

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1802 of 2018

In

Civil Writ Jurisdiction Case No.16306 of 2014

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Sarfaraz Ahmad, son of Md. Ali, Resident of Ram Nagar Bazar, P.S.- Ram Nagar, District- West Champaran at Bettiah, at present residing at Village- Maldahiya, P.S.- Sikarpur, District- West Champaran at Bettiah.

... ... Appellant/s

Versus

1. State of Bihar through the Commissioner-cum-Principal Secretary, Department of Forest and Environment, Government of Bihar at Patna.
2. The District Collector-cum-District Magistrate, West Champaran.
3. The Conservator of Forest-cum-Regional Director, Valmiki Tiger Project, West Champaran, Bettiah.
4. The Licensing Authority-cum-Divisional Forest Officer-cum-Deputy Director, Valmiki Tiger Project, Division-1, West Champaran, Bettiah.
5. M/s Modern Saw Mill, a proprietorship firm through its Proprietor Abdul Sattar, son of Late Abdul Rauf, Resident of Village- Maldahiya, Narkatiyaganj, P.S.- Sikarpur, District- West Champaran.

... ... Respondent/s

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Bihar Saw Mills (Regulation) Act, 1990—Section 24—Bihar Saw Mills (Regulation) Rules, 1993—Bihar Rules for Establishment of Saw Pits and Establishment and Regulation of Depots, 1983—License—grant of—a license was issued in the name of M/s Modern Saw Mill in favour of Respondent No. 5 in the year 1986 under Rules, 1983—by an affidavit, executed by Respondent No. 5 handed over the Saw Mill in favour of Appellant—under Act, 1990 previous license-holders' were required to seek a fresh license, regulated by Rules, 1993—any permission or license under Rules, 1983 became redundant after coming into force of Act, 1990—a fresh license was granted to Respondent No. 5 as he had not applied for after coming into force of Act, 1990—appellant was also called upon to make the requisite deposits of renewal as well as the past dues against the erstwhile license-holder, appellant deposited the same—grant of license to appellant was a fresh license and was not a renewal of the license of Respondent No. 5—appellant ran the saw mills, almost after 15 years a notice was issued to Respondent No. 5 calling upon to explain Saw Mill could have not been transferred on the basis of any power of attorney, etc.—Authority held that Respondent No. 5 had lost all rights as his license was under Rules, 1983 and he failed to apply under the Act, 1990—Order of Authority was upheld in Appeal filed by Respondent No. 5—learned Single Judge held that Appellant obtained the license on the basis of incorrect facts and was ineligible for grant of any license on account of his conduct—there was no misrepresentation by the Appellant as the affidavit was sworn by Respondent No. 5 himself—execution of affidavit was not denied—learned Single Judge does not appreciated the fact that since 1998 onwards and after the promulgation of the 1990 Act, it was the appellant who was running the Saw Mill for 15 years and who had deposited the entire dues and when he applied, he was granted a fresh license in 1998—said license was never challenged before any authority; and it continues in existence till the passing of Order in writ petition—therefore, Respondent No. 5 had absolutely no claim with regard to the license of running of Mill—therefore, question of proprietorship and grant of license could not have been mixed up so as to non-suit the appellant—declaration of ineligibility of the appellant by the learned Single Judge is set aside—appeal partly allowed. (Paras 3, 5, 12, 13, 15 to 18)

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... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Mukesh Kant, Advocate
Mr. Sanchay Srivastava, Advocate
For the Respondent/s : Mr. Sarvesh Kumar Singh, AAG-13
Mr. Shakib Ayaz, AC to AAG-13

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 13-03-2019

Heard Shri Mukesh Kant, learned counsel for the appellant and Shri Sarvesh Kumar Singh, learned Additional Advocate General-13 for the respondent nos.1 to 4.

2. We had adjourned the matter yesterday to enable the Court to be informed as to whether Abdul Sattar, the respondent No.5-petitioner, has filed any L.P.A. against the impugned



judgement or not. This was necessary as the writ petition had been dismissed, but simultaneously the claim of the appellant had also been rejected. Learned counsel informs that no L.P.A. has been filed by Abdul Sattar and it is only the appellant who is aggrieved by the impugned judgement. In this background, we do not find it necessary to issue any notice to Abdul Sattar as he does not appear to be any longer interested in the matter after the dismissal of his writ petition on 28th of November, 2018.

3. The dispute is in relation to grant of license to Modern Saw Mill. The undisputed facts are that in terms of Bihar Rules for the Establishment of Saw Pits and Establishment and Regulation of Depots, 1983, a license was issued in the name of M/s Modern Saw Mill on 9th of May, 1986. A copy of this license in terms of Rule 4 (3) thereof is Annexure-A to the counter affidavit filed on behalf of the respondent nos. 3 and 4 in the writ petition.

4. It appears that the respondent No.5-petitioner on 19th of March, 1998 executed an affidavit, a copy whereof has been filed as Annexure-2 to the writ petition. The contents of the said affidavit are extracted hereinunder:-

AFFIDAVIT

I, Abdul Sattar, son of Abdul Rauf, aged about 50 years, by religion Muslim, by occupation business, resident of village Maldahiya, Narkatiaganj, P.O. and P.S. Narkatiaganj,



District West Champaran do hereby solemnly affirmed and declare as follows:-

1. That I am the Owner and sole proprietor of M/s Modern Saw Mill situated at Hardiya Chowk, Narkatiaganj.

2. That, besides this business I have got other business too and use to look after the cultivation also.

3. That, due to these reasons I am facing difficulty in dealing this business and hence **I have decided to hand, it over to my son-in-law** who has accepted this proposal.

4. That **my son in law Sarfraj Ahmad** son of Mohammad Ali, resident of Ramnagar who is keen and energetic to deal the business and hence a "SOPURDGI NAMA" has already been executed in his favour and now **he has been made responsible for the entire affairs** of the Saw Mills as a sole Proprietor.

5. **That, any act done by my son-in-law who will be presumed to be done in his personal capacity as owner of the Saw Mill.**

6. **That, hereafter I seize any interest in any manner.**

7. **That in the existing licence in place of my name the name of my son in law Sarfraj Ahmad be adjusted and my name should be deleted.**

8. That I in my full sense and sound mind do hereby trust my son in law **as the present owner of the Saw Mill.**

9. That, the contents of the above paras are true to the best of my knowledge and belief.

Sd-

Abdul Sattar

Deponent

I, Abdul Sattar, the deponent do hereby further declare that the contents of this affidavit are true to the best of my knowledge and belief.

Verified at Bettiah on 19.3.98.

Sd-

Abdul Sattar

Deponent

5. In Paragraph-7 of the writ petition, the respondent No.5-petitioner has admitted the execution of the affidavit, but it is



alleged that he signed it without going through the contents thereof.

6. In view of the said affidavit, it appears to be undisputed that the appellant herein took over the Saw Mill and started running the same which fact does not appear to be controverted.

7. With the coming into force of the Bihar Saw Mills (Regulation) Act, 1990, all such license holders were required to seek a fresh license in terms thereof. The procedure for award of such license came to be regulated by the Bihar Saw Mills (Regulation) Rules, 1993. Admittedly, the respondent No.5-petitioner Abdul Sattar did not move any application for grant of license under the new Act.

8. By virtue of the provision of Section 24 of the 1990 Act, in the absence of any such application for grant of license, any permission or license under the 1983 Rules aforesaid became redundant and, therefore, in this background it appears that the present appellant moved an application for grant of a license on 21st March, 1998.

9. However, while processing the said license it appears that the file notings, copy whereof has been filed as Annexure-11 by the writ-petitioner in his supplementary affidavit, the claim of



the appellant was also coordinated with the affidavit which had been filed by the respondent No.5-petitioner. In this background, a fresh license was granted to the respondent No.5-petitioner on 26th of March, 1998. A copy of this fresh license is Annexure-4 to the writ petition being license No.18 of 1998. The grant of such license is, therefore, undisputed, but at the same time, the appellant was also called upon to make the requisite deposits of renewal as well as the past dues against the erstwhile license holder. The appellant, accordingly, deposited the same under his signature which is evident from the Annexure-3 to the writ petition. It may be mentioned that the said application is signed by the appellant and not by the respondent No.5-petitioner. This may have been done in order to cure past continuity.

10. It is, therefore, clear from the facts aforesaid that even though the application had been processed taking notice of the affidavit extracted hereinabove, yet grant of license to the appellant was a fresh license and was not a renewal of the license of the respondent No.5-petitioner whose license stood extinguished on account of the promulgation of the new Act of 1990.

11. The Saw Mill continued to be run by the appellant, and almost after 15 years a notice was issued on 13th of November, 2013 to the respondent No.5-petitioner Abdul Sattar calling upon



him to explain that the Saw Mill could not have been transferred on the basis of any power of attorney etc. and, therefore, he should give his reply. This notice was not issued to the appellant but to the respondent No.5-petitioner.

12. However, the appellant did appear through his counsel before the Licensing Authority and on 6th of March, 2014, an order was passed categorically holding that Abdul Sattar had no right to claim the continuance or otherwise of the license inasmuch as it was the appellant who was granted a fresh license on 26th of March, 1998 and which did not suffer from any infirmity. It was also observed that it was after 15 years that this dispute was raised by Abdul Sattar which deserves rejection. It was also held that Abdul Sattar had lost all rights as his license was under the 1983 Rules and he failed to apply under the 1990 Act.

13. Abdul Sattar, the respondent No.5-petitioner, filed an appeal against the same and the same was dismissed upholding the order of the Licensing Authority. Challenging the said orders, the writ petition giving rise to this appeal was filed by Abdul Sattar and the learned Single Judge while proceeding to dismiss the writ petition has simultaneously held that the appellant had apparently obtained the license on the basis of incorrect facts and consequently, he was ineligible for grant of any license on account



of his conduct referring to the relationship between Abdul Sattar and the appellant.

14. We may mention that the affidavit extracted hereinabove which is the own affidavit of Abdul Sattar recites that the appellant is his son- in- law, but the fact is that he is the son-in-law of his brother. There was no misrepresentation by the appellant. The learned Single Judge, therefore, on the basis of the aforesaid facts dis-entitled the appellant from running his Saw Mill holding him to be ineligible.

15. Learned counsel for the appellant Shri Mukesh Kant submits that this finding recorded by the learned Single Judge is against the weight of the evidence on record inasmuch as a mere denial by the respondent No.5-petitioner that he had executed the affidavit without reading the contents thereof was not established. The execution of the affidavit was not denied. In the said background, there was no misrepresentation on the part of the appellant so as to construe that it was the appellant's conduct which had led to the situation.

16. Secondly, the learned Single Judge also does not appear to have appreciated the fact that since 1998 onwards and after the promulgation of the 1990 Act, it was the appellant who was running the Saw Mill for 15 years and who had deposited the



entire dues and when he applied, he was granted a fresh license on 26th of March, 1998. This license dated 26th of March, 1998 was never challenged before any authority and it continued to be in existence till the passing of the orders impugned in the writ petition. It is, therefore, evident that the respondent No.5-petitioner had absolutely no claim with regard to the license of running of the Saw Mill and, therefore, the question of proprietorship and grant of license could not have been mixed up so as to non-suit the appellant.

17. We do not find any lawful cause for the learned Single Judge to have recorded the findings against the appellant on the basis of the material on record inasmuch as it is also the case of the contesting State-Respondents that the license had been validly granted to the appellant and it was in existence since 1998 and in accordance with 1990 Act and the Rules framed thereunder. Thus, the respondent No.5-petitioner having no claim left, there was no occasion to have declared the appellant to be ineligible.

18. Consequently, the appeal insofar as it relates to the appellant deserves to be allowed. The declaration of ineligibility of the appellant by the learned Single Judge under the impugned judgement dated 28.11.2018 is set aside.



19. It is also on record that a consequential order has been passed cancelling the license of the appellant vide order dated 7th of February, 2019 in view of the judgement of the learned Single Judge. We accordingly set aside the consequential order dated 7th of February, 2019 and the Licensing Authority shall abide by the same. Our judgement should however not be construed to declare any title in favour of the appellant about ownership or proprietorship of the assets of M/s Modern Saw Mills or justifying any inheritance. This judgement is confined only to the validity of the license and dispute relating thereto without any prejudice to any other rights of the parties including the respondent No.5-petitioner.

20. Appeal is partly allowed.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

Sunil/-

AFR	AFR
CAV DATE	N. A.
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