(2015) 02 OHC CK 0027

In the Orissa High Court

Case No : Writ Petition (C) Nos. 17344, 16803, 16804 and 17950 of 2014

Ishwar Chandra Prusti and Others — APPELLANT

Vs

R.T.O. and Others — RESPONDENT

Date of Decision : 05-02-2015

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 16
Motor Vehicles Act, 1988 — Section 48, 50, 50(2)
Orissa Forest Act, 1972 — Section 56, 64, 64(2)
Orissa Motor Vehicles Taxation Act, 1975 — Section 10, 12, 12(1), 13, 13(1)

Citation : AIR 2015 Ori 82 : (2015) 120 CLT 775 : (2015) 2 ILR Ori 308 : (2015) 1 OLR 576

Hon'ble Judges : B.R. Sarangi, J.

Bench : Single Bench

Advocate : Mohit Agarwal, for the Appellant; J. Pal, SC, Transport, Advocates for the Respondent

Final Decision : Allowed

Judgement

Dr. B.R. Sarangi, J.—In the above batch of writ petitions, the petitioners have sought for a direction for grant of registration by transferring ownership without insisting upon No Objection Certificate, payment of tax and penalty as per the provisions of the Motor Vehicles Act and the Rules framed thereunder. Since common questions of facts and law are involved in these writ petitions, they were heard together and are disposed of by this common order.

2. The factual backdrop of the case, in hand, is that the vehicle has been seized by the Forest Authority on the allegation of commission of forest offences under Section 56 of the Orissa Forest Act, 1972 (in short "1972 Act"). Following a confiscation case, proceeding was initiated under Section 56 of the 1972 Act. Since no claimant appeared in the proceeding, said vehicle was finally confiscated by the competent authority. After lapse of appeal period, opposite party No. 2 issued a tender sale notice for auction of the vehicle seized inviting applications from intending persons. Pursuant to the same, the petitioner offered

his price and participated in the process of tender and was declared as the highest bidder and consequently, the auction sale order was confirmed in his name and on acceptance of the sale price, auction certificate was issued by delivering the possession of the vehicle on the very same day. On taking over possession of the vehicle, the petitioner approached the Transport authority in accordance with the provisions contained under Section 50(2) of the Motor Vehicle Act, 1988 (in short, "1988 Act") read with Rule 57 of the Central Motor Vehicle Rules, 1989 with an application in prescribed Form No. 32 for transfer of the ownership in his name and for allotment of new registration number in his favour. The application so submitted has not been accepted on the plea that the petitioner is to obtain no objection certificate (NOC) from the concerned registering authority and further he is liable to pay tax for the pre auction period. Hence these applications.

3. Mr. M. Agrawal, learned counsel for the petitioner in W.P.(C) No. 17344 of 20114 vehemently urged that direction given for levy of tax and penalty for pre auction period by the Transport Authority is arbitrary, unreasonable and contrary to the provisions of law inasmuch as the same is contrary to the settled principles of law decided by this Court and also the apex Court. He further urged that the petitioner is not liable to pay any tax or penalty as demanded by the Transport Authority in view of the provisions contained in Sub-section (2) of Section 64 of 1972 Act. On harmonious reading of the provisions of the 1972 Act read with the Orissa Motor Vehicle Taxation Act, 1975(hereinafter referred to as "1975 Act"), the petitioner having purchased the vehicle in public auction pursuant to the order of confiscation passed under Section 56 of the 1972 Act, which became final under that section, it shall vest with the State Government free from all encumbrances. Therefore, the purchase having been made by way of an auction, from the date the property has been transferred and the petitioner being in possession of the same, from that date he is liable to pay the tax and not prior to that. To substantiate his contention, he has relied upon the judgments of this Court in Orissa State Financial Corporation Vs. State of Orissa and Another, and Bachan Singh Vs. The Road Transport Officer and Others, and the judgment of the Calcutta High Court in Kanakia Trading Co. Vs. Income Tax Officer and Others, .

4. Mr. J. Pal, learned Standing Counsel for Transport Department submits that in view of the provisions contained under Section 10 read with Section 12 of the 1975 Act, the auction purchaser is liable to pay tax and also penalty as per the provisions contained under Section 13(1) of the 1975 Act read with Rule 9(2) of the Orissa Motor Vehicle Taxation Rules, 1976 (hereinafter referred to as "1976 Rules"). To substantiate his contention he has relied upon the judgments of the apex Court in Commissioner, Transport-cum-Chairman and Others Vs. Tapan Kumar Biswas, and Sri Rabindra Kumar Jena Vs. Managing Director, OSFC and Others, and in Sri Sudhankar Patnaik v. Commissioner-cum- Chairman State Transport Authority and two others, 2004 (Supp.) OLR 840.

5. In view of the facts pleaded above, the following questions arise for consideration.

"(i) Whether an auction purchaser is liable to pay tax and penalty for the preauction period in respect of the vehicle he purchased in a public auction conducted by the Forest Authority?

(ii) Whether the auction purchaser is required to obtain No Objection Certificate (NOC) from the Registering Authority to transfer the ownership in his favour when the vehicle in question was purchased in a public auction?"

6. The State legislature to consolidate and amend the law relating to Taxation on Motor Vehicles enacted "the Orissa Motor Vehicles Taxation Act, 1975". To give effect to the provisions of the Act, Rules have been framed called "Orissa Motor Vehicles Taxation Rules, 1976". Section 3 of the 1975 Act deals with "levy of tax" which reads as follows:

"3. Levy of tax- (1) Subject to the other provisions of this Act, there shall be levied on every motor vehicle used or kept for use within the State a tax at the rate specified in Schedule-I and Schedule-III.

(2) The State Government may by notification from time to time, increase the rate of tax specified in Schedule-I and Schedule-III;

Provided that such increase shall not exceed fifty percent of the rate specified in Schedule-I and Schedule-III.

(3) All references made in this Act to Schedule-I and Schedule-III shall be construed as reference to Schedule-I and Schedule-III for the time being amended in exercise of the powers conferred by this section."

7. The aforementioned provision mandates that every motor vehicle used or kept for use within the State shall be liable to pay tax in accordance with schedule provided under the Statute. Section 12 of the 1975 Act states about liability of successor to pay arrears, which reads as follows:

"12. Liability of successor to pay arrears- (1) If the tax leviable in respect of any motor vehicle 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 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 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."

8. Section 12(1) makes it amply clear that the transferee of the vehicle or the person who is in possession or control of the vehicle shall be liable to pay the arrears of the tax payable by the previous owner or the person who had

possession or control of such vehicle and remained unpaid at the time of transfer of the vehicle and Sub-Section (2) of Section 12 speaks that 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. Therefore, Section 12(1) only speaks about unpaid tax and does not speak anything about penalty. On plain reading of above mentioned statutory provision, the inevitable conclusion is that transferee of the vehicle or the person who is in possession or control of the vehicle shall be liable to pay the amount of penalty due and arrear unpaid tax by the time the vehicle was put to auction and purchased by subsequent purchaser. In the present case, the vehicle has been seized by following due procedure of law by the enforcement agency as per the provisions contained in 1972 Act and Rules framed thereunder and the vehicle was in custody of such enforcement agency and pursuant to the public auction held by such authority, the petitioner has purchased the vehicle. Section 13 of the 1975 Act states about penalty for failure to pay and such penalty is only chargeable due to noncompliance of the provisions of Sections 4 and 4-A of the said Act. Section 4 mandates that tax shall be paid in advance within such time and such manner as may be prescribed to the taxing officer by the registered owner or the person having possession or control of the vehicle. Similarly, Section 4-A mandates that notwithstanding anything contained in Sections 3 and 4 of the said Act, the vehicle which is used personally or kept for personal use, onetime tax at the rate equal to a standard rate as specified in Schedule-III are to be paid. Therefore, due to noncompliance of the specific provisions contained in Sections 4 and 4A and under Section 13 of the 1975 Act, the registered owner or person in possession or control of the vehicle in addition to payment of tax due is liable to pay penalty and the modus operandi for recovery of penalty has been prescribed under Section 14 of the 1975 Act. In view of the above mentioned provisions, it is made conclusive that the order of imposing penalty for failure to carry out the statutory obligation is the result of a quasi criminal proceeding and the penalty would not ordinarily be imposed unless a party either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its statutory obligation. The petitioner being an auction purchaser pursuant to the public auction held by the competent authority, is not liable to pay penalty because of the fact that he has not acted deliberately in defiance of law or was guilty of conduct contumacious or conscious of its statutory obligation. More particularly, there is no violation of Section 4 or 4A of the 1975 Act making the petitioner liable to pay penalty to the authority. On the other hand, the petitioner having purchased the vehicle pursuant to public auction held by competent authority from the date of auction purchase, till possession of the vehicle, he may be liable for payment of tax not the penalty.

9 Mr. J. Pal, learned Standing Counsel appearing for the Transport Department in his usual fairness states that the petitioner being an auction purchaser in a public auction may not be liable to pay penalty but he is obliged to pay the tax as

demanded by the authority. Such contention of Mr. Pal has been strongly repudiated by Mr. M. Agrawal, learned counsel for the petitioner in W.P.(C) No. 17344 of 2014.

10. In Bachan Singh (Supra), the Division Bench of this Court has considered the similar question where the petitioner had purchased a truck in auction by the State Government and when application was filed to transfer the ownership of the truck to his name and to issue road permit the same was refused for non-payment of the arrear tax outstanding against the vehicle prior to the date of auction and this Court held that levy of tax and penalty for post auction period by the authorities is not permissible and the petitioner is not liable to pay the arrears payable by the previous owner and also not liable to pay the tax and penalty for the post auction period. This Court held that the OSFC cannot make a claim of sale proceeds of a confiscated vehicle on the ground that the vehicle was purchased by a hire purchase agreement.

11. Mr. M. Agrawal, learned counsel for the petitioner states that in view of the provision contained under Section 64(2) of the 1972 Act, the vehicle which has been seized on the allegation of commission of forest offence the order of confiscation passed under Section 56 in respect of the said vehicle having become final, the petitioner is not liable to pay tax and penalty prior to the date of auction.

Section 64(2) of the 1972 Act is quoted below"

"When an order of confiscation of any property passed under Section 56 has become final under that section in respect of the whole or any portion of the property, such property or the portion thereof, as the case may be, shall vest in the state Government free from, all encumbrances."

12. On perusal of the above mentioned provisions it appears that once the property is confiscated under Section 56, it vests with the State Government free from all encumbrances. Once it is a State property and it has been put to auction by following due procedure, the petitioner being the auction purchaser, the post auction tax cannot be leviable on him. It is stated that once the property has been vested with the State Government free from all encumbrances means the State owes all the liabilities.

13. In Black Law Dictionary, 7th Edn. the meaning of "Encumbrance" has been defined as follows:

"A claim or liability that is attached to property or some other right and that may be lessen its value." 14. In The Collector of Bombay Vs. Nusserwanji Rattanji Mistri and Others, incorporating the word ''encumbrance'' in Section 11 of the L.A. Act, the apex Court has held as follows:

"The word ''encumbrance'' in Section 16 can only mean interests in respect of which a compensation was made under section 11, or could have been claimed. It cannot include the right or the Government to levy assessment on the lands."

15. The meaning of ''encumbrance'' has been considered in AI Champdany Industries Limited Vs. The Official Liquidator and Another, which the apex Court explained the meaning of the word ''encumbrance'' to mean, "a burden or charge upon property or a claim or lien upon an estate or on the land."

16. In State of Himachal Pradesh Vs. Tarsem Singh and Others, , the apex Court further explained the meaning of ''encumbrance'', which reads as follows:

"Encumbrance" means a burden or charge upon property or claim or lien upon an estate or on the land. ''Encumber'' means burden of legal liability on property, and, therefore, when there is encumbrance on a land, it constitutes a burden on the title, which diminishes the value of the land." 17. In Kanakia Trading Co. (supra) referring to Dinendronath Sannial v. Ramkumar Ghosh, 1880-81 ILR 7, the High Court of Calcutta has observed as follows:

"There is a great distinction between a private sale in satisfaction of a decree and a sale in execution of a decree. In the former, the price is fixed by the vendor and purchaser alone; in the latter, the sale must be made by public auction conducted by a public officer, of which notice must be given as directed by the Act, and at which the public are entitled to bid. Under the former, the purchaser derives title through the vendor, and cannot acquire a better title than that of the vendor. Under the latter, the purchaser, not withstanding he acquires merely the right, title and interest of the judgment-debtor, acquires that title by operation of law adversely to the judgment-debtor, and freed from all alienations or encumbrances effected by him subsequently to the attachment of the property sold in execution." 18. In the aforesaid case, the property was purchased by the petitioner free from all encumbrances. Even if there was any attachment levied by the Income-tax Department before sale, the attachment had shifted to the sale proceeds in view of the permission granted by the Tax Recovery Officer for the sale of the said property by the receiver in satisfaction of the decree obtained by the Mercantile Bank Limited and therefore, the Calcutta High Court considering the meaning of ''encumbrance'' stated as follows:

"x x x Encumbrance means a claim lien, charge or liability attached to and binding immovable property, e.g., a mortgaged ejectment or right of way, accrued and unpaid taxes. x x x"

(emphasis supplied)

19. Applying the analysis made by the Calcutta High Court in Kanakia Trading Co. (supra), the petitioner is not liable to pay the unpaid tax pursuant to a confiscation order, which has become final, as the property has already vested to the State Government. Therefore, the tax cannot be leviable on the auction purchaser for the pre auction period.

20. Mr. J. Pal, learned Counsel referring to Sri Sudhakar Pattnaik (Supra) where this Court considered the provisions under Sections 10 and 12 of the 1975 Act and held that no imposition of penalty shall be made for the period of

confiscation as enforcement agencies making seizure of vehicles are not liable to submit off road intimation and the auction purchaser is only liable to pay arrear of tax if not paid by the owner of the vehicle or the enforcement agencies. With due respect to the Hon''ble judges of this Court with humble way I disagree with findings given in said judgment inasmuch as while holding that the auction purchaser is liable to pay ''tax''. Following a confiscation proceeding under Section 56 of 1972 Act, this Court held as such while Section 64(2) of the 1972 Act had not been taken into consideration. Thereby the judgment so passed holding that the auction to pay tax only if the same has not been paid by the owner of the vehicle or the enforcement agency, in my humble opinion, is a per incuriam judgment and more so, the provision contained under Section 64(2) of the 1972 Act has not been brought to the notice of the Hon''ble Judges in Sudhakar Pattnaik (Supra) and therefore, there was no occasion on the part of the Court to deal with such aspect.

21. Mr. J. Pal, learned Standing Counsel for Transport Department relying on Commissioner, Transport-cum-Chairman and Others (supra), wherein the apex Court held that if the owner of the Truck is required to give intimation, an undertaking of temporary discontinuance of use of vehicle for a period of one year only, and no subsequent undertaking was filed it has to be presumed that the vehicle had been used or kept for use within the State. Merely because the certificate of fitness was cancelled, it could not be said that the vehicle had not been kept for use in the State. The apex Court decided the case taking into consideration the provision contained under Sections 3 and 10 of the 1975 Act. There is no dispute with regard to the power and authority to impose tax and penalty thereof. But in the present case, the question is altogether different where the auction purchaser following the confiscation proceeding purchased the vehicle from the authority who is liable to pay the tax and penalty is the question to be considered.

22. In view of the analysis being made, this Court is of the considered opinion that for the period the vehicle was in custody of the enforcement agency and subsequently, following a confiscation proceeding the auction purchaser having purchased the same free from all encumbrances by making a harmonious consideration of the provisions contained in Sections 3,10,12 of the 1975 Act read with Section 56 and Section 64(2) of the 1972 Act, the auction purchaser is not liable to pay the tax and penalty demanded by the Transport Authority for the pre auction period. From the date auction purchaser purchased the vehicle and possessed the same, the tax can be leviable in conformity with the provisions of 1975 Act. The question No. (i) is answered accordingly.

23. Mr. M. Agrawal, learned counsel for the petitioner urged that after the vehicle was purchased in auction purchase, the auction purchaser approached the opposite party No. 1 with an application in prescribed Form No. 32 for transfer of the ownership of the vehicle to his name and a new registration number should be allotted in his favour since the vehicle was originally registered before

opposite party No. 3, RTO, Dhanbad in the State of Jharkhand, the opposite party No. 1 refused to accept the application and insisted that the petitioner has to first obtain NOC from opposite party No. 3 and then only opposite party No. 1 can effect the transfer of ownership of the vehicle in his name.

24. Admittedly, the vehicle was seized by the enforcement agency and after being confiscated following a conciliation proceeding, the same was put to public auction and the petitioner purchased the same in public auction. Section 48 of the 1988 Act deals with No Objection Certificate. It signifies that where the transfer of a vehicle is to be effected in a State other than the State of its registration, the transferor of such vehicle when reporting the transfer under Sub-Section (1) of Section 50 of 1988 Act, shall make an application in such form and in such manner as may be prescribed by the Central Government to the registering authority by which the vehicle was registered for issue of a certificate. Sub-Section (2) of Section 50 of 1988 Act deals with Transfer of ownership which reads as follows:

"50 (2) Where-

(a) the person in whose name a motor vehicle stands registered dies, or

(b) a motor vehicle has been purchased or an acquired at a public auction conducted by, or on behalf of, Government,

the person succeeding to the possession of the vehicle, shall make an application for the purpose of transferring the ownership of the vehicle in his name, to the registering authority in whose jurisdiction he has the residence or place of business where the vehicle is normally kept, as the case may be, in such manner, accompanied with such fee, and within such period as may be prescribed by the Central Government."

25. Sub-Clause (b) of Sub-Section (2) of Section 50 of the 1988 Act mentioned above stipulates that a motor vehicle which has been acquired at a public auction conducted by, or on behalf of, Government, the person succeeding to the possession of the vehicle, he is to only make an application for the purpose of transferring the ownership of the vehicle to his name, to the registering authority in whose jurisdiction he has the residence or place of business where the vehicle is normally kept. In view of the provisions contained in Sub-Clause (b) of Sub-Section (2) of Section 50 and Section 48 of the 1988 Act read with Rule 57 of the Central Motor Vehicle Rules, 1989, the insistence of submission of NOC by opposite party No. 1 to the petitioner is contrary to the provisions of law. As such, he is not required to produce such NOC as the petitioner purchased the vehicle following a public auction from the enforcement agency in accordance with law.

26. In view of the aforesaid facts and circumstances, neither the petitioner is liable to pay tax for the pre auction period and also was not required to submit NOC as he purchased the vehicle in question in a public auction pursuant to the

confiscation proceeding held under Section 56 of the 1972 Act.

27. The writ petitions are thus allowed. However, there shall be no order as to costs.