

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13373 of 2015

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Upendra Thakur son of Late Bal Govind Thakur, Resident of Mohalla-
Kashipur, Ward No.- 12, Town, P.S. and District- Samastipur

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Environment and Forest Department, Govt. of Bihar Patna
2. The Principal Chief Conservator of Forest, Bihar 4th Floor, Technology Bhawan, Bailey Road, Patna
3. The Appellate Authority-cum-Conservator of Forest, Muzaffarpur Circle, Muzaffarpur
4. The Licensing Authority-cum-Divisional Forest Officer, Samastipur Forest Division, Samastipur
5. The Forest Range Officer, Samastipur Forest Range, Samastipur
6. The District Magistrate, Samastipur
7. The Superintendent of Police, Samastipur
8. Rajendra Sharma son of Late Rameshwar Sharma, Resident of Village- Bejha Dih, P.S.- Muffasil, District- Samastipur

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Abhay Shankar Singh With Mr. A.K. Mishra, Advocates
For the State	:	Mr. Bijay Kumar Sinha AC to AAG-V
For the Respondent No.8:	:	Mr. Vinay Mistry, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA
ORAL JUDGMENT

Date : 04-02-2019

Heard learned counsel for the petitioner, learned counsel
for the State and learned counsel for respondent no.8.

I.A. No. 1 of 2019 has been filed stating that respondent
no.8, namely Rajendra Sharma has died on 16.2.2016 seeking
substitution of the heirs and legal representative as mentioned
in para 2 of the petition after deleting the name of deceased
respondent no.8, namely, Rajendra Sharma, from the records of
the case. Prayer made in the application is allowed.



Learned counsel for the petitioner submits that he is mainly aggrieved by last clause 4 of the Annexure-5 by which the Principal Chief Conservator of Forest, Bihar Patna (respondent no.2) has communicated to the concerned respondent that it is not proper to allow the petitioner to shift and run his Saw Mills at some other place until final decision is taken in the matter.

Learned counsel further submits that private respondent no.8 is still running the Saw Mill on the basis of petitioner's license bearing License no. 42/1994 which has already been held to be not legally transferred in his favour by the Appellate authority i.e. the Principal Conservator of Forest (respondent no.2) vide order dated 23.6.2009 as contained in Annexure 2 and the same has been affirmed by this Hon'ble Court by order dated 22.1.2015 as contained in Annexure-3.

Learned counsel further points out that in spite of aforesaid order(s) passed in favour of petitioner by which the original license issued in the name of the petitioner has been held to be valid and it was held that the same was wrongly transferred in the name of Rajendra Sharma, the petitioner is still not allowed to run the Saw Mill.

Learned counsel further submits that in the license granted to petitioner vide License no. 42/1994, it is mentioned that Saw Mill is running in the premises of sugar mill, Samastipur. The Samastipur



Sugar Mill Campus at present is not in existence. It has been sold to some private person. Therefore, the petitioner has made request with the Authority vide his application dated 6.7.2015, as contained in Annexure-7 series, addressed to the Divisional Forest Officer, Samastipur, along with all relevant documents, to allow him to run his Saw Mill in terms of License bearing License no. 42/1994, to the new place, for which he has already entered into a lease agreement with the landlord.

Learned counsel submits that instead of passing any order by the Divisional Forest officer on the aforesaid application, he has referred the aforesaid application to the Principal Chief Conservator of Forest (respondent no.2), who, without considering all the facts in the proper manner has observed vide Clause 4 of Annexure 5 that the Mill cannot be allowed to be transferred till final decision is taken in the matter because the same will be in violation of the order of Hon'ble Supreme Court passed in WP © no. 202 of 1995 as it will amount to opening of new Saw Mill.

A counter affidavit has been filed on behalf of the respondent no.4, wherein, it is stated that petitioner was a lessee of M/S Bihar State Sugar Corporation Ltd. His lease had expired in 1997. Thereafter the respondent no.8 has become the new lease holder. The license was got transferred in name of respondent no.8. But subsequently the same has been found to be wrongly transferred in



his favour and the same was set aside by the order of the appellate authority as contained in Annexure-2. The license which was granted in favour of the petitioner was held to be valid. It is mentioned in para 24 of the counter affidavit that even after reminders the respondent no.8 has not yet stopped the running of Saw Mill and has again moved before the Hon'ble Court vide C.W.J.C. No. 10403 of 2015 to get the aforesaid license transferred in his own name. It is mentioned in para 26 of the counter affidavit that criminal proceeding is initiated against respondent no.8 for running the Saw Mill without a license.

In the counter affidavit, State admits that at present there is no license existing in favour of respondent no.8. Earlier License no. 42/1994 granted in favour of the petitioner was found to be valid by the Appellate Authority vide its order dated 23.6. 2009 as contained in Annexure-2 as well as by this Hon'ble Court vide order dated 22.1.2015 as contained in Annexure-3. This Court after perusing the direction as contained in Clause 4 of Annexure-5 finds that all the facts have not been properly considered by the Principal Chief Conservator of Forest (Respondent no.2) while dealing with the case of the petitioner in terms of the direction of this Hon'ble Court as contained in Annexure-3.

It is pertinent to mention that this Hon'ble Court vide order dated 22.1.2015 as contained in Annexure-3, has held the license of



petitioner to be valid. Therefore, the observation as contained in clause 4 of Annexure-5 is illegal and the same is hereby set aside. The respondent No. 2 is directed to pass fresh order in accordance with law after looking into all the documents filed by the petitioner including the order of Hon'ble Court as contained in Annexure -3, and giving opportunity of hearing to petitioner as well as respondent no. 8, within a period of three months from the date of communication of this order.

The writ application is accordingly disposed off.

(Sanjay Priya, J)

shyambihari/-

AFR/NAFR	
CAV DATE	
Uploading Date	19.2.2019
Transmission Date	

