996()

1. K.SURENDRAN

... Petitioner

Vs

1. DISTRICT COLLECTOR TRICHUR

... Respondent

For Petitioner :SRI.K.P.DANDAPANI,SMT.SUMATI DANDAPANI

For Respondent :GOVERNMENT PLEADER

The Hon'ble MR. Justice PIUS C.KURIAKOSE

Dated :11/07/2008

O R D E R

PIUS C. KURIAKOSE, J.

A.S. No. 162 OF 1996

Dated this the 11th day of July, 2008

J U D G M E N T

The suit was one for injunction to restrain the defendants from initiating action under the Revenue Recovery Act for recovery of the amounts mentioned in Ext.A1 demand. Under Ext.A1 a total amount of Rs.26703/- is demanded from the appellant plaintiff towards motor vehicle tax payable in respect of vehicle No.KLZ 1301 for the period from 1-1-1982 to 30-9-1983. The main premise on which relief was sought for in the plaint was that the appellant had already parted with ownership and possession of the bus in question and hence will not be liable to pay the motor vehicle tax. The respondents - defendants filed a joint written statement raising various contentions and on the basis of the contentions raised the learned Subordinate Judge formulated the following issues for trial.

1. Is the suit maintainable ?

2. Did the plaintiff part with possession and ownership of the Bus bearing No. KLZ 1301 as alleged ?
 3. If the answer to issue No.2 is positive whether the plaintiff had intimated the transfer of the vehicle to the third defendant?
 4. Is the plaintiff entitled to invoke the jurisdiction of this court without resorting to the remedy provided under section 23 of WP(C)No.
- the Motor Vehicles Taxation Act?
5. Is the plaintiff entitled to the injunction prayed for?
 6. Reliefs and costs?

The parties did not adduce any evidence and the evidence in the case consisted of the suit document Ext.A1 demand notice on the side of the plaintiff. The learned Sub Judge on an evaluation of the pleadings and the arguments addressed answered issue No.1 in favour of the appellant-plaintiff and held that the suit is maintainable. Issue No.2 was answered against the appellant-plaintiff. In my opinion the learned Subordinate Judge was perfectly justified in doing so in the absence of any evidence from the side of the appellant-plaintiff. Issue No.3 being dependent on the finding of issue No.2 was rightly deleted by the learned Sub Judge. Issue Nos.4 and 5 which are interrelated to each other were also answered by the learned Sub Judge against the plaintiff. The learned Sub Judge noticed that Section 23 of the Motor Vehicles Taxation Act provides remedy by way of appeal before the statutory appellate authority and in as much as the appellant-plaintiff had not exhausted that remedy the discretionary relief of injunction which has got foundations in equity and discretion of the court could not be granted. I have heard the submissions of learned counsel for WP(C)No.

the appellant and the learned Govt. Pleader. Though the learned counsel for the appellant addressed me on the various grounds raised in the appeal memorandum the only submission which appeal to me was the submission that on the basis of the admissions contained in the written statement itself the the appellant could not have been made liable for payment of tax for the period prior to the appellant becoming the owner of the vehicle. But since in my opinion the finding of the learned Sub Judge on issue No.4, i.e., whether the relief of injunction could be granted due to the existence of alternate statutory remedy is a correct one I am not inclined to uphold even that submission. The result of the above discussion is that the appeal fails and will stand dismissed. But in the circumstances of the case the parties will suffer their costs in this appeal.

(PIUS C.KURIAKOSE, JUDGE) WP(C)No.