
(2011) 03 JH CK 0139

In the Jharkhand High Court

Case No : Writ Petition (C) No. 7367 of 2006

Kishor Tiwary

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 09-03-2011

Acts Referred:

Citation : (2011) 2 JCR 492 : (2011) 8 RCR(Civil) 1997

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Judgement

R.R. Prasad, J.—Heard learned Counsel appearing for the Petitioner and learned Counsel for the State.

2. Learned Counsel for the Petitioner submits that more than three thousand Khair trees had been planted over the raiyati land measuring 59.22 acres bearing Plot Nos. 4, 21, 23, 24, 26, 27, 28, 30, 31, 33, 29, 36, 107 & 108, 111, 112, 114 & 117 of Village-Harinamarh, Tola Pachpahari, P.S.-Chainpur, District-Palamau, by late Rajeshwar Tiwari. When those plants got matured for its cutting and selling, one Ram Krishna Tiwari, son of Late Rajeshwar Tiwari sought permission from the official of the Forest Department to cut the trees, but at that time objections were raised by the sisters and brothers of said Ram Krishna Tiwari. When on account of objections being raised, permission was not granted, the Petitioner moved to this Court vide W.P.(C) No. 3746 of 2003, with a prayer to direct the Respondents to give permission to cut and sell the Khair timber in the open market. In the said case, the sisters and brothers of Ram Krishna Tiwari appeared and took a plea that they do not have any objection in granting permission to cut the trees. Upon it, the case was disposed of, directing the Petitioner to make proper application with no objections of brothers and sisters so that necessary decision in the matter for grant of permission be taken by the authorities. Thereupon the competent authority on taking into account that no objections had been granted by the sisters and brothers of Ram Krishna Tiwary, permission was accorded to Ram Krishna Tiwary to cut the Khair trees.

3. Thereafter, Ram Krishna Tiwari executed a deed of power of attorney in the Year, 2005 in favour of the Petitioner authorising him to cut the trees and to take it to the depot of the State Trading Division. Pursuant to that transit permit on being issued in favour of the Petitioner, trees standing over the plots, not of all the plots were cut and were brought to the depot of State Trading Division, Chainpur so that the same be sold by the Corporation and the proceed be handed-over to the Petitioner after retaining the commission.

4. Thereupon the value of the wood was estimated by the Department. On such estimation direction was issued by the Headquarter to deposit the amount at the Corporation Centre, Chainpur. But that never seems to have been done and hence, the Forest Trading Corporation did not proceed further in the matter of selling those wood as a result of which it remained intact in the depot of the Forest Trading Division at Chainpur. Therefore, under these situations the Petitioner moved to this Court by filing instant writ application, making a prayer to direct the Respondents to sell the wood in the open market and payment be made to the Petitioner or alternatively the Petitioner be allowed to sell the same.

5. A counter-affidavit has been filed on behalf of the Respondents, wherein, the fact stated on behalf of the Petitioner has almost been admitted. However, statement has also been made to the effect that the wood stored at centre could not be disposed of, as certain objections were raised by the co-sharers of Ram Krishna Tiwari. It has further been stated that the charge of Chainpur Depot has been taken over by the Jharkhand Forest Development Corporation. Further it has been stated in Paragraph No. 29 of the Counter-affidavit which reads as follows:

Now the necessary steps are being taken to make the payment of the khair wood in question. A letter bearing memo No. 161 dated 05.02.2007 has been written by Managing Director, Forest Development Corporation directing the respective officers of Corporation to make assessment of the value of the khair wood and send a demand letter for the assessed amount. The value of the khair wood has been assessed and a request has been made by DFO, Garhwa South Division to Divisional Manager, Minor Forest Produce Garhwa vide letter No. 726 dated 13.02.2007 to do the needful.

6. Thus, it does appear that khair wood after being cut with due permission of the competent authority was brought to the Depot of Forest Trading Division, Chainpur under transit permit which was never sold by earlier entity Forest Trading Division, Chainpur, nor it has been sold by the successor entity Jharkhand Forest Development Corporation though they are supposed to get it sold in the market and to pay back proceed of it. However, the same could not be done as according to the Respondents, certain objections were raised by the co-sharers of land holder, but it is admitted position that the wood has been lying in Forest Depot at Chainpur since the Year, 2005, which certainly needs to be disposed of in the manner which the authority of the Corporation deems fit and proper so that the proceed be given to rightful claimant.

7. Accordingly, this writ petition is disposed of, with a direction to the Petitioner to approach before the Divisional Forest Officer, Garhwa South Division, Palamau, with an application to release the khair wood, which has been lying in the Forest Depot at Chainpur with no objections of the co-sharers of the land holder with an alternative prayer to make payment of the proceed of sale of wood to be effected by the department itself. On filing such application the Divisional Forest Officer, Garhwa South Division, Palamau, would be taking decision within a month from the date of receipt of application either to sell it off through the department and to pay proceed of it to the Petitioner or to release the same in favour of the Petitioner on being satisfied that no other co-sharers has got any objection.

8. Thus, this application is disposed of,.