

RAJASTHAN HIGH COURT

Gyarsi Lal

Vs.

Shankarlal

Special Appeal No. 51 of 1990
(M.R. Calla and K.S. Rathore, JJ.)

12.09.2001

JUDGEMENT

M. R. Calla, J.

1. This special appeal is directed against the judgment and order dated 22-12-1989, passed by the learned single Judge, whereby the SB Civil Writ Petition No. 4609/1989 was allowed.

2. Briefly stated the facts leading to this litigation on the basis of the pleading of the parties are as under :-

(i) The Rajasthan Financial Corporation (for short Corporation) in exercise of its power under Section 29 of the Rajasthan Financial Corporation Act, 1951 realised and took over the possession of the truck, bearing No. RND 3873 from its erstwhile owner namely Mr. Ganesh Narain Meena.

(ii) In order to realise its dues, the Corporation put the aforesaid vehicle (truck) to auction. In this auction, Mr. Shankar Lal Meena (Original petitioner) was the highest bidder at the bid of Rs. 1.07 Lacs. A sum of Rs. 27,000/- was to be deposited within a period of 15 days from the date of the communication of the acceptance of the bid which had been approved later on.

(iii) As per communication dated 10-10-1988, Mr. Shankar Lal, who was the highest bidder in the auction was required to pay Rs. 27,000/- within a period of 15 days from the date of communication dated 10-10-1988 as aforesaid and the rest of the amount was to be paid in monthly installments in three years duration.

(iv) Mr. Shankar Lal Meena was also required to execute an agreement to sale

within a period of 30 days from the date of the communication and was to take the possession of that vehicle during this period.

(v) Mr. Shankar Lal Meena was also put under an obligation to manage the transfer of registration and permit etc. of the vehicle at his own level.

(vi) These terms were coupled with the further condition that in case the possession of the vehicle is not taken by the petitioner Mr. Shankar Lal Meena within a period of 30 days, the Corporation shall be at liberty to forfeit the amount deposited by him and vide communication dated 10-10-1988, Mr. Shankar Lal Meena was called upon to deposit 25% of the sale price and to execute the agreement of sale within 30 days.

(vii) It is the case of Mr. Shankar Lal Meena that he deposited a Demand Draft in the sum of Rs. 5,000/- and after the communication dated 10-10-1988, he deposited a sum of Rs. 19,000/- and further deposited a sum of Rs. 3,000/-, making a total sum of Rs. 27,000/- in the account of the respondent Corporation within time and the Corporation was also informed accordingly and necessary entries were made in the record of the Corporation.

(viii) Later on , when Mr. Shankar Lal Meena contacted the personnel of Corporation for execution of the agreement to sale as mentioned in the communication dated 10-10-1988, he came to know to his utter shock, surprise and dismay that the vehicle (truck) had already been delivered by the Corporation and its officials to some third person (Mr. Gyarsilal) behind his back without informing him and without taking his consent.

(ix) Mr. Shankar Lal Meena, therefore, preferred the writ petition on 21-10-1989 against the Corporation and its functionaries i.e. respondents No. 1 and 2 respectively and Mr. Gyarsi Lal as respondent No. 3 with the prayers as under :-

(a) The respondent Corporation may be directed to exercise its powers under the Act of 1951, to resume and take the vehicle/truck No. RND 3873 from the respondent No. 3 and deliver it to the petitioner.

(b) To place the entire relevant record of the whole case before this Hon'ble Court for its perusal.

(c) Any other appropriate writ, order or direction which may be considered just and proper in the facts and circumstances, of the case may also be passed in favour of the petitioner.

3. The writ petition was admitted on 1-11-1989. On behalf of the respondent Nos. 1 and 2, a reply was filed on 18-12-1989. Respondent No. 3 i.e. the appellant herein

namely Mr. Gyarsi Lal also filed a reply on 22-12-1989.

4. On the basis of the pleadings of the parties as aforesaid, the learned single Judge considered the matter and after hearing the parties, passed the order dated 22-12-1989, allowing the writ petition and directed the Corporation to take over the Truck No. RND 3873 from the respondent-appellant Mr. Gyarsi Lal and hand over the possession of the same to Mr. Shankar Lal Meena subject to the condition that Mr. Shankar Lal Meena fulfils the requirement mentioned in the Corporation's letter dated 10-10-1988 and it was clarified that if there are any instalments due to be taken by the Corporation the same shall be paid by the petitioner on the new letter being issued by the Corporation and for this purpose the cost was assessed at Rs. 500/- to be paid by the respondent (appellant herein) Mr. Gyarsi Lal to Mr. Shankar Lal Meena. The writ petition was decided accordingly.

5. It is this order dated 22-12-1989 which has been made the subject matter of challenge in this appeal at the instance of the appellant Mr. Gyarsi Lal. We find that the following facts which emerge from the pleadings of the parties should form the basis of adjudication of the grievance as has been raised.

(1) Mr. Shankar Lal Meena was the highest bidder in the auction of the truck as was held by the Corporation. Mr. Shankar Lal Meena had also deposited 25% of the amount of the highest bid i.e. 1.07 Lakhs and accordingly, he deposited a sum of Rs. 27,000/-.

(2) It appears that thereafter the present appellant Mr. Gyarsi Lal approached the Corporation for the delivery of the truck and to execute the documents, although, no letter as is alleged by the present appellant to have been submitted to the Corporation that Mr. Shankar Lal Meena had authorised him for the purpose of taking over the possession of the vehicle in question and getting execution in his name, has been placed on record either by the appellant, or by the Corporation. The Corporation has acted at the instance of the present appellant Mr. Gyarsi Lal, and the Corporation believing the version of Mr. Gyarsi Lal that he was the representative of Mr. Shankar Lal Meena and as if Gyarsi Lal was the purchaser of the truck in the auction, transferred the vehicle to Mr. Gyarsi Lal and also wrote a letter to the Transport Department for the Registration of this vehicle in the name of Mr. Gyarsi Lal and this is how the

vehicle came to be registered in the name of Mr. Gyarsi Lal and he took its possession. In view of the letter dated 10-10- 1988, sent by the Corporation to Mr. Shankar Lal Meena, it is rather strange that as to how the possession of the vehicle could be given to Mr. Gyarsi Lal and the same could be transferred and got registered in the same. It also appears that a gate pass dated 3-11-1988 was issued under the signature of the Manager, Corporation and on that basis, Mr. Gyarsi Lal took over the possession of the truck in question and the truck was taken away him.

(3) It further appears that later on Mr. Gyarsi Lal lodged a FIR with the Police Station, Gandhi Nagar, Jaipur that the truck No. RND 3873 in question which had been purchased by him in auction from the Corporation and registration of which had also been made in his name, was lying outside his house on 23-7-1989 and in the evening of that day between 4 to 6 O'clock , the tuck had been stolen away by somebody and he was in search of it. In the F.I.R., it has been further stated that this truck stolen was found by him near Tila No. 7 of Jawahar Nagar, Jaipur and when he started the truck to take away the same one Mr. Ram Karan Meena and Mr. Shankar Lal Meena, stopped him from taking away the truck and did not allow him to take away the same. In the F.I.R. he asserted that it is Ram Karan Meena and Shankar Lal Meena who had stolen the truck and that the same be got restored to him in accordance with law. This F.I.R. was lodged on 29-7-1989. It is , therefore, clear that the fact that the truck had been stolen from outside the house of Mr. Gyarsi Lal, had become known to him on 23-7-1989 and it was allegedly found by him on 29-7-1989 but in the meantime Mr. Gyarsi Lal deposited a sum of Rs. 21,000/- with the Corporation. On this date 28-7-1989, according to the case of Mr. Gyarsi Lal himself, the truck was still missing.

6. When Mr. Shankar Lal Meena came to know that in the auction proceedings where at he was highest bidder in the auction for the truck in question, the same truck had been transferred by the Corporation to Mr. Gyarsi Lal without his knowledge and consent, he made a demand for the same and for that purpose a letter had been sent by him to the Corporation with a copy of the proposed draft of the petition. So far as the date of taking over the possession of the truck by Mr. Gyarsi Lal is concerned, two dates have come, the date of gate pass i.e. 3-11-1988 and the other date is 7-11-1988.

7. Mr. R.S. Rathore, learned counsel appearing on behalf of the appellants has tried to

assail the order passed by the learned single Judge by saying that in fact, appellant was the real owner of the truck and the bid had been given in the auction proceedings by Mr. Shankar Lal at his instance. He has also alleged that Mr. Shankar Lal was his 'dharma bhai' and he (Gyarsi Lal) also held the authority to get the vehicle registered in his name. He also submitted that the receipt of deposited amount of Rs. 27,000/- was also with him. Although, no such receipt has been placed on record nor any such authorization by Mr. Shankar Lal has been placed on record. Because Mr. Gyarsi Lal claims the possession of the receipt and had taken the possession of the vehicle, even if it is assumed that receipt is with Mr. Gyarsi Lal though this fact disputed and contested on behalf of Mr. Shankar Lal Meena, the fact remains that the receipt is in the name of Shankar Lal Meena and there is ample evidence on record to show that Mr. Shankar Lal Meena was the highest bidder in fact.

8. So far as the conduct of the Corporation is concerned, we are shocked and surprised that a body like the Corporation has acted in such a casual manner and wholly misconceived approach to hand over the possession of the truck to the present appellant. Merely because, he said that he represents Mr. Shankar Lal Meena and that Mr. Shankar Lal Meena had authorised him to take over the possession of the truck. The responsible body like the Corporation and its functionaries have acted in such a manner in such a case of public dealings to go ahead with the execution of agreement with a party which was, in fact, no party on record in the bid. In any case, Mr. D. K. Soral, learned counsel appearing for the Corporation has very candidly stated that it was all a case of mistake and such a course should not have been adopted by the Corporation.

9. We also find that the learned Single Judge has referred in his order the Benami Transactions (Prohibition) Act, 1988 (for short the Act of 1988). Section 3 of this Act of 1988 provides for the prohibition of the benami transactions. Even if such a benami transaction takes a place, provisions of Section 4 of the Act of 1988 take care of it in as much as it provides for the prohibition of the right to recover the property held benami. Mr. R.S. Rathore, learned counsel appearing for the appellant has tried to make use of the provisions of this Act by saying that the provisions of this Act should apply against the respondents instead same being applied against him.

10. Section 4 of the Act of 1988 says that no suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property

is held or against any other person shall lie by or on behalf of a person claiming to be the real owner of such property".

11. Sub-Section (2) of Section 4 of the Act of 1988 provides that no defence based on any right in respect of any property held benami, whether against the person in whose name the property is held or against any other person, shall be allowed in any suit, claim or action by or on behalf of a person claiming to be the real owner of such property".

12. As against it sub-Section (1) of Section 3 of the Act of 1988 provides that no person shall enter into any benami transaction".

13. We find that notwithstanding the arguments which have been raised with reference to the provisions of the aforesaid Act, it is a case in which the Corporation has passed on the property in question to a party which had nothing to do with the auction and which had no *locus standi* as a bidder. Merely because such party claimed that the highest bidder had authorised him to take over the possession of the truck and that he was 'dharma bhai' of Mr. Shankar Lal Meena, the truck could not have been given to Mr. Gyarsi Lal. Even if the entire story as has been narrated by the present appellant is taken to be true on its its face value, moment the highest bidder Mr. Shankar Lal Meena disputed it and came with the categorical case that he had never made any such authorization in favour of Gyarsilal, when the authorization itself is not available before this Court, we do not find any basis for the claim which is being agitated by Mr. Gyarsi Lal in respect of this truck.

14. The learned counsel for the appellant was not able to give any particulars about the criminal case which was instituted by him through the F.I.R. dated 29-7-1989, before the Police Station, Gandhi Nagar, Jaipur and Mr. R.S. Rathore has categorically submitted that he does not have any particulars of this criminal case. He also does not know whether any challen was filed by the police after investigation? What was the result of the investigation? Whether the case is still pending before any court or not? If it is pending, in which Court it is pending? For what offences, the case had been registered? What is the number of the case and what is the status of the proceedings? Nothing is known to him. While, Mr. Paras Khuhad, learned counsel appearing on behalf of the respondent No. 1 Mr. Shankar Lal Meena submitted that no such criminal case, in fact, was registered against the respondent Mr. Shankar Lal Meena

before any Court. Mr. D. K. Soral has also stated that he does not know that the Corporation has anything on record that any such criminal case is filed and what is the fate of F.I.R. as had been filed by the appellant. However the fact which has been stated on the basis of the F.I.R. which was filed by the appellant that the appellant had taken over the possession of this truck through the Court on 'suprdignama' and the truck is still lying with the appellant namely Mr. Gyarsi Lal Meena is not disputed but the learned counsel appearing on behalf of the appellant submits that he does not know as to what is the position of this truck at present and he also does not know as to whether it has been alienated or transferred to any other party.

15. In the facts and circumstances of this case, it is clear that there was no justification whatsoever for the Corporation to enter into the agreement with the appellant and to deliver the possession of the vehicle to him. In fact, it was for the Corporation to call upon the respondent Mr. Shankar Lal Meena in respect of any further proceedings after the auction when he was found to be the highest bidder and the Corporation should not have entered into any transaction with any party other than the highest bidder Mr. Shankar Lal Meena.

16. It was given out before us by learned counsel appearing for the respondent Mr. Shankar Lal Meena that although the Single Bench of this Court has allowed the petition on 22-12-1989 and that this truck in question was in the possession of the present appellant on the date when the learned single Judge passed the impugned order dated 22-12-1989. Mr. R.S. Rathore, learned counsel appearing for the appellant submits that he is not in a position to say anything in this regard as his client has not contacted him since 22-12-1989, no steps were taken by the Corporation to recover the truck back from the present appellant except a registered letter requiring the present appellant to hand over the possession of the truck to the Corporation. Mr. D. K. Soral, learned counsel appearing for the respondents No. 2 and 3 has stated before us that no steps could be taken for recovery of the truck as the same is not available and he has also submitted that no action can be taken under Section 29 of the State Financial Act when the truck itself is not available. It was also stated by Mr. Paras Kuhad, learned counsel appearing for the respondent Mr. Shankar Lal Meena, before us that in this appeal an *ex parte* ad interim order was passed on 16-2-1990 which was later on vacated on 18-2-1991. Thereafter, another stay application was moved and that too was rejected on 26-7-1991 and yet the directions given by the learned Single Judge were not complied with and he has submitted that the present appellant as well as the

Corporation and its functionaries have shown utter disregard for the directions given by the Court and even after waiting for his rightful claim for the last 12 years' period, the original petitioner Mr. Shankar Lal Meena has not been able to get the relief and the present appellant has enjoyed this truck throughout.

17. In the facts and circumstances of the present case, we find that there is no merit whatsoever in this appeal, the order passed by the learned Single Judge does not suffer from any error and no interference is called for by this Court. Therefore, this appeal deserves to be dismissed and the same is hereby dismissed.

18. Looking to the peculiar facts and circumstances of this case and to see that there should not be any recurrence of such practice in the Corporation or by its officers who are responsible for adopting such a course of action, giving rise to this litigation, we find that this is a fit case in which we should also direct that the controversy, on the basis of which the truck in question was obtained by the appellant and delivered by the Corporation to the present appellant, may be investigated by the C.I.D., Crime Branch of the State Police through an officer not below the rank of Inspector as may be nominated by the competent authority of C.I.D., Crime Branch of the State Police and the Corporation shall also take suitable action against its erring officers in accordance with law. C.I.D., Crime Branch shall complete the investigation within a period of three months from the date of the receipt of the certified copy of this order and proceed as per the result of such investigation in accordance with law against any person, who is found to be involved in it.

19. While, this appeal is dismissed, it is directed that the progress or the result of such investigation shall also be placed on record by C.I.D., Crime Branch before this Court by 20-12-2001 and the Corporation shall also place on record the action taken report against the erring officers. Only for this limited purpose, the matter shall be listed before this Court. A copy of this order may be sent to the Competent Authority of the C.I.D., Crime Branch of the State Police at Jaipur.

Appeal dismissed.