

Special Civil Application No. 7927 of 1998

Tata **Finance** Ltd. v. Motor **Vehicle** Tax Recovery

2009 SCC OnLine Guj 11184

(BEFORE H.N. DEVANI, J.)

Tata **Finance** Ltd. .... Petitioner(s)

v.

Mamlatdar, Motor **Vehicle** Tax Recovery & 1 .... Respondent(s)

Mr. Sanjay M Amin for Petitioner(s) : 1,

Government Pleader for Respondent(s) : 1 - 2.

Special Civil Application No. 7927 of 1998

Decided on December 4, 2009

#### ORAL JUDGMENT

1. The petitioner is a Company incorporated under the provisions of the Indian Companies Act, 1956 and is, inter alia, engaged in the business of providing **finance** to persons for purchasing motor vehicles of different kinds on hire purchase basis. In the regular course of business of the petitioner Company, one Shri Narendrabhai Naranbhai Sheth (hereinafter referred to as "the hirer") approached the Company with a request that he wants to purchase two Motor Truck Chassis of TELCO Make from the dealer M/s Cargo Motors, Ahmedabad for using the same as luxury buses and requested the petitioner Company to provide necessary **finance** for the purchase of the said two buses. After due scrutiny, the petitioner Company agreed to provide **finance** to the said person on hire purchase basis for purchase of two buses. Accordingly, two hire purchase agreements dated 25.7.1994 and 11.8.1994 came to be executed between the Company and the said person hirer, providing for the number of monthly installments that the hirer has to pay to the petitioner Company and also providing amongst other things that the hirer shall not transfer the possession or control of the vehicles to any third party unless the entire hire purchase amount has been paid to the petitioner Company. After completion of formalities, the petitioner Company provided **finance** to the hirer by issuing demand drafts which were given by him to the dealer of the motor vehicles and the hirer took the delivery, possession and control of the said two motor vehicles from the dealer. The hirer himself made necessary application under Section 40 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the M.V. Act") to the Regional Transport Office, Ahmedabad, for registration of the said two vehicles in his name as registered owner by filling in the prescribed form. The registering authority registered the two vehicles in the name of hirer by issuing registered mark being No. GJ-1-V-9932 and No. GJ-1-V-9925 in respect of the said two vehicles and issued registration books for the two vehicles to the hirer as registered owner of the said vehicles under the provisions of the M.V. Act.

2. After taking **finance** from the petitioner Company and obtaining the vehicles in question, the hirer began to use the two vehicles for his business purposes. However, after sometime, the hirer defaulted in making regular payment of installments to the petitioner Company. The petitioner, therefore, entered into correspondence with the hirer intimating him that if the amount due is not paid in respect of the said two vehicles, the petitioner Company will sell the same as per the terms and conditions of

the H.P. Agreements. Pursuant thereto, the hirer made payment of the amount due in respect of the **vehicle** bearing No. GJ-1-V-9932 to the petitioner Company and as a result thereof, the H.P. Agreement in respect of the said **vehicle** came to be terminated on 6.5.1998 and all the documents pertaining to the said **vehicle** came to be handed over to hirer. The registering authority was also informed by the petitioner Company through the hirer about the said fact and was requested to remove the endorsement of hire purchase from the registration book.

3. The hirer, however, did not make payment of the entire amount due in respect of the **vehicle** No. GJ-1-V-9925 and therefore, as per the terms and conditions of the H.P. Agreement, the petitioner Company sold the said **vehicle** by auction in the month of March 1998 and since then, the purchaser is in the possession and control of the said **vehicle**.

4. It appears that the hirer after taking delivery and possession of the two vehicles also defaulted in making payment of **vehicle** tax to the registering authority. The petitioner being a financier, as per the provisions of the M.V. Act, was informed by the respondent No. 1 - Mamlatdar, Motor **Vehicle** Tax Recovery, Ahmedabad vide letter dated 3.7.1998 that the hirer is the registered owner of said two vehicles and an amount of Rs. 4,28,250/- towards tax and penalty in respect of **vehicle** No. J-1-V-9925 and Rs. 4,34,200/- in respect of **vehicle** No. GJ-1-V-9932 is to be recovered from him. The petitioner was, therefore, requested to recover the said amount from the hirer before initiating any process for sale of the said vehicles.

5. Pursuant to the said letter, the petitioner vide reply dated 12.8.1998 pointed out to the respondent that the H.P. Agreement in respect of **vehicle** No. GJ-1-V-9932 had come to an end with effect from 6.5.1998 as the hirer had made the entire payment of the hire purchase amount and that, **vehicle** No. GJ-1-V-9925 had been sold by the petitioner in March 1998 as per the terms and conditions of the H.P. Agreement as the hirer had committed default in the payment of the hire purchase amount and the said **vehicle** is under the control and possession of the subsequent purchaser. Despite the aforesaid position, the petitioner received a notice dated 27.7.1998 under the provisions of Section 152 of the Bombay Land Revenue Code from the respondent No. 1, directing the petitioner to make payment of the said amount within ten days or in case the petitioner had any objection to pay the said amount, to appear in person within a period of seven days with necessary documentary evidence in respect thereof, failing which, steps for the recovery of the said amount by attachment and auction of the properties of the petitioner Company would be taken. The petitioner gave its reply to the said notice vide reply dated 31<sup>st</sup> August 1998. The respondent issued yet another notice dated 24<sup>th</sup> August 1998 to the petitioner directing the petitioner Company to make payment of the amount due on or before 25<sup>th</sup> September 1998, failing which the properties of the petitioner Company would be attached and sold by auction on 27.9.1998 or thereafter. Being aggrieved, the petitioner has filed the present petition under Article 226 of the Constitution of India challenging the validity of the said notice.

6. In response to the petition, the respondent has filed an affidavit in-reply controverting the averments made in the petition. It is stated in the affidavit that the petitioner had knowledge of the arrears of the State revenue, but did not pay any heed to the notice of the respondent and even after acquiring possession of the said vehicles, released the same to a third party and to the owner. It is also submitted that, as provided under Section 8 of the Bombay Motor Vehicles Tax Act, 1958 (hereinafter referred to as "the B.M.V.T. Act"), the petitioner was liable to pay the tax after acquiring possession of the vehicles and that the petitioner was also liable to pay

the tax as it was the 'owner' as defined under the M.V. Act. It is further averred that the motor vehicles in question are provided in the name of hirer and that the petitioner is the owner as per the definition of owner under the M.V. Act being the financier under a higher purchase agreement and as such, is liable to pay the composite tax. It is contended that the petitioner was in possession of the vehicles at material time and the date when the notice dated 3<sup>rd</sup> July 1998 was issued to it. That a notice of demand dated 3.7.1998 has also been issued to the registered owner Shri N.N. Sheth (hirer) and proceedings under the Land Revenue Code have also been directed against him and that the petitioner cannot run away from the responsibility of payment of tax.

7. The petitioner has filed an affidavit-in-rejoinder denying the averments made in the affidavit in-reply of the respondent. It is stated that the petitioner did not and can never have the information whether the hirer has paid the taxes or not. It is submitted that it is the function of the respondent to be vigilant in the matter of recovery of tax and he cannot blame the petitioner Company for his negligence or indolence. It is further submitted that the petitioner has already informed the respondent by a reply dated 12.8.1998 to the said letter dated 3.7.1998 that the transactions in respect of the vehicles in question were already over by the month May 1998. It is contended that the respondent cannot find fault with the petitioner for his failure to discharge his duties and demand premium on the same.

8. It appears that, during the course of hearing of the petition, vide order dated 3<sup>rd</sup> July 2000, this Court had passed an order directing the R.T.O., Ahmedabad to seize the trucks bearing No. GJ-1-V-9932 and GJ-C-V-9925 forthwith and report to the Court. Since the said direction had not been complied with, vide order dated 5<sup>th</sup> September 2005, the respondent was directed to submit a report on or before 27<sup>th</sup> September 2005. Pursuant thereto, the respondent has filed an affidavit dated 26<sup>th</sup> September 2005 placing on record a report wherein it is stated that despite several attempts, the respondents have not been able to trace out the said vehicles.

9. Heard Mr. Sanjay M. Amin, learned advocate for the petitioner and Mr. Nikunt Raval, learned Additional Government Pleader for the respondents.

10. Mr. Amin, learned advocate for the petitioner has vehemently assailed the impugned notice. It is submitted that the respondent No. 1 - Mamlatdar has completely failed to apply the legal provisions as regards the liability to pay tax under the B.M.V.T. Act. It is submitted that neither under the M.V. Act, nor under the B.V.M.T. Act, the petitioner is liable to pay the amount in question and as per the provisions of law, the only persons liable to make the said payment are the hirer and the subsequent transferee who were the registered owners and the persons in possession and control of the said vehicles at the relevant time and even now.

11. Attention is invited to the provisions of Section 2(30) of the M.V. Act which defines 'owner', to submit that in view of the said provision, the hirer is the owner of the vehicles in question as he is the person in whose name the vehicles stand registered and is also the person in possession of the vehicles under the H.P. Agreements with the petitioner Company. It is submitted that the hirer had made an application under Section 40 of the M.V. Act for registration of the said vehicles describing himself as the registered owner of the said vehicles. Attention is invited to Section 51 of the M.V. Act which deals with special provisions regarding motor vehicles subject to hire purchase agreement etc. to submit that it is clear from the said provisions of law that in the present case, it is the hirer who is the registered owner of the vehicles and the petitioner Company is merely a financier. It is contended that the petitioner Company

being only financier cannot be equated with the registered owner. Referring to Section 2(5) of the B.M.V.T. Act which defines 'registered owner', it is submitted that under the said provision, the person in whose name the **vehicle** is registered under Section 40 of the M.V. Act is the hirer and accordingly, he is the registered owner also for the purpose of the B.M.V.T. Act. Attention is invited to Section 4 of the B.M.V.T. Act, which provides for payment of tax as well as to the provisions of Section 8 of the said Act, which provides for liability to pay arrears of tax of persons succeeding to the ownership, possession or control of motor vehicles. It is submitted that it is clear that the liability to pay tax is upon the registered owner or any person having possession or control of the motor **vehicle** and that in the present case, it is an admitted position that the hirer is the registered owner of the vehicles in question and insofar as the second **vehicle** i.e. GJ-1-V-9925 is concerned, the purchaser of the same is the registered owner, if the said **vehicle** has been transferred in his name under the provisions of the M.V. Act. But under no circumstances, can it be said that the petitioner Company is the registered owner or the person in possession or control of the vehicles in question.

12. It is further submitted that till the year 1998, the respondents have not made any attempt to recover the tax amount from the registered owner and no steps have been taken against the registered owner. The petitioner is neither the registered owner nor is the **vehicle** under its control, hence, the petitioner can in no manner be said to be liable for payment of tax under the said Act. It is submitted that under the Hire Purchase Act, 1972, the concept of owner is different with a view to safeguard rights of the **finance** company, whereas insofar as the provisions of the M.V. Act are concerned, the petitioner is only a financier and cannot be equated with the registered owner. It is, accordingly, submitted that the impugned action of the respondent in seeking to recover the amount from the petitioner as well as the notice issued against the petitioner, are completely illegal, arbitrary, ab-initio null and void and as such, are required to be quashed and set aside by this Court. It is submitted that if the action of the respondent making the financier of a **vehicle** under the H.P. Agreements liable for all liabilities in respect of the said **vehicle** is allowed to stand, then not only for tax purposes, but even in giving compensation in respect of the motor accident **cases**, the financier could be held liable. It is submitted that such an interpretation would entail disastrous consequences and would wind up the business of the entire Hire Purchase Industry. It is submitted that the Legislature in its wisdom has differently defined the owner and registered owner or the person in possession or control of a motor **vehicle** than in the ordinary sense. That the attempt on the part of the respondent to rewrite the object and purpose of the legislation is absolutely ultra vires, illegal and ab-initio null and void.

13. On the other hand, Mr. Nikunt Raval, learned Assistant Government Pleader has opposed the petition. Attention is invited to the affidavit-in-reply of the respondent No. 1. It is submitted that the vehicles in question were held by the hirer under an H.P. Agreement. The petitioner herein was served with a show cause notice dated 3<sup>rd</sup> July 1988 in respect of arrears of composite tax together with penalty. The petitioner having knowledge of the arrears of State revenue did not pay any heed to the notice and even after acquiring possession of the said vehicles, released the same to a third party and to the owner. It is submitted that in view of the provisions of Section 8 of the B.M.V.T. Act, the petitioner is liable to pay the taxes after acquiring possession of the vehicles and is also liable to pay the taxes as it is the owner as defined under the M.V. Act. Referring to the provisions of Section 8 of the B.M.V.T. Act, it is submitted that under the said provision, apart from the registered owner, the person who has possession or control of such **vehicle** is also liable to pay the tax to the taxation

authority. It is submitted that once the vehicle was re-possessed by the petitioner for default in payment of installments, the petitioner came into possession and control of the said vehicle and as such, became liable to pay the tax amount to the taxation authority. It is submitted that a notice has also been issued under the provisions of the Land Revenue Code to the hirer; however, the petitioner cannot run away from the responsibility of payment of tax. Attention is also invited to the report made by the respondent to this Court to submit that neither of the two vehicles are traceable and that, on the date when the report was filed, the amount of tax payable in respect of the vehicle bearing No. GJ-1-V-9932, was Rs. 6,81,200/- and the penalty of Rs. 1,70,300/-, making a total of Rs. 8,51,500/- for the period from March 1996 till June 2000, whereas in respect of the vehicle bearing No. GJ-A-V-9925, the amount of tax comes to Rs. 7,70,360/- and penalty of Rs. 1,92,590/- making a total of Rs. 9,62,950/- for the period from May 1995 till June 2000. It is submitted it has been admitted by the Deputy Branch Manager of the petitioner Company that the said vehicles were re-possessed by the petitioner; hence the petitioner is liable to pay the tax due as per the provisions of Section 8 of the B.M.V.T. Act. It is, accordingly, submitted that the petition being devoid of any merit or substance, deserves to be dismissed.

14. This Court has considered the rival submissions advanced by the learned advocates for the parties and has perused the record of the case. A perusal of the record of the case indicates that two hire purchase agreements dated 25<sup>th</sup> July 1994 and 11<sup>th</sup> August 1994 have been executed between the petitioner Finance Company and Shri Narendrabhai Naranbhai Sheth (the hirer) in connection with the vehicles in question. A perusal of the H.P. Agreements shows that the vehicle given on hire shall remain the personal property of the Owners (finance company) and shall continue in the ownership of the Owners. Thus, under the H.P. Agreements, the financier would be the owner of the vehicle which is also borne out from the terms and conditions of the hire purchase agreements and more particularly, clause (12) thereof. Clause 2(j) of the agreement provides that the hirer shall, inter alia, be liable for payment of all taxes. The Certificates of Registration of the said vehicles, copies whereof are annexed as Annexure "C" to the petition, indicate that the hirer is the registered owner of the vehicles in question. The record of the case further shows that the vehicles in question are also insured in the name of the hirer. Vide notice dated 3<sup>rd</sup> July 1998, the respondent No. 1 has informed the petitioner company that Shri Narendrabhai Naranbhai Sheth (the hirer) is the registered owner of the motor vehicle No. GJ-1-V-9925 and motor vehicle No. GJ-1-V-9932. That composite tax plus penalty of Rs. 4,28,250/- in respect of vehicle No. GJ-1-V-9925 and composite tax plus penalty of Rs. 4,34,200/- in respect of motor vehicle No. GJ-1-V-9932 are to be recovered from the said hirer. In the circumstances, prior to taking any steps for sale of the said vehicles, steps be taken for recovery of the above referred government dues. In case, the petitioner makes any default, the entire responsibility would be of the petitioner. In response to the said notice, the petitioner vide reply dated 12<sup>th</sup> August 1998 informed the respondent that insofar as vehicle No. GJ-1-V-9932 is concerned, the hirer has paid the entire amount due in respect thereof and as such, the H.P. Agreement has been brought to an end and all papers have been handed over to the hirer, hence, the entire responsibility of paying the composite tax and the penalty is of the hirer. It is further informed that insofar as vehicle No. GJ-1-V-9925 is concerned, since the hirer had failed to pay the installments in terms of the H.P. Agreement, the said vehicle had been resumed and sold off in March 1998. That the said vehicle had been purchased by one Ramzanbhai Noorbhai Shaikh and that, all the papers of the said vehicle are with him. In the circumstances, the entire responsibility of paying the composite tax and penalty would be of said Shri Ramzanbhai Noorbhai Shaikh.



15. Vide show cause notice dated 27<sup>th</sup> July 1998, the respondent No. 1 informed the petitioner that the amounts of composite tax and penalty have not been paid, hence, it is ordered that the balance amount with 1.5% penal amount per month shall be recovered as arrears of land revenue. Pursuant to the said show cause notice, the petitioner gave a reply dated 31<sup>st</sup> August, 1998 denying its liability to pay the said amount in view of the fact that the H.P. Agreement in respect of one of the vehicles was already terminated and the second vehicle has already been sold to a third party. By the impugned notice dated 24<sup>th</sup> August, 1998 issued under Section 200 of the Bombay Land Revenue Code, the respondent No. 1 informed the petitioner that despite several notices to pay the composite tax plus penalty, the same had not been paid. If the amount was not paid on or before 25<sup>th</sup> September 1998, their movable and immovable properties would be attached. It is, at this stage, that the petitioner has approached this Court challenging the aforesaid show cause notice.

16. Before entering into the merits of the case, it would be germane to refer to certain provisions of the Motor Vehicles Act, 1988 and the Bombay Motor Vehicles Act, 1958. Section 2(30) of the M.V. Act, which defines 'owner' reads as under:

*"Section 2(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."*

Section 40 of the M.V. Act reads as under:

*"Section - 40 : Registration, where to be made - Subject to the provisions of Section 42, Section 43 and Section 60, every owner of a motor vehicle shall cause the vehicle to be registered by a registering authority in whose jurisdiction he has the residence or place of business where the vehicle is normally kept."*

Section 51 of the M.V. Act, insofar as the same is relevant for the purpose of present petition, reads as under:

*"51. Special provisions regarding motor vehicles 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] xxx

[3] xxx

[4] xxx

[5] xxx

[6] *The registered owner shall, before applying to the appropriate authority, for the renewal of a permit under section 81 or for the issue of duplicate certificate of registration under sub-section (14) of section 41, or for assignment of a new registration mark under section 47, make an application to the person with whom the registered owner has entered into the said agreement (such person being hereafter in this section referred to as the financier) for the issue of a no objection certificate*

*(hereafter in this section referred to as the certificate)."*

Section 2(5) of the B.M.V.T. Act defines 'registered owner' to mean the person in whose name a motor **vehicle** is registered under the Motor Vehicles Act, 1939.

Section 4 of the B.V.M.T. Act provides for payment of tax and insofar as the same is relevant for the present purpose, reads as under:

*"[4] Payment of tax - [1] The tax leviable under Section 3 shall be paid in advance by every registered owner, or any person having possession or control of a motor **vehicle**, to which sub-section (1AA) does not apply -*

*[i] annually, at rates fixed by the State Government under section 3 (hereafter referred to as the 'annual rate'), or*

*[ii] for one or more quarters, on payment for each quarter at one fourth of the annual rate referred to in clause (i) plus ten per centum thereof (hereafter referred to as the 'quarterly rate'), or*

*[iii] for any period less than a quarter expiring on the last day of the quarter, at the quarterly rate aforesaid less one-twelfth of the annual rate of tax for every complete calendar month which has expired during such quarter."*

Section 8 of the B.M.V.T. Act reads as under:

*[8] "Liability to pay arrears of tax of persons succeeding to the ownership, possession or control of motor vehicles-*

*[1] If the tax leviable in respect of any motor **vehicle** remains unpaid by any person liable for the payment thereof, and such person before having paid the tax has transferred the ownership of such **vehicle** or has ceased to be in possession or control of such **vehicle** the person to whom the ownership of the **vehicle** has been transferred or the person who has possession or control of such **vehicle** shall also be liable to pay the said tax to the Taxation Authority.*

*[2] Nothing contained in this section shall be deemed to affect the liability to pay the said tax, of the person who has transferred the ownership or has ceased to be in possession or control of such **vehicle**."*

17. In *Harivadan Kanaiyalal v. State of Gujarat*, 1973 GLR 515, a Division Bench of this Court has held that Section 4 of the B.M.V.T. Act imposes an obligation on the registered owner to pay the taxes in respect of a motor **vehicle** of which he is the registered owner. The liability to pay tax in respect of any motor **vehicle** is cast upon two persons, one being the registered owner and the other, the person who is in possession or control of the **vehicle** in question. From the language employed in Section 4(1) of the Act, it is clear that even if the person who is in possession or has control over the motor **vehicle**, is not the registered owner of the motor **vehicle**, a liability is cast upon him to pay tax in respect of the motor **vehicle** which is either in his possession or under his control. The registered owner would continue to be liable to pay the tax notwithstanding the fact that he has transferred the ownership of the **vehicle** in view of the provisions contained in Section 4(1) read with Section 8(2) of the Act. In order to be free from the liability of payment of tax, the registered owner on transfer of the **vehicle** must get the transfer notified as required by Section 31 and get the **vehicle** transferred in the name of the transferee. Till that is done, the registered owner would continue to be liable for payment of the tax.

18. Section 8 of the Act makes the transferee liable for the tax even for the period before the transfer if the transferor as a registered owner had not paid the tax before the transfer. The provisions contained in Section 8(1) of the Act make the transferee of the **vehicle** liable to pay the tax which has remained unpaid before transfer of the registered **vehicle**. By virtue of sub-section (2) of Section 8, the liability of the registered owner for the tax which has remained unpaid for the period before transfer has been kept intact. Section 8 only provides for liability in respect of tax in arrears between transferor and transferee. In view of the provisions contained in Section 8(1), the transferee cannot contend that he would not be liable to pay tax which has become due prior to the transfer. For such tax, both transferor and transferee would be liable. That is the effect of the provisions contained in Sections 8(1) and (2). In fact, Section 8(2) merely reinforces what has been enacted in Section 4(1) namely, the liability of the registered owner to pay tax till he continues to be shown as registered owner notwithstanding that the **vehicle** was transferred by him unless the transfer is reflected in the records maintained under Chapter III of the Motor Vehicles Act.

19. In *State of Maharashtra v. Sundaram Finance*, (1999) 9 SCC 1, the Supreme Court was considering a case where the hirer under the H.P. Agreement had defaulted in payment of installments pursuant to which, the **finance** company had resumed the vehicles and filed applications before the Regional Transport Officer for fresh registration certificates in respect of the said vehicles in its name under the provisions of Section 31-A(5) of the Motor Vehicles Tax Act, 1939. The Regional Transport Officer declined to issue fresh registration certificates unless the **finance** company cleared the arrears of passenger tax in respect of the said vehicles and the penalty levied thereon.

The Supreme Court, while interpreting the expression "operator", held that the word "operator" was said to be (i) the person in whose name the stage carriage was registered, or (ii) the person having possession or control of such stage carriage. The Court upheld the view taken by the Division Bench of the Bombay High Court that the company which had financed the vehicles on hire-purchase basis could not be made liable to pay the arrears of passenger tax as the operator of the vehicles.

20. In *Ganga Hire Purchase Pvt. Ltd. v. State of Punjab*, (1999) 5 SCC 670, where the **vehicle** taken on hire-purchase was seized under the provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985 and the **finance** company contended that it was the 'owner' of the **vehicle** so long as the entire hire-purchase money has not been paid, the Supreme Court held that in absence of any definition of 'owner' in the NDPS Act, it would be reasonable to construe that the 'expression owner' must be held to mean the registered owner of the **vehicle** in whose name the **vehicle** stands registered under the provisions of the Motor Vehicles Act.

21. In *Godavari Finance Company v. Degala Satyanarayanamma*, (2008) 5 SCC 107, the Supreme Court was called upon to decide the question as to whether a financier would be an owner of a motor **vehicle** within the meaning of Section 2(30) of the Motor Vehicles Act, 1988. The Court held that in case of a motor **vehicle** which is subjected to a hire-purchase agreement, the financier cannot ordinarily be treated as the owner. The person who is in possession of the **vehicle** and not the financier being the owner would be liable to pay damages for the motor accident.

22. Adverting to the facts of the present case, it is true that under the hire-purchase agreements, the financier remains the absolute owner of the vehicles in question. However, the hire-purchase agreements are in the nature of contractual agreements between the parties and do not override the statutory provisions of the M.V. Act and



B.M.V.T. Act, which provide that the owner is the registered owner of the vehicle. Even under the agreement as laid down under Clause 7(j) of the hire-purchase agreement, the liability to pay the tax rests on the hirer. Section 2(30) of the M.V. Act clearly lays down that the 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. In the facts of the present case, the hirer is admittedly the registered owner of the vehicles in question, as is borne out from the certificates of registration issued by the Regional Transport Office. The hirer is also the person in possession of the vehicles under the said agreements. Hence, it is the hirer and not the petitioner company who is the owner of the vehicles in question. It is true that there is an endorsement regarding the hire-purchase agreements between the parties in the certificates of registration, however, that is merely compliance with the provisions of Section 51 of the B.M.V.T. Act. Merely because an endorsement is made to the effect that the vehicle is subject to a hire-purchase agreement, would not equate the financier with the registered owner.

23. Besides, the B.M.V.T. Act also envisages 'registered owner' to be a person in whose name the motor vehicle is registered under the M.V. Act. In the circumstances, even under the provisions of the B.M.V.T. Act, the hirer would be the registered owner and not the financier.

24. Section 3 of the B.M.V.T. Act provides for levy of tax on all motor vehicles used or kept for use in the State at rates fixed by the State Government. Section 4 provides that the tax leviable under Section 3 shall be paid in advance by every registered owner, or any person having possession or control of a motor vehicle. Thus, Section 4 of the Act envisages payment of tax by (i) registered owner, or (ii) the person having possession or control of the motor vehicle. In the facts of the present case, insofar as the vehicle No. GJ-1-V-9932 is concerned, the hirer had paid the amount due in respect of the said vehicle and therefore, the hire-purchase agreement in respect of the said vehicle was terminated on 6.5.1998 and the documents pertaining to the said vehicle were handed over to the hirer. The registering authority was also informed by the petitioner Company through the hirer about the said fact and was requested to remove the endorsement of hire-purchase from the registration book. Thus, insofar as the said vehicle is concerned, at no point of time does the petitioner Company appear to be either the registered owner or the person in possession and control of the vehicle in question so as to attract the provisions of Section 4 of the Act.

25. Insofar as the vehicle bearing No. GJ-1-V-9925 is concerned, the hirer had defaulted in payment of installments and as such, the vehicle came to be resumed and was sold off in March 1998. The first notice for payment of the tax amount came to be issued in July 1998 after the said vehicle had been transferred in favour of a third party. Thus, on the date of issuance of the notice, the petitioner Company was neither the registered owner nor the person in possession or control of the said vehicle. Section 8 of the B.V.M.T. Act imposes a liability on the transferee in respect of any tax which remained unpaid before the vehicle was transferred in favour of the transferee and even on the person who happens to be in possession or control of such vehicle. Under sub-Section (2) thereof, it is provided that, nothing contained in the section shall be deemed to affect the liability to pay the said tax, of the person who has transferred the ownership or has ceased to be in possession or control of such vehicle. Thus, in view of the provisions of Section 8 of the Act, the transferee or the person in possession or control of the said vehicle would be liable to pay the said tax to the taxation authority. In the instant case, insofar as the second vehicle is concerned, the

petitioner had resumed the same from the hirer and had sold it to a third party prior to the date of issuance of the notice in question. In the circumstances at no point of time after the issuance of the notice in question was the petitioner in possession or control of the said vehicle. The liability to pay the tax was therefore that of the hirer and of the transferee and not of the petitioner financier Company. The contention that the petitioner is also liable to pay tax as it is the owner as defined under the M.V. Act is not in consonance with the provisions of the Act which provide that the owner is the registered owner. The petitioner Company was at no point of time the registered owner of either of the said vehicles so as to fall within the purview of the provisions of either Section 4 or Section 8 of the B.M.V.T. Act.

26. As held by the Apex Court in *Godavari Finance Company v. Degala Satyanarayanamma*, (supra), in a case where the motor vehicle which is subject to a hire-purchase agreement, the financier cannot ordinarily be treated to be the owner. The person who is in possession of the vehicle and not the financier, being owner would be liable to pay the damages for the motor accident. Drawing an analogy from the said decision, the registered owner or the person in possession of the vehicle and not the financier would be liable to pay the taxes under the B.M.V.T. Act.

27. This Court is, therefore, of the view that the petitioner company would not be liable for the payment of taxes under the B.M.V.T. Act in respect of the vehicles which it had financed on a hire-purchase basis. Consequently, the respondent authorities are not justified in initiating proceedings under the Bombay Land Revenue Code for recovering the outstanding tax in respect of the said vehicles as arrears of land revenue from the petitioner. The impugned attachment notice, therefore, deserves to be quashed and set aside.

28. In the result, the petition succeeds and is, accordingly, allowed. The impugned notice dated 24<sup>th</sup> August 1998 (Annexure 'I' to the petition) is hereby quashed and set aside. Rule is made absolute.

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