

A.F.R.

Neutral Citation No. - 2023:AHC:131023-DB

Court No. - 21

Case :- WRIT - A No. - 10418 of 2023

Petitioner :- Shahrukh Saleem

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Virendra Jaiswal

Counsel for Respondent :- C.S.C.

Hon'ble Manoj Kumar Gupta,J.

Hon'ble Manish Kumar Nigam,J.

1. The instant petition has been filed challenging the order dated 14.06.2023 passed by respondent no. 2 i.e. Assistant Regional Transport Officer (Administration), Bareilly and for a mandamus restraining respondent no. 2 from issuing fresh Registration Certificate in favour of respondent no. 3.

2. The facts in brief are that the petitioner had taken finance from respondent no. 3 for purchasing a truck bearing Registration No. UP25 CT-6625. In the writ petition, the petitioner has not disclosed the amount of finance/assistance taken by him from the said respondent, however, it is stated in paragraph no. 5 of the writ petition that the petitioner had contributed Rs. 8,00,000/- out of Rs. 42,00,000/-, the total price at which the truck was purchased. Meaning thereby that the remaining amount was financed by respondent no. 3. It was to be returned by the petitioner in monthly installments.

3. It is also admitted in the writ petition that the petitioner could not deposit the monthly installments. It appears that respondent no. 3 on account of default on part of the petitioner in paying the installments, exercised its right to possess the vehicle. Accordingly, its possession was taken on 23.05.2021 by respondent no. 3. Thereafter, respondent no. 3 requested the Regional Transport Officer, Bareilly by filing Form-36 to issue fresh Registration Certificate (for short 'RC') in its name. When the

R.T.O. did not transfer the vehicle in favour of respondent no. 3 even after lapse of considerable time, it filed writ petition No. 7366 of 2023 before this Court with the aforesaid grievance. The writ petition was disposed of vide order dated 28.04.2023 directing the R.T.O. to take final decision in the matter within six weeks. Thereafter, the R.T.O. has passed the impugned order dated 14.06.2023, directing for grant of fresh Registration Certificate for the remaining period of validity in favour of respondent no. 3 after realizing requisite fee in exercise of power under Section 51(5) of the Motor Vehicle Act, 1988.

4. The impugned order records that after receipt of Form-36 from respondent no. 3, a notice dated 10.11.2022 was issued in Form-37 to the petitioner. In response to it, the petitioner filed his objection and submitted that the vehicle may not be transferred in favour of respondent no. 3. The objection of the petitioner was forwarded by R.T.O. to respondent no. 3 seeking its comments on the same. Respondent no. 3 submitted its reply thereto on 05.12.2022. In the said reply, respondent no. 3 reiterated that the petitioner had defaulted in payment of the outstanding amount despite notice to him. The R.T.O. in the impugned order has noted that the petitioner in his objection has not mentioned anything about payment of the outstanding amount. Thereafter, the R.T.O. being satisfied that the petitioner had taken financial assistance from respondent no. 3 for purchasing the vehicle; that respondent no. 3 had taken possession of the vehicle owing to default on part of the registered owner in repaying the loan in terms of the agreement relating to finance, directed for fresh RC being issued in name of respondent no. 3.

5. Learned counsel for the petitioner submits that power under Section 51(5) of the Motor Vehicle Act, 1988 could only be exercised in case the registered owner refuses to deliver the certificate of registration or has absconded. He submits that the original Registration Certificate was lying in the vehicle at the time its possession was taken by respondent no. 3 and therefore, it was not a case of refusal to deliver the Certificate of Registration.

6. Section 51 (5) of the Act reads as follows:-

“(5) Where the person whose name has been specified in the certificate of registration as the person with whom the registered owner has entered into the said agreement, satisfies the registering authority that he has taken possession of the vehicle from the registered owner owing to the default of the registered owner under the provisions of the said agreement and that the registered owner refuses to deliver the certificate of registration or has absconded, such authority may, after giving the registered owner an opportunity to make such representation as he may wish to make (by sending to him a notice by registered post acknowledgment due at his address entered in the certificate of registration) and notwithstanding that the certificate of registration is not produced before it, cancel the certificate and issue a fresh certificate of registration in the name of the person with whom the registered owner has entered into the said agreement:

Provided that a fresh certificate of registration shall not be issued in respect of a motor vehicle, unless such person pays the prescribed fee:

Provided further that a fresh certificate of registration issued in respect of a motor vehicle, other than a transport vehicle, shall be valid only for the remaining period for which the certificate cancelled under this subsection would have been in force.”

7. The main ingredient for exercise of power under sub section (5) of Section 51 is the establishment of the fact that the registered owner had purchased vehicle by taking finance and had defaulted in repayment of the amount in terms of the said agreement. The other necessary ingredient is that the financier has taken possession of the vehicle from the registered owner. All these ingredients are fully established in the instant case. The stipulation regarding refusal on part of registered owner to hand over certificate of registration or that he had absconded is not sine qua non for exercise of the power. It only indicates that notwithstanding the aforesaid two contingencies, the registering authority still has power to cancel the certificate and issue a fresh certificate of registration in the name of person with whom the registered owner had entered into the agreement of finance.

8. The above conclusion is also borne out from perusal of Rule 61 (2) and (3) of the Central Motor Vehicles Rules, 1989 and Form 36 in which application is made by the Financier for issue of a fresh certificate of registration in its name and Form 37 in which notice is issued to the

registered owner calling for his explanation. Rules 61 (2) and (3) are reproduced below:-

“Rule 61 (2) The application for the issue of a fresh certificate of registration under sub-section (5) of section 51 shall be made in Form 36 and shall be accompanied by a fee as specified in rule 81.

(3) Where the registered owner has refused to deliver the certificate of registration to the financier or has absconded then the registering authority shall issue a notice to the registered owner of the vehicle in Form 37.”

9. Form 36 and Form 37 which are also relevant are reproduced below for ready reference:-

FORM 36
[(see rule 61 (2))]

APPLICATION FOR ISSUE OF A FRESH CERTIFICATE OF REGISTRATION IN THE NAME OF THE FINANCIER

To,
The Registering Authority,

.....
.....

I/We
(financier)

have taken possession of motor vehicle no.make.....model
.....owing to the default of the registered owner.....
(name)

.....
(full address)

under the provisions of the agreement of hire-purchaser/lease/ hypothecation:

- (1) The certificate of Registration of the said vehicle is surrendered herewith.
- (2) The registered owner has refused to deliver the certificate of Registration to me/us.
- (3) The registered owner is absconding.

I/We request you to cancel the certificate and issue a fresh certificate of registration in my/our name.

I/We enclose a fee of Rs.....

Date..... Signature of the Financier

Specimen signature of the Financier

- 1.
- 2.

[My/Our mobile number is]

Copy to the original Registering Authority.

*Strike out whichever is inapplicable.

FORM 37

[See rule 61 (3)]

NOTICE TO THE REGISTERED OWNER OF THE MOTOR VEHICLE TO SURRENDER THE CERTIFICATE OF REGISTRATION FOR CANCELLATION AND ISSUE OF FRESH REGISTRATION CERTIFICATE IN THE NAME OF THE FINANCIER

(To be made in duplicate and duplicate copy to be sent to the Financier simultaneously on issue of notice)

OFFICE OF THE REGISTERING AUTHORITY.

Ref. Number. Dated.

Shri/Smt./Kumari.....(Regd. Owner) is/

are hereby informed that.....(financier) has/have reported that he/they have taken possession of the motor vehicle bearing registration number.covered by an agreement of hire-purchase/lease/hypothecation, owing to your default under the provisions of the said agreement and that-

*(1) You have refused to deliver the Certificate of Registration to him/her/ them.

*(2) You have absconded.

He/She/They have requested to cancel the Certificate of Registration and issue a fresh certificate of Registration in his/her/their name.

You are, therefore, directed to surrender the Certificate of Registration of the said motor vehicle which has been retained by you in spite of your having lost the possession and thereby the ownership of the motor vehicle under section 2(30) and to send your representation in this regard, if any, to this office within seven days from the date of receipt of this notice by you, failing which a fresh Certificate of Registration will be issued in the name of the Financier, cancelling the Certificate of Registration held by you, in accordance with section 51(5).

Date.....

*Strike out whichever is inapplicable. (Signature of the Registering Authority

To

The Financier.....

.....

(To be sent by Registered Post Acknowledgment Due)].

10. Form 36 in which application is made by the Financier for issue of a fresh certificate of registration requires the Financier to mention as to whether certificate of registration of the said vehicle is surrendered therewith or the registered owner has refused to deliver the certificate of

registration or is absconding. Notice in Form 37 is issued to the registered owner only in the event he refuses to deliver the certificate of registration or had absconded. In such an event, he is called upon to surrender the certificate of registration, failing which, a fresh certificate of registration would be issued in the name of Financier, cancelling the certificate of registration held by the registered owner.

11. The aforesaid provisions clearly reveal the scheme of the Act and the Rules to the effect that when there is default on part of the registered owner in repaying the loan to the financier in terms of the agreement and on account of which the financier takes possession of the vehicle, the finance becomes entitled to a fresh certificate of registration in his name. The registered owner is, therefore, required to surrender the certificate of registration so that it is cancelled and a fresh certificate of registration is issued in the name of the financier. Where the registered owner does not surrender the certificate of registration or absconds, he is put to notice and when even thereafter the certificate of registration is not produced, the Registering Authority has been conferred with power to issue new registration certificate to the financier notwithstanding the fact that the original registration certificate had been withheld by the registered owner or had absconded. Therefore, we find no force in the submission of learned counsel for the petitioner that the power under Section 51 (5) of the Act could not be exercised unless the registered owner refuses to surrender the registration certificate or absconds.

12. Moreover, in case, the certificate was lying in the vehicle at the time it was repossessed, the impugned order directing for the vehicle being registered in the name of the financier would not cause any prejudice nor could be said to be contrary to any provision of law.

13. It also appears from the record that the petitioner had filed some complaint before the Consumer Forum and which is stated to be pending. In the written statement filed by respondent no. 3 in the said proceedings, it had taken the stand that the petitioner had taken loan of Rs. 39,00,000/- and apart from it he had also taken personal loan of Rs. 49,000/-. There is

another amount of Rs. 1,01,074/- which was advanced to the petitioner for taking insurance of the vehicle and the said amount was also to be repaid by the petitioner in monthly installments in which also he committed default.

14. As already noted, the petitioner has not clarified any fact relating to the amount taken as loan and the amount repaid by him.

15. Consequently, we find no merit in the present petition. The impugned order does not call for any interference in exercise of writ jurisdiction.

16. The petition is **dismissed**.

Order Date :- 4.7.2023

Ved Prakash

(Manish Kumar Nigam, J.) (Manoj Kumar Gupta, J.)