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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.11120 OF 2014
WITH
CIVIL APPLICATION NO.2978 OF 2016

Mr. Yunus Munaroddin Kazi ... Petitioner
Vs.
The State of Maharashtra through
the Principal Secretary (Forest)
Revenue and Forest Department & Ors. ... Respondents

WITH
WRIT PETITION NO.11121 OF 2014
WITH
CIVIL APPLICATION NO.2980 OF 2016

Mr.Krushna Balasaheb Babar ... Petitioner
vs.
The State of Maharashtra through
the Principal Secretary (Forest)
Revenue and Forest Department & Ors. ... Respondents

WITH
WRIT PETITION NO.11122 OF 2014

Mr.Ismail Gafoorsab Chamkora ... Petitioner
vs.
The State of Maharashtra through
the Principal Secretary (Forest)
Revenue and Forest Department & Ors. ... Respondents

WITH
WRIT PETITION NO.11123 OF 2014
WITH

CIVIL APPLICATION NO.2981 OF 2016

Mr. Faridsaab Abbasali Harkare ... Petitioner

vs.

The State of Maharashtra through
the Principal Secretary (Forest)
Revenue and Forest Department & Ors. ... Respondents

WITH

WRIT PETITION NO.11124 OF 2014

Mr. A. Sattar Haji Jainoddin Hotgikar ... Petitioner

vs.

The State of Maharashtra through
the Principal Secretary (Forest)
Revenue and Forest Department & Ors. ... Respondents

.....

Mr. T. D. Deshmukh for the Petitioners in all Writ Petitions and for
Applicants in Civil Applications.

Ms. Aparna Vhatkar, AGP for Respondent Nos. 1 to 4.

.....

**CORAM : A.S. OKA &
A.K. MENON, JJ.**

DATE : 11th & 12th APRIL, 2017

PC.

1 Today the petitions are fixed for final hearing. For the sake
of convenience, we are referring to the facts of the case in Writ Petition
No.11120 of 2014. Barring few minor details, all cases are more or less
identical on facts. According to the case of the petitioner in Writ Petition
No.11120 of 2014, the petitioner was running a saw mill which was

established prior to 16th July, 1981. Admittedly, the saw mills which are the subject matter of these petitions are located within the distance of 10 kilometers from the boundary of either a reserved or a protected forest.

2 The petitioner in Writ Petition No.11120 of 2014 is relying upon the order dated 14th December, 1981 passed by the Chief Conservator of Forests, Maharashtra State, Pune by which a direction was issued to the Sub-Divisional Forest Officer, Drought Prone Area Programme, Solapur to issue a saw mill licence to the petitioner.

3 The petitioner is relying upon the judgment and order dated 7th February, 2002 by a Division Bench at Nagpur in Writ Petition No. 3652 of 2001 (Nagpur Timber Merchants Association and Anr. vs. The State of Maharashtra and Ors.). In the said Writ Petition, there is a reference to a notification issued on 16th July, 1981 containing the directions regarding the grant of new licence under Rule 23 of the Bombay Transit of Forest Produce (Vidharbha Region and Saurashtra and Kutch Areas) Rules, 1960. One of the issues before the Bench at Nagpur was whether the direction dated 16th July, 1981 was prospective. The operative part of the judgment and order of the Bench at Nagpur is in paragraph 16 which reads thus :

“16. We are firmly of the opinion that all these petitions can be disposed of with the following directions:-

- (i) The show-cause notices issued by the Government in obedience to the orders of interim nature passed by this Court, are hereby quashed.
- (ii) It is hereby declared that the Notification dated 16th July, 1981 is prospective in nature and it cannot be applied to Saw-mills established prior to that date. There is, therefore, no question of the Saw-mills existing prior to 16th July, 1981 being disturbed in any manner.
- (iii) The submission of the Government to permit them to amend the notification dated 16th July, 1981 by inserting direction (1-A) as stated in paragraph 9 of the written submissions and to insert the explanation below condition (3) as stated in paragraph 10 of the written submissions as per the decision of the cabinet is accepted and the Government is permitted to amend the said Notification accordingly.
- (iv) The State Government shall consider renewals of all existing Licences or Licences which were in existence prior to 16th July, 1981 in the light of observations made in this judgment.

- (v) The stand of the Government in respect of Saw mills which were established prior to 16th July, 1981 but were re-located subsequent thereto within 10 kms radius from the reserved/protected forest is that they are governed by the Notification dated 16th July, 1981. However, it is the contention of the petitioners that such re-location does not attract the aforesaid notification if they were holders of a valid licence prior to 16.7.1981, this question is left open and the State Government shall decide the issue when the show cause notices are issued to such licensees. The parties would be at liberty to agitate this question further, if the occasion so arises. It has already been decided by the State actually that before revoking the Licences or refusing to renew the Licences, procedure of following the principles of natural justice will be observed.
- (vi) The State Government shall permit re-location of the saw-mills beyond 10 kms from the reserved / protected forest.
- (vii) Any of the contentions raised in any of these petitions, but not specifically dealt with by this order, will remain open for the respective petitioners if and when the occasion to raise them arises.

Rule is made absolute in the light of directions made hereinbefore. There shall be no orders as to costs.”

4 It appears that on the basis of clause (iii) of paragraph 16, an amendment was carried out to the notification dated 16th July, 1981 by adding clause (1A).

5 The present petitioners filed Writ Petition No.80 of 2014 and other connected matters before this Court. The petitions were disposed of by order dated 6th August, 2014. The challenge in the said petitions was to the orders of the Appellate Authority (the Chief Conservator of Forest, Nagpur). In the said Petitions, a reliance was placed on the aforesaid decision of the Bench at Nagpur. By setting aside the orders of the Appellate Authority, the matters were remanded in terms of the directions contained in the judgment and order dated 6th August, 2014. Paragraph 9 of the judgment and order reads thus:

“9. It is true that the Appellate Authority was under an obligation to decide the appeal in terms of the law laid down by this Court and in particular the declaration granted by this Court in Writ Petition No. 3652 of 2001 that the notification dated 16th July, 1981 is prospective in operation and the same cannot be applied to the saw mills established prior to that date. There is no specific finding recorded

by the Appellate Authority on the issue whether the saw mills of the petitioners were established before 16th July, 1981. The applicability of the law laid down as above will depend upon the petitioners establishing the fact that their saw mills were established prior to 16th July, 1981. Therefore, the impugned order will have to be set aside and the Appellate Authority will have to be re-directed to rehear the appeals.”

6 Thereafter, on the basis of the said order passed by this Court, on 21st October, 2014, the impugned order has been passed by the Chief Conservator of Forest (Regional), Pune. In the impugned order, the Chief Conservator of Forest, Pune has observed that though requisite no objection certificates for running saw mill appear to have been obtained by the petitioner prior to 16th July, 1981, by an order dated 14th December, 1981, the Chief Conservator of Forest has granted permission for issuing license to the petitioner. It is observed that the saw mill of the petitioner is within the distance of 10 kilometers from a reserved forest. Therefore, the prayer made by the petitioner for renewal of the saw mill license was rejected. It is this order which is impugned in Writ Petition No.11120 of 2014. In Writ Petition No.11121 of 2014 the challenge is to the similar order dated 21st October, 2014. In this case, the petitioner relied upon various no objection certificates and order dated 6th August, 1998 passed by the Chief Conservator of Forest

giving clearance for grant of license to run saw mill to the petitioners. The challenge in the other petitions is to similar orders of the Appellate Authority.

7 Affidavits have been filed in Writ Petition No.11120 of 2014. The first affidavit filed is by Shri Subhash Balkrushnna Badve, the Deputy Conservator of Forest, Solapur. There is a second affidavit tendered by Shri Vinay Vyankatrao Paralkar, Assistant Conservator of Forests, Solapur Forest Division, Solapur in which it is accepted that the saw mills of the petitioners in this group of Petitions were in existence on 16th July, 1981. It is, however, contended that none of them were holding requisite licenses as on that date.

8 The learned counsel appearing for the petitioners has taken us through the impugned orders. His first submission is that the orders which were impugned in Writ Petition No.80 of 2014 and other connected matters were passed by the Principal Chief Conservator of Forests of Maharashtra State, Nagpur and therefore, after the order of remand was made by this Court on 6th August, 2014, only the said officer who was the Appellate Authority could have heard the appeals after remand. He submitted that in all these cases, the appellate orders have been passed by the Chief Conservator of Forest (Regional), Pune.

He invited our attention to the judgment and order dated 7th February, 2002 delivered by a Division Bench of this Court at Nagpur and urged that once it is found that the saw mill was in existence as of 16th July, 1981 within a distance of 10 kilometers from a reserved forest, the State Government was under an obligation to grant renewal of license of the saw mill which was in existence prior to 16th July, 1981. He invited our attention to the order dated 16th July, 1981 as amended. He invited our attention to clause 4 of the said order issued by the State Government conferring a plenary power on the Chief Conservator of Forest to approve the grant of a new license by a Divisional Forest Officer in a case where he is satisfied that such grant of license is necessary to remove genuine and extreme hardship to an applicant or in public interest. He invited our attention to the order dated 14th December, 1981 passed by the Chief Conservator of Forest, Maharashtra State, Pune in favour of petitioner in Writ Petition No.11120 of 2014. He submitted that this order shows that the power under clause 4 has been exercised by the Chief Conservator of Forest. He invited our attention to several orders passed showing that licenses were ordered to be renewed in respect of similarly situated saw mills which were in existence on 16th July, 1981 but which were not holding saw mill licenses as of that date. He submitted that only in these cases that a different interpretation has been adopted by the Forest Department. He

would urge that there was no reason to single out the case of the petitioners in these petitions. He submitted that on plain reading of the judgment of this Court in Writ Petition No.3652 of 2001, the case of the petitioners for renewal of license ought to have been considered especially when saw mills run by the petitioners were admittedly functioning on 16th July, 1981. He relied upon Rule 88 of the Bombay Forest Rules, 1942 in support of his submissions. The learned AGP justified and supported the orders passed by the Chief Conservator of Forest.

9 We have carefully considered the submissions. Firstly, we must make a reference to the aforesaid judgment and order dated 7th February, 2002 of the Bench at Nagpur. We have already quoted the directions issued by the Division Bench in paragraph 16 of the judgment. In the judgment, the Division Bench recorded a statement of the learned Advocate General that the order dated 16th July, 1981 issued by the State Government will not be applied or implemented in relation to any saw mill which was established prior to the date of the order. In fact, he sought a clarificatory order from the Court. That is the reason why in clause (iii) of paragraph 16 of the judgment, the Division Bench permitted the State Government to amend the order dated 16th July, 1981 by inserting paragraph (1-A).

10 Clause (ii) of paragraph 16 of the said judgment holds that the notification dated 16th July, 1981 is prospective and it cannot be applied to saw mills established prior to that date. What is of importance is clause (iii) wherein the Division Bench expressly approved insertion of clause (1-A) as stated in the written submissions filed by the State Government. Clause (iv) of paragraph 16 contains a direction to the State Government to consider renewal of all existing licenses which were in existence prior to 16th July, 1981 in the light of the observations made in the judgment. Thus, the direction to renew the licenses in respect of saw mills in existence on 16th July, 1981 was in respect of the saw mills which were having licenses as on 16th July, 1981. Now, we may make a reference to the notification dated 16th July, 1981 and in particular clause 1 thereof which reads thus:-

“1. Until further orders are issued by the State Government, no new licence under the said rule 88 shall be granted by the Divisional Forest Officer, except where a no objection certificate for the establishment of a 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 Conservator of Forests,] provided that the following conditions are also satisfied :-

(1) The applicant has purchased machinery or incurred financial or other liabilities of a substantial nature, prior to the date of issue of these directions.

[(1A) The direction no.1 shall not apply for the renewal of the licences in respect of the saw mills, which have been erected or operating prior to the 16/7/1981 under valid licenses.]

- (2) The applicant has fulfilled other formalities relating to industrial licence, municipal licence, etc.
- (3) The saw mill is to be located at list 10 Kilometers outside the boundary of any reserved or protected forest.

[Explanation : For the purpose of condition no.3, while measuring the distance of 10 Kms. for the saw mill from the boundary of any forest, the shortest distance by the road shall be taken into consideration.] ”

11 Clause (1-A) was approved by the Division Bench which specifically provides that the direction No.1 shall not apply for renewal of licenses in respect of the saw mills which have been erected or operating prior to 16th July, 1981 under valid licenses. The reason for approving clause (1-A) is very apparent on conjoint reading of clauses (ii) and (iv) of the paragraph 16 of the judgment. The Division Bench held that the order/notification dated 16th July, 1981 will not apply to saw mills established prior to 16th July, 1981 which were holding

licenses. Therefore, clause (iv) contains a specific direction to the State Government to renew licenses which were in existence prior to 16th July, 1981. There is no direction issued by the Division Bench to grant licenses to saw mills which were functioning prior to 16th July, 1981 but without obtaining licenses on or before 16th July, 1981. In fact, this interpretation of the said judgment and order is already accepted by the Division Bench of this Court in the judgment and order dated 16th October, 2009 in Writ Petition No.4520 of 2005 and other connected matters. In paragraph 6, the Division Bench observed thus :-

“no unlicensed sawmill can be allowed or regularised. Use of word “existing licenses or licenses which were in existence” in paragraph 16(iv) by Division Bench of this Court has no impact on words “established” used in its paragraph 16 (ii). If this Court wanted to cover even illegal or unlicensed sawmills in said sub-para (ii), it would not have mentioned only “ex” or “present” licence holder sawmills in sub-para (iv). Decision taken on 16/7/1981 is for conservation of Forest and hence, intention to protect or continue sawmills whose existence was legally unknown cannot be read into in and has not been read into it. By subsequent amendment dated 19/8/1981 by adding clause (3) a limited protection has been given to such illegal sawmills provided they were actually in operation on 16/7/1981. It is policy decision operating subject to fulfillment of certain conditions and judgment dated

7/2/2002 has not in any way modified that policy decision.”

(underline supplied)

12 Clause (1-A) which we have quoted above which is a part of order dated 16th July, 1981 and which was incorporated on the basis of the judgment and order dated 7th February, 2002 reiterates the aforesaid position.

13 Even assuming that in some other cases, the State Government has granted licenses to the similarly placed saw mills which were not possessing licenses as on 16th July 1981, that will not help the petitioners as the said action is not in terms of the aforesaid judgment of this Court and amended order dated 16th July, 1981.

14 In Writ Petition No.11120 of 2014, the petitioner relied upon an order dated 14th December, 1981 and contended that clause 4 of the order dated 16th July, 1981 has overriding effect. He urged that the direction issued under the order dated 14th December 1981 by the Chief Conservator of Forest is issued in exercise of power under clause 4. We have perused clause 4 of the said order. Clause 4 can be invoked when the Chief Conservator of Forest is satisfied that grant of such license is necessary to remove genuine or extreme hardship to the

applicant or when grant of such a license is in public interest. No such satisfaction is recorded in the order dated 14th December, 1981. It is not the case of the petitioners in the other Petitions that while passing a similar order, the Chief Conservator of Forest has recorded a satisfaction which is required to be recorded in terms of clause 4.

15 Hence, we find absolutely no merit in these Petitions. Therefore, it is not necessary for us to consider the issue whether the Chief Conservator of Forest (Regional), Pune was the Appellate Authority.

16 Hence, we pass the following order :-

ORDER

- (i) Writ Petitions are rejected. Pending Civil Applications do not survive and the same are disposed of;
- (ii) Rule is discharged with no order as to costs;
- (iii) The learned counsel appearing for the petitioners prays for continuation of ad-interim relief granted on 14th January, 2016. The prayer is opposed by the learned AGP. We direct the ad-interim will continue to operate for a period of three months from today.

(A.K. MENON, J)

(A.S. OKA, J)