

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15308 of 2014

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Sri Ram Timber Peer Manshar Ramna Road Gaya Civil Lines, District Gaya through its Power of Attorney Holder namely Sri Anand Kishore Diwedi, Son of Sri Vidyanad Diwedi, Resident of Mohalla - Dakshin Darwaja, Police Station - Civil Lines, District- Gaya.

.... Petitioner

Versus

1. The State of Bihar through Secretary Environment and Forest Department Government of Bihar, Patna.
2. The Forest Protection Cum conservative Officer cum forest settlement Officer Gaya.
3. The Licencing Officer Cum Divisional Forest Officer, Gaya.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Pramod Kumar, Adv.

For the Respondent/s : Mr. Vivek Anand Amrithesh, AC to SC-28

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 08-12-2017

Heard Mr. Pramod Kumar, learned counsel for the petitioner and Mr. Vivek Anand Amrithesh, learned AC to SC-28 for the State.

The petitioner is aggrieved by the order dated 17.7.2014 of the Conservator of Forest cum Prescribed Authority, Gaya Circle, Gaya in Appeal Case No. 8/2014 bearing memo no. 1180 dated 26.7.2014, whereby the appellate authority while dismissing the appeal has affirmed the order dated 15.1.2014 of the Licensing Authority cum Divisional Forest Officer, Gaya, whereby the saw mill licence of the petitioner granted under the Bihar Saw Mill (Regulation) Act. 1990 and the Rules framed thereunder bearing Licence No. 119/1997 has been rejected, inter alia, in the light of the advisory issued by the Government of Bihar in its Environment and



Forest Department dated 22.10.2013, a copy of which is enclosed at Annexure 8 to the writ petition, whereunder the Divisional Forest Officer was required to examine the saw mill which was running under a Power of Attorney and whether the circumstances reflected a transfer of ownership. The orders passed by the Licensing Authority as affirmed by the Appellate Authority are impugned at Annexures 11 and 14 respectively to the writ petition.

The facts are not in dispute and it is not disputed that the saw mill in question was running under a Power of Attorney. In fact a similar allegation on this count led to issuance of a show cause, a copy of which is placed at Annexure 2 to the writ petition, bearing Memo No. 1304 dated 15.5.2010 of the Licensing Authority cum Divisional Forest Officer, Forest Division, Gaya, whereby the licensee was directed to appear and clarify on the operation of the saw mill on the basis of Power of Attorney. By the same order the operation of the saw mill was suspended. The licence was in the name of one Chandu Lal Patel, who appeared and filed a reply at Annexure 4 and the matter was examined by the Licensing Authority cum Divisional Forest Officer, Gaya who vide an exhaustive order bearing Memo No. 1270 dated 10.4.2013 dropped the proceedings so initiated against the licensee vide Annexure 6. The last paragraph of the order would confirm that no evidence could be placed before the licensing authority which would demonstrate that there was any change in



ownership by virtue of the Power of Attorney. The order dropping the proceeding also withdraws the stay order earlier passed. The proceeding initiated against the petitioner was dropped on 10.4.2013 and it is closely thereafter that an advisory was issued by the Secretary, Forest and Environment Department, bearing Memo No. 3873 dated 22.10.2013, whereby the Divisional Forest Officer(s) across the State were directed to examine operation of the saw mill run under a Power of Attorney and whether it reflected a change of ownership. A copy of the advisory is enclosed at Annexure 8 and although an allegation to such effect had already been examined and dropped against the petitioner vide Annexure 6 but on a mechanical application of the advisory that a second round proceeding was initiated against the petitioner for the same cause. A show cause was issued which was duly replied by the petitioner at Annexure 9 and which has resulted in the orders impugned at Annexures 11 and 14 passed by the Licensing Authority and the Appellate Authority respectively to cancel the licence of the petitioner simply on grounds that it was being run on the Power of Attorney and the licensee had no control thereon. Feeling aggrieved the petitioner is before this Court.

I have heard learned counsel for the parties and have perused the records and in the circumstances discussed I do not feel the necessity to go into the intricate details of the dispute for once the respondent authorities have examined the effect of the Power of



Attorney to conclude in the order present at Annexure 6 which very clearly confirms absence of evidence to support any change of ownership, neither the petitioner should have been put on notice simply because an advisory was issued by the Department to hold enquiry into a concluded issue nor the orders impugned demonstrate any change of circumstances to confirm a change of ownership. The orders passed are in mechanical obedience of the advisory present at Annexure 8 with no change in circumstances expressed to uphold the charge.

For the reasons discussed, the order dated 15.1.2014 passed by the Licensing Authority cum Divisional Forest Officer, Gaya Division, Gaya together with the order dated 17.7.2014 passed by the Appellate Authority cum Prescribed Authority, Gaya Circle, Gaya in Appeal Case No. 8/2014 communicated vide Memo No. 1180 dated 26.7.2014, impugned at Annexures 11 and 14, cannot be upheld and are accordingly quashed and set aside. The licence of the petitioner bearing Licence No. 119/1997 is restored.

The writ petition is allowed.

(Jyoti Saran, J)

Surendra/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	03.01.2018
Transmission Date	NA

