

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

MISC.CIVIL APPLICATION (REVIEW) NO. 780/2019 IN
WRIT PETITION NO.746/2016

(Umiya Vijay Saw Mill, Akot and others Vs. Chief Conservator of Forest(Regional) and others.

Office notes Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri S.P.Bhandarkar Advocate for applicants.
Shri A.V.Palshikar, Assistant Government Pleader for non applicant nos. 1,
2 and 4.
Shri R.L.Khapre, Advocate for non applicant no.3.

CORAM : A.S.CHANDURKAR, J.

DATED : September 11, 2019

The applicants are the legal representatives of the respondent no.3 in Writ Petition No.746/2016. They seek review of the judgment dated 02.07.2019 by which the said writ petition was allowed and the order passed by the Chief Conservator of Forests came to be set aside.

Shri S.P.Bhandarkar, learned counsel for the applicants submitted that the order passed by the Chief Conservator of Forests was not liable to be set aside by relying upon the provisions of Rule 23 of the Bombay Transit of Forest Produce (Vidarbha Region, Saurashtra and Kutch Areas) Rules, 1960 (for short, 'the said Rules'). According to him, there was no condition in the original lease deed requiring no objection certificate being obtained from the title holder of the property. Referring to the application seeking renewal of the lease, it was submitted that said condition is not shown to be present in the application and therefore, the Deputy Conservator of Forests misdirected himself in relying upon the adjudication in Writ Petition No.328/2001(Mohd Isuf Mohd.Suleman Vs.

Conservator of Forest and others) decided on 08.06.2010. There was no reason for the applicants to have obtained any such no objection from the owner of the property. He also submitted that the decree passed by the Civil Court was subjected to challenge in an appeal which was pending. The possession of the applicants was in fact protected by this Court in Writ Petition No.5751/2015 by directing the applicants to pay an amount of Rs.7,50,000/-per annum as compensation for occupying the said land. Since the provisions of Rule 23(3) and (7) of the said Rules did not come into operation, there was no question of cancelling the lease that was granted in favour of the applicants. He also sought to distinguish the judgment in Writ Petition No.328/2001 and submitted that it was not applicable to the case in hand. He then submitted that the applicants could not make necessary arrangements to have their interests represented before this Court when the writ petition was heard. On these counts, it was submitted that the judgment dated 02.07.2019 was liable to be recalled/reviewed.

Shri R.L.Khapre, learned counsel for the non applicant no.3-original petitioner and Shri A.V.Palshikar, learned Assistant Government Pleader for non-applicant nos. 1, 2 and 4 opposed the aforesaid submissions. It was submitted that the lease in question which was initially granted was for the period from 01.01.2008 to 31.12.2016. After 31.12.2016 the applicants were not concerned with the said lease and in fact a fresh lease has been sought under Rule 53 of the Maharashtra Forest Rules, 2014 by one Nikhil Patel. The applicants therefore lost interest in the initial proceedings as were filed and hence their absence before this Court when the writ petition was heard was deliberate. It was further submitted that the provisions of Rule 23 of the said Rules requiring obtaining of no objection certificate from the owner of the property. The adjudication in Writ Petition No. 328/2001 considered this aspect and in the order passed by the Deputy Conservator Forests this aspect has been specifically referred to. Merely because the decree for eviction was stayed

by the appellate Court would not be a reason to permit the applicants to seek renewal of lease. The learned counsel for the original petitioner further submitted that there was no question of title being in dispute. The applicants had in fact claimed to be sub-tenants in the property in the civil suit for eviction. The objection was rightly raised by the original petitioner and the same was upheld by the Deputy Conservator of Forests. All relevant aspects having been considered, there being no error apparent on the face of record. The application as filed was liable to be rejected. It was further submitted that various relevant facts have been suppressed by the applicants which was an additional reason for rejecting the application. The reliance was placed on the decisions in *M C.Chockalingam and others AIR 1974 SC 104*, *R.V.Bhupal Prasad Vs. State of A.P. and others, AIR 1996 SC 140* and *A.P.Public Service Commission Vs. Koneti Venkateshwarulu and others, 2005(7) SCC 177*.

Since according to the applicants they were not heard when Writ Petition No.746/2016 was decided, I have heard the learned counsel at length. While setting aside the order passed by the Chief Conservator of Forests that was impugned in the writ petition, reliance was placed on the decision in Writ Petition No.328/2001 dated 08.06.2010. On that basis it was observed that under Rule 23 (3) of the said Rules, it was necessary for the person operating the saw-mill to obtain a no-objection certificate from the owner of the site. Perusal of the judgment in Writ Petition No. 328/2001 indicates that reference therein has been made to condition No.23 in the licence as was granted. Said condition no.23 reads as under :

"Whether the no objection certificate is given to the licence holder by the owner of the site on which the Saw Mill is running, for operating the Saw Mill?"

The validity of said condition was challenged in the aforesaid writ petition but that condition was upheld as not being illegal or arbitrary. Under Rule 23(3) of the said Rules, the Range Forest Officer or the Deputy Forest Officer has to make such enquiry as he deems fit and

after satisfying himself on the question whether or not there would be any objection to grant of sanction or licence and having regard to the factors stated therein, he may grant sanction or licence in the form in schedule appended to the said Rules. It is in that context the condition with regard to objection of the owner of the property is required.

In the present case such objection was raised by the original petitioner on the basis of which the matter proceeded further. Under Rule 23 (7) of the said Rules, it is open for the Deputy Forest Officer to revoke the licence granted under the said Rules if he has a reason to believe that the licensee is operating the Saw Mill in contravention to the provisions of the said Rules and conditions of the licence. The Deputy Conservator of Forests while passing the initial order cancelling the licence on 17.02.2014 has referred to such objection being raised by the original petitioner and has observed that despite grant of sufficient time to the applicants herein they were unable to produce any document whatsoever to indicate their entitlement to continue with the licence. Thus in the light of the objection raised by the owner of the property and the applicants not being in possession of any document to indicate their entitlement to continue with the licence, the order dated 17.02.2014 was passed by the Deputy Conservator of Forests. In that order specific reference has been made to the judgment of this Court in Writ Petition No.328/2001 as well as the provisions of Rule 23(3) and (7) of the said Rules.

On perusal of the original records of the proceedings it is seen that the Assistant Conservator of Forests had conducted the necessary enquiry and had submitted his report on 30.12.2013. It is only thereafter by granting due opportunity to the applicants that the order dated 17.02.2014 came to be passed. Since Rule 23(3) of the said Rules requires the Forest Officer to make such enquiry as he deems fit and also to consider whether there would be any objection to granting the licence, he is empowered to take into consideration any objection raised by the owner of the property. In the present case, the Deputy Conservator of Forests has

acted upon the objection raised by the owner of the property and has therefore refused to renew the licence in question. He has rightly placed reliance on the decision of the Division Bench of this Court in Writ Petition No. 328/2001. The fact that after grant of the licence in the year 2008, such no-objection was being obtained from the owner of the property is also evident from the record. Hence the mere fact that the order of status quo was passed by the appellate Court in the proceedings for eviction cannot be a factor to prevent the owner of the property from raising any objection to the continuation of the licence. On a re-consideration of the entire matter, I do not find any reason to recall the judgment or to review the same.

Another factor has to be noted is that the licence in question was granted from 01.01.2008 to 31.12.2016. As of today the applicants cannot seek renewal of that licence since the period specified therein has already expired. A fresh application seeking grant of the licence has been moved under Rule 53 of the Maharashtra Forest Rules, 2014 by one Nikhil Patel. Even on this count, there is no legal right with the applicants to seek further renewal of that licence when its period came to an end on 31.12.2016.

Hence for the aforesaid reasons, the application filed by the applicants stands rejected. No costs.

JUDGE

Andurkar.