

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.2423/2014

Rajendra s/o Arvindbhai Thakkar and another

...Versus...

Chief Conservator of Forest, Chandrapur Forest Division, Chandrapur and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri A.S. Jaiswal, Sr. Adv. with Shri N.A. Padhye, Adv. for petitioners
Shri A.M. Joshi, AGP for respondent nos.1 and 2
Shri Rohit Joshi, Advocate for respondent no.3

**CORAM : SMT. VASANTI A. NAIK AND
MRS. SWAPNA JOSHI, JJ.**

DATE : 14.07.2016

By this writ petition, the petitioners challenge the order of the respondent no.2, dated 3.4.2013 cancelling the saw mill licence of the petitioners and the order of the appellate authority, dated 7.9.2013 upholding the order of cancellation of the licence.

Few facts giving rise to the petition are stated thus : -

The petitioner no.2 – Arvindbhai and the respondent no.3 – Dhirubhai are the real brothers. The petitioner no.1 – Rajendra is the son of Arvindbhai – the petitioner no.2. The saw mill licence No.34/66 was originally in the name of Manoharrao Vitthalrao Velankiwar from whom Arvindbhai had purchased the property in his own name and in view of the same, the licence was transferred in the name of Arvindbhai. After the licence was operated for some time in the name of Arvindbhai, the same was

transferred in the name of M/s Shriram Saw Mill through its proprietor Shri Rajendra Thakkar - petitioner no.1 herein. The respondent no.3 – Dhirubhai had filed a suit for dissolution of partnership of M/s Shriram Company, that was registered as Special Civil Suit No.7/2001. In the said suit, it was claimed by Dhirubhai – respondent no.3 that the saw mill licence was one of the properties of the partnership firm and neither Rajendra nor Arvindhbai were entitled to operate the licence. Dhirubhai prayed for dissolution of the partnership, rendition of the accounts of the partnership firm and a declaration that Dhirubhai and Arvindhbai have an equal share in the partnership properties. The suit was decreed by the trial Court on 26.4.2011. We are actually not concerned with the statements of facts recorded herein above and the correctness thereof as admittedly at the relevant time, when the suit was filed, the licence was operated by the petitioner no.1 – Rajendra and a restraintment order was sought by Dhirubhai – respondent no.3, restraining the petitioners from operating the same. After the suit was decreed by the trial Court, the Deputy Conservator of Forest, by the impugned order, dated 3.4.2013 cancelled the saw mill licence in favour of the petitioners. It is the case of the petitioners that this was done despite the operation of the order of stay, granted by the first appellate Court in an appeal filed by the petitioners against the judgment and decree of the trial Court, dated 26.4.2011 under Section 96 of the Code of Civil Procedure. The order of cancellation of the licence was challenged by the petitioners in an appeal before the respondent no.1. The appeal filed by the petitioners was dismissed. The petitioners have challenged the order of cancellation of the licence and the order in appeal in this writ petition. After the

decision in the appeal, that is, impugned in the instant petition, the judgment and decree passed by the trial Court in the suit filed by Dhirubhai was reversed by the first appellate Court by allowing the appeal filed by the petitioners, with costs.

Shri Jaiswal, the learned Senior Counsel appearing for the petitioners states that the order of the Deputy Conservator of Forest, dated 3.4.2013 is liable to be set aside as the very basis for passing the said order was the decree in the civil suit and the said decree is reversed, in view of the decision in the first appeal filed by the petitioners, on 2.4.2016. It is submitted, by referring to the order of the Deputy Conservator of Forest, dated 3.4.2013 that the said order is simply based on the judgment and decree passed in the suit filed by the respondent no.3 – Dhirubhai. It is stated that in view of the directions issued by the trial Court in the said suit, the Deputy Conservator of Forest had cancelled the saw mill licence by the order, dated 3.4.2013. It is stated that due to the subsequent development, that is, the decision in the appeal filed by the petitioners against the judgment and decree passed by the trial Court, the order of the Deputy Conservator of Forest, dated 3.4.2013 has to fall. It is stated that it would be necessary for the respondents – authorities to revoke/withdraw the order, dated 3.4.2013, in view of the judgment, dated 2.4.2016 in the appeal filed by the petitioners. It is stated that in the circumstances of the case, the orders are liable to be quashed and set aside.

Shri Joshi, the learned Assistant Government Pleader appearing on behalf of the respondent nos.1 and 2 admitted that the first order of the Deputy Conservator of Forest, dated 3.4.2013 was based on the judgment in the suit filed by

Dhirubhai. It is stated that since the trial Court had permanently restrained the present petitioners from carrying on the business of saw mill under licence No.34/66, there was no other course open for the Deputy Conservator of Forest but to cancel the licence in favour of the petitioners. It is fairly stated that in view of the subsequent development, that is, the decision in the first appeal, dated 2.4.2016, an appropriate order may be passed.

Shri Rohit Joshi, the learned Counsel for the respondent no.3 vehemently opposed the prayer made on behalf of the petitioners. It is stated that the actions on the part of the petitioners are tainted by fraud, inasmuch as, in the year 1968, the saw mill was the property of the firm and without seeking the consent of the respondent no.3 – Dhirubhai, who was also a partner of the firm, the saw mill licence was transferred to the proprietary firm of the petitioner no.2 and then to the proprietary firm of the petitioner no.1. It is stated that since the respondent no.3 – Dhirubhai is deprived of the property of the firm without his consent and the licence is transferred in favour of the petitioner nos.2 and 1 without the concurrence of Dhirubhai, this Court may not exercise the discretion in favour of the petitioners.

On hearing the learned Counsel for the parties, we find that it would be necessary to quash and set aside the impugned orders so as to permit the petitioners to operate the saw mill licence. Admittedly, the petitioners were operating the saw mill licence when the suit was filed by the respondent no.3- Dhirubhai and he had sought a permanent injunction restraining the petitioners from operating the saw mill licence. The said suit was decreed by the judgment, dated 26.4.2011. By the said judgment and decree, the trial Court had restrained the

petitioners from operating the saw mill licence. After the judgment and decree was passed in favour of the respondent no.3, the petitioners filed an appeal under Section 96 of the Code of Civil Procedure in the High Court and in the said proceedings, the judgment of the trial Court was stayed by the order, dated 5.7.2011. The stay order was continued by the High Court, on 1.3.2012 and when the matter was transferred to the District Court, in view of the enhancement of the pecuniary jurisdiction, the District Court also continued the stay by the order, dated 20.4.2013. Since a stay was operating against the judgment and decree passed in the suit of Dhirubhai, the Deputy Conservator of Forest could not have cancelled the licence of the petitioners, by the impugned order dated 3.4.2013. Though this fact was brought to the notice of the appellate authority, the appellate authority did not advert its mind to this relevant aspect of the matter and dismissed the appeal filed by the petitioners. Be that as it may, as already submitted on behalf of the petitioners, it would not be necessary to discuss in detail about the correctness or otherwise of the order passed by the appellate authority, as the judgment and decree passed in favour of Dhirubhai is reversed by the first appellate Court by the judgment, dated 2.4.2016, with the result, that there is no injunction restraining the petitioners from operating the saw mill licence. After the appeal was allowed by the judgment, dated 2.4.2016, it was necessary for the Deputy Conservator of Forest to take cognizance of the judgment in the appeal filed by the petitioners and withdraw the order of cancellation of licence, dated 3.4.2013 and permit the petitioners to operate the same. However, this was not done. We are firmly of the view that since the order of the Deputy Conservator of

Forest, dated 3.4.2013 was based solely on the judgment and decree dated 26.4.2011 in the suit filed by the respondent no.3 - Dhirubhai and since the said judgment and decree is reversed by the judgment of the appellate Court, dated 2.4.2016, the order of the Deputy Conservator of Forest, dated 2.4.2013 cannot be sustained. We do not find any merit, whatsoever in the submission made on behalf of the respondent no.3 – Dhirubhai that the petitioners would not be entitled to the relief as the petitioners have played fraud on the respondent no.3 and incidentally on the Court. These aspects are liable to be considered by the civil Court as the matter between the parties is pending in a second appeal filed by Dhirubhai against the judgment of the first appellate Court, dated 2.4.2016. The points that are canvassed on behalf of respondent no.3 – Dhirubhai in this petition, need to be canvassed before the second appellate Court, if permissible.

In the result, the writ petition is allowed. The impugned orders are quashed and set aside. The respondent nos.1 and 2 should take steps to permit the petitioners to operate the licence, within a period of four weeks. Order accordingly.

JUDGE

JUDGE

CERTIFICATE

I certify that this order uploaded is a true and correct copy of original signed order.

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