

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9254 of 2015

=====

M/s Jai Maa Ganga Saw Mill through its Power of Attorney holder Umesh Prasad Sah, Son of Laxmi Prasad Sah, resident of Mohalla- Madhepura, Ward No.6 Jai Prakash Nagar, Police Station- Madhepura, District- Madhepura.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Forest & Environment, Government of Bihar, Patna.
2. The Principal Secretary, Forest & Environment, Government of Bihar, Patna.
3. The Conservator of Forest, Purnea Circle, Purnea.
4. The Divisional Forest Officer, Saharsa Forest Division, Saharsa.
5. The Range Officer of Forest, Madhepura.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Rajesh Kumar Singh Mr. Dharmendra Kumar Singh, Mr. Manish Kumar Singh
For the State	:	Mr. Amit Bhushan, AC to G.P.-17

=====

CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA
ORAL JUDGMENT

Date : 04-01-2019

Heard the learned counsel for the petitioner as well as the State.

This writ petition has been filed for setting aside the order contained in Memo No. 738 dated 02.04.2013, which is annexed as Annexure-7, by which licence of the Saw Mill of petitioner has been cancelled and order contained in Memo No. 898 dated 20.04.2015, which is annexed as Annexure-8, by which order bearing Memo No. 738 dated 02.04.2013 has been affirmed.

Learned counsel for the petitioner has submitted that license of the saw mill of petitioner was initially in the name of his brother Maheshwar Prasad Sah, which was issued in the year 1994 vide License No. 83 of 1994. Thereafter oral family partition took



place on 16.11.2000. After oral family partition, Maheshwar Prasad Sah executed Power of Attorney dated 24.10.2003 in favour of petitioner to run the said Saw Mill. The oral family arrangement culminated into joint compromise decree dated 02.05.2011, wherein the said Saw Mill fell in exclusive share of petitioner. The petitioner has been running the said Saw Mill independently since 16.11.2000. For that petitioner made proper information to the respondent authorities about the execution of Power of Attorney in his favour. The respondent authorities more particularly the Licensing Authority had been making correspondence with the petitioner with regard to running of Saw Mill. The Licensing Authority had earlier cancelled the licence of the Saw Mill vide order dated 30.11.2004. Said order was challenged in the appeal bearing Appeal No. 6S of 2007 and the appellate authority vide order dated 21.07.2009, which is annexed as Annexure-5, set aside the order of Licensing Authority dated 30.11.2004 and directed the Forest Officer that in the event License holder files petition for compounding of the offence then Licensing Authority will consider on the same in accordance with law. It is mentioned in the aforesaid order that there is no permission given to transfer the ownership of aforesaid Saw Mill and to increase the number of Saw Mill.

Learned counsel for the petitioner has submitted that in terms of aforesaid order petitioner had deposited Rs. 5,000/- by way



of bank draft for compounding of the offence. But before depositing the same in bank date had lapsed and draft was returned. The Licensing Authority again cancelled the license of petitioner vide Annexure-7. Subsequent thereto Confiscation Case No. 1 of 2012 and 2 of 2012 was initiated against the petitioner and his brother respectively on the ground that two Saw Mills were found running in the same premises on a single licence and the original license holder had totally parted with the ownership of the Saw Mill, which was running by this petitioner, which is not permissible under Section 7(5)(a) of Bihar Saw Mills (Regulation) Act, 1990. The subsequent appeal filed by petitioner was also rejected by a common order dated 20.04.2015 passed in Appeal Nos. 2S of 2013 and 3S of 2013. Copy of aforesaid order is annexed as Annexure-8.

The main point raised by the petitioner before this Court is that transfer of the Saw Mill by family partition is permissible.

Learned counsel for the petitioner has referred relevant portion of resolution of the Govt. of Bihar, which is annexed as Annexure-6, wherein it is mentioned in item (K) under heading “Matter with regard to Inheritance” that *“if there is transfer of ownership of license on the basis of inheritance then seniority of the Saw Mill will be maintained”*.

Learned counsel for the petitioner has submitted that once order has been passed by the appellate authority, vide Annexure-5,



setting aside the earlier order of cancellation of the license of petitioner on the same ground, fresh order for cancellation of license of the Saw Mill of petitioner, vide Annexure-7, is illegal as the authority has got no power to review the earlier order.

Learned counsel for the State has submitted that after family arrangement this petitioner was running the Saw Mill. The petitioner never took any valid permission from the department on the basis of inheritance to run the Saw Mill to run the same.

The original license was issued in the name of brother of petitioner, namely, Maheshwar Prasad Sah. Maheshwar Prasad Sah had appeared before the Licensing Authority during confiscation proceeding and stated that by Power of Attorney aforesaid Saw Mill has been given to this petitioner, who is running the same. He has no concern with the same.

The Licensing Authority has mentioned in the order contained in Annexure-7 that he found one another Saw Mill running in the said premises by Maheshwar Prasad Sah without any license. Both the Saw Mill were confiscated and the license of Saw Mill of petitioner bearing License No. 83 of 1994 was cancelled under the provision of Section 7(5)(a) of the Bihar Saw Mills (Regulation) Act, 1990.

Learned counsel appearing for the State has mentioned in the counter affidavit that State Government vide letter no. 3673 dated



22.10.2013 issued direction to all the Divisional Forest Officers along with copy of opinion of learned Advocate General, Bihar to identify such saw mills which were running under Power of Attorney executed by the original license holders in violation of Section 7(5) of Bihar Saw Mill (Regulation) Act, 1990 and cancel their licenses after giving them an opportunity of show cause. It is also mentioned in the counter affidavit that petitioner has not been issued any license under Bihar Saw Mills (Regulation) Act, 1990. He was operating the Saw Mill in illegal manner on the basis of Power of Attorney and the original license holder has wholly parted with the ownership of the aforesaid Saw Mill.

The counsel for petitioner has relied on provision of Rule 3(4)(ii) of Bihar Saw Mills (Regulation) Rules, 1993 and also Form 'C' used for renewal of the licence as mentioned in Schedule of aforesaid rules.

Rule 3(4)(ii) of Bihar Saw Mills (Regulation) Rules, 1993 reads as follows:

“No person shall be permitted to file application on behalf of any person or Company until he encloses executed copy of the power of attorney authorising him to work on behalf of such person or Company and produces its original or the certificate of registration of such company of which he claims to be a partner before the licensing officer.”



From bare perusal of aforesaid Rule it is apparent that original licensee shall execute Power of Attorney authorizing the person to work on his behalf. It does not talk about of parting control in whole or in part by original licensee of his Saw Mill or saw pit.

The Licensing Authority has cancelled the license of Saw Mill of petitioner under provision of Section 7(5)(a) of the Bihar Saw Mills (Regulation) Act, 1990 because he has wholly parted with the ownership of aforesaid Saw Mill.

Therefore, this Court does not find any illegality in the order passed by the Licensing Authority as well as Appellate Authority.

This Writ Petition is, accordingly, dismissed.

(Sanjay Priya, J)

rakhi/-

AFR/NAFR	
CAV DATE	N.A.
Uploading Date	
Transmission Date	

