

Kerala High Court

Fousia Mohammad vs The Transport Commissioner on 6 August, 2008

IN THE HIGH COURT OF KERALA AT ERNAKULAM

WP(C).No. 9905 of 2008(D)

1. FOUSIA MOHAMMAD,AL-FATHAH MANZIL,  
... Petitioner

Vs

1. THE TRANSPORT COMMISSIONER  
... Respondent

2. THE REGISTERING AUTHORITY

3. ICICI BANK LTD, KARTHIKA TOWERS,IST

4. MUHAMMAD,S/O. PAREETH, CHENTHARA HOUSE

For Petitioner :SRI.P.SREEKUMAR

For Respondent :SRI.KKM.SHERIF

The Hon'ble MR. Justice ANTONY DOMINIC

Dated :06/08/2008

O R D E R

ANTONY DOMINIC, J

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W.P.(C).No.9905/2008  
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Dated this the 6th day of August, 2008

JUDGMENT

Petitioner submits that, he had purchased a lorry availing of finance from the 3rd respondent. It is stated that in October, 2007, the 3rd respondent took forceful possession of the vehicle and subsequently made an application under Section 51(5) of the Motor Vehicles Act, 1988, for a

duplicate certificate of registration. Thereupon the second respondent issued Ext.P2 notice to the petitioner and she filed Ext.P3 objection. Though she was called for a hearing, due to sickness she sought for an adjournment. It is stated that thereafter nothing further was heard. When she came to know that duplicate RC was proposed to be issued to the 3rd respondent, a writ petition was filed before this court as WP(c).No.7241/2008 which was disposed by Ext.P5 judgment directing that if orders have not been passed on the application made by the 3rd respondent, the objection filed by the petitioner should also be considered. Petitioner states that when Ext.P5 judgment was delivered to the second respondent, she was informed that on 26.7.2008 Ext.P7 order was passed, allowing the request of the 3rd respondent. It is thereupon that this writ petition has been filed challenging Ext.P7.

2. The 4th respondent submits that, following Ext.P7, by proceeding dated 29.7.2008 registration was also transferred to the 3rd respondent and that in an auction that was held subsequently he had purchased the vehicle for valid consideration. It is also stated that by Ext.R4(a), registration also has been transferred in his favour.

3. Although the petitioner is impugning Ext.P7 in this writ petition it is seen that against Ext.P7, the petitioner has filed Ext.P8 appeal before the Transport Commissioner, Thiruvananthapuram. However, the fact remains that it is not the Transport Commissioner but the Deputy Transport Commissioner Thiruvananthapuram, who is the notified appellate authority. Therefore Ext.P8 appeal filed before wrong authority cannot be treated as an appeal properly filed to direct its consideration.

4. In view of the fact that the petitioner has already availed of the appellate remedy provided under the Statute itself, though before a wrong authority, I am inclined to dispose of this writ petition directing the petitioner to produce a copy of Ext.P8 before the Deputy Transport Commissioner, Thiruvananthapuram, who on receipt of the same shall treat Ext.P8 as a regular appeal filed against Ext.P7. The Deputy Transport Commissioner shall there upon issue notice to the petitioner, and respondents 3 and 4 herein, hear them and pass final orders in this matter. It is directed that a copy of Ext.P8 shall be filed as above before the Deputy Transport Commissioner within 3 weeks from the date of receipt of a copy of the judgment.

Writ Petition is disposed of as above.

ANTONY DOMINIC JUDGE vi.