

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.24763 of 2013

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1. M/S Vishwakarma Furniture Works, P.G. Road, Jehanabad, A Proprietorship Firm through its Power of Attorney Holder Kapildeo Singh Son of Ramdahin Singh Resident of Village - Irki, P.S. Jehanabad, District - Jehanabad

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Environment & Forest Department, Government of Bihar, Patna
2. The Principal Chief Conservator of Forest, Bihar, 4th Floor, Technology Bhawan, Bailey Road, Patna
3. The Additional Chief Conservator of Forest-Cum-Chief Wildlife Warden, Bihar, Patna
4. The Divisional Forest Officer, Gaya Forest Division, Gaya
5. Biranj Devi wife of late Kanhai Mistri, resident of village Larsa, P.S. Parasbigha, District Jehanabad

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Mrigank Mauli, Adv.
Mr. Vinay Mistry, Adv.
For the Respondent/s : Mr. Kumari Amrita, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 13-10-2017

Heard Mr. Vinay Mistry, learned counsel for the petitioner and
Mer. Mithilesh Kumar Upadhyay, A.C. to G.P.10 for the State.

The writ petition was filed by the petitioner to question the advisory issued by the Secretary, Environment and Forest Department, Government of Bihar dated 22.10.2013 which inter alia directed the Divisional Forest Officers in the State to examine as to whether there is a change in ownership of a saw mill under a cover of Power of Attorney as according to the Secretary, such kind of transfer was in violation of Section 7(5) of the Bihar Saw Mills (Regulation)



Act, 1990 and the rules framed thereunder. A copy of such advisory is impugned at Annexure-9. The petitioner has also questioned a show cause notice issued pursuant thereto under the signature of the Divisional Forest Officer-cum-Licensing Authority bearing letter No. 4412 dated 14.11.2013 whereby the attorney holder has been noticed as to why the licence be not cancelled since the conditions of attorney present in the Power of Attorney practically was in the nature of transfer of ownership. While the writ petition is pending that final orders have been passed by the Divisional Forest Officer, Gaya cum-Licensing Authority on 15.01.2014 which has been placed on record vide Annexure-1 to I.A.No.1316 of 2014 and considering that it is consequential in nature that the prayer of the petitioner to question the same in the present proceeding is allowed and accordingly I.A.No.1316 of 2014 is allowed.

The facts are in a very narrow compass. The husband of the private respondent was the original licensee bearing License No. 51 of 1997 and on his death that the licence was transferred in the name of his widow, the private respondent herein. The licence has been renewed until 31.12.2013. Since the current licensee i.e the private respondent was not keeping good health to run the saw mill that she executed the power of attorney in the name of the Manager Kapildeo Singh for operating the saw mill and to do all lawful acts relatable



thereto. A copy of the power of attorney is placed at Annexure-3 and is dated 15.02.2009. It is not in dispute that since after 2009, for a period of 4 years the licence has been renewed through the attorney holder that is Kapildeo Singh without any objection which is also confirmed from the last renewal granted on 06.02.2013. In fact the entry made against serial No.1 clearly mentions the private respondent as the licensee, who has applied for renewal through Kapildeo Singh. In other words, the respondents with open eyes have renewed the licence of the petitioner for all the years since 2009 until the last renewal on 06.02.2013 vide Annexure-1 through the attorney holder.

In between this period an advisory was issued by the Forest Department on 22.10.2013 advising the Divisional Forest Officer to ensure as to whether any Saw Mill Licensee was practically transferring the ownership thereof in the form of Power of Attorney and for taking appropriate action in this regard. In my opinion, the Divisional Forest Officer, Gaya without applying his mind on the issue as to whether the advisory of the Secretary dated 22.10.2013 would be applicable in the present case and whether each case had to be tested in the light of the advisory, has mechanically applied the advisory to notice the petitioner vide Annexure-10 on 14.11.2013 and despite specific stand taken by the licensee as well as the attorney holder that the ownership remained with the licensee Biranj Devi yet



treating the Power of Attorney as a transfer of ownership with no evidence behind, has proceeded to cancel the licence vide order dated 15.01.2014 impugned at Annexure-1 to the interlocutory application and feeling aggrieved the petitioner is before this Court.

While it is the argument of Mr. Mistry learned counsel for the petitioner in placing reliance to the judgment of this Court reported in **2015(2)PLJR 211 (Champan Timber & Allied Product & Anr. Vs. the State of Bihar & Ors.)** to submit that the opinion expressed by the Bench in the said case would squarely apply to the present case, the position is contested by Mr. Upadhyay learned State counsel to submit that the facts are otherwise and in so far as the present case is concerned, there is a clear relinquishment by the petitioner.

I have heard learned counsel for the parties and I have perused the records. The only issue in my opinion, which requires consideration is whether there is any thing on record which would confirm relinquishment of ownership by the petitioner. In my opinion, there is none. The only document which has come handy with the Licensing Authority is the power of attorney placed at Annexure-3 and the Licensing Authority mechanically applying the advisory of the Secretary dated 20.10.2013 at Annexure-9, has treated the Power of Attorney as a transfer of ownership when there is nothing in the



power of attorney which would confirm any such transfer.

Surprisingly even when, the impugned order passed by the Licensing Authority clearly notices the stand of the licence holder where she specifically has stated that she has not transferred ownership and there is nothing in the order which contests the stand of the licence holder, yet he has rejected the stand of the licence holder. The opinion of the Licensing Authority that the Power of Attorney is a change of ownership is a presumptuous finding resting on no evidence. Rightly, Mr. Mistry has relied upon the judgment of this Court in the case of **Champan Timber** (supra) because even in the present case no objection was raised by the Licensing Authority on the Power of Attorney when they started to renew the licence of the private respondent on that basis right since 2009 until 2013 i.e. a period of 4 years though specifically noticing that the applicant for the renewal was the attorney holder. Meaning thereby, the renewal was being granted regularly and with open eyes, through the attorney holder and the only change in the circumstance is the issuance of the advisory dated 22.10.2013 which only required the Licensing Authority to apply his mind into the conditions of Power of Attorney and whether it would confirm a change of ownership. In my opinion the recitals of the power of attorney at Annexure-3 does not in any manner reflect a change in ownership. A categorical stand of the



licence holder Biranj Devi that she has not transferred the licence, has also not been contested with any supportive material. The order passed is thus mechanical without application of mind and is resting on no evidence.

In result, the order of the Licensing Authority-cum-Divisional Forest Officer dated 15.01.2014 impugned at Annexure-1 of I.A. No.1316 of 2016 is quashed and set aside.

The licence of the private respondent is restored and she shall be entitled to the renewal thereof all through, which should be granted within a period of six weeks from the date of receipt/production of a copy of this order.

The writ petition is allowed.

(Jyoti Saran, J)

Bibhash/-

AFR/NAFR	A.F.R.
CAV DATE	NA
Uploading Date	02.11.2017
Transmission Date	NA

