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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2021

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THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P. No. 5090 of 2012

M.Stephan Malar Selvam

... Petitioner

-vs-

1. The Registering Authority,
Regional Transport Officer,
Chengelpet, Kancheepuram District.

2. M/s.Cholamandalam Finance Investment and
Finance Company Limited,
Chennai - 600 001.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari calling for the records pertaining to order bearing R.No.B3/35022/2011 dated 03.02.2012 of the first respondent and quash the same.

For Petitioner : No appearance

For Respondents : Mr.NRR.Arun Natarajan
Special Govt. Pleader for R1

Mr.M.B.Raghavan for R2

ORDER

The prayer sought for herein is for a Writ of Certiorari calling for the records pertaining to order bearing R.No.B3/35022/2011 dated 03.02.2012 of the first respondent and quash the same.

2. That the petitioner had purchased a four wheeler, i.e., Mahindra Tourister Van bearing Registration No. TN 22 AW 0547. For the said purchase, the second respondent had advanced a financial assistance for a sum of Rs.4,65,000/- on 27.05.2008 on hire purchase scheme with an agreement to repay the same at the rate of Rs.13,260/- per month.

3. According to the petitioner, the petitioner had paid a



registration certificate in the name of the second respondent for the said vehicle after collecting the tax due if any. Felt aggrieved over the said order dated 03.02.2012 issued by the first respondent, the petitioner has moved the present Writ Petition with the aforesaid prayer.

9. When this Writ Petition is taken up for hearing, there is no representation for the petitioner. However, since the Writ Petition has been pending from the year 2012 and pleadings have been completed and the learned special Government Pleader appearing for the first respondent and the learned counsel appearing for the second respondent are ready to make their submissions, this Court is inclined to take up this Writ Petition and decide the same.

10. The learned counsel appearing for the second respondent would submit that, the petitioner admittedly is a defaulter as according to his own statement as averred in the affidavit he had to pay 26 installments to the second respondent. Therefore, because of such a chronic default, the second respondent had no other way except to seize the vehicle in question as per the hire purchase agreement and subsequently also, since the petitioner did not come forward to pay the due to the second respondent, the second respondent had requested the petitioner to give the registration certificate for transfer the same in the name of the second respondent. However that also, the petitioner had not agreed upon, hence having no other option, the second respondent approached the first respondent by making application under Section 51 of the Motor Vehicles Act. Accordingly, the same is concluded with the order dated 03.02.2012 which is impugned herein where the first respondent after having followed the necessary procedure as has been established under Section 51 of the Act as well as the Rule 61 (3) of the Rules referred above had passed the order for directing to issue a fresh RC in the name of the second respondent, therefore, the said order does not require any interference from this Court.

11. Also Mr.NRR.Arun Natarajan, learned Special Government Pleader appearing for the first respondent reiterating the aforesaid stand taken by the second respondent would further submit that, it is the power vested with the first respondent to decide an application filed by the hire purchaser under Section 51 of the Act especially under Section 51 sub section 5. Therefore, after giving due notices for four or five times to the petitioner, who on receipt of the same did not since appeared or responded to the first respondent, he proceeded further and concluded the proceedings by passing the present order whereby under Section 51(5) since the first respondent can pass an order for issuance of fresh RC in the name of the person



with whom the agreement has been entered into by the registered owner, the said procedure has been adopted and such order which is impugned herein has been passed, hence the learned Special Government Pleader wants to sustain the said order.

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12. I have considered the said submissions made by the learned counsel appearing for the respondents and also have perused the materials placed before this Court.

13. Section 51(5) of the Motor Vehicles Act, 1988 reads thus:

"(5) Where the person whose name has been specified in the certificate of registration as the person with whom the registered owner has entered into the said agreement, satisfies the registering authority that he has taken possession of the vehicle from the registered owner] owing to the default of the registered owner under the provisions of the said agreement and that the registered owner refuses to deliver the certificate of registration or has absconded, such authority may, after giving the registered owner an opportunity to make such representation as he may wish to make (by sending to him a notice by registered post acknowledgment due at his address entered in the certificate of registration) and notwithstanding that the certificate of registration is not produced before it, cancel the certificate and issue a fresh certificate of registration in the name of the person with whom the registered owner has entered into the said agreement.

Provided that a fresh certificate of registration shall not be issued in respect of a motor vehicle, unless such person pays the prescribed fee :

Provided further that a fresh certificate of registration issued in respect of a motor vehicle, other than a transport vehicle, shall be valid only for the remaining period for which the certificate cancelled under this sub-section would have been in force."

14. Under the said Section, if the person whose name has been specified in the certificate of registration as the person with whom the registered owner has entered into the agreement, satisfying the registering authority that, he has taken possession of the vehicle from the registered owner for default of the registered owner under the provisions of the agreement then such authority after giving the registered owner an opportunity to make representation can cancel the certificate



and issue a fresh certificate of registration in the name of the person with whom the registered owner has entered into the said agreement.

15. Herein the case in hand, the second respondent is the person whose name has been specified in the certificate of registration as hire purchaser with whom the petitioner has entered into an agreement who is the registered owner and he has become a defaulter. Therefore, the possession of the vehicle has been taken by the second respondent. Accordingly, he makes an application under Section 51 of the Act to the first respondent who issued notices on various occasions to both parties, though the representative of the second respondent appeared every time, the petitioner has not chosen to even appear and even at one point of time when he appeared, he made a request that, he has already approached the consumer forum, therefore, based on which, the first respondent cannot proceed further in the said proceedings initiated under Section 51(5) of the Act. When the power is vested with the Regional Transport Authority under Section 51(5) of the Motor Vehicles Act, where such an application is made by hire purchase, after having taken possession of the vehicle, the Regional Transport Officer concerned has to act upon as has been contemplated under sub section 5 of Section 51 of the Act. Accordingly, he issued notices more than once to the petitioner also who has not come forward to deliver the original RC for the purpose of transfer of the same in favour of the second respondent. Therefore, by exercising his power, the first respondent cancelled the certificate issued already in favour of the petitioner and directed to issue a fresh certificate of registration in the name of the second respondent who is the person with whom the registered owner has entered into the said agreement.

16. After having gone through the said provisions of law as well as the content of the impugned order, this Court is satisfied that, the first respondent having duly followed the said procedure contemplated under the Act as well as the Rules made thereunder has passed the present order dated 03.02.2012. Therefore, there is no plausible ground available for the petitioner to challenge the same successfully. Hence, in that view of the matter, this Court feels that, this Writ Petition fails and is liable to be rejected.

17. Accordingly, this Writ Petition is dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar



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To

1. The Registering Authority,
Regional Transport Officer,
Chengelpet, Kancheepuram District.

+1cc to the Government Pleader, S.R.No.59020

W.P. No. 5090 of 2012

GPL (CO)
SB (11/02/2022)