

(2020) 01 PAT CK 0099

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 25817 Of 2019

Sunit Saw Mill

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 06-01-2020

Acts Referred:

Citation : (2020) 01 PAT CK 0099

Hon'ble Judges : Aditya Kumar Trivedi, J

Bench : Single Bench

Advocate : Kripa Nand Jha, Himanshu Kumar Akela

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the petitioner as well as learned A.C. to PAAG-2.

2. The petitioner has asked for quashing of the Office Order no.103 dated 09.11.2019 so communicated under Memo No.1616 dated 09.11.2019

whereby and whereunder the authorities have rejected the petition filed on behalf of the petitioner and further, directed to remove the existing saw mill.

3. From the annexures, it is evident that the petitioner has locked his horns since before. Earlier, CWJC No.16387 of 2013 was filed on his behalf

which was later on withdrawn after having appearance of Suresh Thakur as an intervenor, claiming himself to be the proprietor of Sunit Chirai Mill

with a liberty to seek appropriate remedy but, same got stated as no step was taken. Subsequent thereafter, CWJC No.19704 of 2015 has been filed

(Annexure-6) wherein the aforesaid Suresh Thakur was not impleaded as a party and, aforesaid writ petition was disposed of giving an opportunity to

the petitioner to make representation before the appropriate authority who, after

taking into account the plea will pass appropriate order as, this Court was of the view that disputed question of facts always happen, to be out of writ jurisdiction. Thereafter, as has been submitted, the plea has been raised which has been negatived by the competent authority. Hence this petition.

4. The learned counsel for the petitioner has submitted that from Annexure 3 it is evident that through a deed of agreement the aforesaid Suresh

Thakur transferred the ownership of Sunit Chirai Mill in favour of the petitioner and so, he got it exclusively which is found further

supported/substantiated by Annexure 4, the sale letter executed by aforesaid Suresh Thakur in favour of the petitioner after receiving cash

appertaining to Rs.2,00,001/- so, the petitioner is the exclusive owner of Sunit Chirai Mill and, the competent authority duly recognized his status and

for that, referred Annexure 1 as well as Annexure 2, the licence issued by the competent authority for the year 2001, as well as 2002. Apart from this,

it has also been pleaded that the competent authority failed to appreciate that both the saw mills are distinct to each other. Only to give undue

advantage to the aforesaid Suresh Thakur, the licence of the petitioner has been rejected, mala fide which should be annulled by issuing the writ of

certiorari.

5. The learned A.C. to PAAG-2 has submitted that when the aforesaid Suresh Thakur had already appeared as an intervenor in CWJC No.16387 of

2013 then, in that circumstance, in CWJC No.19704 of 2015 the aforesaid Suresh Takur must have been impleaded as respondent but, non-impleading

is indicative of the fact that all the documents whatsoever been annexed with the instant petition are forged and fabricated and so, no reliance could be

placed thereupon. Consequent thereupon, the instant petition is fit to be rejected.

6. Three circumstances are visualizing from the petition which discredit the plea of the petitioner. The first one is the sale letter (Annexure 4) which is

of dated 01.10.2002. When the firm Sunit Saw Mill has already been sold to the petitioner then in that circumstance the petitioner should not have

claimed himself to be the partner of M/s Sunit Saw Mill. After sale, it would not have been a partnership firm rather proprietorship firm. If the

partnership survives then with whom and where is the partnership document more particularly by way of Annexure 3, the deed of agreement

executed by Suresh Thakur transformed as a sale letter (Annexure-4). Apart from this, it could not be an agreement as, there happens to be absence of second party. It happens to be transfer of the ownership and so, Annexure 3 must be considered as a sale letter and without registration, as happens to be more than Rs.100/-, has got no relevance. The second aspect is that irrespective of presence of Suresh Thakur as an intervenor followed with withdrawal of CWJC No.16387 of 2013, he was not at all impleaded as respondent in CWJC No.19704 of 2015 (Annexure-6) and so, it speaks dubious character of the petitioner who anyhow is trying to ward off presence of Suresh Thakur in the scheme. The third aspect is that under Annexure 6 at paragraph 6 it has been observed that writ court would not indulge in disputed question of facts. Whether the firm is a partnership or proprietorship is a disputed question which the petitioner could avail by way of a declaration in a proper constituted suit in consonance with declaration with regard to Sunit Saw Mill and then and then only, would be entitled to ask for any kind of licence at the end of the respondents.

7. For the present, this writ petition is found devoid of merit and is accordingly dismissed.