

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

WRIT PETITION No.23471 of 2015

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ORDER:

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This Writ Petition is filed challenging the proceedings

dt.10-07-2015 of the 4th respondent rejecting the application of petitioner for shifting of existing saw mill from the premises bearing R.S.No.220/6 of G.Konduru village to R.S.No.220/6A of G.Konduru Village.

2. The petitioner had purchased the said Saw Mill-cum-Timber Depot from its previous owner Smt.Y.Udaya Lakshmi. The petitioner had submitted a letter requesting the change of ownership in her name on 02-04-2015. This was forwarded to the Forest Range Officer of Mylavaram and the latter was instructed to inspect the said saw mill-cum-Timber Depot and genuineness of the documents submitted by the applicant to 4th respondent.

3. Thereafter the Forest Section Officer, G.Konduru inspected the Sawmill-cum-Timber Depot and stated that the proposed site of the Sawmill is existing adjacent to the present existing sawmill premises and that the distance of the proposed site is 835 meters to the nearest Konduru Reserve Forest. The Forest Range Officer, Mylavaram

also inspected the Sawmill on 06-07-2015 and accepted the report of the Forest Section Officer, G.Konduru.

4. However, the application of the petitioner for shifting of the Sawmill was rejected referring to Rule 5(2) of the A.P. Sawmills (Regulation) Rules, 1969 (for short “the Rules”), G.O.Ms.No.91, Environment, Forests, Science and Technology (FOR.III) Department dt.11-07-2006 and letter of the Principal Chief Conservator of Forests (HoFF), Hyderabad vide Ref.No.1208/2007/V3 dt.10-03-2007. In the letter of the Principal Chief Conservator of Forests dt.10-03-2007 he had instructed not to allow any shifting or transfer of ownership for the existing sawmills that are situated within a distance of 5 K.M. of forest boundary.

5. Learned counsel for petitioner Ms.Y.Jhansi contends that the impugned order is contrary to law declared by this Court in **Divisional Forest Officer, Kaghaznagar and another Vs. Sree Venkateswara Saw Mills, Kaghaznagar**^[1], wherein this Court had categorically held that an existing saw mill could be shifted to another location within the same forest division with the prior approval of the licensing authority.

6. Learned Government Pleader appearing for respondents, however, supports the impugned order and insists that there is a prohibition for not only transfer of

ownership but also shifting of saw mill premises in the above proceedings.

7. I have noted the submissions of both sides.

8. Rule 3(1) of the Rules mandates that 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. Sub-rule (2) of Rule 3 directs no licence for setting up fresh saw mills within a distance of 5 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. Sub-rule (3) of Rule 3 directs that the distance of 5 Kms shall be computed from topo sheets as aerial distance as crow flies. Rule 5(2) of the Rules states that the licence granted under these Rules for saw mills located within five kilometers of forest boundary shall not be transferable, and sub-Rule (4) of Rule 5 directs that in case the saw mill premises is to be changed, or when the machinery is to be shifted from one place to another within the same forest division, such changes should not be done without prior approval of licensing authority.

9. A Division Bench of this Court in **Divisional Forest Officer, Kaghaznagar** (1 supra) interpreted Sub-rule (2) of Rule 3 and Sub-rule (4) of Rule 5 of the Rules and held

that an existing saw mill could be shifted to another location within the same forest division but only after prior approval of the licensing authority i.e. 4th respondent under Rule 5(4) of the Rules and the bar contained in sub-rule (2) of Rule 3 applies only for setting up fresh saw mills. The Bench rejected the submission of the learned Government Pleader that the bar contained in sub-rule (2) of Rule 3 would also apply to the sifting of the existing saw mills, and observed that the word “fresh” occurring in sub-rule (2) of Rule 3 of the Rules would be rendered redundant and surplusage, if this interpretation is accepted.

10. Subsequent thereto, the Supreme Court had an occasion to consider these aspects in the decision in **T.N.Godavarman Thirumulpad Vs. Union of India and others**^[2]. In the said judgment, the Supreme Court directed the State Governments to close down all unlicensed units established after 30-10-2002 forthwith and imposed moratorium directing that no State Government or Union Territory will permit the opening of any new Saw Mills, Veneer or Plywood Industry without prior permission of Central Empowered Committee (CEC).

11. Before the CEC, the issue of regularization of Wood Based Industries in Andhra Pradesh was discussed on

26-05-2006 with the A.P. State Forest Department Officials and a three member committee was constituted to examine the various issues. The CEC had directed the State Forest Department to issue transparent guidelines with the approval of the Government. The CEC, in its Minutes dt.30-05-2006, approved the said guidelines and these were notified by the Government vide G.M.Ms.No.91 Environment, Forests, Science and Technology (FOR.III) Department dt.11-07-2006. In this G.O., the State Government declared that the transfer of ownership by way of sale, inheritance, division of property, family arrangement and dissolution of partnership or by lease of Sawmill shall be allowed with the approval of the licensing authority. It further directed that no relocation shall be allowed into the area prohibited under Rules i.e. no saw mill shall be shifted from outside of 5 Km radius from the forest area to within 5 Km of forest area. It however stated that shifting will be allowed from within the 5 km of forest area to outside. It is pertinent to note that in this G.O., there is no prohibition for relocation of saw mills which are located within 5 km forest area. It is not as if the State Government was not aware, when it issued this G.O., of Rule 5(2) of the Rules which does not permit transfer of licence with regard to new mills located within 5 Kms of a forest boundary.

12. However, the 2nd respondent appears to have issued proceedings in Ref. No.1208/07/V3 dt.10-03-2007 after noticing the above Division Bench judgment of this Court and other decisions which have followed it, opining that G.O.Ms.No.91 dt.11-07-2006 requires a Revision. He sought clarification on the interpretation of Rule 5(4) of the Rules from the Government and till such clarification is received, he directed that all the licensing authorities shall not to take up any transfer of ownership or shifting of sawmills within 5 Kms of forest boundary.

13. It is not the case of respondents that any such clarification has been issued subsequent to this letter of 2nd respondent. Once G.O.Ms.No.91 had been issued by State Government after approval of the CEC and the said G.O. had specifically permitted transfer of ownership and did not prohibit shifting of existing sawmill within 5 Kms of forest area, it is not open to 2nd respondent to take a contrary view since he is bound by the said G.O.

14. The Forest Section Officer, G.Koduru had reported that the distance of the proposed site is 835 meters to the nearest Koduru Reserve Forest and this was also accepted by the Forest Range Officer, Mylavaram. Thus the place of shifting is also within 5 kms from the forest area. There is no prohibition in G.O.Ms.No.91 dt.11-07-2006 for such a shifting. The Division Bench of

this Court in **Divisional Forest Officer, Kaghaznagar** (1 supra) had considered the Rules and opined that existing saw mill could be shifted to another location within the same Division with the prior approval of the Licensing Authority. It may be that Rule 5(2) of the Rules prohibits transfer of licence granted under the Rules within 5 kilometers of forest boundary, but once G.O.Ms.No.91 dt.11-07-2006 is issued permitting such transfer, since latter G.O. is issued with the approval of the Central Empowered Committee and the State Government concerned, it has to be given effect to.

15. The views of the Principal Chief Conservator of Forests (HoFF), Hyderabad dt.10-03-2007 not to allow any shifting or transfer of ownership for the existing sawmills situated within a distance of 5 km of forest boundaries are not in consonance with G.O.Ms.No.94 dt.11-07-2006 or with the Division Bench of this Court in **Divisional Forest Officer, Kaghaznagar** (1 supra). Therefore, the

4th respondent cannot rely upon on it and reject the application of petitioner for shifting of sawmill purchased by her in R.S.No.220/6.

16. Although the learned Government Pleader sought to contend that the impugned order is correct and sought to sustain it on the ground that the distance to the proposed

place of shifting is not indicated, such a reason is not found in the impugned order.

17. As far as the transfer of ownership from Smt.Y.Udaya Lakshmi to the present owner of the saw mill in question is concerned, G.O.Ms.No.91 dt.11-07-2006 specifically permits the same.

18. Accordingly, the Writ Petition is allowed; the impugned order is set aside and 4th respondent is directed to accept the request of petitioner to record the change of ownership of the subject saw mill and also permit its shifting from R.S.No.220/6 of G.Konduru Village and Mandal to R.S.No.220/6A of G.Konduru Village and Mandal of Krishna District. This exercise shall be done within four (04) weeks from the date of receipt of a copy of this order. No costs.

19. As a sequel, miscellaneous petitions pending if any, in these Revisions shall stand disposed of.

JUSTICE M.S. RAMACHANDRA RAO

Date: 30-11-2015

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

[\[2\]](#) W.P.No.202 of 2005 dt.30-10-2002