
(2010) 10 AHC CK 0296

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 61400 of 2010

Mansha Devi

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 07-10-2010

Acts Referred:

Uttar Pradesh Establishment and Regulation of Saw Mills Rules, 1978 — Rule 10, 5, 6, 7, 9

Citation : (2011) 2 ADJ 775

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Arun Tandon, J.—Smt. Shards Devi-Respondent No. 5, on the basis of a sale-deed executed by the earlier owner of the Saw Mill dated 19th April, 1999, made an application for grant of Saw Mill licence in her name. This application was granted by the Chief Conservator of Forest, U.P. Lucknow vide letter dated 15.1.2000 and by the Conservator of Forest, Azamgarh vide order dated 26.1.2000 and w.e.f. 1st December, 2001 the transfer was made effective.

2. After nearly 9 years of such transfer, the Petitioner is stated to have filed an appeal under Rule 10 of the U.P. Establishment and Regulation of Saw Mill Rules, 1978. In the appeal it-was contended that the sale-deed alleged to have been executed by the husband of the Petitioner was a forged document and therefore the licence granted in favour of Smt. Sharda Devi be cancelled. The appeal has been dismissed under the impugned order by the Conservator of Forest vide order dated 4th June, 2010 and it has been recorded that there is a serious dispute with regard to the correctness or otherwise of the sale-deed executed, for which opinion of hand-writing expert was obtained and it has been found that the sale-deed did contain the signature of the earlier licensee.

On behalf of the Petitioner following grounds have been raised for questioning the order so passed i.e. (a) the order impugned is in violation of the principles of

natural justice, inasmuch as expert opinion has been obtained, without notice and opportunity to the Petitioner and after arguments were heard, (b) the Petitioner had filed an statutory appeal and therefore, if the order passed by the appellate authority is illegal, this Court has to interfere, (c) the sale-deed on a bare perusal by the Court would be found to contain forged signatures, (d) re-allocation of the Saw Mill was done subsequent to the death of the husband of the Petitioner was illegal, inasmuch as, if the sale-deed of 1999 was valid, re-allocation should have been done during the life time of the husband and (e) since the Saw Mill was attached to the earth, the transfer could only be effected by registered sale-deed.

3. I have heard learned Counsel for the Petitioner and have gone through the records of the writ petition.

I am of the considered opinion that the writ petition is totally misplaced. No appeal under Rule 10 of U.P. Establishment and Regulation of Saw Mill Rules, 1978 was legally maintainable against an order granting/transferring the licence. Rule 10 provides that an appeal, only against an order of refusal to grant licence made under Rule 9, could be filed. For ready reference Rules 9 and 10 are being quoted below:

9. Procedure on refusal, non-renewal or revocation of licence.--Where the concerned Divisional Forest Officer refuses to issue or renew the licence, he shall send intimation thereof to the applicant or the holder of the licence, as the case may be, giving reasons therefor.

10. Appeal against refusal to issue or renew or revoke licenced.--Any person aggrieved by an order of Divisional Forest Officer under Rule 9 may, within 30 days of the service of the order on him, appeal to the concerned Conservator of Forest. The Conservator of Forest thereupon, shall decide the appeal after giving the Divisional Forest Officer and/or Appellant, an opportunity of being heard. The decision of the Conservator of Forest on such appeal shall be final.

4. Grant of licence is done under Rule 5. Validity period is provided under Rule 6 and renewal has been provided under Rule 7.

On a simple reading of the aforesaid rules it shall be clear that no appeal under Rule 10 against grant of licence under Rule 5 or transfer of such licence is provided for under Rule 10. Right to appeal is a statutory right and can be exercised strictly in terms of the provision so applicable. This Court therefore holds that the appeal filed by the Petitioner was legally not maintainable.

In view of the said conclusion it is not necessary for this Court to examine the issues No. (a) and (b) any further.

5. So far as issues no (c), (d) and (e) are concerned, this Court finds that the licence was granted/transferred in favour of Respondent No. 3 in the year 2001. It has been in operation for more than 9 years as on date. The Petitioner during all this period made no application for renewal /transfer of the licence of the Saw

Mill in her favour.

6. In the facts of the case issues with regard to genuineness of the sale-deed executed by the husband of the Petitioner in the year 1999 have been raised, which require consideration of oral as well as documentary evidence. The proper remedy is to file a suit for declaration of the sale transaction as void and other consequential relief. Writ is not the proper remedy in the facts of this case.

Writ petition is dismissed.