(1999) 12 KAR CK 0022

In the Karnataka High Court

Case No : Writ Petition No. 44341 of 1999

Vijayakumar Mane APPELLANT

Vs

The Regional Transport Officer, Dharwad and Others RESPONDENT

Date of Decision : 14-12-1999

Acts Referred:

Karnataka Motor Vehicles Taxation Act, 1957 — Section 16 (1), 3, 4, 7, 8
Motor Vehicles Act, 1988 — Section 2 (30)

Citation : AIR 2000 Kar 209 : (2000) ILR (Kar) 754 : (2000) 2 KarLJ 78 : (2000) 2 KCCR 1268

Hon'ble Judges : R.V. Raveendran, J

Bench : Single Bench

Advocate : Sri C. Narasimhachar, for the Appellant; Sri T.K. Vedamurthy, G.P., for the Respondent

Judgement

1. Sri T.K. Vedamurthy, the learned Government Pleader, is directed to take notice for respondents 1 and 2.

2. Petitioner claims to be the registered owner of vehicle bearing Registration No. KA25/5656. The vehicle is hypothecated to the Karnataka State Financial Corporation (''KSFC'' for short), the third respondent herein. As the petitioner committed default in paying the amounts due to the KSFC, the vehicle was seized by KSFC from the possession of the petitioner on 16-3-1996. Petitioner had paid the motor vehicle tax in regard to the vehicle upto 31-3-1996. The motor vehicle tax for the period commencing from 1-4-1996 was not paid either by the petitioner or by the KSFC. The seizure of the vehicle and non-use of the vehicle as a consequence of such seizure, was not intimated to the first respondent either by the petitioner or by KSFC. It was only by a letter dated 21-5-1997, the KSFC informed the first respondent that the vehicle had been seized on 16-3-1996 and that the vehicle was still in its custody. Along with the said communication, KSFC sent an intimation of non-use in Form No. 30 under Rule 34-A of the Karnataka Motor Vehicles Taxation Rules, 1957 (''Rules'' for short).

3. On a report by the Inspector of motor vehicles about the seizure of the vehicle by KSFC, the first respondent sent a notice of demand dated 8-7-1996 (Annexure-D) to KSFC in regard to the motor vehicle tax due for the period 1-4-1996 to 30-6-1996. This was followed by another notice dated 29-5-1997 to KSFC demanding Rs. 1,82,000/- as motor vehicle tax due from 1-4-1996 to 30-6-1997. In the meanwhile, the petitioner took back possession of the vehicle from KSFC and is using it. As the tax for the period 1-4-1996 to 30-6-1997 remains unpaid, the first respondent sent a notice dated 9-12-1997 (Annexure-F) to the petitioner claiming Rs. 1,82,000/- as motor vehicle tax for the period 1-4-1996 to 30-6-1997.

4. Feeling aggrieved, the petitioner filed an appeal before the second respondent. The second respondent allowed the appeal by order dated Nil (Annexure-L) and remanded the matter to the first respondent for fresh disposal on the ground that first respondent had not initiated action for recovery of tax, against KSFC, in addition to the petitioner. The Appellate Authority has held that as no intimation of non-use was sent as required u/s 16(1) of the Karnataka Motor Vehicles Act, 1957 (''Act'' for short) read with notification dated 11-9-1980 and Rule 34-A of the Rules, till 21-5-1997, both the petitioner and the KSFC are liable to pay the taxes for the period from 1-4-1996 to 30-6-1997 and the petitioner will have to pay the tax and then seek refund, if the vehicle is not in use u/s 7 of the Act. He held that the registered owner cannot escape liability to pay the tax having regard to Section 9 of the Act.

5. The petitioner contends that the registered owner is not liable to pay the motor vehicle tax during the period when the vehicle is seized and kept by the financier and only the financier is liable to pay the motor vehicle tax for such period and therefore the first respondent cannot demand the motor vehicle tax from the petitioner for the period 1-4-1996 to 30-6-1997, when the vehicle was under the control and possession of KSFC. The petitioner also contends that instead of remanding the matter, the Appellate Authority ought to have allowed the appeal by holding that petitioner was not liable and that the entire tax for the said period was payable by KSFC. He has therefore filed this petition for quashing the demand notice dated 9-12-1997 (Annexure-F) and the appellate order dated Nil (Annexure-L).

6. The question that arises for decision is whether the registered owner is liable to pay the motor vehicle tax of the vehicle, for the period when it was in the possession of the financier in pursuance of a seizure,

7. A brief reference to the relevant provisions of the Act is necessary to decide the question.

7.1 Section 3 of the Act provides for levy of motor vehicle tax. Section 4 of the Act provides that the tax levied u/s 3 shall be paid in advance by the registered owner or person having possession or control of the motor vehicle. Section 2(1)(f) of the Act defines the term ''Registered Owner'' as meaning the person in whose name a motor vehicle is registered tinder the Motor Vehicles Act, 1939.

7.2 Section 2(30) of Motor Vehicles Act, 1988 defines "Owner" as the person in whose name a motor vehicle stands registered or where a vehicle is subject to an agreement of hire purchase/lease/hypothecation, the person in possession of the vehicle under such agreement. The corresponding definition of ''Owner'' in the Motor Vehicles Act, 1939 was slightly different. Section 2(19) of the 1939 Act defined "Owner" as the person in possession of a motor vehicle and in relation to a motor vehicle which is the subject-matter of an agreement of hire purchase, the person in possession of the vehicle under that agreement.

7.3 Section 9 of the Act relates to liability to pay arrears of tax. The said section is extracted below:

"9. Liability to pay arrears of tax.-

(1) If the tax leviable in respect of any motor vehicle remains unpaid by any person liable for the 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 taxation authority.

(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 the vehicle, to pay the said tax".

8. The position that emerges from a combined reading of Sections 4 and 9 of the Act, is thus:

(a) A registered owner of a motor vehicle, or a person having possession and control of a motor vehicle, is liable to pay the current motor vehicle tax, as also all arrears of motor vehicle tax relating to the period prior to the date he became the registered owner or obtained possession and control of the vehicle.

(b) A person who was a registered owner of a motor vehicle, but who is no longer a registered owner, continues to be liable for payment of motor vehicle tax, due upto the date when he ceased to he a registered owner. Similarly, a person who had possession and control of a motor vehicle (but who is no longer in possession and control) continues to be liable for payment of motor vehicle tax, due upto the date when he ceased to have possession and control.

(c) In other words, every registered owner is liable to pay the taxes due during the period when he was or is the owner and also all arrears due for the period prior to the date on which he became the registered owner.

Similarly, every person who obtains/takes possession and control of the motor vehicle, is liable to pay the taxes due during the period when he was or is in possession and control and also all arrears due for the period prior to the date on which he obtained possession and control of the motor vehicle.

9. The position as above, can be clarified by the following illustrations:

Illustration (i):

Let us say that motor vehicle tax is due in regard to a vehicle for the periods 1-1-1999 to 31-3-1999, 1-4-1999 to 30-6-1999 and 1-7-1999 to 30-9-1999 (for convenience referred to as periods ''x'', ''y'' and ''z'').

Let us say ''PO'' (previous owner) was the registered owner during 1-1-1999 to 30-6-1999; ''F'' is the financier who took possession on 1-4-1999 on default by ''PO'', and was in possession and control between 1-4-1999 to 30-6-1999; and ''CO'' (current owner) is the registered owner in possession from 1-7-1999 when the vehicle was transferred with possession, to him by ''PO'' and ''F''.

The position regarding liability will be thus:

''PO'' will be liable to pay the taxes for the periods ''x'' and y (that is for the period 1-1-1999 to 31-3-1999 when he was the registered owner having possession and control and 1-4-1999 to 30-6-1999 when he continued to be registered owner without possession).

''F'' will also be liable to pay the taxes for the periods ''x'' and ''y''. (For the period 1-4-1999 to 30-6-1999 as the person in possession and control of the vehicle and for the period 1-1-1999 to 31-3-1999 as arrears).

''CO'' will be liable to pay the taxes for the periods x, y and x (For the period 1-7-1999 to 30-9-1999 as registered owner and for the period 1-1-1999 to 30-6-1999 as arrears).

Illustration (ii):

Let us say that the motor vehicle tax is due for the first three quarters of 1999 that is from 1-1-1999 to 30-9-1999. ''A'' is the registered owner during the entire period. ''F'' is the financier who took possession of the vehicle for non-payment of instalments on 1-4-1999. ''F'' returns the possession of the vehicle to ''A'' on 30-6-1999. ''A'' continues in possession and control from 1-7-1999.

''A'' wilt be liable to pay the motor vehicle tax for the entire period. Firstly, his liability is as the registered owner during the entire period. Secondly, as the registered owner and person in possession, during the third quarter (1-7-1999 to 30-9-1999), he is liable to pay all arrears, that is tax due for 1-1-1999 to 30-6-1999.

''F'' will be liable to pay the tax for the period 1-1-1999 to 30-6-1999. His liability for the period 1-4-1999 to 30-6-1999 as person having possession and control and for the period 1-1-1999 to 31-3-1999 as arrears due when he took possession and control.

Illustration (iii):

''A'' is the registered owner and ''B'' is the financier of a vehicle motor vehicle tax is due from 1-1-1999. The vehicle is possessed by the financier on 1-4-1999 for non-payment of instalments. As on date ''A'' continues to be the registered owner and ''B'' continues in possession and control of the vehicle.

''A'' is liable to pay the motor vehicle tax from 1-1-1999 till date as registered owner. ''B'' is also liable to pay the motor vehicle tax from 1-1-1999 till date, that is for the period 1-4-1999 to date as the person in possession and control and for the period 1-1-1999 to 31-3-1999 as arrears.

10. The liability of the registered owner and person in possession and control of the vehicle is joint and several. The primary obligation to pay motor vehicle tax is on the registered owner. In law there is a presumption that an owner has possession and controls of the property or asset owned. If he parts with the possession and control either voluntarily in pursuance of any agreement/ arrangement, or non-voluntarily but in pursuance of any agreement/ arrangement, his liability to pay tax does not cease, so long as he continues to be the registered owner. The person who takes possession and control, either as a lessee or as a financier becomes liable to pay the taxes, as a co-obligant.

11. In this case, the motor vehicle tax is due for the period 1-4-1996 to 30-6-1997. The vehicle was seized by KSFC on 16-3-1996. Though it is stated that the vehicle has been returned by KSFC to petitioner, the date on which the vehicle has been returned to petitioner is not disclosed. Petitioner, as registered owner, will be liable to pay the motor vehicle tax for the entire period, irrespective of the fact whether he had possession and control or not. The liability of KSFC to pay the tax will be joint and several, along with petitioner from 1-4-1996 to the date when it returned possession and control of the vehicle to the petitioner. KSFC will have no liability to pay the motor vehicle tax from the date on which it returned possession and control to the petitioner. It is in these circumstances, the Appellate Authority has remanded the matter to first respondent to determine the extent of liability of KSFC, that is the period for which KSFC is jointly and severally liable to pay the motor vehicle tax in regard to the vehicle. As rightly held by the Appellate Authority, as intimation of non-use was not given till 21-5-1997, there is a statutory obligation, both on the part of the petitioner and KSFC to pay the taxes for the period 1-4-1996 to 30-6-1997, having regard to Sections 4 and 9. After such payment it is open either to the petitioner or KSFC who pays the said taxes, to seek refund on the ground that the vehicle was not under use. There is no infirmity in the order of the Appellate Authority.

12. Strong reliance is placed by the petitioner on four unreported decisions of this Court, to contend that during the period when the vehicle is seized by the financier and is in the possession and control of the financier, the registered owner is not liable to pay the tax and the financier alone is liable to pay the tax. The decisions are R.G. Bawdekar v Regional Transport Officer; L. Krishna Murthy v Special Tahsildar for Prevention of Unauthorised Constructions and Recoveries ; Shivakumar it Regional Transport Officer, Mandya and R.B. Patil v Regional

Transport Officer, Davanagere. The last three cases merely follow the decision in Bawdekar''s case. Bawdekar''s case and L. Krishna Murthy''s case arose during the period when Motor Vehicles Act, 1939 was in force. The other two decisions relate to the period when Motor Vehicles Act, 1988 is in force. The decision in Bawdekar''s case is short and may conveniently be extracted in full.-

''''This matter is disposed of at the stage of preliminary hearing after notice to respondent.

2. The petitioner was the owner of the public carrier vehicle bearing Regn. Mark MYL-7025. It was hypothecated to Shivayogi Murugendraswamy Urban Co-operative Bank Limited, Athani, Belgaum District. The vehicle was seized apparently for default in repayment of loan by the hypothecatee on 18-6-1987. Thereafter, the hypothecatee has filed Form No. 30 claiming non-user with effect from 1-12-1987 by the application filed which is found in the records produced by the learned Government Pleader. That the vehicle was seized by the Bank on 18-6-1987 has not been disputed by the rospondent-RTO, Chikkodi, Belgaum District, The petitioner has questioned the legality and correctness of the demand of Rs. 8,140/- as at Annexure-B as arrears of motor vehicle tax due on the vehicle for the period 1-7-1987 to 31-7-1988 inter alia on the ground that he was not the owner of the vehicle having the custody or possession and use and as such not liable to pay taxes. He has also filed Annexure-A true copy of the affidavit filed on behalf of the hypothecatee dated 29th November, 1988 wherein it has admitted that it took the custody of the vehicle on 18-6-1987 at which point of time the tax was paid by the petitioner. Therefore, there is no further liability on the part of the petitioner to pay tax on the vehicle in question.

3. The tax must be collected for the period for which it is due from hypothecatee who is the owner in possession of the vehicle. Therefore, the demand impugned-notice is clearly without the authority of law and is liable to be quashed insofar as the petitioner is concerned.

4. Rule may issue accordingly and be made absolute".

12.1 The learned Single Judge who decided the matter did not refer to the provisions of Sections 4 and 9 of the Act. On the other hand, he proceeded on the basis that the hypothecatee who took possession of the vehicle became "the owner in possession of the vehicle" and having regard to the definition of the term ''owner'' u/s 2(19) of the Motor Vehicles Act, 1939 apparently proceeded on the basis that the hypothecatee as such owner in possession became liable to pay the tax. As noticed above, the definition of the term ''owner'' in Section 2(30) of the Motor Vehicles Act, 1988 is completely different from the definition of the term ''owner'' in Section 2(19) of the Motor Vehicles Act, 1939. Under 1939 Act, ''ownership'' purely depended on the possession of the vehicle. But under the 1988 Act, ''ownership'' depends on the registration of the vehicle and only in certain limited cases, on possession and control. The decision in Bawdekar''s case, supra, which does not take note of Sections 4 and 9 of the

Karnataka Motor Vehicles Taxation Act, 1957, and which was decided when the Motor Vehicles Act, 1939 was in force, is therefore of no assistance, to now decide the liability of the registered owner to pay motor vehicle tax. The decision in L. Krishna Murthy''s case, supra, which merely follows Bawdekar''s case and which also related to a period when Motor Vehicles Act, 1939 was in force, is also of no assistance to the petitioner.

12.2 It is no doubt true that in the decisions in Shivakumar''s case, supra, and R.B. Patil''s case, supra, this Court was dealing with cases which arose after Motor Vehicles Act, 1988 came into force. But, those decisions merely followed the decision in Bawdekar''s case without noticing Sections 4 and 8 of the Karnataka Motor Vehicles Taxation Act and without noticing that the definition of the word ''owner'' has undergone significant change under the Motor Vehicles Act, 1988 which had come into effect by the time the said two cases were decided. Hence, the decisions in Shivakumar''s case, supra, and R.B. Patil''s case are also not relevant as they do not lay down any proposition that a registered owner is not liable to pay motor vehicle tax.

12.3 As none of the decisions has referred to Sections 4 and 9 of the Karnataka Motor Vehicles Taxation Act, 1957 which specify the persons who are liable to pay the current motor vehicle tax as also the arrears of motor vehicle tax, they have to be held as having been rendered per incuriam and are therefore of no assistance to decide whether a registered owner is liable to pay motor vehicle tax during the period when the vehicle is under the possession and control of the financier.

13. There is, therefore, no merit in this petition and accordingly, it is rejected.

14. Sri T.K. Vedamurthy, learned Government Pleader, is permitted to file memo of appearance in six weeks.

