

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 19161 of 2014

Kamal Prasad son of Late Harendra Prasad, proprietor M/s Shyam Saw Mill,
Mohanpur, Sitamarhi, resident of College Gate, Main Road, P.S.- Sitamarhi,
Dist.- Sitamarhi

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Chief Conservator of Forest, Bihar, Patna.
2. Director of Industries, Government of Bihar, Patna
3. The Conservator Forests, Muzaffarpur Circle, Muzaffarpur
4. The Divisional Forest Officer-cum-Licensing Officer, Tirhut Forest Division, Muzaffarpur

... .. Respondent/s

Appearance:

For the Petitioner/s : Mr. Sushir Kumar Singh, Advocate
Mr. Praveen Kumar, Advocate
For the State : Mr. Mahtab Alam, AC to SC-20

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date: 26-06-2024

The present writ petition has been filed for quashing the order dated 09.06.2014, contained in Memo No.1125, passed by the Divisional Forest Officer-cum-Licensing Officer, Tirhut Forest Division, Muzaffarpur, i.e. the respondent no.4.

2. The brief facts of the case, according to the petitioner are that the petitioner had established a



saw mill in the name and style of “M/s. Shyam Saw Mill”, in the year 1988, whereafter he had got it registered with the Directorate of Industries, Government of Bihar, vide registration dated 16.03.1988, as a small-scale Industrial Unit and was granted a license by the Director of Industries, Muzaffarpur, in the year 1988 itself, whereupon production had commenced on 05.02.1988. The petitioner had also got the said Saw Mill registered with the sales tax Department.

3. The State of Bihar had during the interregnum period brought an enactment to regulate the saw mills in the State of Bihar, i.e. the Bihar Saw Mills (Regulation) Act, 1990 (hereinafter referred to as “the Act, 1990”), and in terms thereof Bihar Saw Mills (Regulation) Rules, 1993 were also framed, which came into effect on 04.09.1993. The petitioner had then applied for grant of saw mill license, pursuant whereof the petitioner was granted a license bearing license No.249 of 1996 for operating the said saw mill at village-Mohanpur, Sitamarhi. The petitioner had then got



the license renewed from time to time, however, in between the period 2003 to 2010, the license could not be renewed, nonetheless pursuant to a notification dated 22.10.2011, issued by the Environment and Forest Department, Government of Bihar, Patna, a seniority list of saw mills was prepared and in the district of Sitamarhi, the petitioner was placed at Serial No.40.

4. In the meantime, the petitioner had executed a power of attorney on 22.06.2009 in favor of one Ram Chandra Thakur to run his business of saw mill, as a Manager, in view of his deteriorating health. The said Ram Chandra Thakur had got the saw mill license renewed for the years 2011-13. However, the petitioner suddenly received a show-cause notice dated 09.01.2014, asking him as to why the license be not cancelled in view of violation of Section 7(5)(a) of the Act, 1990, in response whereof, the petitioner had filed a detailed reply, nonetheless, the license of the petitioner has been cancelled under Section 7(5) (a) of the Act, 1990, by the respondent no. 4, by an



order dated 09.06.2014 and a penalty of Rs. 2000/- has been imposed, on the ground that the petitioner is only 10% partner in the partnership created by the aforesaid power of attorney dated 22.06.2009, whereas the said Ram Chandra Thakur is partner of 90%, hence the ownership of the saw mill in question has been transferred to the said Ram Chandra Thakur upon relinquishment by the petitioner by the aforesaid power of attorney dated 22.06.2009.

5. The learned counsel for the petitioner submits that a bare perusal of the power of attorney dated 22.06.2009, annexed as Annexure-8 to the present writ petition, would show that nowhere the same stipulates relinquishment on the part of the petitioner of his ownership right in favor of Ram Chandra Thakur and moreover, the same also does not depict that the petitioner has transferred 90% ownership right to the said Ram Chandra Thakur. Therefore, the respondent no.4, on a hypothetical premise, has illegally and wrongfully held that the petitioner has transferred 90%



ownership rights of the aforesaid M/s Shyam Saw Mill and Traders in favor of the aforesaid Ram Chandra Thakur.

6. The learned counsel for the petitioner further submits that there is no contravention of Section 7(5) (a) & (b) of the Act, 1990 and the stand of the petitioner is buttressed by a judgment rendered by a co-ordinate Bench of this Court in the case of **M/s Vishwakarma Furniture Works vs. the State of Bihar & Ors.** dated 13.10.2017 passed in **CWJC No.24763 of 2013**, relevant portion whereof is reproduced herein below:-

“While it is the argument of Mr. Mistry learned counsel for the petitioner in placing reliance to the judgment of this Court reported in 2015 (2) PLJR 211 (Champaran Timber & Allied Product & Anr. Vs. the State of Bihar & Ors.) to submit that the opinion expressed by the Bench in the said case would squarely apply to the present case, the position is contested by Mr. Upadhyay learned State counsel to submit that the facts are otherwise and in so far as the present case is concerned, there is a clear relinquishment by the petitioner.



I have heard learned counsel for the parties and I have perused the records. The only issue in my opinion, which requires consideration is whether there is any thing on record which would confirm relinquishment of ownership by the petitioner. In my opinion, there is none. The only document which has come handy with the Licensing Authority is the power of attorney placed at Annexure-3 and the Licensing Authority mechanically applying the advisory of the Secretary dated 20.10.2013 at Annexure-9, has treated the Power of Attorney as a transfer of ownership when there is nothing in the power of attorney which would confirm any such transfer. Surprisingly even when, the impugned order passed by the Licensing Authority clearly notices the stand of the licence holder where she specifically has stated that she has not transferred ownership and there is nothing in the order which contests the stand of the licence holder, yet he has rejected the stand of the licence holder. The opinion of the Licensing Authority that the Power of Attorney is a change of ownership is a presumptuous finding resting on no evidence. Rightly, Mr. Mistry has relied upon the judgment of this Court in the case of Champaran Timber (supra) because even in



the present case no objection was raised by the Licensing Authority on the Power of Attorney when they started to renew the licence of the private respondent on that basis right since 2009 until 2013 i.e. a period of 4 years though specifically noticing that the applicant for the renewal was the attorney holder. Meaning thereby, the renewal was being granted regularly and with open eyes, through the attorney holder and the only change in the circumstance is the issuance of the advisory dated 22.10.2013 which only required the Licensing Authority to apply his mind into the conditions of Power of Attorney and whether it would confirm a change of ownership. In my opinion the recitals of the power of attorney at Annexure-3 does not in any manner reflect a change in ownership. A categorical stand of the licence holder Biranj Devi that she has not transferred the licence, has also not been contested with any supportive material. The order passed is thus mechanical without application of mind and is resting on no evidence.

In result, the order of the Licensing Authority-cum-Divisional Forest Officer dated 15.01.2014 impugned at Annexure-1 of L.A. No.1316 of 2016 is quashed and set aside.”



7. *Per contra*, the learned counsel for the respondent-State has submitted by referring to the counter affidavit filed in the present case that since the petitioner has transferred ownership of the aforesaid saw mill in question to the extent of 90% in favor of the aforesaid Ram Chandra Thakur, he has violated Section 7 (5) (a) of the Act, 1990, thus the impugned order dated 09.06.2014, passed by the respondent no.4, cancelling the saw mill license of the petitioner, is absolutely just and legal.

8. I have heard the learned counsel for the parties and perused the materials on record.

9. At this juncture, it would be relevant to reproduce Section 7(5) (a) & (b) of the Act, 1990, which reads as follows:-

7. *Grant, renewal, revocation or suspension of licence-*

(1) xxx xxx xxx

(2) xxx xxx xxx

(3) xxx xxx xxx

(4) xxx xxx xxx



(5) If the licensing officer is satisfied, either on a reference made to it in this behalf or otherwise, that-

(a) the licensee has 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

(b) the licensee has without reasonable cause, failed to comply with any of the conditions of the licence or any direction lawfully given by the licensing officer or has contravened any of the provisions of this Act or the rules made thereunder;

(C) xxx xxx xxx

Then without prejudice to any other penalty to which licensee may be liable under this Act the Licensing Officer may, after giving the licensee an opportunity of showing cause, revoke, or suspend the licence and forfeit the sum, if any, or any portion thereof deposited as security for the due performance of the conditions subject to which the licence has been granted."

10. This Court finds from a bare perusal of the power of attorney dated 22.06.2009 that admittedly, the same neither stipulates that the



saw mill license of the petitioner has been transferred in favor of the said Ram Chandra Thakur nor the same shows that the petitioner has parted with his ownership rights in the aforesaid M/s Shyam Saw Mill much less his control over the same, in favor of the aforesaid Ram Chandra Thakur, either in part or in whole nor the same depicts that the petitioner has otherwise ceased to operate or own the said saw mills, hence undeniably, there has been no violation of Section 7(5)(a) & (b) of the Act, 1990. This Court further finds that the premise/ground, on which the impugned order dated 09.06.2014, has been passed by the respondent no.4, i.e. the petitioner having transferred 90% ownership rights in favor of one Ram Chanrda Thakur, is not borne out from the records much less from the power of attorney dated 22.06.2009, apart from the fact that the learned counsel for the respondents has miserably failed to show from the records, any such material which would support the said findings of the respondent no.4, as have been arrived at in the



impugned order dated 09.06.2014. In fact, the present case is squarely covered by the aforesaid judgment rendered in the case of **M/s Vishwakarma Furniture Works** (supra).

11. Having regard to the facts and circumstances of the case and for the forgoing reasons, this Court finds that the impugned order dated 09.06.2014, passed by the respondent No.4 is based on a hypothetical premises, thus is not sustainable in the eyes of law, hence is quashed.

12. The writ petition stands allowed.

(Mohit Kumar Shah, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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