

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12607 of 2016

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M/s Shakti Saw Mill Saguna More, Bailey Road, Patna, P. S. Rupaspur, Dist. Patna, a Proprietorship firm through its Proprietor Kailash Prasad Gupta son of Late Ramswaroop Sao, R/o Mohalla Riding Road, Shekhpura, P.S. Hawaiadda, Dist. Patna

... .. Petitioner/s

Versus

1. The State Of Bihar through the Secretary Environment and Forest Department, Govt. of Bihar, Patna.
2. The Principal Chief Conservator of Forest, Government of Bihar, Patna.
3. The Licencing Officer-cum-Divisional Forest Officer, Patna Forest Division, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Vinay Mistry, Advocate
For the Respondent/s : Mr. Anirban Kundu, SC-24

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA
ORAL JUDGMENT

Date : 03-04-2019

Heard learned counsel for the petitioner and learned counsel for the State.

Learned counsel for the petitioner seeks following reliefs:

“(i) For issuance of appropriate writ in the nature of Mandamus directing the respondents to run his Saw Mill at newly place appertaining to Khata No. 2181, Survey Plot No. 6894/8789, Thana No.70, measuring an area of 2 katha, 2 Dhur, 3 Dhurki, 17 Furki, 8 Lurkhi situated at Mauza Painal, P.S. Maner (Revenue),P.S. Bihta, Distt. Patna in terms of the standing direction of the respondent No.2 vide letter No. 3777 dated 1.10.2008 wherein all the Divisional Forest Officers were directed to decide the application for change of location of Saw Mill within 30 days from the receipt of the application, but no decision was taken within 30 days from the date of application made by the petitioner on 29.3.2016.

(ii) For issuance of a writ in the nature of Mandamus directing the respondents not to take any coercive action against the petitioner in the facts and circumstances of the case.”



Learned counsel for petitioner has submitted that he was holding valid licence for his Saw Mill vide License no. 223 of 1995. The petitioner has filed an application before the respondent no.3 for transfer/change of location of his Saw Mill to run his Saw Mill at the new site appertaining to Khata No. 2181, Survey plot no. 6894/8789, Thana No.70 measuring an area 2 katha, 2 Dhur, 3 Dhurki, 17 Furki, 8 Lurhki situated at Mauza Painal, P.S. Maner (Revenue) P.S. Bihta, District Patna. True copy of representation dated 29.3.2016 has been annexed as Annexure-1 to the writ petition. It is further submitted that in spite of specific direction of the respondent no.2 vide his letter no. 3777 dated 1.10.2008 that application for change of location has to be decided within 30 days no order has been passed by the respondent no.3. True copy of letter no. 3777 dated 1.10.2008 has been annexed as Annexure-2 to the writ petition. Thereafter, the petitioner has changed the location of Saw Mill over new place on 11.7.2016. The petitioner wrote a letter to the respondent no.3 on 11.7.2016 informing about the change of location of his Saw Mill. True copy of letter dated 11.7.2016 has been annexed as Annexure-3 to the writ petition. Thereafter, the petitioner has approached this Hon'ble Court by preferring writ petition seeking necessary direction to respondent no.2 to



allow the petitioner to run his Saw Mill at the newly changed place in terms of his representation dated 29.3.2016 filed before the competent Authority i.e. the Licensing Officer-cum-Divisional Forest Officer, Patna Forest Division, Patna (respondent no.3) because no order has been passed on the aforesaid petition even after lapse of one month in terms of direction issued by respondent no.2 vide letter no. 3777 dated 1.10.2008 as contained in Annexure-2 to writ petition.

During pendency of the writ petition, I.A. No. 1 of 2019 was filed by the petitioner stating therein that in the month of September, 2017, the Ranger and the Forester had visited the Saw Mill and asked the petitioner to close down the Saw Mill without any notice. It is also mentioned in the aforesaid Interlocutory Application that petitioner filed a representation before the Ranger and the Forester, Danapur, Patna requesting them not to take coercive action against the petitioner till the disposal of the writ application.

In the meantime, counter affidavit was filed on behalf of the respondent no.3 stating therein that during inspection of the Saw Mill it was found that petitioner was running two Saw Mills on same License vide License no. 223/1995. One Saw Mill is at Danapur and the another at Painal.



The rejoinder to the counter affidavit has been filed denying the allegation that petitioner is running two Saw Mills. The learned counsel for the State was directed by this Court to file supplementary counter affidavit giving necessary details of the order passed by the concerned authority.

A supplementary counter affidavit has been filed on behalf of the respondent no.3 stating therein that the order has been passed on 6.3.2019 suspending the license of the petitioner on the ground that two Saw Mills are running in the garb of License No. 223 of 1995 in the name and style of M/S Shakti Saw Mill at two places and also that petitioner has changed the location of the Saw Mill without permission of the Licensing Officer and further that licensee has parted the control over the Saw Mill on the basis of Power of Attorney executed between the licensee Kailash Prasad Gupta and Vijay Kumar Singh on 10.4.2008. The aforesaid order has been annexed as Annexure- C to the supplementary counter affidavit filed on behalf of the respondent no.3. The petitioner has also annexed the aforesaid order dated 6.3.2019 in his I. A. No. 2 of 2019.

Learned counsel for the petitioner submits that aforesaid order has been passed without affording any opportunity of



hearing to the petitioner in the back date after the order passed by this Court on 7.3.2019 directing the State to file supplementary counter affidavit giving necessary details of the order passed by the concerned authority. He further submits that he has already informed about the change of location of the Saw Mill to the Licensing Officer but no order was passed on his representation to change the location for more than 30 days. He further submits that reasons given in the order dated 6.3.2019 for suspending the license of the petitioner are arbitrary. The order has been passed without giving any opportunity to the petitioner to give proper reply.

This Court, after looking into the order dated 6.3.2019, finds that the aforesaid order has been passed by Divisional Forest Officer without giving proper opportunity of hearing to the petitioner. The alleged inspection, as mentioned in the aforesaid order, have been held *ex parte*. From perusal of the order dated 6.3.2019, it appears that at no point of time the petitioner was afforded opportunity of personal hearing. Therefore, this Court feels that there is complete violation of the principle of natural justice in passing the aforesaid order.

Learned counsel for the State submits that there is provision of Appeal provided U/s 12 of the Bihar Saw Mills



(Regulation) Act 1990 before the competent authority. As such the petitioner has efficacious alternative remedy. This Court finds that there is direct violation of the principle of natural justice because the order has been passed *ex parte* without affording opportunity of hearing to the petitioner.

The Hon'ble Supreme Court has held in judgment reported in **1998 (8) SCC 1 (Whirlpool Corporation Vs. Registrar of Trade Marks)** *that plea of alternative remedy would not operate as a bar in at least three contingencies, namely, (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is violation of the principle of natural justice; or (iii) where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged.*

Therefore, the impugned order is liable to be set aside. Accordingly, the order dated 6.3.2019 passed by the Divisional Forest Officer, Patna Forest Division as contained in Annexure-C to the supplementary counter affidavit is set aside. Divisional Forest Officer, Patna is directed to pass fresh order in accordance with law after affording proper opportunity of hearing to petitioner and looking into all the relevant documents filed by the petitioner within a period of four months



from the date of receipt/production of copy of this order.

In the meantime, no coercive step will be taken against
the petitioner.

(Sanjay Priya, J)

shyambihari/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	18.4.2019
Transmission Date	

