IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11287 of 2015

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Pravin Kumar Das, S/o Sri Ram Prasad Das, R/o Janak Kishore Road, P.S. Kadamkuan, Dist. Patna.

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary cum. State Transport Commissioner, Bihar State Transport Department, Bihar, Patna.
2. The Chief Manager Retail Assets Central Processing Centre (RACPC) State Bank of India West Gandhimaidan Patna.
3. The District Transport Officer Biskomaun Bhawan, Gandhi Maidan, Patna

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Ram Shankar Das, Advocate
For the State : Mr. Vivek Prasad, G.P.7 with Ms. Manisha Singh, Ac to G.P.7
For the State Bank : Mr. Satya Prakash Tripathy, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA

ORAL ORDER

8 21-10-2016 Heard learned counsel for the petitioner and learned counsels for the State and for the State Bank of India.

The writ application has been filed for quashing the order dated 8.7.2015 passed by the District Transport Officer, Patna by which the petitioner has been directed to deposit Rs.1,07,231/-, including a fine of Rs.33,501/- for the purpose of registration of the vehicle, Force One Car, and for consequential direction to the DTO.

The facts are that the State Bank of India RACPC, Patna issued a general auction notice on 5.6.2015 fixing the date as 14.6.2015 with respect to a number of motor vehicles which included at Serial No.7, a motor vehicle, manufactured by Force Motors, showing the year of manufacturing as 2013 and registration No. as ‘Not Available’. The said vehicles had been repossessed on account of non-payment of the motor vehicle loan by the previous owner. With respect to the vehicle in question the previous owner had not even got the vehicle registered which is a mandatory requirement under the Motor Vehicles Act. The petitioner purchased the said vehicle as the highest bidder for Rs.4,37,000/- and delivery of possession had also been handed over to him as also Sale Certificate dated 27.6.2015 was issued. Immediately thereafter the petitioner also applied for registration of the vehicle before the DTO, Patna, whereupon the DTO informed that since the said car was purchased in auction from State Bank of India RACPC, Patna and was unregistered, hence the registration fee of Rs.1,07,231/-, including a fine of Rs.15,313/- was to be made. It was also informed by the DTO to the State Bank, RACPC, Patna by letter dated 18.1.2016 that there being no registration certificate, hence registration cannot be done and it is the duty of the auctioning authority to have got the vehicle registered after the auction and only after that the ownership can be transferred.

Learned counsel for the petitioner submits that since the petitioner has purchased the vehicle for Rs.4,37,000/-, hence the tax should be levied only for the said amount and not on the original price of the said vehicle.

Learned counsel for the State, on the other hand, submits that under the provisions of the Bihar Motor Vehicles Taxation Act the registration has to be made on the cost of the vehicle, including VAT and thus the price at which the petitioner has purchased the same in auction is irrelevant as one time tax was to be paid for registration.

So far as the said submission of learned counsel for the petitioner is concerned, the same is contrary to the provisions of Section 5 of the Bihar Motor Vehicles Taxation Act, 1994 read with Schedule-1 Part A under which the registration of a vehicle has to be made upon the cost of the vehicle excluding the VAT. It is true that the specific situation like the present one, which is very unusual and rare, is not specifically covered either by the provisions of the Central Motor Vehicles Rules or the Bihar Motor

Vehicles Taxation Act but upon a perusal of the different provisions it does appear that one time tax for the registration of the vehicle has to be paid on the cost of the vehicle and not on the price at which the petitioner may have purchased in auction. Thus, there does not appear to be any illegality in the order of the District Transport Officer demanding an amount of Rs.1,07,231/- for the registration of the vehicle.

It is further submitted by learned counsel for the petitioner that no fine is leviable under any of the provisions of the Bihar Motor Vehicles Taxation Act or the Rules with regard to the registration of personalized vehicle as the said vehicle has to be registered immediately upon its sale and in the present matter the vehicle was not registered due to the fault on the part of the original purchaser for which no liability can flow to the petitioner.

Learned counsel for the State submits that the fine has been levied in terms of Rule 4 of the Bihar Motor Vehicles Taxation Rules and thus the fine has also to be paid before the registration is made.

So far as the levy of fine is concerned, it does not appear from Rule 4 that the said Rule is applicable with respect to the personalized vehicle. From a consideration of the Scheme of the Act and the Rules itself it is clear that so far as the personalized vehicles like motor cars are concerned, as in the present matter, one time tax has to be paid on the cost of the vehicle excluding VAT and in case of cost of more than Rs.4 lacs the rate is 7% of the cost excluding VAT. In such matters the question of applying the Rule regarding non-payment of tax in time would not at all arise barring exceptional cases, like the present matter, for which no provision is to be found either in the Bihar Motor Vehicles Taxation Act or in the Rules with regard to the delay in payment of tax. Rule 4, as pointed out, does not relate to such type of vehicle.

It is well known proposition of law that a taxing statute has to be strictly construed and tax can only be levied strictly in terms of the said statute and benefit of any ambiguity in the Tax Legislation has to go in favour of the tax payer and not the State.

In the aforesaid view of the matter, this Court is of the view that the levy of fine for Rs.33,501/- is not justified in terms of Rule 4 as claimed in the counter affidavit of the State.

So far as the other formalities are concerned, since the respondent Bank has sold a non-registered vehicle it must assist the petitioner in all manner to ensure that after the payment of the registration fee and registration of the vehicle in the name of the Bank as stated by the DTO, the transfer form, etc. if required afresh are issued to the petitioner. The DTO shall also ensure that the transfer is made without any delay thereafter as there is no dispute that the petitioner is a valid purchaser in auction held by the SBI.

The writ application is, accordingly, partly allowed and the impugned order dated 8.7.2015 is quashed to the extent of levy of fine of Rs.33,501/-.

Let the petitioner deposit the balance amount of tax expeditiously, whereafter the respondents shall act as directed above.

(Ramesh Kumar Datta, J)

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