

(2006) 04 UK CK 0034

In the Uttarakhand High Court

Case No : Writ Petition No. 896 of 2005 (M/B)

Ranjan Kumar

APPELLANT

Vs

State of Uttaranchal and Others

RESPONDENT

Date of Decision : 27-04-2006

Acts Referred:

Constitution of India, 1950 — Article 226, 48A, 51A
Uttaranchal Establishment and Regulation of Saw Mills Rules, 2004 — Rule 5

Citation : (2006) 2 UC 1110

Hon'ble Judges : Rajeev Gupta, C.J.; Prafulla C. Pant, J

Bench : Division Bench

**Advocate : Alok Singh, assisted by, Dharmendra Barthwal, for the Appellant;
Subhash Upadhyaya, for the Respondent**

Final Decision : Dismissed

Judgement

Prafulla C. Pant, J.—We heard learned Counsel for the parties.

2. By means of this writ petition, moved under Article 226 of Constitution of India, the Petitioner has sought writ in the nature of mandamus, directing the Respondents to issue/renew the license to run saw mill in the name of Petitioner.

3. Brief facts of the case as narrated in the writ petition are that in the year 1979, one Mukhtyar Ahmad installed a saw mill and started running it in the name and style of M/s Janta Laghu Udhog, at Bageshwar. Hon'ble Supreme Court in writ petition No. 202 of 1995 T.N. Goda Varman v. Union of India, issued certain guidelines regarding establishment and renewal of license of saw mills. One of the guideline was that the installation of the saw mill should not be made within 10 kilometers of the forest areas. Before said judgment, in the year 1993, Petitioner had purchased the saw mill of Shri Mukhtyar Ahmad, Vide letter dated 10-11-2003 (copy Annexure-3 to the writ petition), the Petitioner sought permission to shift the saw mill to District Udham Singh Nagar. The Petitioner arranged the land on lease for reinstallation of the saw mill at village Sarasaria, Tehsil Khatima, District Udham Singh Nagar. He made further-representations on

07-07-2005 and 15-07-2005 in this regard but to no avail. Hence the writ petition.

4. A counter affidavit has been filed on behalf of the Respondent No. 2 and 5, in which it has been stated that the Petitioner wants to establish his saw mill within a radius of 10 kilometers from the forest area, which cannot be allowed in view of the guidelines given by the Supreme Court in writ petition No. 202 of 1995, T.N. Goda Varman v. Union of India. As to the installation of saw mill by Shri Mukhtyar Ahmad in Bageshwar, the fact is neither disputed nor any comment is made on the transfer of saw mill by Mukhtyar Ahmad to the Petitioner. It is further stated in the counter affidavit that the Range Officer of Jaulasal Forest range, after inspection of the site where the Petitioner wants to reinstall the saw mill, submitted his report in which it has been mentioned that the distance of the place where saw mill is to be established is 6 kilometers from the forest area.

5. The controversy as to the permission to establish the saw mill within a distance of 10 kilometers from the forest area earlier arose before this Court in writ petition No. 1082 of 2005 (M/B), Moh. Hazi Rafeeq v. State of Uttaranchal 2006 (1) U.D. 14, decided on 24-11-2005. While deciding the said controversy, this Court has observed as under:

The object of prohibiting relocation of saw mills within 10 Kms. from any existing forest is to preserve and protect forests and to prevent illicit felling of trees and destruction of forests and also to avoid the adverse impact of pollution, if any, caused by saw mills, on the forests.

6. Keeping in view the spirit of Article 48A of Constitution of India, which requires that the State shall endeavour to protect and improve the natural environment and to safeguard the forest and wild life of the country and the fundamental duty of the citizen contained in Article 51A(g) of the Constitution which casts a duty on every citizen to protect and improve the natural environment including forests, lakes, rivers and wild life, this Court cannot issue a mandamus to the Respondents to permit the installation of saw mill within 10 Kms. of the forest area. In this connection, it is also pertinent to mention that Second Proviso to Rule 5 of Uttaranchal Establishment and Regulation of Saw Mills Rules, 2004, contains the direction issued by the Supreme Court as to the aerial distance, which is to be mentioned between the forest land and the place where saw mill is to be established. From the counter affidavit of the Respondents, it is clear that the proposed place where the Petitioner wants to establish the saw mill is at a distance of 6 Kms. from the forest area, as such, this Court cannot issue mandamus to do what is not permissible under law.

7. For the reasons as discussed above, the writ petition is liable to be dismissed and the same is dismissed.