

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7649 of 2015

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Bhuneshwar Mistry son of Late Sukhdeo Mistry resident of Mohalla-Shantinagar Paliganj, P.S. Paliganj, District- Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The District Magistrate, Patna.
3. The Senior Superintendent of Police, Patna.
4. The Sub - Divisional Officer, Paliganj, District- Patna
5. Sri Subodh Kumar, Station House Officer, Paliganj, District- Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Vinay Mistry
For the Respondent/s : Mr.K.N. Jha, Ac to GP 11

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CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY
ORAL JUDGMENT

Date : 16-04-2024

The writ application is filed directing the respondents to ensure the opening of the main gate of the furniture shop of the petitioner at Paliganj Bazar, District Patna as the same has been closed by the 5th respondent by putting a lock over it on 09.04.2015 without any sanction of the court or any order of the competent authority it is contrary to the order dated 16.09.2008, passed in C.W.J.C. No. 12218 of 2008. Further directing the respondents to take appropriate legal action against Subodh Kumar, Station House Officer, Paliganj, District Patna, who has absolutely failed to discharge his official duties.



2. The brief facts culled out of the petition are that the petitioner is a proprietor of furniture shop situated at Paliganj Bazar, District Patna and was engaged in manufacturing of furniture i.e. Palla, Chaukat, window, chair, table, Palang etc. The State of Bihar took a decision that small size Saw Mill, upto 18" diameter should be kept out from the purview of Bihar Saw Mills (Regulation) Act, 1990 and as such an Expert Committee was constituted by Department of Environment and Forest, Government of Bihar vide Notification No. 1, Parya 55/2002-765E dated 14.11.2003. The Committee submitted a report to the State Government in which Wood Cutter Tiny Saw Mills (18" Diameter) used in carpentry and are used for making furniture/finishing works of soles for shoes should be kept out of the ambit of the number of Saw Mills. The State of Bihar filed a petition before the Hon'ble Central Empowered Committee praying to pass necessary orders for exemption of Tiny Saw Mill upto 18" diameter from the purview of Bihar Saw Mills (Regulation) Act, 1990 and therefore, no license was required for these Saw Mills and the Saw Mills will be used for exclusively carpentry and sole making works. Accordingly, the Central Empowered Committee was pleased to recommend the State of Bihar that the vertical band Saw upto 18" diameter is



de-linked from the availability of the timber and the same is used for making furniture by the carpenter vide recommendation dated 11.06.2008.

3. Pursuant to that the petitioner established 18” diameter Saw Mill for making furniture, within his furniture shop but the same was closed by the respondents in the year 2008. Being constrained by the acts of the respondents, the petitioner approached this Court vide C.W.J.C. No. 12218 of 2008, and after hearing the parties, the Hon’ble High Court vide order dated 16.09.2008 was pleased to direct the State to seek instructions in the matter and file a comprehensive counter affidavit, so that the matter can be disposed of at the stage of admission itself and it was also observed that no coercive steps shall be taken against the petitioner in the matter. Apart from that another writ petition was also decided by this Court vide C.W.J.C. No. 6662 of 2009 by its dated 24.06.2009 and therefore, the petitioner prays to dispose of the present writ petition in the same terms and conditions.

4. It is further contended in the writ petition that the Forester and the Police Inspector are not empowered to make any inspection, search and seizure of Saw Mills under Section 8



of the Bihar Saw Mill (Regulation) Act, 1990 as per the order of this Court dated 04.07.2012, in C.W.J.C. No. 11206 of 2005.

5. It is specifically contended by the learned counsel for the petitioner that the 5th respondent came to his furniture shop on 09.04.2015 and illegally demanded double set Palang, Sofa Set and Dining Table and as the petitioner refused to deliver then the 5th respondent forcibly closed the main gate of the furniture shop of the petitioner by putting a lock over it. Further the police called the Forest Department and accordingly inspection was conducted on 13.04.2015. A seizure list was prepared and subsequent to it, case was registered against the petitioner on 13.04.2015. From the seizure list, it appears that no zimenama was given to anybody to suggest that the seizing authority has intention to take away the seized wood, from the premises and various items were taken away by the 5th respondent prior to the seizure.

6. It is further contended by the learned counsel for the petitioner that the petitioner made a detailed representation before the respondent authorities requesting them to open the main gate of the premises but as the respondents failed to do so, he was constrained to file the writ application. It is also contended that inspite of the orders of this Court, dated



16.09.2023, passed in C.W.J.C. No. 12218 of 2008, the respondents are not opening the main gate of the petitioner's premises and therefore, prayed to allow the writ application.

7. On the other hand, a detailed counter affidavit was filed by the Respondent No. 3 denying all the allegations made in the writ petition. The counter affidavit discloses that the SHO, Paliganj, Police Station has not locked the furniture shop of the petitioner. Rather it was a Saw Mill but not a furniture shop and the officers of Forest Department visited the premises of the petitioner, basing on discrete information. It was noticed that the petitioner has been running a Saw Mill for several years without taking any license from the Forest Department under Saw Mill (Regulation) Act, 1990. At the time of the raid, Forest Department got the assistance of police personnel of Paliganj Police Station and seized many items including 38" diameter and several wooden logs for which a case was also registered against the petitioner bearing Paliganj P.S. Case No. 69 of 2015 under Section 414 of the I.P.C., Section 33 of the Indian Forest Act, 1927 as well as under Section 14 of the Bihar Saw Mills (Regulation) Act, 1990.

8. It is further contended in the counter affidavit that the seized articles were not carried away by the Forest



Department, therefore, the premises was kept under lock and key and a Chawkidar has been deputed for looking after the said premises and it is not a furniture shop. The counter affidavit also reveals that the police officials have visited the premises only, at the request of the Forest Divisional Officer, Patna vide letter no. 1156 dated 13.05.2015. Further it is contended that the S.H.O., Paliganj has neither locked the gate of the premises of the petitioner nor seized any material and that the writ petition is filed with a malafide intention against the police officials.

9. Heard learned counsel for the petitioner as well as learned counsel for the respondents.

10. It is specific contention of the learned counsel for the petitioner that the main gate which was locked is a furniture shop and not a Saw Mill and the shop was kept under key and lock on 09.04.2015 by the police officials whereas the raid was conducted by the Forest Department officials on 13.04.2015. Learned counsel for the petitioner further contended that the orders of this Court in C.W.J.C. No. 12218 of 2008, dated 16.09.2008 are not complied with by the respondents in spite of specific directions that no coercive step shall be taken against the petitioner.



11. On the other hand learned counsel for the State contended that the case was registered against the petitioner under the IPC as well as under the Forest Act and the Forest officials have raided the Saw Mill of the petitioner and kept it, under key and lock as the articles which are mentioned in the seizure list cannot be moved from the premises. Further the learned counsel for the respondents contended that the Forest Department officials or the Forest Department was not made as a party to the writ petition and therefore, the writ petition is itself devoid of merits and prayed to dismiss the writ petition.

12. Perused the records. On perusal of the petition, it is evident that the Forest Department officials were not made party to the writ petition. Furthermore, the order dated 16.09.2008 in C.W.J.C. No. 12218 of 2008, was an interim order directing the respondents therein not to take any coercive steps until further orders i.e. till the date of filing of the comprehensive counter affidavit by the respondents. Admittedly, the writ petition was dismissed on 16.12.2014. On perusal of the order, it is evident that the petitioner was operating his Saw Mill without license and after observing that the petitioner did not have license the said Writ Petition was dismissed. As on the date of the seizure, the writ petition no. C.W.J.C. No. 12218 of 2008



was dismissed. Therefore, the contention of the counsel that the order dated 16.09.2008 in C.W.J.C. No. 12218 of 2008 is in force as on the date of search and seizure has no force. Furthermore, this Court has directed the Writ Petitioner on 25.01.2014 to file the photographs showing the premises of the petitioner which was seized was kept under lock and key. The learned counsel for the petitioner also sought time for filing rejoinder. In spite of giving sufficient time, the petitioner has neither filed rejoinder to the counter affidavit nor filed photographs of the premises. It is specific contention of the learned counsel for the petitioner that the main gate of the furniture shop was kept under lock and key. The name of the furniture shop was also not mentioned in the Writ Petition. There is no document before the Court to show that the furniture shop was registered under Shops and Establishments Act, 1953. Furthermore, CWJC No. 12218 of 2008 was dismissed with an observation that the petitioner does not possess any license for running the Saw Mill.

13. Therefore, this Court is of the considered view that there are no merit in the case of the petitioner and the pleadings are not supporting by any document or any evidence to prove



that the furniture shop of the petitioner was being kept under key and lock.

14. With the aforesaid observation, the writ petition is dismissed as it is devoid of merits.

(G. Anupama Chakravarthy, J)

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AFR/NAFR	NAFR
CAV DATE	N/A
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