(1997) 12 KAR CK 0049

In the Karnataka High Court

Case No : Writ Petition No. 29703 of 1993

Arif Munewar — APPELLANT

Vs

The Regional Transport Officer, Jayanagar, Bangalore and Others — RESPONDENT

Date of Decision : 01-12-1997

Acts Referred:
Karnataka Motor Vehicles Taxation Act, 1957 — Section 4 (1), 9

Citation : (1998) 5 KarLJ 131

Hon'ble Judges : Hari Nath Tilhari, J

Bench : Single Bench

Advocate : Sri C. Narasimhachar, for the Appellant; Sri B.E. Kotian, Government Advocate, for the Respondent

Judgement

1. Heard the learned Counsel for the petitioner Sri C. Narasimhachar and Sri B.E. Kotian, learned Government Advocate on behalf of respondents.

2. The short point involved in this case is who is liable to pay the arrears of tax under the Motor Vehicle Taxation Act, 1959 in a case where the vehicle has been transferred by the owner and intimation thereof had been sent to the authorities concerned. This is the short question that is involved. The facts of the case in brief are that, the petitioner was the registered owner of the vehicle bearing No. CAD 1797 Matador Seater. According to the petitioner''s case, he had been paying taxes in respect of this vehicle and paid it upto 1-3-1987. As the petitioner''s vehicle developed some mechanical problem, he sold the vehicle on 29-5-1987 to respondent 3 for a sum of Rs. 38,900/- and delivered the possession thereof on the very same day to the purchaser i.e., to the 3rd respondent and had taken sale receipt and the delivery note from the 3rd respondent, copy of which the petitioner has annexed as Annexure-A and B. Petitioner''s further case is that he had sent a letter in writing by registered A.D. post to respondent 1 informing the respondent 1 that the vehicle had been sold to 3rd respondent and he enclosed the delivery note. The authority was

requested to make the necessary entries in the official record. Petitioner''s case is that the postal A.D. reveal that the letter was served on respondent 1 on June 8, 1987. But the respondent 1 did not take any action thereon making entry in the register. Petitioner''s further case is that the 2nd respondent issued a demand notice on 1-7-1993 demanding an amount of Rs. 16,860/- as arrears of tax for the period from 1-3-1987 to 30-4-1989 in No. MV 153 of 1989-90. That notice had not been served by the petitioner. Petitioner''s further case is that the matter was referred for the taking of recovery proceedings and in pursuance of recovery certificate, the Deputy Commissioner, Bangalore District, started recovery proceedings to recover the amount due from the petitioner and issued a notice dated 1-7-1993. Petitioner has challenged that notice. Petitioner''s case is that he applied for the certified copy of proceedings and the copy was not supplied. Petitioner has challenged this notice dated 1-7-1993 (Annexure-E to the writ petition) and sought for a writ of certiorari quashing the said recovery notice.

3. I have heard the learned Counsel for the petitioner Sri C. Narasimhachar and Sri B.E. Kotian, learned Government Advocate.

4. As regards the question referred to above which arises in this case, it will be appropriate to refer to Section 9 of the Karnataka Motor Vehicles Taxation Act, 1957. Section 9 of the Karnataka Motor Vehicles Taxation Act, 1957 reads as follows. -

"9. Liability to pay arrears of tax. --(1) If the tax leviable in respect of any motor vehicle remains unpaid by any person liable for the payment thereof and such person before having paid the tax, has transferred the ownership of such vehicle or has ceased to be in possession or control of such vehicle, the person to whom the ownership of the vehicle has been transferred or the person who has possession or control of such vehicle shall be liable to pay the said tax to the Taxation Authority.

(2) Nothing contained in this section shall be deemed to affect the liability of the person, who has transferred the ownership or has ceased to be in possession or control of the vehicle, to pay the said tax".

It will also be profitable to refer to Section 4, sub-section (1) of the Act.

"4(1) The tax levied u/s 3 shall be paid in advance by the registered owner or person having possession or control of the motor vehicle, for a quarter, half-year or year at his choice, within 15 days from the commencement of such quarter, half-year or year as the case may be".

5. A reading of these two sections per se reveals that in addition to the registered owner of a vehicle, the liability to pay tax is of the person who is really in possession and control of the vehicle. If the registered owner is not in possession, it may be said or argued that he is not liable to pay. But, Section 9 of the Act per se reveals that once a vehicle has been transferred by a person i.e.,

registered owner thereof, before making payment of tax leviable on the motor vehicle or he has ceased to be in possession or control of the vehicle, then the person to whom the ownership of the vehicle has been transferred or the person who is in possession and control of the vehicle, it is his liability to pay the said unpaid taxes, if any. The authorities could issue notice for realisation of unpaid tax to the purchaser of the motor vehicle in view of Section 9 whereunder it has been made very clear. No doubt, that if there had been any liability for payment of the tax on the transferor, realised from the transferee u/s 9 of the Act, the liability of owner therefore shall not cease i.e., it may get reimbursed if there is no specific impediment. That once the vehicle has been transferred and it is in possession of the transferee, the tax can be realised from the transferee or the person who is in possession of the vehicle. The petitioner is not in possession of control of the vehicle and further tax sought to be realised primarily is for the period after the date of transfer i.e., for period from 1-3-1987 to 30-4-1989, while the vehicle is asserted to have been transferred in May 1987. In view of above, in my opinion, the notice could not be issued demanding payment of tax from him or for realising tax from him. This view of mine finds support from the observations of this Court in the case of M.C. Someshwam alias Somanna v Regional Transport Officer,

6. Writ petition, as such, is allowed. The notice at Annexure-E dated 1-7-1993 issued to the petitioner by the 2nd respondent, as such, appears to be without jurisdiction and illegal. It is hereby declared to be null and void and the respondents are restrained from using any coercive methods against the petitioner in realisation of taxes. It is open to the respondent to proceed with the matter of realisation of tax from the proper person in the light of Section 9 and the observations made above and it is open to parties i.e., transferor and transferee to adjust amongst themselves their respective liability for the tax keeping in view the date of transfer of vehicle. Writ petition is thus disposed of. Notice dated 1-7-1993 (Annexure-E) is to be deemed to have been quashed.

