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(2004) 09 OHC CK 0013

In the Orissa High Court

Case No : Writ Petition (C) No. 5150 of 2002

Orissa State Financial Corporation APPELLANT

Vs

State of Orissa and Another RESPONDENT

Date of Decision : 20-09-2004

Acts Referred:

Orissa Forest Act, 1972 — Section 56, 64, 64(2)

Citation : (2005) 99 CLT 38 : (2004) 29 OCR 875 : (2004) 2 OLR 627

Hon'ble Judges : P.K. Tripathy, J;N. Prusty, J

Bench : Division Bench

Advocate : P.K. Routray, P.R. Sutar, M.R. Dash, M.K. Deo, R.K. Rout and A. Routray, for the Appellant; Additional Government Advocate, for the Respondent

Judgement

P.K. Tripathy, J.—Heard.

On consent of both the parties, this Writ Petition is disposed of at the stage of admission.

2. This Writ Petition has been filed by the Orissa State Financial Corporation (in short ''the O.S.F.C) represented by its managing Director, seeking a direction to the opposite party members to release the sale proceeds of the confiscated vehicle bearing Registration No. OSP-3795 in discharge of the loan liability of the registered owner of the said vehicle (Truck).

3. From the narration of facts in the Writ Petition, it appears that the aforesaid Truck (OSP-3795) was purchased by the owner of the truck on the financial assistance provided by the. OSFC and therefore the vehicle was hypothecated to it. As back as on 15.3.1993. the said truck was seized by the Forest Officials on the allegation of transporting timbers illegally. A proceeding u/s 56 of the Orissa Forest Act, 1972 (in short ''the Act'') was accordingly initiated against the registered owner of the truck and ultimately an order of confiscation was passed. Pursuant to that order, on 30.5.1997 the said truck was sold at Rs. 60,786/-. The Branch Manger of Puri Branch of the OSFC on 15.1.1998 wrotethe letter

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Annexure-1 and requested the Opp. Party No. 2 i.e., the Divisional Forest Officer, Puri Division, Khurda to release the vehicle in favour of the Corporation for proceeding in accordance with Section 29 of the Orissa State Financial Act, 1951 (in short ''the Act 1951''). As alleged by the petitioner Opp. Party No. 2 did not respond to the letter of request. However, on 17.8.2002, the letter, Annexure-2 was sent by the said Branch Manager of the OSFC requesting the Opp. Party No. 2 to release the sale proceeds. In reply to that, in Annexure-3 the Opp. Party No. 2 declined to concede to the request on the ground that as per the decision of the Supreme Court in Criminal Appeal No. 1200 of 1995 the OSFC cannot be treated as the owner within the meaning of the provision in the Motor Vehicles Act and for realisation of the outstanding loan petitioner may proceed against the loanee in accordance with law. Thereafter, petitioner has filed this Writ Petition with the above noted prayer.

4. Learned Counsel for the petitioner reiterates the aforesaid contention and states that in view of the ratio in the case of Orissa State Financial Corporation Vs. Range Officer, Sukinda and Others, the aforesaid conduct of the Opp. Party No. 2 indicated in his reply Annexure-3 is contrary to the position of law. He, thus, prays to issue a direction for release of the sale proceeds in favour of the petitioner.

5. Learned Additional Government Advocate, on the other hand, argues that in view of the ratio in the case of Ganga Hire Purchase Pvt. Ltd. v. State of Punjab and others 2000 (1) Crimes 13the view expressed in Annexure-3 is the correct position of law and therefore, on the basis of preference the view of the apex Court, supersedes the view expressed by this Court in the above cited decision.

6. After dealing with a similar fact situation in the case of the OSFC (supra) a Division Bench of this Court, held that :

"In this case a quandary situation has emerged as to whether the State Financial corporation which is an instrumentality of the State would be deprived of getting their money, which was advanced to the Principal loanee for the purpose of purchasing the vehicle. The Writ Petitioner has not produced any document before us to show whether at the time of advancing the loan any property was either offered by the loanee or by the guarantor/surety as colateral security. In case such colateral securities were offered, it is open to the petitioner OSFC to proceed for realisation of the outstanding dues against those colateral securities. It is further to be considered whether the amount advanced to the loanee should be treated as a charge over the property against which the loan was sanctioned. In the event the petitioner OSFC satisfied that the vehicle in question was kept as a charge for the loan, then, it is open to them to approach the Authorised Officer claiming the loan amount from the consideration obtained after the vehicle put to auction. Since all such money advanced by the petitioner OSFC can be treated as a public demand as envisaged in Orissa Public Demand Recovery Act and is being treated as a charge, in that event, any confiscation of the vehicle shall be subject to the charge of the OSFC. The language employed in

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Section 56(2a) of the Act is lucidly clear that the order of confiscation is not free from encumbrances and to that extent it is silent, Therefore, it is understood that since the loan was advanced by the OSFC petitioner by keeping the vehicle as a charge, they have a right to recover the same treating it as public demand."

7. In the case of Ganga Hire Purchase Pvt. Ltd., (supra) the Apex Court held that :

"... In the absence of any definition of ''owner'' in the NDPS Act, it would be reasonable to construe that the expression ''owner'' must be held to mean the ''registered owner'' of the vehicle in whose name the vehicle stands registered under the provisions of the Motor Vehicles Act.

In view of the aforesaid interpretation of the expression owner in Sub-section (3) of Section 60 of the NDPS Act, the appellant cannot be permitted to urge that the order for confiscation is bad, as he had no knowledge of the fact that the vehicle was used for carrying any Narcotic Substances. The High Court, therefore, was justified in rejecting the contention of the appellant that the truck in question having been taken on hire-purchase agreement, for the purpose of Sub-section (3) of Section 60 the appellant shall be treated to be the owner."

8. On perusal of the above quoted ratios, we do not find that the principle highlighted by the Apex Court in any way contradicts or directly supersedes to the decision of this Court in the above noted case of OSFC (supra). However, we find that when a proceeding for confiscation is undertaken, u/s 56 of the Act, against a vehicle for committing any forest offence, at that stage, there is no debarring provision in that Section or any other provision in that Act to make the order of confiscation subject to satisfaction of any encumbrances. On the other hand, Section 64 of the Act provides as follows :

"64. Property when to vest in Government;

(1) When an order for the confiscation of any property has been passed u/s 59 or Section 61 as the case may be, and the period limited by Section 63 for filing an appeal from such order has elapsed, and no such appeal has been preferred or when, on such an appeal being preferred, the Appellate Court confirms such order in respect of the whole or a portion of such property, such property or such portion thereof, as the Government free from all encumbrances.

(2) When an order of confiscation of any property passed u/s 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."

9. It is apparent from the above quoted Sub-section (2) of Section 64, that property confiscated u/s 56 shall vest in the State Government free from all encumbrances. Therefore, in the context of claim of the petitioner of hypothecation of the confiscated vehicle, the provision in Section 56 has to be read together with provision in Sub-section (2) of Section 64 of the Act. [In

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Orissa State Financial Corporation Vs. Range Officer, Sukinda and Others,], we do not find that the provision in Sub-section (2) of Section 64 was brought to the notice of the Court or the same was considered while laying down the above quoted principle by the said Division Bench.

10. Apart from that the hypothecated vehicle remained as a charge for discharge of the loan amount. After committing a forest offence when such vehicle is under order of confiscation and therefore, if the said vehicle or the sales proceed is to be released by the State in favour of the OSFC for repayment of the loan, then that negatives the purpose of Section 56 inasmuch as the loanee-cum-the registered owner of the hypothecated vehicle gets the reward of repayment of his loan which otherwise would have been an additional burden on him.

11. For the reasons, we find it difficult to accept the above quoted proposition in the case of OSFC (supra). At the same time, this being the decision of a colateral/ Co-ordinate Bench, we have no jurisdiction or authority to bye-pass or superseed that judgment save and except passing an order referring the issue to a Larger Bench and requesting the Chief Justice to refer the matter to a Larger Bench for due consideration. Accordingly, we direct the Deputy Registrar (Judicial) to place this matter before Hon''ble the Chief Justice for assigning the matter to a Larger Bench. An early decision in the matter by the Lager Bench, may help disposal of the pending litigations of the like nature.

N. Prusty, J.

12. I agree.

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