IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2019

CORAM :

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.6230 of 2016

M/s Magma Fincorp Limited
Navin's Presidium, 7-A, B Block
New No.17-19, Old No.103
Nelson Manickam Road
Chennai 600 029
rep by its Assistant Manager
Mr.J.Vijayaraj

...Petitioner

-Vs-

1. Regional Transport Authority
   Unit Office
   Sriperumbudur 602 105

2. M/s Saveetha Engineering College
   rep.by its President Dr.V.Saveetha
   Saveetha Nagar
   No.1, Thandalam (Post)
   Mevalurkuppam
   Chennai 602 105

3. The Inspector of Police
   Sriperumbudur Police Station
   Sriperumbudur
   (R2 & R3 impleaded vide order
   of Court dated 30.8.2016 in
   WMP No.15693 of 2016 in
   WP No.6230 of 2016)

4. Mr.P.Sivakumar
   Proprietor Muthuramman Travels & Transports
   No.240/5, Nagathamman Nagar
   Nemilicheri, Thiruninravur
   Thiruvallur 602 024

5. Deputy Superintendent of Police
Office of the DSP
Kancheepuram District
Tamil Nadu
R4 & R5 impleaded vide order of Court
dt. 20.3.2018 in WMP No.7068 of 2018
in WP No.6230 of 2016) ..Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus, directing the first respondent herein to release the vehicle No.TN 21 AV 8903 to the petitioner or his agents after clearing the arrears of Motor Vehicle Tax as expeditiously.

For Petitioner :: Ms.K.Bhuvaneswari for Mr.M.Arunachalam

For Respondents :: Mrs.P.Rajalakshmi
Additional Government Pleader
For R1, 3 and 5

Mr.V.P.Sengottuvel for R2
No appearance for R4

ORDER

The petitioner, M/s Magma Fincorp Limited represented by its Assistant Manager Mr.J.Vijayaraj, has filed this writ petition seeking a mandamus directing the Regional Transport Authority, Sriperumbudur, the first respondent herein to release the vehicle No.TN 21 AV 8903 to the petitioner after clearing the arrears of Motor Vehicle Tax as expeditiously as possible.

2. Learned counsel for the petitioner submitted that the petitioner is a Non Banking Finance Company registered under the provisions of the Companies Act, 1956 and governed by the rules of NBFC with Reserve Bank of India. While so, Saveetha Engineering College, the second respondent herein approached the petitioner for availing finance facilities for purchase of vehicles in the month of August, 2013 and accepting their request, the petitioner, on execution of the loan agreement by the borrower, permitted the second respondent to avail the finance facilities to the tune of Rs.62,21,622/-. The second respondent-borrower agreed and undertook to repay the monthly installments as per the terms and conditions mentioned in the agreement. Subsequently, contrary thereto, the second respondent

failed to pay the installments, as per the terms of the loan agreement, despite repeated reminders and notices. Finally the petitioner sent a demand notice calling upon the second respondent-borrower and co-borrower to regularize the outstanding dues. However, there was no response, as a result the petitioner also issued a demand notice to the borrower to pay the outstanding amount on 14.4.2015. In the meanwhile, the petitioner received a notice from the office of the Regional Transport Authority, the first respondent herein on 22.9.2015. As per the said letter, the petitioner was informed that the vehicle bearing Registration No.TN 21 AU 8903 was seized by them from the borrower for tax recovery. Therefore, the officials of the petitioner visited the office of the first respondent for enquiry. After knowing that the vehicle was seized for non payment of tax arrears, a representation was given on 26.9.2015 claiming the return of the said vehicle. The petitioner also provided the details of the loan agreement along with the relevant copies and RC book to establish that the petitioner is the interested party, as they had funded to the said vehicle. Since the registered owner being M/s Saveetha Engineering College, who is the borrower, has not shown any interest to take the vehicle, the petitioner is entitled to take the vehicle. The learned counsel also submitted that when the petitioner is ready and willing to pay the entire tax arrears with penalty for the said vehicle, a direction be issued to the first respondent to release the said vehicle on payment of the motor vehicle tax. The learned counsel further submitted that the counter affidavit filed by the second respondent college also shows that they are not claiming ownership or title over the vehicle in question. As the petitioner is the owner of the vehicle, the writ petition be allowed as prayed for.

3. Mrs.P.Rajalakshmi, learned Additional Government Pleader for the respondent-State, producing a copy of the Registration Certificate, submitted that the vehicle in question was registered in the name of Saveetha Engineering College with the same address in which the college is situated. Therefore, the denial made by the second respondent that they are not the owner of the vehicle needs to be examined in the pending criminal case registered in Crime No.6 of 2015 before the learned District Munsif cum Judicial Magistrate, Sriperumbudur for an offence under Sections 419, 406, 420, 468 and 471 IPC against Mr.P.Shiv Kumar, M/s Muthuramman Travels & Transports, service provider, who is the fourth respondent herein.

4. A detailed counter affidavit has been filed by the second respondent. The learned counsel for the second respondent, drawing the notice of this Court to paragraph-7 of the counter affidavit, submitted that the second respondent is neither a

borrower nor a co-borrower in respect of the hire purchase agreement and their seals and signature were fabricated and forged as the borrower and co-borrower by M/s Muthuramman Travels & Transports with the active support of the officials of the petitioner. Now the criminal case is also pending on the file of the learned District Munsif cum Judicial Magistrate, Sriperumbudur for the offence under Sections 419, 406, 420, 468 and 471 IPC against Mr.P.Shiv Kumar, M/s Muthuramman Travels & Transports, service provider. The charge sheet is yet to be filed. Adding further, the learned counsel submitted that the petitioner, in spite of receiving the legal notice dated 10.3.2015 sent by the second respondent, issued a demand notice on 14.4.2015 to the second respondent to pay the outstanding amount, for which the second respondent sent their reply dated 19.5.2015 stating that the second respondent has nothing to do with the hire purchase agreement dated 31.8.2013, which is neither binding nor enforceable on the second respondent. The learned counsel also submitted that when the second respondent is not the signatory to the agreement, as there no privity of contract between the petitioner and the second respondent, the college is no way responsible or accountable for the three buses mentioned in the hire purchase agreement dated 31.8.2013 and had no connection whatsoever with the seized vehicle. He has further submitted that there are four arbitration proceedings pending. The second respondent has initiated arbitration proceedings and the same is pending before the learned Arbitrator, Hon'ble Mr.Justice K.Venkataraman (Retd.). The second arbitration proceedings initiated by the petitioner is pending before the learned Arbitrator at Calcutta and two other arbitration proceedings initiated by the other finance companies are pending in Chennai and Mumbai respectively. Until the arbitration proceedings and the pending criminal case on the file of the learned District Munsif cum Judicial Magistrate, Sriperumbudur are decided, the petitioner cannot say that the second respondent is the borrower or the owner of the vehicle.

5. Be that as it may. When the second respondent has filed the counter affidavit taking a stand that they are neither the borrower nor co-borrower of the hire purchase agreement dated 31.8.2013, as they are not even the signatory to the hire purchase agreement, accepting the claim of the petitioner that they are prepared to pay the entire tax arrears along with the penalty to the first respondent, this Court is inclined to direct the Regional Transport Authority, Sriperumbudur, the first respondent herein to consider the representation of the petitioner for release of the vehicle in question on receipt of the entire tax arrears along with penalty. Accordingly, subject to the payment of the entire tax arrears along with penalty by the petitioner, the first respondent is directed to release the vehicle in question, immediately on receipt of the entire tax

arrears along with penalty, to the petitioner without prejudice to the pending adjudication. With this direction, the writ petition stands disposed of. Consequently, W.M.P.No.33153 of 2017 is closed. No costs.

ss

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Regional Transport Authority
Unit Office
Sriperumbudur 602 105

2. The Inspector of Police
Sriperumbudur Police Station
Sriperumbudur

3. The Deputy Superintendent of Police
Office of the DSP
Kancheepuram District
Tamil Nadu

Copy to
The District Munsif cum Judicial Magistrate,
Sriperumbudur.

+1cc to Mr.V.P.Sengottuvel, Advocate, S.R.No.847
+1cc to Mr.M.Arunachalam, Advocate, S.R.No.1551.

mg(CO)
kak(28/01/2019)