



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.02.2021

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD)No.18754 of 2016

R.Dravida Selvam

... Petitioner

Vs.

1. State of Tamil Nadu,
Rep. by the Regional Transport Officer,
Regional Transport Office,
Rajapalayam Road,
Srivilliputhur.

3. M/s.Kotak Mahindra Bank Ltd.,
No.1A, Second Floor,
West Perumal Maistry Street,
Madurai - 625 001.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the first respondent to cancel the hypothecation endorsement in the registration certificate of the vehicle bearing registration No.TN 67-AT-5749 on the file of the first respondent in the light of the petitioner's representation dated 12.04.2016.

For Petitioner : Mr.Dhilipan Pandian,
for M/s.T.Thangamani.

For R-1 : Mr.S.Angappan,
Government Advocate.

For R-2 : Mr.Pala Ramasamy

ORDER

Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the first respondent and the learned counsel appearing for the second respondent.

2. The writ petitioner purchased a tractor by availing financial assistance from the second respondent. The petitioner entered into hypothecation agreement with the second respondent. The contention of the petitioner is that he had cleared all the dues. However, the stand of the second respondent is that the petitioner has to pay some more amount. In this background, when the petitioner



regards hypothecation, the first respondent did not pass any favourable order on the petitioner's application by taking the stand that "No Objection Certificate" from the financier has not been obtained. That necessitated the filing of this writ petition.

3. The learned counsel appearing for the second respondent has filed a detailed counter affidavit and in the said counter affidavit, a memo has also been filed indicating that the petitioner is still in arrears.

4. I carefully considered the relevant provisions. Section 51 (1) and 51(3) are the relevant provisions. They reads as under:-

"51. Special provisions regarding motor vehicle subject to hire-purchase agreement, etc.-

(1) Where an application for registration of a motor vehicle which is held under a hire-purchase, lease or hypothecation agreement (hereafter in this section referred to as the said agreement) is made, the registering authority shall make an entry in the certificate of registration regarding the existence of the said agreement.

(2) ...

(3) Any entry made under sub-section (1) or sub-section (2), may be cancelled by the last registering authority on proof of the termination of the said agreement by the parties concerned on an application being made in such form as the Central Government may prescribe and an intimation in this behalf shall be sent to the original registering authority if the last registering authority is not the original registering authority. "

5. According to the learned Government Advocate, entry of hypothecation made in the registration certificate will be cancelled on being satisfied that the agreement between the parties has been terminated.

6. Now the question that arises for consideration is whether the second respondent falsely contested the stand of the petitioner that he is still in arrears. Then definitely the first respondent will have to hold a summary enquiry as to whether the amounts due and payable under the agreement have been paid in full. On being so satisfied, the first respondent authority can certainly direct cancellation of hypothecation entered in the agreement.

7. The first respondent is directed to hold an enquiry in this regard. The petitioner as well as the second respondent will have to be heard before passing final orders. The agreement in original will be filed by the second respondent before the first respondent. The petitioner has to show proof of the amounts due and



payable by the petitioner under the agreement have been cleared. It is open to the second respondent to file a calculation memo indicating as to how the petitioner is still liable. It is for the first respondent to satisfy himself. Based on the said satisfaction, the first respondent will pass orders under Section 51(3) of the Motor Vehicles Act, 1988. The entire exercise shall be concluded within a period of twelve(12) weeks from the date of receipt of a copy of this order.

8. This writ petition stands disposed of on these terms. No costs.

Sd/-

Assistant Registrar(AS)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

PMU

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

1. the Regional Transport Officer,
Regional Transport Office,
Rajapalayam Road,
Srivilliputhur.

+1 CC to M/s.SPL GP (SR-6674[F] dated 23/02/2021)

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TR(25.03.2021) 3P 3C