

03.02.2022
sayandeep
Sl. No. 34
Ct. No. 05

WPA 11525 of 2021

Sk. Mahammad Ali
-Versus-
The State of West Bengal & Ors.

Mr. Sankar Nath Mukherjee
Sk. Samim Akhter

..... for the petitioner

Mr. Amal Kr. Sen
Ms. Ashima Das (Sil)

.....for the State

The prayer in this writ petition is for a mandamus on the State respondent Transport Authority to show cause as to why the transfer of ownership of a vehicle bearing a particular registration number should not be cancelled.

According to learned counsel appearing for the petitioner, the vehicle as well as the registration number was forcibly taken from the petitioner by the financier and subsequently sold to a third party. Counsel relies on Section 51(5) of the Motor Vehicles Act, 1988 to urge that the petitioner should have been given an opportunity to make a representation before sale of the vehicle to the third party.

Learned counsel appearing for the State respondents submits that Section 51(5) of the said Act will not apply in the present case since the petitioner has voluntarily deposited the Registration Certificate with the Transport Authorities. Counsel hands up the original Registration Certificate/Smart

Card and Form Nos. 29 and 30 to submit that since the Registration Certificate is with the respondent authorities, the conditions precedent for operation of Section 51(5) are not fulfilled in the present case.

Upon hearing learned counsel, it is undisputed that the original Registration Certificate of the vehicle in question is with the Registering Authority. The disputed fact is whether the petitioner voluntarily deposited the Registration Certificate with the Registering Authority or whether the Certificate was forcibly taken from the petitioner. Section 51(5) provides for a situation where the registered owner has defaulted on the agreement entered into with a financier and refuses to deliver the Certificate of Registration or has absconded. The Registering Authority in such cases may give an opportunity to the registered owner to make a representation before cancelling the Certificate in the name of the person with whom the registered owner entered into an agreement or issuing a fresh Certificate of Registration in the name of the party who purchases the vehicle. The condition precedent for applicability of Section 51(5) is hence the refusal on the part of the registered owner to deliver the Certificate of Registration to the Registering Authority or being unavailable to take the necessary steps. In the present case, although the State respondents have

produced the Certificate of Registration, the fact whether the said Certificate of Registration was voluntarily handed over by the petitioner to the Registering Authority remains unclear. This fact is not clarified from the documents on record. Hence, this Court is not in a position to come to a definitive conclusion that the petitioner has lost his right of claiming a representation under Section 51(5) of the Act.

Equity would thus demand that the petitioner be given an opportunity to at least present his case before the vehicle, of which the petitioner is a registered owner, is sold to a third party (the private respondent in the present case).

Learned counsel appearing for the State respondents has informed this Court that the petitioner and the private respondent were called for a hearing by the Registering Authority but that the process could not be completed. A document annexed to the writ petition dated 24th June, 2021 shows that the petitioner was informed by the Regional Transport Officer to appear for a hearing on 16th July, 2021. The petitioner is hence directed to act in furtherance of the notice dated 24th June, 2021 and the concerned Transport Authority shall give a hearing to the petitioner and the private respondent on a date to be communicated by the

Transport Authority to the petitioner and the private respondent by way of a formal notice. The Notice shall be given within two weeks from date.

WPA 11525 of 2021 is disposed of in terms of the above order.

(Moushumi Bhattacharya, J.)