

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 2953 of 2007

Govind Lal Agrawal S/o Late Shri Nathmal Agrawal Aged About 61 Years,
R/o Village And Post - Than Khamharia, Tehsil Saja, District Durg
Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Forest Department,
Mantralaya, Raipur., District : Raipur, Chhattisgarh
2. The Conservator Of Forest, Durg Circle, Durg, District : Durg,
Chhattisgarh
3. The Divisional Forest Officer Durg Forest Division, Durg, District : Durg,
Chhattisgarh
4. Manoj Kumar Agrawal S/o Late Mahadev Lal Agrawal Aged About 44
Years R/o Behind Ram Mandir, Shanti Nagar, Raipur, District : Raipur,
Chhattisgarh

---- Respondents

For Petitioner	:	Shri Prafull Bharat, Advocate
For Respondent No.1 to 3 / State	:	Shri Aditya Bhardwaj, Panel Lawyer
For Respondent No.4	:	Shri B.P. Sharma, Advocate with Shri Chakresh Tiwari and Shri Raza Ali, Advocates

S.B. : Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

24/10/2019

1. By this petition under Article 226 of the Constitution of India, the
petitioner seeks to assail legality and validity of the orders dated
12.3.2007 and 15.3.2007, by which the forest authorities have directed
renewal of licence of sawmill in favour of original 4th respondent-

Mahadev Lal Agrawal (since deceased).

2. The factual matrix of the present case is in narrow compass. According to the petitioner, a sawmill was established by one Nathmal Agrawal way back in the year 1957. Sometimes in the year 1970, the petitioner (son of Nathmal Agrawal) applied and licence of sawmill was renewed in his name under a changed name- "Chhattisgarh Sawmill". The licence was renewed from time to time in his name up to 2005. However, thereafter, when the petitioner again applied for renewal of sawmill licence, his brother, deceased 4th respondent- Mahadev Lal Agrawal came out with a claim that licence should now be renewed in his name, resting his claim on the basis of family settlement/partition dated 5.12.1984. The Divisional Forest Officer, Durg Division, having found that there was a dispute with regard to title, did not renew the licence and the parties were advised to get the dispute of title decided by a competent Court of jurisdiction. An order to this effect was passed by the Divisional Forest Officer (DFO) on 3.7.2006. Renewal fee was also returned.
3. It appears that despite there being no renewal licence, the sawmill was being operated and upon receipt of information, DFO directed closure of sawmill on 18.9.2006. Against this order dated 18.9.2006, deceased- 4th respondent preferred an appeal before the Conservator of Forest who passed impugned order dated 12.3.2007 that the licence of sawmill be renewed in his name. In execution thereof, the Divisional Forest Officer passed an order on 15.3.2007 directing renewal of licence in favour of 4th respondent. It is this order and action which is under challenge in this writ petition.
4. Submission of learned counsel for the petitioner is that the Conservator of Forest exceeded its jurisdiction in deciding the issue of title between the parties which was completely outside the scope of his jurisdiction. He would argue that the dispute with regard to title could be decided only by the Civil Court and not by the Appellate Authority in proceedings relating to renewal of licence. His next submission is that though the

petitioner, by way of his written objection, filed before the Appellate Authority, clearly stated that civil suit had already been filed and it was also within the notice and knowledge of the Appellate Authority that the DFO has refused to renew licence and directed the parties to seek adjudication on the issue of title vide his order dated 3.7.2006, ignoring all these relevant factual aspects and exceeding its jurisdiction, holding that the 4th respondent, by virtue of partition, holds title in respect of the sawmill to the exclusion of the petitioner, proceeded to pass order. Submission of learned counsel for the petitioner is that the appeal was preferred against the order dated 18.9.2006 which was not an order of rejecting application for renewal of licence. That was only an order for closure of sawmill as licence was not renewed. The relevant order dated 3.7.2006 passed by the DFO was never challenged.

5. Per contra, learned counsel appearing for 4th respondent would submit that even though, the licence was being renewed in favour of the petitioner up to 2005, the Appellate Authority took into consideration that there had been a family arrangement and partition under a written partition deed dated 5.12.1984 and this was signed by all the parties including the petitioner. On this basis, in a summary enquiry, without adjudicating upon the civil rights of the parties, the Appellate Authority directed renewal of licence. He would also submit that in the order impugned, the Appellate Authority has made it clear that this order of grant of licence in favour of 4th respondent would be subject to any decision that may be rendered in any civil proceeding relating to title between the parties. Therefore, there is no illegality or perversity in the order and it can not be said to be beyond jurisdiction.
6. Learned counsel for the State would submit that the Appellate Authority has passed an order based on the partition deed between the parties and also spot inspection report which shows that sawmill is in possession of the 4th respondent.
7. I have heard learned counsel for the parties and perused the records.

8. It is not in dispute that the sawmill was licenced in favour of petitioner and it was being renewed from time to time till 2005. The dispute, however, arose between the petitioner and his brother Mahadev Lal Agrawal (deceased 4th respondent) when Mahadev objected to renewal of licence in favour of petitioner claiming that on the basis of partition deed dated 5.12.1984, the licence ought to be renewed in his name. Divisional Forest Officer, however, passed an order dated 3.7.2006 (Annexure P-2) wherein he recorded that as there is dispute with regard to title of the sawmill, the decision with regard to renewal shall be taken only after decision of title dispute between the parties. The licence fee was also returned. It appears that this order was not challenged by any of the parties before any higher authority.
9. It is also clear that Mahadev Lal Agrawal filed a suit seeking declaration of title and permanent injunction against the petitioner mainly on the ground that by virtue of family partition, he is not entitled to get the sawmill. In that suit, legality and validity of orders dated 18.9.2006 and 5.10.2006 by which there is a direction of closure of sawmill was also assailed. This proceeding remained pending before the Civil Court.
10. The Appellate Authority, however, fell in grave error in deciding the issue of title between the parties. A perusal of the impugned order passed by the Conservator of Forest shows that it has entered into title dispute of the parties. It relied upon partition deed dated 5.12.1984 which is unregistered deed and it is not an admitted document. It was, therefore, clearly a dispute of title existing between two brothers namely Govind Lal Agrawal, the petitioner, and Mahadev Lal Agrawal, the deceased respondent No.4. Adjudication of this dispute was clearly outside the jurisdiction of the Appellate Authority under the forest clause.
11. Grant or renewal of licence for running a sawmill is essentially a matter in public domain and has nothing to do with the private dispute between the parties. During the pendency of dispute in the Civil Court, the Conservator of Forest had no authority whatsoever to enter into the dispute and decide the issue of title between the parties on the basis of

partition deed or any other material for that matter. This Court finds that despite the fact of pendency of civil case having been brought to the notice of Conservator of Forest, the Conservator of Forest completely ignored this aspect and proceeded to decide the dispute between the parties and held that deceased-respondent No.4 succeeded to the suit property i.e. sawmill on the basis of partition between the parties and then proceeded to issue direction for grant or renewal of licence in his favour.

12.Apparently, in the opinion of this Court, order of the Appellate Authority is in excess of jurisdiction. The order passed by the Divisional Forest Officer on 3.7.2006, which otherwise was not challenged in appeal, was that as there exists a title dispute between the parties, renewal/grant of licence shall be considered only upon adjudication of the dispute by a competent Court.

13.In that view of the matter, impugned orders cannot be sustained and are, therefore, set aside. It goes without saying that on account of dispute between the parties, closure of sawmill shall continue until the issue is decided or the parties enter into any agreement.

14.The petition is accordingly allowed to the extent indicated above.

Sd/-
(Manindra Mohan Shrivastava)
Judge