

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 39898 of 2018

ORDER:

- 1) Heard the learned counsel for the petitioner; learned Government Pleader for official respondents and learned counsel for the unofficial respondents
- 2) The present Writ Petition came to be filed seeking issuance of writ of mandamus declaring the proceedings of the 2nd respondent in Rc.No.5051/2003 dated 08.10.2018 as illegal, improper and incorrect.
- 3) The petitioner herein started his Saw Mill in the year 2001 in the name and style of M/s.Mubarak Saw Mills, in Adoni Town. As the property was standing in the name of the father of the petitioner, hence he executed a lease deed in favour of the petitioner (son) so as to enable the petitioner to obtain a saw mill licence from the authorities. The said licence was renewed from time to time and lastly such renewal was made on 25.03.2015 for a period of three years till 31.12.2017. Thereafter, revised rules under Forest Act came to be in force and as per G.O.Ms.No.48 dated 08.05.2018, every licensee has to obtain a new licence. Rule 4(1)(a) of the A.P. Wood Based Industries (Establishment and

Regulation) Rules 2018 (hereinafter referred to as "Rules") prescribe that the licensee has to produce title deed or lease deed from the owner of the premises, for renewal of the licence. Meanwhile, differences arose between the family members, more particularly, between the father of the petitioner, who is the 4th respondent herein and the petitioner. The 4th respondent is said to have executed a gift deed in favour of the 5th respondent, who is the brother of the petitioner in respect of the property where the saw mill was running from 25.05.2001 onwards. Having regard to the factual situation, the petitioner filed O.S.No.12 of 2018 seeking declaration of title and for consequential injunction against his father and brother i.e., respondents 4 and 5. By its order dated 13.04.2018, temporary injunction was granted restraining the respondents from interfering with the subject property. The said injunction order is still in force. It is stated that 4th and 5th respondents gave a notice to the official respondents not to renew the licence in favour of the petitioner having regard to the disputes between them. Pursuant to which, the second respondent issued a notice dated 15.07.2018 requesting the petitioner to produce the required documents for renewal of the licence. A reply came to be issued by the petitioner enclosing a copy of the order passed by Civil Court. Not being satisfied with the same, the

impugned order came to be passed refusing to renew the licence, which is subject matter of challenge in the present writ petition.

4) The main ground urged by the learned counsel for the petitioner is that since the ownership of the property is subject matter of dispute between the family members and having regard to the fact that licence came to be issued in respect of the very same property basing on the lease deed executed by the father of the petitioner, he pleads that it would be just and proper to renew the licence in favour of the petitioner. According to him, the order of injunction granted in favour of the petitioner satisfies the requirement of Rule 4(1)(a) of the Rules.

5) A counter came to be filed by the 4th respondent disputing the averments made in the affidavit filed in support of the Writ Petition. As per the counter, earlier O.S.No.2 of 2012 came to be filed by the petitioner for permanent injunction against another brother viz., Maistry Ghouse Basha in respect of the property comprising in Dr.No.16/13-2, Machavaram road, Adoni town, but the same was dismissed on 19.02.2015. Aggrieved by the same, an appeal was filed vide A.S.No.40 of 2015, which is pending before the II Additional District Judge, Kurnool. Thereafter, O.S.No.12 of 2018 came to be filed in respect of the land in dispute seeking

declaration. It is stated that in respect of the same property, the petitioner approached different courts with different pleas, as such the petitioner is not entitled for any relief and that the authorities were right in refusing to renew his licence.

6) From the narration of the facts referred to, it is very clear that there exist a dispute over the property, between the family members. Initially, when everything was going well in the family, the father executed a lease deed in favour of the son, which enabled the petitioner to obtain licence and he has been running the saw mill since then. Later on, disputes arose between the family members, which lead to filing O.S.No.2 of 2012 against one of the brothers in respect of the property bearing Dr.No.16/13-2, Madhavaram road, Adoni town, which was dismissed and O.S.No.12 of 2018 is filed in respect of the subject property in which there is an order of injunction in favour of the petitioner.

7) Rule 4 of the A.P. Wood Based Industries (Establishment and Regulation) Rules 2018 postulate that any person desiring to install or erect or operate a wood based industry shall make an application in Form-I enclosing copies of the following documents:

- (a) Title deeds or lease deed of the premises or an undertaking by the applicant that the premises of wood based industry are on lease from the land owner.

- (b) Copy of Factory licence, if any,
- (c) Copy of GST registration
- (d) Copy of Pa Card
- (e) Copy of Aadhar card of applicant
- (f) Copy of location sketch of the premises.

8) Rule 4(3) of the Rules state that every proprietor of an existing wood based Industry shall obtain a licence from the Licensing Authority within sixty days from the date of publication of these rules and any existing wood based Industry should not be operated beyond sixty days from the date of publication of these rules without a valid licence under these rules.

9) Therefore, to obtain a valid licence under the new rules, one has to submit a title deed or a lease deed of the premises or an undertaking of the applicant that the premises of wood based industry is on lease from the land owner.

10) In the instant case, the father of the petitioner, who is said to have initially executed a lease deed, now went back and gifted the said property in favour of the 5th respondent. The affidavit filed by the petitioner in support of the I.A.190 of 2018 in O.S.No.12 of 2018 would show that the first defendant, who is the father of the petitioner herein, executed a gift deed in respect of the suit properties (which includes subject property) in favour of

second, third and fourth defendants in the said suit and all the three gift deeds came to be executed in the month of February 2015. It may be true that there is order of injunction in favour of the petitioner, but as per the new rules, the petitioner has to produce a lease deed or title deed for renewal of the same. An order of interim injunction passed in favour of the petitioner may prove his possession, but it will not satisfy the requirement of Rule 4(1)(a) of the Rules, which prescribe having a title deed or lease deed of the premises or an undertaking by the applicant that the premises of wood based industry is on lease from the land owner. Obtaining an interim injunction by the petitioner and executing the gift deeds by the 4th respondent in favour of the 5th respondent and others, who are the brothers of the petitioner herein, and pendency of suit and appeal before the civil courts, shows that the subject property is in dispute. When the said dispute is pending before the civil court, issuing a direction to renew the lease, basing on possession, even after expiry of lease period, may not be permissible. Viewed from any angle, I feel that there are no merits in the present Writ Petition and the same does not warrant interference with the proceedings issued by the 2nd respondent in Rc.No.5051/2003 dated 08.10.2018.

11) Accordingly, the Writ Petition is dismissed. There shall be no order as to costs. As a sequel to it, miscellaneous petitions pending if any, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

Dt:11.12.2018
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