

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 17200 of 2013

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Vijay Kumar Son of Devendra Prasad Resident of Village - Sharma Bazar
Tol, Tiwari Chak, Police Station Brachatti, District - Gaya

.... Petitioner

Versus

1. The State of Bihar
2. The Commissioner, Magadh Pramandal, Gaya
3. The License Officer Cum Forest Pramandal, Office, Gaya Forest
Pramandal, Gaya
4. Forest Conservator Cum Vihit Officer, Gaya Anchal, Gaya
5. Forest Area Office, Barachatti, District - Gaya

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Suraj Narain Yadav, Adv.
Mr. Nikhilesh Kumar, Adv.

For the Respondent/s : AC to GP - 2

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL ORDER

6. 19-08-2015 Heard Sri Suraj Narain Yadav, learned counsel, who
was assisted by Sri Nikhilesh Kumar, learned counsel for the
petitioner and learned A.C. to Govt. Pleader – 2.

The petitioner, invoking writ jurisdiction of this Court
under Article 22 of the Constitution of India, has prayed for
quashing of an order, contained in Memo No. 253 dated
19-01-2011, passed by the licensing authority-cum-Divisional
Forest Officer, Gaya (hereinafter referred to as the ‘licensing
authority’) whereby, he cancelled the licence in respect of saw
mill, which was running in the name of petitioner. The petitioner
has further prayed for quashing of an order dated 10-07-2013,



communicated through Memo No. 1432 dated 16-07-2013, passed by the Conservator of Forest-cum-Authorised Officer, Gaya Circle, Gaya (hereinafter referred to as the 'Conservator of Forest'), by which, he has affirmed the order of the licensing authority and approved the cancellation of the saw mill licence of the petitioner.

Short fact of the case is that earlier saw mill licence was obtained by one Sri Amrit Lal Patel. The said licence was operational from 1994 to 1999, since it was being regularly renewed. Subsequently, on the request of Sri Amrit Lal Patel the then Licensing Authority by its letter dated 10-02-1999 permitted Sri Amrit Lal Patel to change the ownership in the name of petitioner. It is the case of the petitioner that since 10-02-1999, the petitioner continued with the licence of the saw mill, which was renewed up-to 2010. All of a sudden, the same authority i.e. Divisional Forest Officer-cum-Licensing Authority, Gaya cancelled the licence of the petitioner, on the plea that the transfer of the licence in the name of petitioner was contrary to the provision of section 7(5)(a) of the Bihar Saw Mill (Regulation) Act, 1990. After cancellation of licence, the petitioner directly approached this Court invoking its writ jurisdiction, vide C.W.J.C. No. 6304 of 2011. In view of facts disclosed in the counter



affidavit, the petitioner withdrew the writ petition with liberty to file appeal before the Divisional Commissioner, Magadh Pramandal, Gaya. In view of order of this Court, the petitioner firstly preferred an appeal before the Divisional Commissioner, Magadh Division, Gaya, however; since the appeal was to be adjudicated under the Bihar Saw Mill (Regulation) Act, 1990 (hereinafter referred to as the 'Act') by the authorized person i.e. Conservator of Forest, record was referred to the Conservator of Forest and thereafter, the Conservator of Forest-cum-authorised officer has approved the order of the licensing authority.

Learned counsel for the petitioner submits that since due to old age, the earlier licensee i.e. Sri Amrit Lal Patel was facing difficulty in pursuing the matter, he himself requested the licensing authority-cum-D.F.O. to change the ownership in the name of the petitioner. Once, on the prayer made by Sri Amrit Lal Patel, the same authority i.e. the licensing authority-cum-DFO by its letter no. 317 dated 10-02-1999 permitted to change the ownership and from 1999 till 2010, the petitioner continued with the business on the strength of said licence, which was regularly being renewed, the same authority i.e. licensing authority-cum-DFO was not having any jurisdiction to recall or modify the order passed by his predecessor long back in the year 1999 and as such,

submission was made that the order impugned was without jurisdiction and since an order passed without jurisdiction was approved by the appellate authority, the order of the appellate authority is also liable to be set aside.

Learned counsel for the State has objected the prayer of the petitioner by way of referring to averments made in the counter affidavit. He submits that in view of provision contained in Section 7(5)(a) of the Act, parting with the licence was strictly prohibited and as such, in any event, the original licensee was not at all authorized to transfer the licence in the name of the petitioner.

Besides hearing learned counsel for the parties, I have also perused the materials available on record. It is not in dispute that earlier licence was issued in the name of Sri Amrit Lal Patel. Similarly, it is undisputed that the ownership was transferred in the name of petitioner on the request made by Sri Amrit Lal Patel long back on 10-02-1999. The said permission was granted by the Divisional Forest Officer, who was the licensing authority, to the petitioner, who thereafter got the licence renewed in his name regularly after deposit of requisite fee. All of a sudden, after about 10 years, there was no occasion for the licensing authority i.e. the same authority, who had earlier granted permission, to recall its

own order.

Learned counsel for the petitioner had emphatically argued that in the Act, there is no such provision empowering the D.F.O.-cum-Licensing Authority to recall its own order.

In view of the fact that the permission was granted in the year 1999 and the petitioner was allowed to continue with the licence, which was regularly renewed for such a long time, the D.F.O. has committed serious error in cancelling the licence. Similarly, the appellate authority has also erred in the manner.

Accordingly, both the orders i.e. order contained in Memo No. 253 dated 19-01-2011 passed by the Licensing Authority-cum-Divisional Forest Officer, Gaya (Annexure – 9) as well as order, contained in Memo No. 1432 dated 16-07-2013, passed by the Conservator of Forest-cum-Authorised Officer, Gaya Circle, Gaya (Annexure – 12) are, hereby, set aside.

The writ petition stands allowed.

(Rakesh Kumar, J.)

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