

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2021

CORAM

THE HON'BLE MR.JUSTICE B. PUGALENDHI

WP No.20091 of 2020

G.Ranjith Kumar

...Petitioner

Vs.

1. The Regional Transport Officer
Unit Office, Omalur,
Salem District 638 052.

2. Indusind Bank Limited,
Rep.by its Branch Manager
Consumer Finance Division
43/B, 1st Floor, Abhirami Towers,
Above Bioline Laboratory
Cowly Brown Road,
R.S.Puram, Coimbatore 641 002.

3. G.Chinnathambi

4. C.Sathish

....Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned letter bearing Na.Ka.No.14640/A1/2020 dated 4th December 2020 issued by the 1st respondent and quash the same consequently direct the 1st respondent to remove the said Lorries bearing Registration Nos.TN30 BT 4674 and TN30 BT 4698 from the black list of the online portal of the transport department, to enable the petitioner to register the transfer of ownership of the said lorries with the RTO, Trichy who has jurisdiction over the petitioner's place of residence.

For Petitioner

:

Mr.T.Balakumaran

For Respondents

:

Mr.Annai Ezhil
Govt. Advocate

ORDER

This writ petition is filed as against the impugned order dated 04.12.2020 passed by the first respondent in and by which the first respondent has informed the petitioner that

for the change of ownership in R.C.Book for the vehicles bearing Reg.Nos.TN30 BT 4674 and TN30 BT 4698 are concerned, those vehicles are black listed and therefore the concerned owners have to execute a bond in a Rs.20/- stamp paper attested by the notary requesting for deleting the vehicles from the black list.

2. The case of the petitioner is that he purchased the lorries bearing Reg.Nos.TN30 BT 4674 and TN30 BT 4698 for a valuable consideration in the auction conducted by the second respondent on 20.08.2020. The above said lorries originally belonged to the third and fourth respondents who are the father and son respectively and they have purchased the above lorries by availing financial assistance from the second respondent bank in a hire purchase agreement scheme. The 3rd and 4th respondents defaulted in repayment of loan amount and therefore the second respondent bank intimated the RTO Officer to black list those vehicles. Accordingly, these two vehicles have been black listed by the first respondent. In the meantime, the second respondent Bank has subjected these vehicles for an auction sale and in the auction sale conducted on 20.08.2020, this petitioner purchased these vehicles for a sale consideration of Rs.24,50,000/- in the auction conducted by the second respondent. After purchasing the lorries, he also informed the third and fourth respondents about the purchase of vehicles and requested them to hand over the original R.C.Books. The third and fourth respondents have demanded some money for returning the original RC Books and also subsequently they have returned the original RC Books. The bank financier has also given a No Objection Certificate to enable the petitioner to transfer the ownership of the said lorries with the first respondent. This petitioner based on the No objection certificate and other relevant documents of purchase has approached the first respondent vide this impugned communication has directed him to get a Bond from the third and fourth respondents. Therefore as against the same this writ petition is filed.

3. In response to this writ petition the first respondent has filed a counter affidavit and based on the counter affidavit filed Mr.Annai Ezhil, learned Government Advocate submitted as follows:-

"the respondents 3 and 4 were the owners of the vehicles based on a hypothecation agreement entered into with the second respondent bank. The respondents 3 and 4 committed default, which resulted in the blacklisting of the vehicles hypothecated to them to prevent any transfer of ownership of the aforesaid vehicles to third party or any further alienation of the vehicles. Such a black listing was done at the instance of the Indus Ind Bank. This is more so that whenever blacklisting had taken place, the registration of the vehicle will be re-transferred in the name of the financier, in this case, the second respondent on the basis of an application

submitted by the financier for issuing fresh registration certificate. After obtaining such fresh registration certificate, it is for the second respondent to sell the vehicle to third party and seek for transfer of ownership of the vehicle in the name of such third party".

4. In addition to this the learned Government Advocate submitted that this impugned letter is issued in accordance with the provisions under Section 51 of the Motor Vehicles Act 1989. According to him the petitioner is prohibited as per Section 51 (5) of the Motor Vehicles Act and Section 51(5) of the Motor Vehicles Act is extracted hereunder.

" Section 51(5) of the Act reads as follows:-

(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 acknowledgement 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".

5. When the financier has taken possession of the vehicle from the registered owner owing to the default of the registered owner and when the registered owner refuses to deliver the certificate of registration or has absconded, then the authority may after giving registered owner an opportunity to make such registration, as he may wish to make and thereafter cancel the certificate and issue a fresh certificate of registration in the name of the person with whom he has entered into an agreement. In this case, the respondents 3 & 4 being the registered owners, have also handed over the documents to the petitioner. In the meantime,

for the dues owed by the respondents 3 & 4, the financier second respondent Bank has made a request to black list the vehicles and based on the request of the second respondent bank the black list was made by the first respondent. The first respondent has also conducted an auction for the dues to the bank and this petitioner has purchased the vehicles. Subsequent to that, by letter dated 28.08.2020, the second respondent IndusInd Limited Bank has issued a No objection certificate for effecting the name transfer in the name of the petitioner and for deleting or canceling the endorsement in the RC book. The IndusInd Bank Limited has also applied in the prescribed Form No-35 with a declaration that the hire-purchase/lease/Hypothecation agreement entered into between the IndusInd Bank Limited has been terminated and canceled the endorsement in the certificate of registration. Even after this NOC issued by the IndusInd Bank limited in the prescribed Form, the respondents vide their communication dated 04.12.2020 has insisted to obtain a bond from the third and fourth respondents attested by the notary public. Section 51 (5) of the Act clearly provides that if the registered authority has taken possession of the vehicle owing to the default of the registered owner and when the registered owner refuses to deliver the certificate of registration or has absconded, the authority namely the first respondent may provide an opportunity to the respondents 3 & 4 by sending notice through RPAD and cancel the certificate and issue a fresh certificate of registration.

6. As per the provisions under Section 51(5) of the Act, the respondent can very well transfer the certificate in the name of the petitioner when the financier of the bank has also subjected the vehicle for auction and this petitioner has also taken the vehicle in auction and the second respondent Bank has also issued NOC for entering the name of the petitioner in the RC Book. In view of the same the writ petition is allowed and the first respondent shall pass orders on the application of this petitioner within a period of four weeks from the date of receipt of a copy of this order. If the first respondent requires the cancellation of the name of the third and fourth respondents he is also at liberty to issue notice to the respondents 3 & 4 and to complete this process of cancellation in the meantime. No costs.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

dpq

To

1. The Regional Transport Officer
Unit Office, Omalur,
Salem District 638 052.

+1cc to the Government Pleader, S.R.No.7518

SSN(CO)
SM/01/03/2021

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