

Case No. 81

(2003) 10 Supreme Court Cases 261

(BEFORE D.P. MOHAPATRA, R.P.SETHI AND BRUESH KUMAR,JJ)

ORISSA STATE FINANCIAL CORPORATION Appellant

Vs

NARSINGH CH. NAYAK AND OTHERS Respondents

Criminal Appeal No.489 of 1992 with SLP (C) NO.12578 of 1992,
decided on March 7, 2002.

**Writ petition under Art 226 - High Court cannot interfere in contractual matters
- Court cannot rewrite or replace the terms of the agreement - parties to the
contract are bound by the same - writ petition not maintainable.**

Allowing the Corporation's appeal and dismissing SLP, the Supreme Court
Held:

On a plain reading of the impugned order it is manifest that the High Court while considering the writ petition filed by the owner of the vehicle for quashing of the notice of auction-sale and for other consequential reliefs has passed order drawing up a fresh contract between the parties and has issued certain further directions in the matter; the Corporation has been directed to advance a fresh loan to the writ petitioner to enable him to purchase a new truck; to enter into agreement for realization of the balance loan amount in accordance with law; to write off the remaining amount of Rs.16,500 and to order waiving of the interest till date etc. The order, to say the least, was beyond the scope of the writ petition which was being considered by the High Court and beyond the jurisdiction of the Court in a contractual matter. No doubt, while exercising its extraordinary jurisdiction under Article 226 of the Constitution, the High Court has wide power to pass appropriate orders and issue proper directions as necessary in the facts and circumstances of the case and in the interest of justice. But that is not to say that the High Court can ignore the scope of the writ petition and nature of the dispute and enter the field pertaining to contractual obligations between the parties and issue such directions annulling the existing contract and introducing a fresh contract in its place.

ORDER

1. We have heard Shri Shambhu Prasad Singh, Advocate for the appellant. Respondent I who was the writ petitioner before the High Court has not appeared despite service of notice.

2. Respondent I had purchased the truck bearing No.ORY-2785 utilising the loan taken from Orissa State Financial Corporation, the appellant herein. As he defaulted in depositing the instalments fixed under the agreement, the Corporation seized the vehicle exercising its powers under Section 29 and 30 of the State Financial Corporations Act. The respondent filed the writ petition registered as OJC No.201 of 1991 assailing the notice issued under Section 30 of the Act and for quashing the notice for auction of the seized vehicle etc. In the said proceeding the High Court passed an interim order on 14-1-1991 which reads as under:

"Heard the petitioner in person.

It is stated by the petitioner, who appears before us, that the sale of the truck bearing Registration No.ORY-2785 is fixed for tomorrow.

On the facts and in the circumstances of the case, we direct stay of confirmation of sale, if sale is held. The petitioner shall deposit Rs.25,000 (Rupees twenty-five thousand) with the Corporation by tomorrow. The matter shall be taken up for further orders on Tuesday (22-1-1991)."

3. The respondent failed to deposit the sum of Rs.25,000 as ordered by the High Court. The Corporation went ahead with the auction as scheduled and the vehicle was sold to one Shri Navkishore Bhuiyan for a sum of Rs.2,20,000. The sale was confirmed on 28-1-1991. The writ petitioner again approached the High Court for an interim order for releasing the vehicle. By the order dated 8-2-1991 the High Court issued the following directions:

"The opposite parties are directed to show cause as to why they shall not be suitably punished for having deliberately flouted the Court's order by putting the vehicle into auction-sale notwithstanding the interim order of this Court. They should also show cause as to why they refused to accept the money that was offered by the petitioner pursuant to the order of this Court dated 14-1-1991. Along with the show

cause, Opposite Party 2 should appear in person in the Court on 27-2-1991. In the mean time, the opposite parties are restrained from taking any further action for transfer of ownership of the vehicle in question."

4. This was followed by another Interim order passed on 27-2-1991 in which the Court directed the Corporation to hand over possession of the vehicle to the writ petitioner by recovering the same from the auction-purchaser within one month and further directed that on possession of the vehicle being so handed over, the writ petitioner shall pay a sum of Rs.12,000 per month and on failure to do so the entire amount shall become realizable in accordance with law.

5. The writ petitioner filed Misc. Case No.109 of 1991 complaining before the Court that the Corporation and its officers have failed to carry out the directions of the High Court and possession of the Vehicle has not been delivered to him. On the said application the High Court by the order dated 9-7-1991 granted further one month's time to take over the vehicle from the possession of the auction-purchaser, Navkishore Bhuiyan and permitted the Corporation to seek police help from Jagatsinghpur Police Station. Finally the Court disposed of the writ petition, OJC No.201 of 1991 and the contempt petition, Original Criminal Misc. Case No.109 of 1991 by the order passed on 30-1-1992. The relevant portion of the said order reads as follows:

The petitioner shall file a fresh application before the Corporation to advance loan to purchase a new truck and on this being done the Corporation shall sanction the loan within two months after the petitioner complies with the necessary formalities. Though in this connection it has been urged by Shri Patnaik, appearing for the Corporation, that as the price fetched in the auction was about Rs.2,20,000 as against the defaulted amount of Rs.2,36,525 as on 31-12-1990, the Corporation should be allowed to realize the balance amount from the petitioner in accordance with law, on the facts of this case, we have not felt inclined to accept this submission because the sale in the present case was on 28-1-1991. Therefore, according to us, it is a fit case where the remaining amount of about Rs.16,500 should be written off by the Corporation.

As to the purchaser in the auction, we would say that he would file appropriate representation before the Corporation for waiving of the interest till date whereupon the Corporation shall take such decision as deemed fit and proper. The order of the seizure passed on 27-2-1991 in OJC No.201 of 1991 stands vacated."

6. The said order is under challenge in this appeal. On a plain reading of the impugned order it is manifest that the High Court while considering the writ petition filed by the owner of the vehicle for quashing of the notice of auction-sale and for other consequential reliefs has passed order drawing up a fresh contract between the parties and has issued certain further directions in the matter; the Corporation has been directed to advance a fresh loan to the writ petitioner to enable him to purchase a new truck; to enter into agreement for realization of the balance loan amount in accordance with law; to write off the remaining amount of Rs.16,500 and to order waiving of the interest till date etc. The order, to say the least, was beyond the scope of the writ petition which was being considered by the High Court and beyond the jurisdiction of the Court in a contractual matter. No doubt, while exercising its extraordinary jurisdiction under Article 226 of the Constitution the High Court has wide power to pass appropriate order and issue proper direction as necessary in the facts and circumstances of the case and in the interest of justice. But that is not to say that the High Court can ignore the scope of the write petition and nature of the dispute and enter the field pertaining to contractual obligations between the parties and issue such directions annulling the existing contract and introducing a fresh contract in its place.

7. The prevailing factual position as on date, as stated by the learned counsel for the appellants, is that in compliance with the interim order of stay passed by this Court no further step has been taken and the possession of the vehicle has remained with the auction-purchaser. The Corporation has realized certain amount from the auction-purchaser towards its dues and the balance amount is yet to be realized. It also appears that Respondent I who was the owner of the seized vehicle has lost interest in the matter, in all probability due to the lapse of about more than 12 years in the meantime.

8. On facts and in the circumstances of the case, the orders passed by the High Court are clearly unsustainable and are to be set aside. Accordingly, the appeal is allowed and the orders of the High Court which are under challenge are set aside.

9. Delay condoned.

10. Special leave petition is dismissed.