

Case No. 50

I.L.R. 1995 KAR 1353  
High Court of Karnataka at Bangalore

RAVEENDRAN, J

Seetharam vs Regional Transport Authority

**Motor Vehicle Act, 1998 - 'owner' - vehicle registered in his name - includes not only the vehicle of which he is the registered owner but also any vehicle possessed under agreement of hire purchase/lease/hypothecation - to have been duly entered in the RC book - nature of the respective transactions-explained**

Question for Consideration :

Whether the vehicle covered by the permit should actually be owned by the permit holders?

**HELD :** Reference to 'owner' in Section 60 of the Act, would refer not only to a person registered as owner of the vehicle, but also to a person who is validly in possession of the vehicle under an Agreement of Hire Purchase or Lease or Hypothecation, provided, such Agreement of Hire Purchase or Lease or Hypothecation is duly entered or recorded in the Certificate of Registration under Section 51 of the Act. The term vehicle registered in his name occurring in Rule 65, should be understood and read as referring not only to a person registered as owner, but to a person in possession under an Agreement of Hire Purchase, Hypothecation or Lease, noted in the Registration Certificate under Section 51, having regard to the definition of 'owner'. In view of the definition of the term 'owner' in Section 2(30) of the Act, the holder of a permit is entitled to cover a vehicle which is actually owned by him and registered in his name or a vehicle which is lawfully in his possession under an Agreement of Hire Purchase or Hypothecation or Lease, which is duly recorded and registered in the Certificate of Registration, by the permit held by him. Consequently, the Transport Authorities cannot require that the vehicle to be covered by the permit should only be a vehicle owned by the permit holder. Even if the vehicle is not owned but is validly possessed by the permit holder and the permit holder answers the definition of 'owner' under Section 2(30) of the Act and the Agreement under which the possession is held is duly noted in the Registration Certificate under Section 51 of the Act, the permit holder is entitled to use the vehicle so possessed by him against the permit

held by him.

**CASES REFERRED:**

1. AIR 1969 SC 493 - Vishwanatha vs Shanmugam (Dist)
2. AIR 1966 SC 1178 - Sundaram vs State of Kerara (Ref)

Mr. C.S. Shanthamallappa for Petitioners

Mr. N.P. Singri, HCGP for Respondent

**ORDER**

Raveendran J.

In all these Cases, the petitioners are holders of stage carriage permits issued when the Motor Vehicles Act. 1939 was in force. They had put vehicles owned by others to operate under their permits. Having regard to the provisions of the 1939 Act, it was not necessary that vehicles covered by the permits should be owned by the permit holders. After the Motor Vehicles Act, 1988 ('Act' for short) came into force the Transport Authorities insisted that the vehicles covered by the permits, should be owned by the permit holders. When petitioners applied for renewal of their permits, the Transport Authorities issued Endorsements or passed Resolutions requiring that vehicles covered by the petitioners permits should be duly registered in their own names. The petitioners were also informed that they will not be permitted to operate vehicles standing in the names of others against permits (vide Annexure-A dated 7.6.1990 in W.P. 13312/90; Annexure-B dated 23.2.1990 in W.P. 13313 and 13314/1990; Annexure-A dated 5.4.1991 in W.P. 15940/1991 and Annexure-A dated 16.5.1992 in W.P. 22664/1992). Feeling aggrieved, the petitioners have filed these petitions for quashing the imposition of the condition that the vehicle covered by the permit should be owned by the permit holder. The Question that arises for Consideration is whether the vehicle covered by the permit, should actually be owned by the permit holders and having regard to the case of the expression owner of a motor vehicle in Section 66 of the Act and use of the expression vehicle registered in his name in Rule 65 of the Karnataka Motor Vehicle Rules 1989 whether a vehicle not actually owned by the permit holder, can be covered by the permit.

2. The petitioners relying on the Decision of the Supreme Court in K.M. VISHWATHA PILLAI vs M. SHANMUGHAM PILLAI concluded that a permit holder can use a vehicle owned by any third party in respect of his permit. The portions relied

on, are extracted below:

"Section 42 (1) does not require that the owner himself should obtain the permit, it only requires the owner that the transport vehicle shall not be used except in accordance with the conditions of the permit... There may be permit holders who own the vehicle covered by the permit and there may be permit holders who do not own the vehicle.... Thus it cannot be said to be a requirement of the Act that in each case the person in whose favour a permit has been issued should necessarily be the owner of the vehicle covered by it." The Decision is based on Section 42 (1) of the 1939 Act which is differently worded, when compared to the corresponding Section 66 (1) of the 1988 Act. Section 42 (1) of the 1939 Act provided that no owner shall use the vehicle save in accordance with the conditions of a permit authorizing the use of the vehicle. On the other hand, Section 66 (1) of the 1988 Act provides that no owner shall use the vehicle save in accordance with the condition of a permit authorizing him the use of the vehicle. Secondly, the said Decision proceeds on the basis that Benami transactions are permissible. Which is no longer the position. Hence, the said Decision is of no assistance to the petitioner.

3. The matter will have to be examined with reference to the provisions of the 1988 Act.

3. 1) Section 66(1) of the Act provides that no owner of a motor vehicle shall use or permit the use of the vehicle, as a transport vehicle in any public place whether or not such vehicle is actually carrying any passengers or goods. save in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority or any prescribed Authority authorizing him the use of the vehicles in that place in the manner in which the vehicle is being used. To put it simply, a owner of a motor vehicle has to use the vehicle only in accordance with the conditions of a permit authorizing him to use the vehicle. Thus, Section 66 contemplates the owner of a motor vehicle and 'holder of the permit' being the same person.

3. 2) Rule 65 of the Karnataka Motor Vehicle Rules 1969 ('Rules' for short) provides that where the registration mark of the vehicle is to be entered in the permit and the applicant is not, on the date of application the registered owner of the vehicle then the applicant shall, within one month of the sanction or the application by the Transport Authority, produce before the Authority, the Certificate of Registration of the Vehicle registered in his name, in order that particulars of the registration mark may be entered in the permit.

3. 3) Section 2(30) of the Act defines the expression 'owner' as 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 2(31) defines a 'permit' as a permit issued by a Transport Authority, authorizing the use of a motor vehicle as a Transport Vehicle.

3. 4) Section 51 contains the special provisions regarding Motor Vehicle subject to a Hire Purchase Agreement. etc. Sub-section (1) provides that where an application for registration of a motor vehicle which is held under a Hire Purchase, Lease or Hypothecation Agreement, is made, the Registering Authority shall make an entry in the Certificate of Registration regarding the existence of the said Agreement. Sub-Section (2) provides that if a transferee of a motor vehicle enters into such agreement the registering authority shall on receipt of an application in the prescribed form make an entry of the existence of such Agreement in the Registration certificate. Sub-section (3) provides that an entry made under sub-section (1) and (2) may be cancelled by the Registering Authority on proof of termination of such Agreement on an application being made in the prescribed Form.

4. A Hire Purchase Agreement means a contract a contract under which goods are let on hire with an option to the hirer to purchase such goods in accordance with the terms of the Agreement. It is in the nature of a contract of bailment with an element of sale added to it. The Supreme Court in *SUNDARAM FINANCE LTD vs STATE OF KERALA* classified Agreement of hire purchase broadly into two categories: (i) Where the goods are purchased by the financier from the dealer and the financier obtains a Hire Purchase Agreement from the customers under which the latter becomes the owner of the goods on payment of all hire instalments and exercising his option to purchase the goods on payment of a nominal price; and (ii) where the goods are purchased by the customer who in consideration of executing a Hire Purchase Agreement in favor of the financier remains in possession of the goods, subject to liability to pay the amount paid by the financier on his behalf to the dealer and the Hire Purchase Agreement gives the financier a licence to seize the goods in the event of failure by the customer to abide by the conditions of the Hire Purchase Agreement.

4.1. In a contract of Hypothecation the possession of the property remains with the owner debtor and a right is created in favour of the creditor over the property belonging to the debtor to cause such property to be sold to realize the debt from out of the proceeds of the sale. In regard to motor vehicle, a loan transaction under

which a customer who is the owner of a vehicle with a view to obtain finance enters into an Agreement with the financier in the form of a Hire Purchase Agreement giving him the right to seize the goods in the event of non-payment, may also in effect be an Agreement of Hypothecation.

4.2. An Agreement of Lease is slightly different. Under an Agreement of Lease relating to moveable property the possession is delivered by the owner-lessor to the lessee with a right to enjoy the same in consideration of payment of rent of hire periodically. It is apt to call such a contract as one of hiring, the term 'lease' being more appropriate in respect of immovable properties.

4.3. Thus under an Agreement of Hire Purchase actual physical possession will be given to the hirer. Under an Agreement of Hypothecation, possession will be retained by the owner. Under an Agreement of Lease, possession will be held by the lessee. Thus 'owner' for the purpose of Motor vehicles Act, in regard to a motor vehicle not only includes a registered owner, but also includes a person in possession and control of the vehicle. In terms of an Agreement of Hire Purchase, Hypothecation or Lease.

5. Thus reference to 'owner' in Section 65 of the Act would refer not only to a person registered as owner of the vehicle. but also to a person who is validly in possession of the vehicle under an Agreement of Hire Purchase or Lease or Hypothecation provided such Agreement of Hire Purchase or Hypothecation is duly entered or recorded in the certificate of Registration, under Section 51 of the Act. The term 'vehicle registered in his name' occurring in Rule 65, should be understood and read as referring not only to a person registered as owner, but to a person in possession under an Agreement of Hire Purchase, Hypothecation or Lease, noted in the Registration Certificate under Section 51, having regard to the definition of 'owner'.

6. In view of the definition of the term 'owner' in Section 2(30) of the Act the holder of a permit is entitled to cover a vehicle which actually owned by him and registered in his name or a vehicle which is lawfully in his possession under an Agreement of Hire Purchase Hypothecation or Lease, which is duly recorded and registered into certificate of Registration, by the permit held by him. Consequently by the Transport Authorities cannot require that the vehicle to be covered by the permit should only be a vehicle owned by the permit holder. Even if the vehicle is not owned, but is validly possessed by the permit holder and the permit holder answers the definition of owner under Section 2(30) of the Act and the Agreement under which a possession is held is duly noted in the Registration Certificate under Section 51 of the Act, the permit holder is entitled to use the vehicle so possessed by him against the permit held by him.

7. The petitioners have not produced any material to show whether the vehicle covered by their permits are possessed by them under Agreement of Hire purchase/ Lease/Hypothecation duly entered in the Registration Certificate or whether they are vehicle belonging to third parties of which they not 'owners' within the meaning of Section 2(30).

8. Hence these Petition are allowed, declaring that the word 'vehicle registered in his name' in the impugned endorsement would include not only a vehicle of which he (the permit holder) is the registered owner, but any vehicle possessed by, the permit hold under any Agreement of Hire Purchase /Lease/Hypothecation, which is duly entered/registered in the Registered Certificate, under Section 51 of the Act. In view of the said clarification it is unnecessary to quash the impugned endorsements/ resolutions. The Transport Authorities shall accordingly permit the permit-holders to use vehicle owned/possessed by them as stated above.