

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 13267 OF 2016

Shri. Digambar Shrikant Lohar	...Petitioner
<i>Versus</i>	
Deputy Forest Conservator, Kolhapur	
And Anr	...Respondents

....
Mr.Sandeep S. Koregave, Advocate for the Petitioner.
Ms. K.P. Kulkarni, AGP, for Respondents.

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CORAM : R. G. KETKAR, J.

DATE : 18th JANUARY, 2017

P.C.

1. Heard Mr.Sandeep Koregave, learned Counsel for the petitioner and Ms.K.P. Kulkarni, learned AGP for respondents, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as the 'plaintiff' has challenged the judgment and order dated 1.1.2016 passed by the learned Civil Judge, Senior Division, Kolhapur below Exhibit-5 in R.C.S. No.994/2015 as also the judgment and order dated 9.3.2016 passed by

the learned District Judge-4, Kolhapur in Misc. Civil Appeal No.12/2016. By these orders, the Courts below dismissed the application filed by the plaintiff for temporary mandatory injunction directing defendant No.1 to remove the seal of suit property No.1B.

3. In support of this Petition, Mr.Koregave submitted that the plaintiff's father Shrikant Lohar was holding license bearing No. 257/2013 (old No.P-93) in respect of the property described in paragraph-1B. Shrikant Lohar died on 6.12.2013. The plaintiff is one of the heirs of deceased Shrikant Lohar. He claims to have purchased the license by a sale deed dated 30.11.2010. It is the case of the plaintiff that he has moved applications on 31.12.2013 and 11.12.2014 for renewal of license of saw mill i.e. suit property No.1B. The plaintiff though repeatedly made applications for transfer of license in his name, defendant No.1 did not pass any order on these applications. He, therefore, submitted that by not deciding the applications within the prescribed period of limitation, the license is

deemed to have been granted. In support of this proposition, he relied upon Rule 88 of the Bombay Forest Rules, 1942. In particular Rule 88(2) lays down that any person desiring to establish a saw pit or to manufacture charcoal under clause (i), or to erect or operate any machinery or saw mill under clause (ii), of sub-rule (1) shall make an application in that behalf to the Range Forest Officer and Divisional Forest Officer, respectively. Proviso thereto lays down that where within a period of one month from the date of the application the applicant fails to receive the sanction under clause (i) of sub-rule (I), the applicant may proceed to establish the saw-pit or to manufacture charcoal, but not so as to contravene any of the provisions of the Act or any rules made thereunder. He submitted that as within one month from making application, defendant No.1 has not taken any decision, the license for running saw-mill is deemed to have been granted. He also relied upon the guidelines issued by the State Government and in particular clauses-8, 9 and 10 thereof. He submitted that the defendants did not decide the

applications made by the plaintiff for renewal of the license or transferring the license only on extraneous ground that other co-sharers have raised objections. He submitted that the Courts below were, therefore, not justified in dismissing the application.

4. On the other hand Ms.Kulkarni supported the impugned orders. She submitted that as on date the license does not stand in the name of the plaintiff after death of his father who was license holder. She further submitted that Regular Civil Suit No.251/2000 was instituted and the saw-mill was the subject matter of that suit. On 20.1.2010, the suit was decreed by the Court. It was held that the deceased Shrikant Lohar had 1/6th share in the said saw-mill. In other words, the deceased Shrikant Lohar was not sole owner of the saw mill.

5. I have considered the rival submissions advanced by learned Counsel appearing for the parties. I have also perused the material on record. The plaintiff has instituted suit *inter alia* for declaration that the action of defendant

No.1 in sealing the suit property on 24.9.2015 is illegal, void ab initio and contrary to the provisions of the Forest Act and for mandatory injunction directing the defendant to transfer the license in his favour. In the alternative to issue mandatory injunction against defendant No.1 to decide the plaintiff's application. The plaintiff also sought mandatory injunction against defendant No.1 to remove the seal. It is not in dispute that the plaintiff's father Shrikant Lohar was holding license for running saw-mill. He however died on 6.12.2013. The plaintiff came with the case that he had purchased the license by sale deed. With the assistance of Mr.Koregave, I have perused the said sale-deed. Perusal of the sale deed does not show that the plaintiff had purchased the license by that sale deed. What was purchased by the plaintiff is the property where the saw-mill is situate.

6. Mr. Koregave relied upon Rule 88(2) of the Rules. Relying upon this Rule, Mr.Koregave submitted that by not deciding the application within one month, the license

is deemed to have been granted in favour of the plaintiff. It is not possible to accept this submission. Rule 88(1) and (2) read thus :

“1(i) Within the limits of any reserved or protected forests (whether in charge of Forest or Revenue Department) or of any land in respect of which a notification under section 4 declaring that it has been decided to constitute such land a reserved forest has been issued, and within one mile of such limits, no person shall establish a saw pit for cutting or converting of timber or manufacture charcoal without the previous sanction in writing of the Range Forest Officers;

or

(ii) Within the limits of any reserved or any protected forest, or any land referred to in clause (i) and within “[eighty kilometers]” of such limits, no person shall erect or operate any machinery or saw mill for cutting or converting of timber, without obtaining a licence in that behalf.

2. Any person desiring to establish a saw pit or to manufacture charcoal under clause (i), or to erect or operate any machinery or saw mill under clause (ii), of sub-rule (1) shall make an application in that behalf to the Range Forest Officer and Divisional Forest Officer, respectively;

Provided that where within a period of one month from the date of the application the applicant fails to receive the sanction under clause (i) of sub-rule (1), the applicant may proceed to establish the saw-pit or to manufacture charcoal, but not so as to contravene any of the provisions of the Act or any rules made thereunder.”

7. Perusal of Rule 88(1)(i) shows that no person can establish a saw pit for cutting or converting of timber or manufacture charcoal without the previous sanction in writing of the Range Forest Officers, within the limits of any reserved or protected forests and within one mile of such limit. Rule 88(1)(ii) lays down that no person shall erect or operate any machinery or saw mill for cutting or converting of timber, within the limits of any reserved or any protected forest, or any land referred to in clause (i) and within eighty kilometers without obtaining a licence in that behalf. Rule 88(2) lays down that any person desiring to establish a saw pit or to manufacture charcoal under clause (i), or to erect or operate any machinery or saw mill under clause (ii), of sub-rule (1) shall make an application in that behalf to the Range Forest Officer and Divisional Forest Officer, respectively. Proviso thereto expressly makes it clear that where within a period of one month from the date of the application the applicant fails to receive the sanction under clause (i) of sub-rule (1), the applicant may proceed to

establish the saw-pit or to manufacture charcoal, but not so as to contravene any of the provisions of the Act or any rules made thereunder. Thus, the proviso expressly excludes clause (ii) of sub-rule 1 of Rule 88. In short, the deeming provision is not attracted in respect of erection or operation of any machinery or saw mill for cutting or converting of timber. I, therefore, do not find any merit in the submission of Mr. Koregave that in view of Rule 88(1) and (2) as the defendants have not taken decision on his applications, deemed to have been granted license.

8. Mr. Koregave also relied upon the guidelines issued by the State Government. Guideline No.8 provides that in the event of death of original licensee, L.Rs can make an application within 90 days for transferring the license. The guidelines, however, nowhere, lay down that in the event of failure of the Government machinery in deciding the application within the stipulated period, the license is deemed to be transferred. In view thereof, I do not find merit in the guidelines relied upon by Mr. Koregave in any

way assist him. Moreover licence is a privilege. It an be transferred only if rules so permit.

9. In the present case, the Courts below have refused to grant mandatory injunction as admittedly as of date the plaintiff does not have the license. Hence, no case is made out for invocation of powers under Article 227 of the Constitution of India. Petition fails and the same is dismissed. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)