
(2010) 10 UK CK 0020

In the Uttarakhand High Court

Case No : Writ Petition No. 1780 of 2010 (M/S)

Sundaram Finance Ltd.

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision : 20-10-2010

Acts Referred:

Citation : (2010) 10 UK CK 0020

Hon'ble Judges : Brahma Singh Verma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

B.S. Verma, J.—Heard Mr. Nagesh Agarwal, Advocate for the Petitioner and Mr. N.P. Shah, learned Standing Counsel on behalf of the Respondents.

2. By means of this petition the Petitioner has sought the following relief-

A- To issue a writ, order or direction in the nature of certiorari to quash the auction and sale proceeding for selling the vehicle in question viz. Mitsubishi/ Eicher Canter bearing No. UK-05-6110 initiated by Respondents 1 to 3.

B- To issue a writ, order or direction in the nature of mandamus commanding the Respondents not to sale the vehicle in question viz. Mitsubishi/ Eicher Canter bearing No. UK-05-6110 without deciding the objection of the Petitioner.

C- To issue a writ, order or direction in the nature of mandamus commanding the Respondents to hand over the possession of the vehicle in question viz. Mitsubishi/Eicher Canter bearing No. UK-05-6110 to the Petitioner being the subject matter of loan agreement dated 1st December, 2007.

3. During the course of argument, learned Counsel appearing on behalf of the Petitioner has submitted that the Petitioner company carries on business of hire purchase of motor vehicles and also provides loan facilities for the purpose of assets, lease of equipments and machinery and Respondent No. 4 has taken a loan from the Petitioner's company to purchase a canter and got a vehicle

Mitsubishi/Eicher Canter bearing No. UK-05-6110 financed from the Petitioner's company. On default, the Respondent No. 2 issued show cause notice to the Petitioner to file objection, if any, against the auction/sale of the tanker. In response to that the Petitioner has filed objection before Assistant Collector/Respondent No. 2 on 29th and 30th September, 2010, Annexure Nos. 4 and 5 respectively to the writ petition and the same are still pending for disposal. According to the Petitioner he is third party and the vehicle in question was financed by the Petitioner to the borrower, Respondent No. 4 and the charge of the Petitioner is first charge on the vehicle (tanker), therefore, for the other dues the tanker cannot be attached.

4. In the above circumstances of the case, it would be appropriate that the objections filed by Petitioner before Respondent No. 2 should be decided first before proceeding for auction and sale of tanker in dispute. Therefore, the Assistant Collector/Respondent No. 2 is directed to decide the objection of the Petitioner in accordance with law before proceeding further for auction and sale of the tanker in dispute. The objections be decided within a period of four weeks from the date of production of certified copy of this order.

5. With the aforesaid direction the writ petition is disposed of finally.

6. Let certified copy of this order be supplied to the parties by tomorrow on payment of requisite fee.