
(2003) 03 JH CK 0107
In the Jharkhand High Court
Case No : Writ Petition (C) No. 27 of 2003

Lalji Sahay Bajpai

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 12-03-2003

Acts Referred:

Forest (Conservation) Act, 1980 — Section 2
Forest Act, 1927 — Section 29

Citation : (2003) 2 JCR 579

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : Rajiv Ranjan, for the Appellant; SC II, for the Respondent

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—In this writ application the petitioner has prayed for quashing the order dated 22.12.2001, whereby the Divisional Forest Officer, Kolhan Forest Division, being the Licensing Authority, cancelled the license of the Saw Mill of the petitioner and also the order dated 11.5.2002 passed by respondent No. 3, Conservator of Forest, being the appellate authority, who affirmed the order passed by the Licensing Authority.

2. Petitioner's case is that he started Saw Mill on a portion of land comprised of RS Plot No. 431 under valid licence granted by the respondents in the year 1976. Petitioner's further ease is that RS Plot No. 431 stands recorded in the name of Spath Eastern Railway in survey record of right and the land has been shown in possession of Forest Department since 1940. It is contended by the petitioner that time-to-time license was renewed by the Licensing Authority but in 2001 the Licensing Authority refused to renew the license.

3. Respondents in their counter affidavit have stated that the impugned orders refusing to grant license to the petitioner has been passed in the light of the orders passed by the Supreme Court restraining any non-forest activities in the

forest land. It is stated that running of Saw Mill of any kind is not permissible without approval of the Central Government under the provision of Forest Conservation Act. Respondent's further case is that the location of the Saw Mill is within less than two kilometer nearest to the protected forest and the plot in question where the petitioner running a Saw Mill is in peaceful possession of the Forest Department since 1940.

4. Mr. Rajiv Ranjan, learned counsel for the petitioner assailed the impugned orders as being illegal and wholly without jurisdiction. Learned counsel drawn my attention to Section 29 of the Indian Forest Act and submitted that only excepting those forest declared by notification the respondents had no authority to refuse the renewal of license merely because the Saw Mill is situated within the area described as a forest. In my opinion, the submission of Rajiv Ranjan is wholly misconceived and devoid of any substance.

5. Admittedly, the petitioner installed saw mill on a portion of land of RS Plot No. 431 which stands recorded in the Revenue Record of Right in the name of South Eastern Railway and the nature of the land has been shown as forest and in possession of the Forest Department. The only question therefore falls for consideration is as to whether petitioner can carry on saw mill on the forest land.

6. From perusal of the impugned letter issued by Divisional Forest Officer refusing to renew the license of the petitioner, it appears that the only ground taken by the authority is that pursuant to the decision of the Supreme Court no new license can be granted after 12.12.1996. It is stated in the said letter that since petitioner was not granted licence for saw mill after 1997 and therefore, it cannot be renewed. It is not the case of the petitioner that the saw mill of the petitioner is not situated within the forest area.

7. In the case of T.N. Godavarman Thirumulkpad Vs. Union of India and others, the Supreme Court while considering the, question about the object and purpose of the enactment of Forest (Conservation) Act, 1980 issued some guidelines. In the order dated 12.12.1996 the direction inter alia given by the Supreme Court reads as under :

. "In view of the meaning of the word "forest" in the Act, it is obvious that prior approval of the Central Government is required for any non-forest activity within the area of any "forest". In accordance with Section 2 of the Act, all on going activity within any forest in any State throughout the country, without the prior approval of the Central Government, must cease forthwith. It is, therefore, clear that the running of saw mills of any kind including veneer or ply wood mills, and mining of any mineral are non-forest purposes and are, therefore, not permissible without prior approval of the Central Government. Accordingly, any such activity is prima facie violation of the provisions of the Forest Conservation Act, 1980, Every State Government must promptly ensure total cessation of all such activities forthwith.

8. The Supreme Court again passed the order in the same case on 4.3.1997 T.N.

Godavarman Thirumulkpad Vs. Union of India and others, issuing further direction. Para 4 of the said order is worth to be quoted :

"All unlicensed saw mills, veneer and ply wood industries in the State of Maharashtra and the State of Uttar Pradesh are to be closed forthwith and the State Government would not remove or relax the condition for grant of permission/license for the opening of any such saw mill, veneer and ply wood industry and it shall also not grant any fresh permission/license for this purpose. The Chief Secretary of the State will ensure strict compliance of this direction and file a compliance report within two weeks."

9. Recently a Division Bench of Orissa High Court in the case of Bhagawan Bhoi Vs. State of Orissa and Others, was considering a question as to whether permission under the aforesaid Act is required even for felling of trees from private forest. Speaking for the Bench, Hon"ble P.K. Balasubramanyan, Chief Justice (as he then was) following the decision of the Supreme Court in Godavarman case held :

"In view of the decisions of the Supreme Court as aforesaid, there cannot be any doubt that the Forest (Conservation) Act would apply to any forest land whether declared as private forest or not and whether the forest is a reserve forest or not. Once you find that the land satisfies the description of being a forest land, it has to be taken that the Forest (Conservation) Act would have application and no permission to fell trees could be granted without prior concurrence of the Central Government."

10. Taking into consideration the entire facts of the case and the law discussed herein above, I am of the opinion that the respondents have rightly refused to renew the saw mill license of the petitioner, which is situated on the forest land and in possession of the forest department for the last several decades.

11. For the reasons, aforesaid, there is no merit in this writ application, which is accordingly dismissed.