

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6791 OF 2007

Devidas s/o. Babasaheb Khatake,
Age 65 years, Occ. Business and
Social work, R/o. Odigodri,
Tal. Ambed, Dist. Jalna.

.. PETITIONER

VERSUS

- 1] The State of Maharashtra
through its Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai
- 2] The Conservator of Forest,
Aurangabad.
- 3] The Deputy Conservator of Forest,
Aurangabad Region,
Aurangabad.
- 4] The District Forest Officer, Jalna,
District Jalna.

.. RESPONDENTS.

Mr. V.D. Sapkal, Advocate for petitioner
Smt. S.S. Raut, AGP for respondents.

**CORAM : S.V. GANGAPURWALA
& K.K. SONAWANE, JJ.**

DATE : 23rd JUNE , 2016.

ORAL JUDGMENT [PER S.V. GANGAPURWALA,J] :-

1] The petitioner had approached this court assailing the order dated 17.11.2007, so also, 13.9.2007, whereby, the petitioner was issued show cause notice on the basis of the letter dated 11.1.2005 to the effect that the business was carried out in the name of the dead person and as such, same should not be continued in the name of a dead person. During

the pendency of the writ petition, this Court permitted the petitioner to approach the Chief Conservator of Forests, by filing an appeal. The petitioner thereafter preferred an appeal before the Chief Conservator of Forest. Same was dismissed. Said order is also assailed in the present writ petition to the extent of observations which are against the petitioner.

2] Mr Sapkal, learned counsel for the petitioner strenuously contends that the communication dated 17.11.2007 stating that the business is being carried out in the name of a dead person and that the licence holder has died and that the legal heirs of the deceased licence holder have not applied for transfer, is erroneous. The original licence holder was one Mr. Dilawarkhan Dawarkhan Pathan. The licence was issued to him purportedly in the year 1987. the said licence was transferred in the name of the petitioner in the year 1989. Learned counsel submits that even the communication dated 12.9.2007 is incorrect and not sustainable. The original licence was issued by the Deputy Conservator of Forests after obtaining sanction from the Conservator of Forest in compliance with the notification dated 14.8.1981. Learned counsel submits that even in appeal, the Chief conservator of Forests accepted the said aspect. However, only on the ground that communication dated 11.1.2005 is binding upon him, has not interfered in the matter. Learned counsel submits that licence was validly issued in the name of the original licence holder and subsequently transferred in the name of the present petitioner. No illegality has been committed.

3] Miss Raut, learned AGP submits that licence is not issued by the Chief Conservator of Forest in view of the notification dated 16.7.1981 read with communication dated 11.1.2005. Said licence is issued by an incompetent authority and transfer on the basis of said licence is also illegal. The petitioner is not entitled to carry on the business on the basis of the said licence. Even this Court at Nagpur has upheld the communication dated 11.1.2005 and the notification dated 16.7.1981. In view of that, the petitioner does not have right to carry on the business on the basis of the licence transferred in his name.

4] We have considered the submissions canvassed by the learned counsel for the respective parties. From the facts on record, it is apparent that the licence to run the saw mill was issued in favour Dilawar Khan Pathan in the year 1987. Atleast same appears from the petition and the licence. Thereafter, the application made was for transfer of the said licence in the name of the petitioner and vide order dated 17.1.1989 the said licence stood transferred in the name of the petitioner. On perusal of the judgment of the Chief Conservator of Forests, it is manifest that prior approval of the Conservator of Forest was obtained vide office memorandum dated 9th July, 1987, pursuant to Government Notification dated 19th August, 1981. The Chief Conservator of Forests , in its order, has observed as under :-

"5.....

,,,,,The Clause 1 of statutory directions contained in Government Notification No. SWM. 1081/106836F-6, dated 16th July, 1981, relating to Hyderabad Transit of Forest Produce (Bombay) Rules, 1958 (similar directions have been issued in respect of Bombay Forest rules, 1942 as well as Bombay Transit of Forest Produce (Vidarbha Region and Saurashtra and Kutch Areas) Rules, 1960, reads as under :-

“Until further orders are issued by the State Government, no new licence under the said rule 23 shall be granted by the Divisional Forest Officer, except where a no objection certificate for the establishment of saw mill was given by the Forest Department, prior to the date of issue of these directions, and except with the prior approval of the Chief Conservator of Forests, provided that the following conditions are also satisfied :-

- (1) The application has purchased machinery or incurred financial or other liabilities of a substantial nature, prior to the date of issue of these directions.
- (2) The applicant has fulfilled other formalities relating to industrial licence, municipal licence, etc.

- (3) The saw mill is to be located at least 10 kilometers outside the boundary of any reserved or protected forest.

From here it is clear that the Divisional Forest Officer is competent to grant new licenses with the prior approval of the Chief Conservator of Forests in cases where the conditions prescribed in this clause are fulfilled. By directions contained in clause (a) of the Government Notification No. SWM. 1081/10683(c)/F6, dated 19th August, 1981, the directions issued under the Government Notification No. SWM. 1081/108636-F-6 dated 16th July, 1981 have been amended as follows :-

“In the said notification :-

- (a) for the words “the prior approval of the Chief Conservator of Forests” the words “the prior approval of the Conservator of Forests” shall be substituted.

Therefore, by virtue of this amendment, in place of the Chief Conservator of Forests, the Conservator of Forests became the authority by whose prior approval new licenses could be granted under clause I (reproduced above) of the directions contained in the Government Notification dated 16th July, 1981. Therefore, it is clear that the Conservator of Forests was competent authority after 19.8.1981 for granting approval for the issue of sawmill licenses under clause I mentioned above, and therefore, the license in question does not appear to suffer from any legal infirmity on the grounds of competency of the authority with whose prior permission the sawmill license in question has been issued. In view of the facts in the matter and this legal position, issue of the said sawmill license as well as the renewal of the same that has taken place from year to year subsequently after issue of the license was according to law.”

5] The said licence is issued in consonance with the notification dated 19.8.1981. The Chief Conservator of Forests while delivering the judgment in the appeal filed by the petitioner has observed that petitioner complies all the aspects of the matter and licence has been granted after following due process of law. But, only on the ground that the administrative instructions, as contained in the letter dated 11.1.2005 is binding upon him, as refrained from passing the order in favour of the petitioner. The said communication would not come in the way of the petitioner in view of the Government notification dated 19.8.1981, which states that the licence can be granted with prior approval of the Conservator of Forest and in the present case, as observed by the Chief Conservator of Forest in its order, that the licence was granted after prior approval of the Conservator of Forest.

6] No other ground is put forth by the respondents while passing the impugned order about location of saw mill etc. Two grounds on the basis of which action is sought to be taken against the petitioner are (i) licence was not issued by the competent authority and (ii) the business was being run in the name of a dead person, i.e. licence holder is dead. These grounds cannot be sustained in view of the aforesaid discussion.

7] In the light of that, the impugned orders are quashed and set aside. Rule is accordingly made absolute in terms of prayer clauses (B) and (F). This Court had passed an interim order on 15.3.2011 and the licence is renewed from time to time. As the impugned orders are quashed and set aside, the respondents shall consider the application of the petitioner and shall not reject it on the grounds on which the impugned orders have been passed.

[K.K. SONAWANE]
JUDGE

[S.V. GANGAPURWALA]
JUDGE.

grt/-