(1972) 07 KL CK 0003

In the High Court Of Kerala

Case No : O.P. No. 4014 of 1969

The Standard Motor Union (p) Ltd. APPELLANT

Vs

The R. T.O. Kottayam and Others RESPONDENT

Date of Decision : 03-07-1972

Acts Referred:

Constitution of India, 1950 — Article 14, 19
Kerala Revenue Recovery Act, 1968 — Section 13, 7

Citation : (1973) KLJ 321

Hon'ble Judges : V. Balakrishna Eradi, J

Bench : Single Bench

Advocate : K.S. Sebastian and V.C. James, for the Appellant;

Final Decision : Dismissed

Judgement

V. Balakrishna Eradi, J.—This writ petition has been instituted on behalf of a private company by name the Standard Motor Union (P) Ltd. by its Managing Director. The prayers in the writ petition are (i) to issue a writ of certiorari or other appropriate writ to respondents 1 to 4 namely, the Regional Transport Officer, Kottayam, the State of Kerala, the Tahsildar, Kottayam and the Tahsildar (Tax Recovery Officer), Vaikom, calling up the records evidencing the proceedings of the said respondents for recovery from the petitioner of arrears of motor vehicles tax due in respect of eight stage carriage vehicles, whose registration numbers are mentioned in the writ petition and to quash the said proceedings, (ii) to declare that S. 7 of the Kerala Revenue Recovery Act, 1968 is ultra vires and void on the ground that it is violative of Art. 14 and 19 of the Constitution of India and (iii) to issue a writ of mandamus or such other appropriate writ or direction to respondents I to 4 compelling them to drop the tax recovery proceedings initiated against the petitioner company and its assets. The eight of vehicles referred to in the writ petition admittedly belonged to the petitioner company and even now they stand registered in the name of the petitioner only. It is not denied'' that there are large arrears of motor vehicles tax outstanding as due in respect of those vehicles. According to the petitioner the vehicles had been sold by the company to the 5th respondent namely, the Meenachil Motor Workers'' Co-operative Society Ltd. in 1964-65 but since only a small portion of the purchase price had been paid by the society the registration has not been transferred in the name of the purchaser. Whatever may be the reason for retaining the registration in the petitioner''s name, so long as the petitioner is the registered owner of the motor vehicles in question the legal liability for payment of the tax in respect of these vehicles will be that of the petitioner under S. 3(2) of the Kerala Motor Vehicles Taxation Act, 1963 (hereinafter referred to as the Act). The respondents are, therefore, well within their rights in proceeding against the petitioner for the realisation of the said arrears of motor vehicles tax.

2. It is then contended by the petitioner that even if the petitioner is liable for the arrears of tax the respondents can proceed to realise the said tax arrears only by the attachment and sale of the very same vehicles in respect of which the arrears of tax had accrued due and that other vehicles belonging to the petitioner company cannot be proceeded against for recovery of the said tax.

3. Under S. 13 of the Act the State is empowered to recover the tax due under the said Act in the same manner as an arrear of land revenue. By the latter part of the said section it is provided:

The motor vehicle in respect of which tax is due or its accessories may be distrained and sold in pursuance of this section whether or not, such vehicle or accessories are in the possession or control of the person liable to pay the tax.

4. Relying on the portion of S. 13 extracted above it is argued that the Legislature has imposed a restriction in the matter of taking proceedings for recovery of the tax due under the Act by laying down that steps for distraint and sale may be taken only against the very same vehicles in respect of which the tax liability has arisen. In my view, this interpretation cannot be accepted as correct. Under the first part of S. 13 of the Act it is specifically provided that the tax due under the Act shall be recoverable in the same manner as an arrear of land revenue. Under the provisions of the Kerala Revenue Recovery Act proceedings for recovery can be taken only by attachment and sale of property which belongs to the defaulter at the time of initiation of the revenue recovery proceedings. Hence if by the time the proceedings are initiated the defaulter has transferred the vehicle to another person it will not be possible under the Revenue Recovery Act to proceed to distrain or sell the vehicle for recovery of the arrears of tax. It is to get over this difficulty that special provision has been made in the latter part of S. 13 conferring an additional right on the State Government and its revenue recovery officers to proceed against the motor vehicle in respect of which the tax liability sought to be recovered had accrued due notwithstanding any transfer of the vehicle by the original owner subsequent to the accrual of arrears and before the institution of the revenue recovery proceedings. The section does not in any manner restrict the right inherent on

the State Government under the Revenue Recovery Act to proceed against any movable or immovable property belonging to the defaulter for recovery of the amount which is statutorily liable to be recovered as an arrear of land revenue. The contention of the petitioner is thus devoid of merit and has only to be rejected. I do so.

5. Although the petitioner has taken a ground impugning the validity of S. 7 of the Kerala Revenue Recovery Act, the validity of the said provision has already been upheld by a Division Bench of this Court in Writ Appeal Nos. 133 of 1970 and 101 of 1972. Apparently because of this the learned advocate for the petitioner did not pursue the aforesaid contention at the time when the case was argued. The original petition fails and is dismissed. The parties will bear their respective costs.

