HONOURABLE SMT. JUSTICE V.SUJATHA

WRIT PETITION No.19783 of 2023

ORDER:

The present Writ Petition came to be filed under Article 226 of the Constitution of India seeking the following relief:-

> *"...to issue any appropriate Writ, order or Direction preferably a Writ in the nature of Writ of Mandamus declaring the challenging the action of Respondents No.2 in not renewing the licence of the Petitioners Saw mill namely Sri Lakshmi Saw Mill, Kaligiri Village and Mandal, SPSR Nellore District, vide Proceedings in Ref no.1833/2023 I Prod.3 dated 28.03.2023 though similarly situated with other saw mills located within 5 km distance from nearest forest are renewed and permitted as illegal, arbitrary, high handed and violative of Article 14, 19 and 301 of the Constitution of India and consequently to direct the Respondents to renew the licence of the Petitioner sawmill and permit to run the sawmill and to pass....."*

2. The petitioner herein is the owner of Sri Lakshmi Saw Mill, Kaligiri, SPSR Nellore District, which was purchased by the petitioner from the legal heirs of one Sri V. Venkateswarlu, who has obtained license in the year 2000. Thereafter, the petitioner has requested for change of ownership and to shift the location of the saw mill from Sy.No.775/12 of Kaligiri Village to Sy.No.631/2-1, Sy.No.643/3-1 and Sy.No.643/3-2 of Kaligiri. In pursuance of the same, the 3rd respondent has accorded permission for transfer of ownership and for shifting the saw mill vide Rc.No.4981/2000/P9, dated 22.10.2011.

While so, the 3rd respondent issued notice dated 20.01.2014 and subsequent notices dated 07.03.2014, 11.04.2014, 17.06.2014, by duly cancelling the permission granted by the 3rd respondent in Rc.No.4981/1999/F9, dated 06.11.2012 stating that the saw mill is located within a distance of 5Km from nearest forest boundary and directed for shifting the saw mill beyond 5Km. Aggrieved by the same, the petitioner filed W.P.No.28856 of 2014, wherein this Court has passed interim orders on 07.10.2014 and restrained the respondents from taking any action in pursuance to the notice dated 17.06.2014.

3. While the petitioner was running the saw mill in pursuance of the interim orders, the 4th respondent has visited the petitioner's saw mill on 31.03.2019 and directed the petitioner not to run the saw mill as it is located within 5Km from nearest forest boundary. As such, the petitioner has filed W.P.No.5482 of 2019 praying to restrain the respondents from interfering with the running of the saw mill, wherein, this Court has passed the following order on 23.04.2021:

> "*...Admittedly, the license has lapsed. No proof was filed to show that a correct and proper application complete in all aspects has been submitted. In the absence of such proof, the petitioner cannot claim any relied from this Court. With a lapsed/expired license the*

petitioner cannot get any relief from this Court. Unless he makes a proper application complete in all respects and strictly as per the rules he cannot claim any relief."

4. In pursuance of the aforesaid orders, the petitioner has submitted an application dated 16.09.2022 in Form-1 as prescribed in Andhra Pradesh Wood Based Industries (Establishment and Regulation) Rules, 2018 to the 3rd respondent. Thereafter, the saw mill was inspected by the 4th respondent on 18.09.2022 and has recommended to place the matter before the 2nd respondent for taking appropriate decision to renew the sawmill license from 2013 and also to permit relocation of sawmill as permitted by the 3rd respondent in his orders dated 06.11.2012. The Assistant Conservator of Forests, Kavali also had inspected the sawmill on 20.09.2022 and reported that the saw mill is located at a distance of 4.62 Km from the nearest Chinnannaluru reserved forest and recommended to place the case of lapsed sawmill before the 2nd respondent. The main grievance of the petitioner is that though 25% of respondents in meeting held on 15.07.2020, decided to renew the lapsed sawmill licenses located within a distance of 3.43 km and 0.81 km, the same relief is not being forwarded to the petitioner. Aggrieved by the same, the petitioner has filed W.P.No.37145 of 2022, but, pending the

writ petition, the respondent No.2 passed the impugned proceedings in Ref.no.1833/2023 I Prod.3, dated 28.03.2023, wherein it was held that the license of the petitioner's saw mill would be restored by the DFO, provided the sawmill is located from the present place of establishment to another place beyond 5 Km distance from nearest forest boundary. The grievance of the petitioner is that though similarly situated sawmills which are within 5 Kms from the notified forest areas are considered for license renewal, the petitioner's saw mill is not being permitted. Rule 3(3) of Andhra Pradesh wood based industries established in the year 2018 does not apply to the petitioner as the petitioner's saw mill is not a fresh saw mill. Aggrieved by the action of the respondents in not considering the case of the petitioner for renewal of sawmill license on par with similarly situated sawmills, the present writ petition is filed.

5. The 3rd respondent herein has filed a counter denying the contentions raised by the petitioner and further stated that claim of the petitioner that Rule 3(3) of the Andhra Prdesh Wood Based industries established in the year 2018 would not apply to the present case is false and the case of the petitioner

cannot be considered. Rule 10 of the aforesaid rules reads as under:

> "*10. Conditions of Licence, Renewal, Transfer etc.,*
> *(2) If no renewal application is submitted to the licensing authority upto 31st December, a late fee of Rs.2000/- shall be levied upto February succeeding year, irrespective of duration of delay. If renewal application is not submitted before the end of February it will be deemed that the license has lapsed and the wood based industry owner should apply for fresh licence. The security deposit available with the Licencing Authority shall stand forfeited."*

6. The license of petitioner's saw mill already lapsed on 31.12.2012, but, the petitioner did not make any renewal application within the stipulated period along with relevant documents. He did not submit application through proforma "Form-I". As the petitioner has shifted the premises of the saw mill, he is supposed to obtain fresh license, but, in the present case the petitioner is seeking renewal of saw mill license which was already lapsed. Hence, the application submitted by the petitioner dated 16.09.2022 is to be treated as an application for fresh license with antecedents of lapsed category license holder and was dealt with by the 2nd respondent in accordance with the terms of the Rule 10(2) of the A.P. Wood Based Industries (Establishment and Regulation) Rules, 2018 and took a right decision vide proceedings dated 28.03.2023 and thus, prayed to dismiss the writ petition.

7. To the counter affidavit filed by the respondent No.3, the petitioner has filed a reply affidavit, reiterating the facts as stated in the writ petition and has further placed reliance on a judgment of this Court in W.P.No.1888 of 2023, dated 28.08.2023 and the relevant portion of the same is extracted as under:

> "*16. In view of my foregoing discussion, writ petition is allowed with the following directions:*
>
> *a. The action of Respondent Nos.2&4 in not forwarding the application for relocation of the petitioner's saw mill to Respondent No.2 for granting license for location is declared as illegal and arbitrary;*
>
> *b. Respondent No.3 shall consider and process the application of the petitioner to Respondent No.2. Thereupon, Respondent No.2 shall consider the application for relocation of the sawmill and issue license, in accordance with law, within a period of one mo nth from the date receipt of copy of this order."*

8. Heard learned counsel for the petitioner and learned Government Pleader for Forests.

9. For better appreciation, the relevant portion of G.O.Ms.No.91, Environment, Forests, Science & Technology (For.III) Department, dated 11.07.2006 is extracted hereunder:

> *"**On Relocation:-***
>
> *1. No relocation shall be allowed into the area prohibited under A.P. Saw Mill rules. It means no saw mill shall be shifted from outside of 5Km radius from the forest area to within 5 Km of*

forest area. However, shifting will be allowed from within the 5 Km of forest area to outside.

2. *Total number of machines used before shifting (for example number of the horizontal saws, Vertical saws. Peelers, slicer and chipper) shall not be increased.*
3. *The annual capacity of saw mill or saw mill inside the wood based industry for conversion of timber shall not be increased.*
4. *The machine type should not be changed from one type to another. For example saw mill having the licence for band saw cannot change to peelers or slicer etc.*
5. *Multiple licenses should not be given from a single license by splitting the license. For example, if the saw mill is having a license for 2 horizontal saw, it cannot be shifted to another place/ places with 1 horizontal saw each.*
6. *The shifting of saw mill should take place with the prior permission of the competent authority. For transfer of ownership or for shifting within the Division the DFO having the territorial jurisdiction shall be the competent authority. For transfer or shifting outside the Division and within the Circle the Conservator of Forests having the jurisdiction shall be the competent authority. For transfer or shifting outside the Circle the Prl. Chief Conservator of Forests, A.P. shall be the competent authority."*

10. While deciding a similar issue, a Hon'ble Division Bench of the erstwhile High Court of Andhra Pradesh in ***Divisional Forest Officer Vs. Sree Venkateswara Saw Mills***[1] held as under:

> *"Undoubtedly, an existing saw mill could be shifted to another location within the same forest division but only after prior approval of the licensing authority-in the instant case, the Divisional Forest Officer, under Rule 5(4) of rules. The bar contained in sub-rule (2) of Rules 3 applies only for setting up fresh saw*

[1] 2002(4)ALD 55

mills. If the argument of the learned Government Pleader for Forests is accepted that the bar contained in sub-rule(2) of Rule 3 would also apply to the shifting of the existing saw mills, then, we are of the considered opinion that the word "fresh" occurring in sub-rule (2) of Rule 3 of the rules would "be rendered redundant and surplusage. It is well settled principle of construction of statute that no such interpretation can be placed to render any word or expression used in a statute waste or surplusage. The rule making authority, in its wisdom, with clear intendment has specified that the bar contained in Rule3(2) is applicable only to the setting up of 'fresh' saw mills and, therefore, that bar cannot be applied to the shifting of the existing saw mills."

11. From the above, it is clear that the law laid down in the above case, also applies to present case in view of the fact that the petitioner saw mill is in existence from the year 2000 itself, whereas G.O.Ms.No.91, was issued in the year 2006. As per the aforesaid G.O., relocation of a saw mill shall not be allowed into the area prohibited under A.P. Sawmill rules which in fact indicates that no saw mill, situated outside 5Kms radius from the nearest reserve forest, shall be shifted to within 5km of forest area, however, shifting of a saw mill which is in existence within the boundary of 5Kms., would be allowed to be shifted.

12. Even otherwise, the petitioner's saw mill cannot be treated in the lapsed category license holder because of the interim orders granted by this Court in W.P.No.28856 of 2014, 5482 of 2019 and 37145 of 2022. All these writ petitions would go to show that the petitioner has been requesting the respondents for change of ownership and also to shift the location from Sy.No.775/12 of Kaligiri Village to Sy.No.631/2-

1, Sy.No.643/3-1 and Sy.No.643/3-2 of Kaligiri, since the date of purchase of the said saw mill i.e. in the year 2011.

13. In view of the above discussion, this Court feels it appropriate to allow the present writ petition by directing the respondent No.2 to consider the case of the petitioner for renewal of the sawmill license on par with other similarly situated sawmills that are located within 5Km distance from nearest forest boundary whose license was renewed and to whom permission was granted to run sawmill.

14. Accordingly, this writ petition is allowed. There shall be no order as to costs.

As a sequel, miscellaneous applications pending, if any, shall also stand closed.

JUSTICE V.SUJATHA

Date : 03.01.2024
GSS