

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPC No. 914 of 2020

1. Smt. Suruchi Singh, Wd/o Late Nandkumar Singh, Aged About 44 Years, R/o Village Thathari, P.S. Baradwar, District : Janjgir-Champa, Chhattisgarh

---- Petitioner

Versus

1. Principal, Chief Conservator of Forest (HOFF), Chhattisgarh Forest Department, Jail Road, Aranya Bhawan, Raipur, Chhattisgarh
2. Chief Conservator of Forest, Chhattisgarh Forest Deptt. Bilaspur Division, Sindhi Colony, Jarhabhata, District : Bilaspur, Chhattisgarh
3. The Divisional Forest Officer, Champa Division, Champa, District : Janjgir-Champa, Chhattisgarh
4. The Divisional Forest Officer, Forest Division Raipur, District : Raipur, Chhattisgarh

----- Respondents

For Petitioner	: Mr. Kshitij Sharma, Advocate
For State	: Mr. Anmol Sharma, Panel Lawyer

Hon'ble Shri Justice P. Sam Koshy

Order on Board

16.03.2020

1. The challenge in the present writ petition is to Annexures P-1, P-2 and P-3 dated 31.01.12, 19.12.19 and 30.12.19 passed by the respondent no. 1, 2 and 3 respectively. Firstly, holding that, for the purpose of transfer of name in the licence to operate a saw mill on the death of the original proprietor/licensee, the requirement of succession certificate from the competent court of law is necessary. Secondly, the rejection of the application of the petitioner, for not having the said succession certificate in her favour vide order Annexure P-2 and P-3.

2. The brief facts of the case is that, the petitioner's husband Late Shri Nandkumar Singh was a licensee for operating the saw mill situated at village: Thathari, Police Station: Jaijaipur, District: Janjgir-Champa, (C.G.). The said licensee died on 25.01.2007. On the date of the death of the deceased-licensee, he had a valid license in his favour and his widow (the petitioner herein) moved an application on 11.12.2007 for the transfer of the name in the license. Subsequently, the respondent-authorities directed the petitioner to produce a succession certificate from the competent civil court. The petitioner applied for the succession certificate for this reason and for the other securities. The civil court granted the succession certificate in favour of the petitioner for other reasons except for the transfer of name in the license, as according to the civil court, it was one which cannot be granted under Section 372 of the Indian Succession Act, 1925. The petitioner preferred a first appeal before the court of Additional District Judge who has also affirmed the order of the civil court holding that the petitioner is not entitled for grant of succession certificate for the purpose of transfer of name in the license of the saw-mill for want of succession certificate.
3. Meanwhile, the State Government issued a circular Annexure P-1 dated 31.01.2012 whereby the opinion received in this regard from the Office of the Advocate General, was for insistence for the succession certificate from the competent civil court under the Indian Succession Act, 1925. Subsequently, the respondent no. 2 vide P-6 forwarded the claim of the petitioner for proper consideration of her request for transfer of name and the respondent no. 3 in turn vide his opinion Annexure P-8 dated 11.12.2019 has recommended the transfer of name in the license in favour of the petitioner. Subsequently, the matter

again came-up before the respondent no. 2 who this time passed Annexure P-2 dated 19.12.2019 stating that since the claim application of the petitioner was not supported with duly issued succession certificate from the competent civil court. The petitioner's claim could not have been forwarded by the respondent no. 3 itself. Thus it was made over to the respondent no. 3 for passing an appropriate order, who has since passed Annexure P-3, the impugned order citing the same reasons for turning down the application for transfer of name for want of succession certificate from the competent court of law.

4. It would be relevant at this juncture to take note of the fact that under section 370 (2) of the Indian Succession Act, 1925 in this regard. For ready reference, the same is reproduced here-in-under:

“370. Restriction on grant of certificates under this Part. - (1) A succession certificate (hereinafter in this Part referred to as a certificate) shall not be granted under this Part with respect to any debt or security to which a right is required by section 212 or section 213 to be established by letters of administration or probate:

Provided that nothing contained in this section shall be deemed to prevent the grant of a certificate to any person claiming to be entitled to the effects of a deceased Indian Christian, or to any part thereof, with respect to any debt or security, by reason that a right thereto can be established by letters of administration under this Act.

(2) For the purposes of this Part, “security” means -

- (a) any promissory note, debenture, stock or other security of the Central Government or of a State Government;
- (b) any bond, debenture, or annuity charged by Act of Parliament¹ [of the United Kingdom] on the revenues of India;
- (c) any stock or debenture of, or share in, a company or other incorporated institution;
- (d) any debenture or other security for money issued by, or on behalf of, a local authority;
- (e) any other security which the ¹[State Government] may, by notification in the Official Gazette, declare to be a security for the purposes of this Part.”

¹ Ins. by the A.O. 1950.

¹ The words “G.G. in C.” have been successively amended by the A.O. 1937 and the A.O. 1950 to read as above.

5. A plain reading of the aforesaid two sub-sections of Section 370, it clearly reflects that the said provisions would not be applicable for the purpose of granting of succession certificate for transfer of the license of a saw-mill. The succession certificate can only be granted to those, for any sort of debt, or for any sort of security as is envisaged under the two sub-sections of the Section 370.
6. Given the said facts, that the succession certificate could not have been issued under law by any competent civil court insistence by the department for obtaining the succession certificate for transfer of name in the license would be insisting upon a condition which otherwise is not permissible under the law.
7. It would also be relevant at this juncture to refer to a judgement in this regard by the Rajasthan High Court under identical set of facts reported in **AIR 2013 RAJASTHAN 1** in the case of ***Iqbal Singh v. Every One & Ors.*** In paragraph 13 and 14 of the said judgement after discussing the law in this regard, the High Court has held as under:

“ 13. A distinction has to be made between the transfer of a licence and seeking the refund of a security. Although for the purpose of refund of a security, the applicant would be entitled to a succession certificate provided such a refund is permissible under the law. However, since a saw mill licence does not fall within the term “security” as defined in Section 370 sub-clause (2) of the Act, no succession certificate can be issued for the said transfer of licence under Section 370 read with Section 374 of the Act.

14. In the case of Bhajan Lal v. All General Public & Ors., (S.B. Civil Misc. Appeal No. 2403/2011, decided on September 4, 2012), this Court has taken a similar view.”
8. In view of the aforesaid legal position as it stands, coupled with the decisions from the Rajasthan High Court, this Court has no hesitation in reaching to the conclusion that the insistence on by the department for obtaining the succession certificate from the competent civil court is totally contrary to law and also is one, which

is not permissible under the law and also a case where the department is putting a condition, which under no circumstances can be obtained by the petitioner.

9. Since it was not permissible under the law, moreover, the petitioner having bonafidely approached the competent civil court for obtaining succession certificate under Section 370 of the Indian Succession Act, 1925 which stood rejected and it has also been affirmed by the appellate court Annexure P-1, P-2 and P-3 passed by the respondent no. 1, 2 and 3 respectively deserve to be and is accordingly set-aside/quashed. The matter stands remitted-back to the respondent-authorities to consider the case of the petitioner afresh on its own merits without insisting upon the requirement of succession certificate from the competent civil court. The respondent no. 2 would be at liberty to get the status and identity of the petitioner verified by any other means of enquiry. Considering the period that has lapsed since the time, the petitioner has first moved the applicaiton. It is expected that the respondents shall take a decision at the earliest, preferably within a period of four months from the date of receipt of copy of this Order.

10. The present writ petition, accordingly stands allowed and disposed off.

**Sd/-
(P. Sam Koshy)
Judge**