

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.310 of 2019

In
Civil Writ Jurisdiction Case No.168 of 2015

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M/s Rajkishore Saw Mill, Labhra-Panchanpur P.S. Tekari, District-Gaya a Proprietorship Firm through through its Proprietor Sri Rajkishore Prasad , Son of Late Parmeshwar Prasad, resident of village-Khizarsarai, P.S- Khizarsarai, District - Gaya.

... .. Appellant/s

Versus

1. The State of Bihar, through the Secretary, Environment and Forest Department, Government of Bihar, Patna
2. The Principal Chief Conservator of Forest, Bihar, 4th Floor, Technology Bhawan, Bailey Road, Patna
3. The Conservator of Forest-Cum-Prescribed Officer, Gaya Circle, Gaya
4. The Licensing Officer-cum-Divisional Forest Officer, Gaya Forest Division, Gaya
5. Shailesh Kumar son of Sri Uma Prasad, resident of village-Labhra P.O. Panchanpur, P.S. Tekari, District-Gaya

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Vinay Mistry, Advocate
For the Respondent/s : Mr. Sarvesh Kumar Singh (AAG 13)

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE NAWNEET KUMAR

PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 10-11-2022

Heard Mr. Vinay Mistry, the learned counsel for the appellant and Mr. Rajat Kumar Tiwari for the State.

The appellant has challenged the order dated 02.01.2019 passed in C.W.J.C. No. 168 of 2015, whereby the order passed by the Licensing Officer-cum-Divisional Forest Officer, Gaya Forest Division, cancelling the licence



of the petitioner to run the saw mill as also the appellate order dated 23.07.2014 passed by the Conservator of Forest-cum-Prescribed Officer, Gaya Circle, Gaya in Appeal Case No. 3 of 2014 have been affirmed and upheld.

The licence of the petitioner to run a saw mill has been cancelled on the sole ground that he has parted control of the saw mill to a person in whose favour he has executed a power of attorney.

The learned counsel for the appellant has taken this Court to the contents of the power of attorney, which clearly discloses that such power of attorney was executed for the limited purpose of running the saw mill on behalf of the appellant, which was necessitated because of his bad health. Nowhere in the power of attorney is there any clause which would lead one to infer that the entire ownership or control of the saw mill has been given to the power of attorney holder.

Mr. Vinay Mistry, learned counsel for the appellant has further drawn the attention of this Court to the provisions contained in Section 7 of the Bihar Saw Mills



(Regulation) Act, 1990 and Section 3 (4) of the Bihar Saw Mills (Regulation) Rules, 1993 along with Form-C appended to the Rules meant to be filled up by the power of attorney holder for renewal of licence.

Section 7 of the Act of 1990, referred to above, deals with grant, renewal, revocation or suspension of licence, which is obtained under Section 5 of the Act. Any application for licence under Section 5 is required to be accompanied by application fee, security deposit as also compliance with other conditions. This is the controlling provision for renewal of licence as well. Section 7 (5) further declares that if the Licensing Officer is satisfied, either on a reference made to it in that behalf or otherwise that the licensee had parted, in whole or in part, with his control over the saw mill or saw pit or has otherwise ceased to operate or own such mill or saw pit or the licensee has, without reasonable cause failed to comply with any of the conditions of the licence or any directions given by the Licensing Officer or having contravened any of the provisions of the Act or Rules made thereunder or is



not able to satisfactorily account for the wood in the premises of the saw mill or saw pit, then the licence is liable to be cancelled, after giving the licensee an opportunity of showing cause and forfeiture of any sum or any portion thereof which has been deposited as security for the due performance of the conditions of the licence.

Rule 3 (4) of the Rules of 1993 provides that the application for license for saw mill or saw pit, complete in all respects including the prescribed application fee, shall be submitted to the Licensing Officer and that no person would be permitted to file an application on behalf of any person or company until he encloses executed copy of the power of attorney authorizing 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. The Form-C attached to the Rules further provides that a person holding the power of attorney could apply for operating the established saw mill/saw pit or a new saw mill or saw pit. It has been urged on behalf of the



appellant that from a conspectus of the afore-noted provisions in the Act and the Rules of 1990 and 1993 respectively, it is apodictic that a power of attorney could be executed by a licensee for the holder to act on his behalf and such power of attorney holder could apply for renewal of licence.

In the instant case, it has been urged that because of ill health of the appellant, he had executed the power of attorney and the power of attorney holder in later years got the licence renewed on not less than three occasions. However, ultimately, for reasons which are not explicable to the appellant, the licence was cancelled on the ground that the licensee/appellant had parted with the control of the licence unauthorizedly.

The provisions of the Act and Rules, referred to above, have not been properly adverted by the authorities having passed the order. The learned Single Judge does not appear to have adverted to the contents of the power of attorney, which does not reflect any outright sale or the animus of the licensee/appellant to part with all control of



the saw mill. Merely because a power of attorney has been executed in favour of a third party, who has been running the saw mill for all these years and has also got the licence renewed, that would not constitute any valid reason for cancellation of licence of the petitioner; more so, in the absence of any reported breach of any of the conditions of licence.

For the reasons afore-stated, we are not agreement with the order passed by the learned Single Judge and, therefore, we deem it appropriate to and set aside the same.

The matter is remitted to the Licensing Authority/the Licensing Officer-cum-Divisional Forest Officer, Gaya Forest Division, Gaya to examine the records of this case, specially the power of attorney executed by the appellant in favour of the third party and then pass an order in accordance with law.

The Licensing Officer-cum-Divisional Forest Officer, Gaya Forest Division, Gaya shall seek the response of the appellant afresh within 30 days from the date of



production/receipt of a copy of this order and on receiving the reply of the appellant within next 15 days, shall pass a final order within a further period of 60 days, giving reasons in support of the decision so arrived at.

Should the petitioner feel aggrieved by any decision of the Licensing Officer, he would be at liberty to challenge the same before an appropriate forum.

The appeal stands allowed accordingly.

(Ashutosh Kumar, J)

(Nawneet Kumar Pandey, J)

Mahesh/Sunil

AFR/NAFR	AFR
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