IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 17517OF 2022

Cholamandalam Investment and Finance Company	…..	***Petitioner***

Mr. Nalini Kanta Dash, Advocate

-versus-

Commissioner of Transport, Odisha and others	….	***Opp. Parties***

Mr. Pravakar Behera,
Standing Counsel for Transport Department
(For Opposite Party Nos.1 and 2)

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER

Order No. **27.07.2022**

3. 1. This matter is taken up through Hybrid mode.

2. Petitioner in this writ petition seeks to assail the proclamation of sale dated 28th June, 2022 (Annexure-3) in respect of vehicle bearing registration No.OD-09-N-6741 issued by the Tax Recovery Officer-cum-RTO, Keonjhar.

3. Mr. Dash, learned counsel for the Petitioner submits that due to non-payment of MV Tax and other dues in respect of the aforesaid vehicle by the owner, notice for proclamation of sale has been issued. It is his submission that the Petitioner, which is the Financier, has taken over possession of the vehicle on 16th February, 2022 for non-payment of loan dues and since then it is in the custody of the Financer. The seizure of the vehicle was duly intimated to the authority vide letter dated 4th March, 2022 (Annexure-2) by registered post with AD. The Financier is only liable to pay dues in respect of the said vehicle from the date it

has taken over possession of the same in view of the ratio decided in the case of ***Mahindra and Mahindra Financial Services Ltd. Vs. State of U.P. and Ors.,*** reported in (2022) 5 SCC 525. For the period during which the vehicle in question was in possession of the owner, the Financer is not liable to pay the dues. Hence, proclamation of sale dated 28th June, 2022 (Annexure-3) is *per se* illegal and is liable to be set aside.

4. Mr. Behera, learned Standing Counsel for the Transport Department submits that due to non-payment of dues by the registered owner in respect of the aforesaid vehicle, Certificate case was initiated and by following due procedure of law proclamation of sale under Annexure-3 was issued. If the Petitioner-Financer wishes to retain the vehicle it may pay dues and recover of the same from the registered owner. He, therefore, submits that the writ petition merits no consideration and is liable to be dismissed.

5. In view of the submissions made above, this Court finds that the demand of Rs.1,68,200/- impugned herein, is outstanding in respect of the aforesaid vehicle and due to non-payment of such dues proclamation of sale under Annexure-3 has been issued. Although the Petitioner-Financer claims that it took over possession of the vehicle since 16th February, 2022, but Mr. Behera, learned Standing Counsel strongly refutes the same submitting that no such communication was ever made to the authority in that regard. In order to avoid sale of the aforesaid vehicle, the dues in respect of the said vehicle has to be paid either by the Financer or the registered owner. In the instant case, the vehicle is in possession of the Financer. If the Petitioner

wants to avoid sale, it has to pay the dues outstanding against the aforesaid vehicle.

6. Accordingly, the writ petition is disposed of with a direction that on payment of the outstanding dues of Rs.1,68,200/- by the Petitioner-Financer within fifteen days, the impugned proclamation of sale under Annexure-3 shall be withdrawn in respect of the aforesaid vehicle. Petitioner may seek recovery of amount, if any, it is entitled by taking recourse to law.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge

s.s.satapathy