

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1015 of 2017

In

Civil Writ Jurisdiction Case No.9484 of 2015

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Santosh Kumar Sharma, Son of Late Ram Sevak Thakur, Resident of Village-Bajitpur, P.s. Manigacchi, District-Darbhangha.

... .. Appellant/s

Versus

1. M/s Upendra Saw Mill, Bajitpur, Manigacchi, District-Darbhangha a Proprietorship Firm through its Proprietor Phulo Devi, Wife of Late Upendra Thakur, Resident of Village-Bajitpur, P.s. Manigacchi, District-Darbhangha.
2. The State of Bihar, through the Principal Secretary, Environment and Forest Department, Govt. of Bihar, Patna.
3. The Principal Chief Conservator of Forest, Bihar, 4th Floor, Technology Bhawan, Baily Road, Patna Secretary, Human Resources Development Department Govt. of Bihar, Patna.
4. The Sub-Divisional Officer-cum-Divisional Forest Officer, Mithila Forest Division, Darbhanga.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. R.S. Ganguly, Advocate Mr. Md. Shahnawaz Ali, Advocate
For the Respondent/s	:	Mr. Ankit Katriar, AC to AAG13

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

6 27-11-2018

I.A. No. 5037 of 2017

This interlocutory application has been filed for condoning the delay of 88 days in filing this Letters Patent Appeal.

Having heard learned counsel for the parties, we are persuaded to condone the delay, which is accordingly, condoned.



I. A. No. 5037 of 2017 is hereby allowed.

With the consent of the parties this Letters Patent Appeal has been taken up for consideration on merit.

Heard Mr. Ravi Shankar Ganguly, learned counsel for the appellant and Mr. Ankit Katriar, AC to learned AAG-13.

The appellant is aggrieved by the order dated 18.03.2017 passed by learned Single Judge in C.W.J.C. No. 9484 of 2015 whereby the writ petition was allowed with direction to the Licensing Authorities under the Bihar Saw Mill Regulation Act, 1990 (hereinafter referred to as 'the Act') and the rules framed thereunder, to renew the license of the writ petitioner which had been refused inter alia on the grounds that the Saw Mill of the writ petitioner did not figure in the merit list of the Saw Mills existing in the district.

Facts of the case in brief is that a Saw Mill License under 'the Act' and the Bihar Saw Mill Regulation Rules, 1993 (hereinafter referred to as the 'Rules') was issued in the name of the husband of the writ petitioner Fulo Devi namely Upendra Thakur. The Saw Mill license so issued was in connection with the Mill existing on a plot bearing Khata No. 80 and Khesra No. 4351, Village Bajitpur in the district of Darbhanga through the proprietor. In a family arrangement, the plot of land on which



the Saw Mill was existing fell in the share of the brother of Upendra Thakur namely Ram Sevak Thakur who is the father of the appellant. It is in consequence of such development and family arrangement that an application was filed by the father of the appellant namely Ram Sevak Thakur claiming license for the Saw Mill. Such application was rejected by the statutory authority which has led to filing of a Writ petition bearing C.W.J.C. No. 13041 of 2012. The writ petition was disposed off vide order passed on 31.07.2012 with a direction to the father of the appellant Ram Sevak Thakur to approach the competent statutory authority under 'the Act' who in turn was to dispose of the application in accordance with law.

On the other hand, on the death of Upendra Thakur, his widow i.e. the respondent- writ petitioner approached the licensing authority-cum-Divisional Forest Officer, Mithila Forest Division, Darbhanga claiming transfer of license in her name on the death of her husband. One important aspect of the matter is that since by virtue of the family arrangement discussed above the plot of land on which the Saw Mill was earlier running i.e. plot bearing Khata No. 80 and Khesra No. 4351 fell in share of the father of the appellant, it was shifted to plot bearing Khata No. 284, Khesra No. 4833 within the same



village albeit without obtaining necessary permission from the statutory authority, who in consideration of the submission advanced by the contesting parties and taking note of the undisputed fact that the Saw Mill had been shifted to a plot different from which the license was granted, and that the present appellant who was son of Late Ram Sevak Thakur was running a Saw Mill on the original plot but without any license, rejected the claim advanced by the present appellant. Insofar as running of the Saw Mill on a different plot is concerned, the licensing authority taking note of this fact but also bearing note of the plea advanced by the widow that the Saw Mill was her only source of livelihood, on remand renewed the license for the period 2013-14.

The aforesaid aspect of the matter would confirm that a conscious decision was taken by the licensing authority under 'the Act' to grant sanction to the Saw Mill license even after noting the shifting of the situs of the Saw Mill from the plot so mentioned in the license to a different plot. The writ petitioner, who is the widow of original licensee Upendra Thakur, operated the Saw Mill under the renewal so granted and applied for fresh renewal on its expiry on 31.12.2014. The application for fresh renewal application was rejected on 31.12.2014 by the licensing



authority not on grounds of shifting of the Mill to a different plot but on the ground that the merit list so prepared of the Saw Mill in the district did not contain the name of the Saw Mill in question.

The dispute thus, which came up for consideration before the learned Single Judge was whether the failure of the Saw Mill of the writ petitioner to appear in the merit list of the Saw Mills in the district can be held a reasonable ground for rejection of a renewal. The appellant herein tried to intervene into the writ proceedings by filing an interlocutory application bearing I.A. No. 1550 of 2016. According to the appellant-intervener, the license ought not to have been transferred in the name of the widow on its shifting from the original place and thus, the cancellation was valid.

The learned Single Judge placing reliance on an opinion of Division Bench recorded in L.P.A. No. 1216 of 2015 as to whether any of the Saw Mill which was running under a valid license could be excluded from the merit list or refused renewal simply because the name did not occur in the merit list, accepted the prayer of the petitioner for renewal as well as to interfere with the order of refusal of renewal. Since the foundation of the opinion of the learned Single Judge rests on



the opinion of the Division Bench in L.P.A. No. 1216 of 2015, we are persuaded to reproduce the paragraph so relied upon which reads as follow:

“It is, no doubt, true that the High Court would be slow to entertain the writ petition when the petitioner has an effective alternative remedy by way of statutory appeal. However, there are certain well- recognized exceptions to that. One of them is where order is passed in violation of principles of natural justice; and the other is where the order is passed wholly without jurisdiction. Apart from these two, there are certain other exceptions also.

In the instant case, it is not in dispute that the saw mills were established more than a decade ago, after obtaining the licenses from the competent authority. In case there is any violation on their part, the licenses can be cancelled by initiating the proceedings. Further, if the petitioners did not qualify for renewal, the reasons must be stated.

One strange reason assigned in all the orders refusing renewal is that the names of the saw mills of the appellants do not figure in the list of selected saw mills. The relevant law does not provide for preparation of such a select list. If an exercise of that nature was undertaken, it was fundamental that all the functional saw mills were given opportunity to put forward their cases. There cannot be any unilateral preparation of select list and denial of license on that basis.

We, therefore, allow the Appeal.



Consequently, the writ petition is allowed and the individual orders dated 8.4.2015, served to the petitioners (appellants herein) are set aside. The 5th respondent, i.e. the Licensing Authority, shall give an opportunity to the petitioners to represent their cases and shall also indicate the basis on which the list of selected saw mills was prepared. In case the petitioners were not found to have violated any provisions of law, they shall be granted renewal without any delay. Till such time, the appellants shall be entitled to run the mills, duly following the relevant provisions of law and conditions of license.”

The order of the Division Bench by itself is sufficient to hold that the refusal of renewal of the license of the writ petitioner is unsustainable inter alia on the ground that it did not figure in the merit list.

In the circumstances, so noted, the order of the learned Single Judge to quash the order dated 31.12.2014 bearing memo no. 2329 whereby the renewal was refused by the licensing authorities suffers no illegality. Insofar as the interlocutory application filed by the appellant is concerned, the learned Single Judge was of the rightful opinion that in the nature of dispute which fell for consideration before the learned Single Judge, the intervenor-appellant had no locus to intervene because it was a refusal of renewal of a license standing in the



name of the writ petitioner which was a subject matter of challenge and not a grant thereof.

According to Mr. Ganguli, standing in support of the appellant, he has questioned the grant of license in favour of the widow and the original licensee, Upendra Thakur, in a separate writ petition and in our view, since the issue has already been raised by this appellant in an independent proceeding, there was no occasion for him to intervene in a proceeding which had no relation to the issue of grant because the license is already transferred in the name of widow and it is for the renewal thereof that the writ petition was filed by the widow.

For the reasons and discussions above, we are satisfied to record that the judgment and order of the learned Single Judge suffers no infirmity requiring interference of this Court. The opinion of the learned Single Judge not to entertain the interlocutory application filed by the appellant-intervener also does not require any interference because even in our opinion the appellant-intervener had no locus to oppose the renewal

Since the appellant has already filed an independent proceeding to question the grant of license to the widow of the original licensee, he shall be at liberty to raise all issues as



raised in the present appeal, before the writ court in the pending writ petition.

In result, this appeal is dismissed with the observations aforesaid.

All the interlocutory applications stand disposed of.

(Jyoti Saran, J)

(Rajeev Ranjan Prasad, J)

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