

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 5651 of 2011**

FOR APPROVAL AND SIGNATURE:

**HONOURABLE MR.JUSTICE J.B.PARDIWALA
and
HONOURABLE MR. JUSTICE BHARGAV D. KARIA**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	Yes
2	To be referred to the Reporter or not ?	No
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

VIJAYKUMAR NARANBHAI DHOLA
Versus
STATE OF GUJARAT & 5 other(s)

Appearance:

MR RAMKRISHNA B DAVE for the Petitioner(s) No. 1
MR CHINTAN DAVE, ASSISTANT GOVERNMENT PLEADER for the Respondent(s) No. 1
MR MP SHAH(2418) for the Respondent(s) No. 4
MR PM DAVE for the Respondent(s) No. 5
MS BHARGAVI G THAKAR(5015) for the Respondent(s) No. 6
MS. KRUTI M SHAH(2428) for the Respondent(s) No. 4
RULE SERVED for the Respondent(s) No. 2,3

**CORAM: HONOURABLE MR.JUSTICE J.B.PARDIWALA
and
HONOURABLE MR. JUSTICE BHARGAV D. KARIA**

Date : 21/01/2020

**ORAL JUDGMENT
(PER : HONOURABLE MR.JUSTICE J.B.PARDIWALA)**

1. By this writ application under Article 226 of the Constitution of India, the writ-applicant has prayed for the following reliefs :

"13. (A) Your Lordships may be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other writ, order or direction to the respondent no.3 to grant the applications of transfer and termination of hire purchase agreement.

(B) Your Lordships may be pleased to direct the respondents not to recover any tax with penalty or interest from the petitioner pending the hearing and final disposal of this petition;

(C) Your Lordships may be pleased to declare that the petitioner is not liable to pay any tax for the period, the vehicle is in possession of the financier;

(D) Your Lordships may be pleased to grant costs for preferring this petition;

(E) to pass such other and further orders as may be deemed just and proper in the facts and circumstances of the case;"

2. The facts giving rise to this petition may be summarized as under :

2.1. It appears from the materials on record that the respondent No.4 herein availed off loan facility from the respondent No.5-Bank for the purpose of purchasing a motor vehicle. It is not in dispute that a hire purchase

agreement was executed between the respondent No.4 and the HDFC Bank Ltd. It is also not in dispute that the respondent No.4 purchased the Motor vehicle bearing Registration No.GJ-5-CJ-1116. It appears that the respondent No.4 could not repay installments, so by communication dated 27.04.2009, surrendered vehicle to respondent No.5-Bank. Later, the said vehicle was put to auction. The brother of writ-applicant respondent No.6 herein purchased the vehicle in the auction conducted by the Bank. The writ-applicant with the consent of his brother respondent No.6 applied with the RT0 authorities to transfer the vehicle in his name. At that point of time, two issues were raised by the RT0 authorities, first an objection was raised with regard to the manner in which the writ-applicant preferred an application for transferring the vehicle in his name and secondly with regard to the liability of the writ-applicant to once again pay the life time tax. It is not in dispute that the respondent No.4 had already paid the life time tax at the relevant point of time in accordance with the rules. As the RT0 authorities declined to transfer the vehicle in the name of the writ-applicant and also insisted for payment of the life time tax once again, the writ-applicant was left with no other option, but to come before this Court with the present writ petition.

2.2. We take notice of the few orders passed by the different benches in this matter. We first refer to the order dated 25th November 2011 :

"Petitioner claims to have purchased a motor vehicle bearing registration GJ5-CJ-1116 from respondent no.5. Respondent no.5 is a financier who had financed the purchase of the vehicle by respondent no.4. Stand of the respondent no.5 is that respondent no.4 since was unable to pay the entire loan amount, he had voluntarily surrendered the vehicle to respondent no.5 upon which the same was sold to respondent no.6 who happens to be brother of the petitioner. At this stage, we may briefly note that as per respondent no.4, however, the vehicle was not surrendered to respondent no.5-financier but was forcibly repossessed. With this controversy between respondents no.4 and 5, we are, however, not concerned in this petition since it appears that respondent no.4 has not taken any legal steps to raise such an issue. Be that as it may, case of the petitioner is that respondent no.6 is brother who agreed to have the vehicle registered in the name of the petitioner. Respondent no.6 who is represented by advocate also supports this case.

On behalf of the RT0 authority, it is, however, there is an objection to transferring the vehicle in the name of the petitioner. Their

stand, as is emerging from the affidavit-in-reply, is that respondent no.5-financier should have first registered the vehicle in its name and thereafter only could have transferred to any other person be it respondent no.6 or the petitioner. However, so far the RT0 authorities have not passed any order on the application of the petitioner for transferring the vehicle in his name. The application was filed long back. It is the case of the petitioner that for the vehicle not being transferred in his name, is unable to use the vehicle and is remaining idle since long. Counsel for the petitioner submitted that the petitioner is prepared to deposit any amount that the RT0 authorities may indicate for the transfer of the vehicle, of course subject to his objection and further orders that may be passed in this petition.

At this interim stage, looking to facts and circumstances of the case, we are inclined to direct the RT0 authorities and in particular respondent no.3 to transfer the vehicle in name of the petitioner subject to certain terms and conditions.

Under the circumstances, by way of interim direction, it is provided that:

- 1) Respondent no.3 shall communicate to the petitioner according to him what are the RT0 dues that the petitioner must*

pay to get the vehicle transferred in his name. Such computation shall be provided within two weeks from today.

2) The petitioner shall deposit such amount with the RT0 authorities within two weeks thereafter. Such deposit shall, however, be without prejudice to the rights and contentions of the petitioner and subject to further or final order that may be passed in this petition.

3) Upon deposit of such amount, the vehicle shall be transferred in the name of the petitioner provisionally subject to outcome of this petition.

4) Respondent no.3 shall, within six weeks from today, pass a speaking order with respect to the application of the petitioner for transfer of the vehicle. It would be open for him either to order transfer subject to conditions as may be legally imposable or for reasons that may be recorded even to refuse such a request if he is of the opinion that for whatever reasons the vehicle cannot be transferred at all.

5) Such order shall be placed on record before the next date of hearing.

Nothing stated in this interim order is meant to decide the disputes between respondents no.4 and 5.

S.O. to 13.1.2012. Direct service is permitted."

2.3. We thereafter, refer to the order dated 20th January 2012 :

"1. Pursuant to the order dated 25.11.2011, respondent No.3 was required to take certain steps and also pass a speaking order with respect to the petitioner's request for transfer of the vehicle in his name.

2. It, however, appears that due to some miscommunication or the other such order has not so far been passed. Case of respondent No.3 presented before us through an affidavit dated 16.1.2012 filed by Shri Kantilal Ambalal Patel, R.T.O, Surat, is that the petitioner, despite communications, did not remain present for hearing before the authority. Case of the petitioner is that the petitioner desires to be heard in person but no such opportunity is granted so far.

3. Be that as it may, we fix 1.2.2012 as date on which the petitioner shall appear before respondent No.3. Respondent No.3

shall hear the petitioner and pass appropriate order in terms of our interim directions dated 25.11.2011. If for some reason it is not convenient for respondent No.3 to hear the petitioner on the appointed date, he shall fix some suitable date shortly thereafter and indicate the same to the petitioner about the same. At the first instance, however the petitioner shall appear before respondent No.3 on 1.2.2012.

4. Counsel for the petitioner submitted that the authorities have fixed the necessary charges as per the amended rules which are not applicable. Counsel stated that the petitioner shall deposit such amount under protest but may be permitted to represent this issue before respondent No.3. Permission granted.

S.O to 1.3.2012.”

2.4. We also take notice of the order passed by a Division Bench of this Court dated 11.09.2012. The same reads thus:

“Pursuant to our order dated 20th January 2012, RTI Authorities already passed order on 25th January 2012 under which subject to satisfying certain conditions, registration of the vehicle is

permitted to be transferred. Counsel for the petitioner stated that such conditions have been fulfilled and the registration of the vehicle is also transferred.

*For rest of the issues, issue **rule**.*

Learned counsel Ms.Kruti M.Shah waives service of rule on behalf of respondent No.4 and learned counsel Mr.P.M.Dave waives service of rule on behalf of respondent No.5."

3. The picture that emerges from the materials on record is that the RT0-authorities passed an order dated 25th January 2012, registering the vehicle in question in the name of the writ-applicant. This of course was done subject to fulfilling certain conditions. However, the fact remains that as on date, in the registration book, the name of the writ-applicant is reflected as the registered owner of the vehicle. In fact, while granting interim relief, the RT0-authorities were directed to calculate the requisite amount to be paid and it appears that such amount was calculated and the writ-applicant was asked to deposit the same. It is not in dispute that the writ-applicant has deposited the amount towards the tax which according to the writ-applicant, he is not liable to pay.

4. Mr.Chintan Dave, the learned AGP appearing for the State-respondents vehemently submitted that although the respondent No.4, as the original registered owner of the vehicle, might have paid the tax, yet the possession of the vehicle was surrendered to the Bank by the respondent No.4 as he was not able to pay installments of loan. It is the Bank, who could thereafter be said to be the owner of the vehicle and as a financial institution, its liability to pay tax is higher. It is that difference of the higher amount which is sought to be recovered from the writ-applicant.

5. Having heard the learned counsel appearing for the respective parties and having gone through the materials on record, the only question that fall for our consideration whether the subsequent purchaser in an auction of the vehicle is once again liable to pay the difference of the higher amount of tax.

6. Our attention has been drawn to the definition of the term "owner" as defined under Section 2 (30) of the Motor Vehicles Act, 1988, which reads thus :

"2. Definitions.-

In this Act, unless the context otherwise requires, --

“(30) “owner” means a person in whose name a motor vehicle stands registered, and where such person is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire-purchase, agreement, or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement;”

7. We also take notice of the definition of the term “dealer” as defined under Section 2(8) of the Act, 1988, which reads thus :

“2. Definitions.-

In this Act, unless the context otherwise requires, --

“(8) “dealer” includes a person who is engaged-

** * * * **

(b) in building bodies for attachment to chassis; or

(c) in the repair of motor vehicles; or

(d) in the business of hypothecation, leasing or hire-purchase of motor vehicle;”

8. We also take notice of the provisions of Section 3 of the Bombay Motor Vehicles Tax Act, 1958, now read as the Gujarat Motor Vehicles Tax Act, 1958. Section 3 of the Gujarat Motor Vehicles Tax Act, 1958 reads thus :

“3. (1) Subject to the other provisions of this Act, on and from the 1st day of April 1958, there shall be levied and collected on all motor vehicles used or kept for use in the State, a tax at the rates

fixed by the State Government, by notification in the Official Gazette, [but not exceeding the maximum rates specified in the First, [Second and Third Schedules]]]:

Provided that in case of any motor vehicle (irrespective of whether they are specified [in [* *] the First Schedule or the [Second Schedule or Third Schedule]) kept by a dealer in, or manufacturer of such vehicles, for the purpose of trade, there shall be levied and collected annually such amount of tax not exceeding Rs. 5000 as the State Government may, by notification in the Official Gazette specify on those motor vehicles only which are permitted to be used on the roads in the manner prescribed by rules made under the Motor Vehicles Act, 1988:*

Provided further that, if the State Government, because of disparity in the rates of tax prevailing in certain areas of the State immediately before the commencement of this Act or for any other reason, is of opinion, that the levy and collection of tax on motor vehicles immediately at a uniform rate throughout the State, is likely to cause undue hardship to owners or persons having possession or control of such vehicles in those areas, or to affect adversely trade and commerce or the development of motor transport and other industries in such areas, the State Government may levy and collect the tax on motor vehicles, or any class thereof at different rates in those areas, so however that by increase or decrease of the rate of tax annually in those areas, within a period of three years, a uniform rate of tax is levied

throughout the State.

(1A) Notwithstanding anything contained in sub-section (1), a tax in lump sum in respect of a motor vehicle for which lump sum tax has been paid and ownership of such motor vehicle is transferred on sale, shall be payable at such rates as may be specified by the State Government by notification in the Official Gazette, but not exceeding twenty-five percent of the lump sum tax paid.

Explanation.- *For the purpose of this sub-section, a motor vehicle registered in other State and brought in the State for use permanently, lump sum tax shall be the tax which was payable at the time of registration of such motor vehicle in the State, as if it was a new vehicle.*

(2) Except during any period for which the Taxation Authority has, in the prescribed manner, certified that a motor vehicle was not used or kept for use in the State, the registered owner, or any person having possession or control, of a motor vehicle of which the certificate or registration is current, shall, for the purposes of this Act, be deemed to use or keep such vehicle for use in the State"

9. We are not convinced with the stance of the State that as the writ-applicant purchased the vehicle in an auction conducted by the respondent No.5-Bank, he being the subsequent owner of the vehicle is once again liable to pay the tax.

10. There is nothing in the Gujarat Motor Vehicles Tax

Act, 1958, nor in the Motor Vehicles Act, 1988 by which any liability to once again pay the one time tax can be fastened on the subsequent purchaser of the vehicle. We are not convinced with the argument of the learned AGP that the HDFC Bank could be said to be the owner of the vehicle. When the respondent No.4 availed the finance from the respondent No.5-Bank all that could be said is that the vehicle was hypothecated in favour of the Bank. A charge could be said to be created in favour of the Bank. The respondent No.4 remained as a registered owner. Let us assume for the time being that it is the Bank as the financial institution, which could be said to have transferred the vehicle in favour of the writ-applicant. Even in such circumstances it is difficult for us to take the view that the writ applicant has to once again pay the one time tax. No provision of law in this regard has been pointed out to us. We are dealing with a matter as regards the levy of tax. Such levy should be provided under the provisions of the Act or the Rules framed therein. We are of the view that the insistence on the part of the RT0-authorities in asking the writ-applicant to once again pay the one time tax is not justified in law.

11. Pursuant to the interim direction issued by this

Court, the amount of tax, as sought to be levied has been deposited by the writ-applicant. The entire amount will now have to be refunded to the writ-applicant.

12. In the result, this writ-application succeeds and is hereby allowed. It is hereby declared that the writ-applicant is not liable to pay any tax as sought to be recovered by the RT0-authorities being the subsequent purchaser of the vehicle. No further directions are necessary as the vehicle has already been transferred in the name of the writ-applicant. As on date, the Registration book reflects the name of the writ-applicant as the registered owner of the vehicle. Rule is made absolute to the aforesaid extent. Direct service is permitted.

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(J. B. PARDIWALA, J)

THE HIGH COURT
OF GUJARAT

(BHARGAV D. KARIA, J)

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