
(2000) 02 OHC CK 0034

In the Orissa High Court

Case No : Original Jurisdiction Case No. 17611 of 1998

Bansidhar Mohanty

APPELLANT

Vs

Orissa State Financial Corporation and Others

RESPONDENT

Date of Decision : 02-02-2000

Acts Referred:

Orissa Motor Vehicles Taxation Act, 1975 — Section 12

Citation : (2000) 89 CLT 351 : (2000) 1 OLR 426

Hon'ble Judges : Pradipta Ray, J; L. Mohapatra, J

Bench : Division Bench

Advocate : P.K. Mohapatra, B.K. Behera and N.C. Das, for the Appellant;
Sankarsan Rath, for Opp. party No. 1, for the Respondent

Judgement

L. Mohapatra, J.—The grievance of the petitioner in this writ application is that the Regional Transport Officer, Cuttack, is not granting road permit in favour of the petitioner's vehicle despite deposit of the required tax for the said purpose. The petitioner also challenges the demand notice bearing No. 3051 dated 14.9.1998 issued by opposite party No. 3 directing the petitioner to deposit M.V. Tax and road tax along with penalty for an amount of Rs. 57,243/- for the period from October, 92 to June, 93; October 93 to June, 94; April, 95 to March. 98: and other taxes.

2. The case of the petitioner is that he purchased the vehicle bearing registration No. OR-15-A/I 924 in an auction held by Orissa State Financial Corporation ("OSFC. for short) after the same was taken over u/s 29 of the State Financial Corporation Act from the previous owner Purna Chandra Kheti. While purchasing the said vehicle an agreement was entered into between the petitioner and the OSFC which is the subject-matter of Annexure-1. Clause 3.10 of the said agreement provides that the Corporation will not be liable for statutory dues, such as M. V. tax, road tax, etc. if any, against the vehicle for the period prior to or after the sale. In the same clause it is further provided that the purchaser, i.e. the petitioner, shall also not be liable for such dues prior to the sale. Under

Clause 3.18 of the said agreement, it is provided that the OSFC shall write to the concerned, R.T.O. for transfer of ownership of the vehicle in favour of the purchaser and the arrear taxes, M.V.dues, etc., if any, shall be payable by the original loanee. The learned counsel for petitioner submits that because of the aforesaid two clauses in the agreement the petitioner offered a higher price and purchased the vehicle without knowing that there was huge tax liability and that such tax liability, if any, cannot be claimed from him, in view of the agreement.

3. The learned counsel appearing for opposite party No. 3 submits that u/s 12 of the Orissa Motor Vehicles Taxation Act, 1975 ("OMVT Act, for short) the successor is liable to pay the arrears and therefore, the petitioner under the said provision has the liability to clear the arrear taxes.

4. Section 12 of the OMVT Act is quoted below :

"12. Liability of successor to pay arrears -

(1) If the tax leviable in respect of any motor vehicle remains unpaid by any person liable for 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 vehicles, 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 taxing officer.

(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 such vehicle, for payment of the said tax."

It is very clear from the aforesaid provision that in case of transfer of a motor vehicle the person who is in possession or control of the same shall be liable to pay the tax. Undisputedly the petitioner is in possession of the vehicle in question. Learned counsel appearing for OSFC has drawn the attention of this Court to a judgment reported in Bishnu Mohan Jena Vs. Regional Transport Authority and Others, , and submits that the Corporation has no liability to pay the arrear dues, as indicated in the agreement and the petitioner has also no liability to pay. Opposite party No. 3 can only recover the arrear taxes from the original loanees. We have perused the judgment carefully. In the aforesaid case this Court held :

"It is no doubt true that the provisions of the Orissa Motor Vehicles Taxation Act are to prevail if there is any conflict between the provisions of the Act and the instructions issued by the STA. The liability of a subsequent purchaser or possessor of the vehicle u/s 12(1) is not wiped out under the aforesaid instructions issued by the STA. However, since the instructions had been issued to facilitate collection of tax from the original owner, the position is clear that initially the RTO has to proceed against the original owner by filing certificate case which is in consonance with Section 12 (2). If the RTO after proceeding, as aforesaid, is unable to realise the arrear dues, he may proceed against the

Corporation, which becomes a successor-in-interest. Similarly, bereft of anything else, the RTO can also proceed against the ultimate purchaser of the vehicle. However, since a specific condition has been included in the present case, exonerating the subsequent purchaser from such a liability, it is the duty of the Corporation to clear up the arrear dues if the same remain unpaid after institution of any certificate case against the original owner."

However, the Division Bench relied upon the State Government's letter dated 8.10.1991 to take the view that when the State Government has itself in writing waived its statutory right to proceed against successor owner first, the concerned authorities should proceed against the erstwhile owner first, and on failure to realise the amount or the full amount, should proceed against the Corporation.

An agreement between the Corporation and the purchaser cannot bind the State Government and its Tax Recovery Authorities. So long as the said letter was in vogue, it could have been said that the State had willingly bound itself by the said condition. After withdrawal of the said letter, State Government has become free to realise the arrear from the successor owner. Since the said instruction is stated to have been withdrawn in the meantime, we do not propose to enter into the question as to whether such instruction can override the statutory provisions. As the law stands today the arrear tax has to be collected from the person who is in possession or control of the vehicle in question.

5. Coming to the facts of this case, we find that the petitioner had been given an impression that he would not be liable for payment of any arrear tax for which a higher price was offered for the vehicle. The petitioner further submits that had the tax liability been disclosed to him, he would not have offered higher price for the vehicle or may be, would not have participated in the auction. The submission of the petitioner has considerable force in view of the clauses of the agreement the Corporation shall pay or bear the burden of the arrear tax. Since under the agreement the petitioner was not made liable for payment of the arrear tax, we are of the view that under the peculiar facts of this case, the OSFC should pay the tax and recover it from the original owner. We, therefore, direct the OSFC to pay the arrear tax due prior to the date of sale, as has been demanded by opposite party No. 3, within three weeks from the date of communication of this order, and on payment of such arrear tax as well as any other tax that may be due from the petitioner after the date of sale, the Regional Transport Officer, Cuttack, shall issue necessary permit to the petitioner on compliance of other requirements under law, within a period of two weeks from the date of payment by the Corporation. It will be open for the OSFC to recover the tax paid from the original owner in such manner as is permissible under law.

The writ application is accordingly disposed of.

Pradipta Ray, J.

I agree.