

**THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA
RAO**

W.P.No.24492 of 2015

ORDER:

Heard the learned counsel for the petitioner and the learned Government Pleader for Forests appearing for the respondents.

2. In this Writ Petition, the petitioner assails proceedings Rc. No.942/1998/S5 dt.04-04-2014 of 2nd respondent rejecting petitioner's application for shifting of an existing saw-mill to another location within five kilometers from the forest area.

3. The petitioner's saw mill is owned by the deponent of the affidavit filed in support of the Writ Petition and is located in Balanagar, Railway Kodur village, YSR Kadapa District. Petitioner filed an application dt.28-11-2013 seeking shifting of the same to a new location at Door No.6/425, besides Siddeswara Theater, Vasantha Nagar, Railway Kodur village, YSR Kadapa District. The application of the petitioner was referred to the Forest Range Officer, Kodur and on 16-12-2013. He reported that the distance of the saw mill site proposed is within five kilometers from the Reserve Forest and recommended to issue permission for shifting of the saw mill to the newly proposed site as requested by the applicant. A fresh inspection by the Forest Range Officer of Chitvel was

directed by 4th respondent. The Forest Range Officer, Chitvel by proceedings

dt.29-03-2014 reported that the proposed site of the saw mill is 3.5 kilometers away from Kodur Reserve Forest in RV Palli Beat of Chitvel Range. The Forest Range Officer, Kodur submitted a report dt.01-04-2014 that the distance of the proposed saw mil site is within one kilometer of Kodur Red Sandal Plantation Reserve Forest. By the impugned order, 2nd respondent had rejected the petitioner's application for shifting of saw mill on the ground that it is contrary to AP Saw Mills (Regulation) Rules, 1969 and also G.O.Ms.No.91, Environment, Forests, Science and Technology (For.III) Department dt.11-07-2006 on the ground that shifting of the saw mill from the existing location to the proposed location is impermissible since the proposed location also falls within five kilometers from the Reserve Forest Area of Kodur Reserve Forest and Kodur Red Sanders Plantation.

4. Learned counsel for the petitioner submits that under Rule 3 (1) of the AP Saw Mills (Regulation) Rules, 1969, no person shall install, erect or operate a saw mill for cutting, converting or sawing of timber without obtaining a licence for such installation from the Licensing Authority; under sub Rule (2) of Rule 3, no licence for setting up fresh saw mills within a distance of five kilometers from the boundary of any Forest under the

control of the Forest Department shall be granted, except when it is required for departmental use; and that sub Rule (2) of Rule 3 would apply only for setting up of fresh saw mills and not for shifting of existing saw mills as decided by a Division Bench of this Court in **Divisional Forest Officer, Kaghaznagar and another Vs. Sree Venkateswar Saw Mills, Kaghazanagar**^[1]. He contended that although G.O.Ms.No.91 dt.11-07-2006 had been issued by the State Government in consultation with the Central Empowered Committee appointed by the Supreme Court of India in W.P.No.202 of 1995 dt.30-10-2002 (*Sri T.N.Godavarman Thirumulpad Vs. Union of India and others*), there is no prohibition even in the said G.O. for shifting of saw mills from a place within the five kilometers radius from the forest area to another place within the same radius; that the said G.O. had been issued by the Government of Andhra Pradesh and is binding on the respondents; and therefore the impugned order should be set aside.

5. Learned Government Pleader appearing for respondents supported the impugned order while stating that the proposed site for shifting is within five kilometers radius from the forest area. He made reference to G.O.Ms.No.91 dt.11-07-2006 wherein it was laid down that no saw mill would be allowed to be shifted outside of five kilometers radius from the forest area to within the five

kilometers of forest area.

6. Since the petitioner is not seeking shifting of his saw mill from an area outside the five kilometers radius of the forest area to a site within the five kilometers radius of the forest area, this contention of the respondent is not tenable.

7. In **Divisional Forest Officer, Kaghaznagar and another** (supra), a Division Bench of this Court considered the AP Saw Mill (Regulations) Rules, 1969 and in particular Rule 3 (2) as well as Rule 5 (4). The said Rules state:

"Rule 3 (2):

No licence for setting up fresh saw mills within a distance of five Kms., from the boundary of any Forest under the control of the Forest Department whether notified or not shall be granted, except when it is required for Departmental use."

"Rule 5 (4):

In case the saw mill premises is to be changed, or when the machinery is to be shifted from one place to another within same forest division, such changes should not be done without prior approval of licensing authority."

8. The Division Bench, after considering these two rules, held that an existing saw mill could be shifted to another location within the same forest division after prior approval of the licensing authority i.e. 2nd respondent. The Bench rejected the submission of the learned Government Pleader for Forests in that case that the bar contained in sub rule (2) of Rule 3 applies the shifting of

the existing saw mills and held that said provision applies only for setting up fresh saw mills and that the use of the word 'fresh' occurred in sub rule (2) of Rule 3 cannot be ignored and should be given effect to.

9. G.O.Ms.No.91 dt.11-07-2006 had been issued by the State Government and it contains no prohibition for relocation within five kilometers radius from the forest area and the said G.O. also binds the respondents.

10. In this view of the matter, the action of 2nd respondent in passing the impugned order refusing shifting of petitioner's existing saw mill to another place within the five kilometers radius from the forest area cannot be sustained.

11. The Writ Petition is accordingly allowed and the impugned order is set aside. Since the contents of the order dt.04-04-2014 passed by 2nd respondent are identical with the contents of the subsequent order dt.05-05-2014 passed by 2nd respondent, the same is also set aside. The 2nd respondent is directed to permit the petitioner to shift the existing saw mill at Balanagar near bus stand Railway Kodur, YSR Kadapa District to the newly proposed location i.e. Door No.6/425, Besides Siddeswara Theatre, Vasantha Nagar, Railway Kodur village, YSR Kadapa District. This exercise shall be

completed within four (4) weeks from the date of receipt of a copy of this order. No costs.

12. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 30-11-2015

kvr

[\[1\]](#) 2002 (5) ALT 286 (D.B.)