

Tripura High Court

Fortuna Agro Plantations Limited vs The State Of Tripura on 17 May, 2022

HIGH COURT OF TRIPURA
AGARTALA

RFA 07 of 2019

Fortuna Agro Plantations Limited,
having its registered office at Sadhan Ashram,
P.O. Sadhan Ashram, P.O. Kailashahar,
District- Unakoti, Tripura:799277

Plaintiff - Appellant(s)

Versus

1. The State of Tripura, represented by its
Principal Secretary, to the Government of Tripura,
Forest Department having his office at Civil
Secretariat, Agartala, P.O. Kunjaban, PS New Capital
Complex, Gorkhabasti, Agartala, West Tripura,
PIN:799010

2. The Principal Chief Conservators of Forests,
Aranya Bhavan, Pandit Nehru Complex, Gorkhabasti,
Agartala, West Tripura: 799006

3. The Divisional Forest Officer, Kailashahar,
District Unakoti, Tripura : 799277
(Presently renamed as Sub-Divisional Forest Officer)

4. The Conservator of Forests, Office of the
Principal Chief Conservators of Forests, Aranya
Bhavan, Pandit Nehru Complex, Gorkhabasti,
Agartala, West Tripura: 799006

Defendant-Respondent(s)

5. Sri Babul Kumar Banik, Palace Compound (West Gate), Opposite Khadi Board Office, Agartala,
West Tripura

6. M/S Metalworth Industries Limited of Chennai, C-703, Shivalaya, Ethiragsalai, Egmore, Chennai,
PIN:600105

7. Fortuna Greenfields Pvt. Limited, having its registered office at 8/1 Lal Bazar Street, Bikaner
Building, Middle Block, 3rd Floor, Kolkata : 700001 Pro-Defendant-Pro-Respondent(s) For
Petitioner (s) : Mr. S Deb, Sr. Advocate Mr. B Debnath, Advocate For Respondent(s) For
respondents No.1-4 : Mr. SP Datta Purakayastha, Advocate Mr. Ratan Datta, Advocate Mr. K De,
Addl. GA For respondent No.5 Mr. S Datta, Advocate For respondents No.6&7 Mr. Koomar
Chakraborty, Advocate Date of hearing : 25.02.2020 & 04.03.2022 Date of pronouncement :
17.05.2022 Fit for reporting : YES HON'BLE THE CHIEF JUSTICE MR. INDRAJIT MAHANTY
HON'BLE MR. JUSTICE S. TALAPATRA Judgment & Order (Talapatra, J.) This is an appeal under

Section 13(1)(a) of the Commercial Courts Act, 2015 read with Order XLI Rule 1 of the CPC from the judgment dated 07.01.2019 delivered in T.S. 01(Com) of 2016 by the District Judge, Unakoti Judicial District, Kailashahar.

2. By the said judgment dated 07.01.2019 the commercial suit instituted by the appellant has been dismissed on returning the finding that the agreement dated 18.10.2004 cannot be acted upon and hence, the action to renew the licence in favour of Chunilal Banik for the period from 24.05.2008 to 03.09.2012 by the respondents No. 1 to 4 cannot be challenged by the plaintiff, the appellant herein, and hence, the question of compensating the plaintiff for loss of his business due to denial to the action in renewing the licence in favour of Chunilal Banik for the period from 24.05.2008 to 03.09.2012 cannot be decided in favour of the plaintiff.

3. It has been further observed that by the agreement dated 18.10.2004 Chunilal Banik transferred all his rights emanating from the licence for running a saw mill or wood-based industry, in favour of M/S Fortuna Agro Plantations Limited. By dint of the said agreement, the plaintiff has claimed to have carried on the business. But from the facts as established by evidence, it is apparent that Chunilal Banik passed away. The agreement dated 18.10.2004 as entered by the plaintiff and M/S Industrial Saw Mills is an instrument of transfer, which act has been prohibited by statute. Consequently, the suit has been dismissed. This particular finding and its consequences have been challenged in this appeal.

4. For purpose of appreciation, it would be appropriate to introduce the facts leading to the institution of the suit.

5. M/S Fortuna Agro Plantations Limited instituted the suit being M.S. 09/2015 in the court of the Civil Judge, Sr. Div. Kailashahar, Unakoti Tripura. With introduction of the Commercial Courts Act, 2015 the nomenclature of the suit was changed to TS (Commercial) and it was re- numbered as T.S. 01(Com) of 2016. The plaintiff is a Company incorporated under the Companies Act, 1956 (as it then was). The plaintiff is engaged inter alia, in the business of tea and other allied industries. One Chunilal Banik, the predecessor of the defendant No.5, the respondent No.5 herein, used to carry on the business under the name and style of Industrial Saw Mill as its sole proprietor. Following the directions of the apex court, Chunilal Banik was required to relocate his saw mills in the notified industrial estate for wood based industries, but his mills could not be accommodated in any industrial estate as there location was not convenient. It is to be noted that the saw mills of Chunilal Banik were located at Arundhutinagar, Agartala.

6. In order to run the saw mills, after locating them in any wood based industrial estate, Chunilal Banik required the licence from the High Power Committee as was constituted as per the directions of the apex court. During that time, Chunilal Banik, as claimed by the plaintiff, approached the plaintiff and proposed to enter into an agreement. The plaintiff had informed him that they would arrange the land from their sister concern, namely, M/S Fortuna Greenfields Private Limited, the respondent No. 7 herein, for setting up of the wood based industrial estate. The plaintiffs sister concern M/S Fortuna Greenfields Private Limited, agreed to provide a portion of their land for setting up of an industrial estate.

7. On protracted negotiations, the agreement dated 18.10.2004 was entered into for operation of saw mills located in the declared wood based industrial estate, managed by M/S Fortuna Greenfields Private Limited. The terms and conditions of the said agreement were broadly as under:

- a) The plaintiff shall run the business of the saw mills by taking all steps at their costs and conveniences, and shall earn all profits and suffer loss, if any. Chunilal Banik shall receive a sum of Rs.12,000/- per month irrespective of the profit or loss.
- b) A power of attorney be executed in favour of the plaintiff authorizing them or their directors to do all acts necessary for the setting up and running the Saw Mills in the notified Industrial Estate on the land belonging to M/S Fortuna Greenfields Pvt. Ltd.

8. It has been stated that all steps were taken to set up the wood based industrial estate on the terms of the said agreement dated 18.10.2004 (Exhibit-7) on an area of 0.25 acre of land within Mouja Murticherra, pertaining to Khatian No. 20/20A as provided by M/S Fortuna Greenfields Pvt. Ltd. The Industrial Saw Mill of Chunilal Banik was relocated. It has been stated by the plaintiff that Murticherra Wood Based Industrial Estate was further expanded with the approval of the Forest Department, Government of Tripura by the notification No. F. 7(177)/For/FP-03/Part-XII/37161-74 dated 17.02.2006.

9. By virtue of the power of attorney, executed by Chunilal Banik on 02.12.2014 (Exhibit-6), one agent of the plaintiff, namely, Gouri Shankar Dey was nominated as the attorney of Chunilal Banik. The fresh licence bearing No. 01 of 2006 was issued in favour of Chunilal Banik (now deceased) for carrying on all functions of Saw mills on the notified land with capacity of sawing to the extent of 3 lac CFT timber per year and the said licence was declared to be valid till 31.03.2007.

10. It has been stated that as the official defendants did not permit the plaintiff to get the trees registered for purpose of felling and hence, the plaintiff was not allowed by the Forest Department, Government of Tripura to export the purchased timber from the Forest. Even though, there were numerous applications for tree registration, submitted by the plaintiff to the official defendants for purpose of extraction, but such registration or permission for extraction was not allowed. As a result, the plaintiff has suffered huge loss during the period from 2006-2007 and also on subsequent years.

11. When the said licence (Exhibit-2) expired, Chunilal Banik applied for its renewal. Pending disposal of the said application for renewal, the Divisional Forest Officer, Northern Division, Kailashahar informed the Saw Mill that pending instruction from the Principal Chief Conservator of Forests (PCCF for short) as regards the renewal of licence for the year 2007-2008, the said Saw Mill shall not undertake any sawing operation. Despite repeated requests made by the plaintiff, operation of the saw mill could not resume, as the licence was not renewed. Even, no communication from the PCCF (the respondent No.2 herein) was made to the plaintiff.

12. By the order dated 24.05.2008 the operation of the saw mills in the said notified industrial estate was stopped on and from 24.05.2008. It has been admitted that no challenge was ever thrown

against the said order. It has been asserted in the plaint that the plaintiff applied for renewal on each consecutive financial year, but nothing yielded in the positive.

13. All on a sudden on 13.12.2012, Chunilal Banik died leaving behind a Will. The defendant No.5, his son applied for the survival certificate. The defendant No.5 applied for issuance of licence in his favour, based on the said Will left by his deceased father, Chunilal Banik. The defendant No.5 had authorized the plaintiff to continue with the operation of the Saw Mills in terms of the agreement dated 18.10.2004. In the month of July, 2013, the plaintiff was asked to deposit the renewal fee for seven years commencing from 2006-2007 to 2012-2013 aggregating to a sum of Rs.10,500/-. It has been claimed that on receipt of such fee, the respondent No.3 by an undated communication renewed the licence and according to the plaintiff, the licence was renewed till 31.03.2013.

14. The operation of the Saw mill was abruptly stopped by the defendant No.3, but on 03.09.2012, the defendant No.3 issued an order allowing the operation of the saw mill [see para 19 of the plaint].

15. According to the plaintiff, the cause of action for instituting the suit arose firstly on 03.09.2012 when the licence of the saw mill was renewed without explaining the reasons for closing down the saw mills for more than four years. It is therefore, according to the plaintiff, is apparent that the defendants No. 1 to 4 were at fault and as such the damage that has been suffered by the plaintiff became irreversible.

16. The Divisional Forest Officer of the said concerned forest division had, by a letter dated 23.09.2009, tried to clarify whether the plaintiff had any lease to run the Saw mill under the licence of the competent authority. When the plaintiff received the communication dated 23.09.2009, he could understand that the suspension was wholly illegal.

17. As the said saw mills could not be operated during the period from 24.05.2008 to 03.09.2012, the plaintiff has estimated the loss and damages @ Rs.46,75,86,569/- out of which a sum of Rs.36,15,48,920/- has been estimated as loss of profit and another sum of Rs.60,37,648/- has been accounted for damage of timber and logs lying at the Saw mill and the further sum of Rs.10 crores towards loss of good will. 18. The plaintiff has also prayed for an inquiry into the damages and prayed for a decree based thereon. The plaintiff has also prayed for a money decree in terms thereof, but it may be noted that while issuing the notice under Section 80(1) of the CPC, the claim was enhanced from Rs.46,75,86,569/- to Rs.197,25,86,569/-. The defendants No. 1 to 4 (the respondents No. 1 to 4 herein) did not respond to the said notice.

19. In the plaint, the appellant has provided an account of loss of profit from sale of sawn timbers and offsets which is reproduced hereunder for reference. It is apparent that the plaintiff estimated the loss on that count at Rs.36,15,48,921/-.

Loss of profit on sale of Sawn timber and offsets

i) 2008-2009 - Rs. 3,63,79,331.51 for closure of sawmill for 311 days.

ii) 2009-2010 - Rs.7,20,96,000.00 for closure of saw mill for 365 days.

iii) 2010-2011 - Rs. 9,40,86,000.00 for closure of saw mill for 365 days.

iv) 2011-2012 - Rs.10,97,46,000.00 for closure of saw mill for 365 days.

v) 2012-2013 - Rs. 4,92,41,589.00 for closure of sawmill for 155 days.

Total being of Rs. 36,15,48,921/-"

20. The plaintiff has further stated that for the suspension of the licence, the plaintiff has suffered a loss of Rs.82,85,792/- as the timber of that amount got totally damaged. The plaintiff has claimed to have suffered a loss of Rs.60,37,848/- after salvage. The plaintiff calculated the loss and damages @ Rs.60,37,848/- on [account of] damage of sawn timbers. The respondents No.1 to 4, the defendants No. 1 to 4 in the suit, are liable to compensate the plaintiff for the aforesaid loss and damage.

21. As stated earlier, for loss of goodwill, the plaintiff has assessed Rs. 10 crores. The plaintiff has, thus, claimed a sum of Rs. 108,00,46,763/- for a period of three licensing tenures and the principal defendants (the respondents No. 1 to 4) are liable to pay the said damages, to the extent of the above sum, to the plaintiff.

22. The plaintiff used to get the supply orders from different business houses such as M/S Metalworth Industries Ltd., of Chennai. During the period from 2007-3rd November, 2012 as the operation of the saw mills was suspended by the respondents No. 1 to 4, the plaintiff could not enter into any agreement to supply the required sawn woods to the different companies and hence, the plaintiff is in a position to compute and realize the contemplated profits from the respondents No. 1 and 2.

23. It has been stated that M/S Metalworth Industries Ltd. of Chennai has claimed a loss of profit @ Rs.300/CFT for non-implementation of the contract, aggregating to the sum of Rs. 40,50,00,000/- with interest @ 24% per annum.

24. What has been claimed in the suit, has been provided in the schedule of claim. For reference, the said schedule of claim is reproduced hereunder:

SCHEDULE OF CLAIMS

i) Loss of profit by Fortuna Agro plantations Ltd. Rs. 36,15,489,21.00

ii) Loss due to damage of timber lying at the Rs. 60,37,648.00 Saw Mill

iii) Goodwill loss Rs.10,00,00,000.00

iv) Fortuna could not do similar business for 3 Rs. 108,46,46,763.00 terms as per the previous years

v) claimed amount of compensation by Metal Worth Industries Ltd. Chennai to the plaintiff for non Rs.40,50,00,000.00 supplying of products Total Rs.195,72,33,332.00

25. A large quantity of documents have been introduced to substantiate such claim. But the principal- defendants No. 1 to 4, against whom the said claim has been raised, filed their written statement and stated that the agreement dated 18.10.2004 is completely against the public policy as the said agreement clearly violates the provisions of Tripura Forest (Establishment and Regulation of Saw Mills and other wood based industries) Rules, 1985 as framed under Section 51A of the Indian Forest Act, 1927 and under Section 6(d) of the Transfer of Property Act. Such agreement is forbidden by law and hence, the agreement is hit by Section 23 of the Indian Contract Act, 1872. Therefore, the claim as raised by the plaintiff is untenable. Moreover, the manner in which the licence to run the saw mills was transferred to the plaintiff by Chunilal Banik falls within Benami transaction which has been prohibited by Benami Transactions (Prohibition) Act, 1988.

26. Those defendants have also raised the plea that the suit is barred by law of limitation as the limitation for the said suit is one year from the cause of action.

27. In para 10 of the written statement, the respondents No. 1 to 4 have stated that the plaint has been signed and verified by one stranger namely, Ajoy Malakar but he has no locus standi to represent the plaintiff which is a company incorporated under the Companies Act, 1956. Even the said Ajoy Malakar is not a principal officer of the plaintiff. Therefore, the suit has been instituted by an unauthorized person.

28. The principal defendants did not intend to cancel or withdraw the licence or to rescind the same. Keeping that intention on the board, the licence as earlier issued in the name of Chunilal Banik has not yet been rescinded or cancelled but its operation by the licensee had only been permitted at a new venue at Sadhanashram in Kaliashahar. Such permission was never granted to the plaintiff or any other person, not legally entitled to operate the Saw mill inasmuch as, the licence is granted exclusively in favour of one Chunilal Banik, since deceased.

29. According to them, the agreement based on which the plaintiff has raised the claim is entirely unlawful being prohibited by law inasmuch as the plaintiff has nothing to do with the licence and the licence cannot be transferred in any form without prior approval of the licensing authority. The licence fee for the period from 24.05.2008 till 03.09.2012 was taken by the respondents to keep the continuity of the licence. The defendants No. 1 to 4 had insisted for shifting of the saw mill to another notified estate for wood-based industries. They have categorically stated in the written statement that nowhere and at no point of time, the authority revoked its earlier imposed restraint on operation by any other person, except the licensee, by way of transfer in whatever form, without approval of the competent authority in the forest department, Government of Tripura.

30. It has been categorically stated by the respondents No. 1 to 4 that the plaintiff still operates the saw mills by defying the lawful orders.

31. The brazen defiance of the conditions of the licence is apparent when it has been stated that the plaintiff entered into an agreement with the predecessor of the defendant No.5 on 18.10.2004 for operation of the saw mill in the declared wood based industrial estate of M/S Fortuna Green Fields Pvt. Ltd. The plaintiff had designed to run the business of saw mills on payment of Rs.12,000/- per month irrespective of profit or loss. Even a power of attorney was executed in terms of the said agreement, in favour of a person who cannot be treated as an authorized agent but the plaintiff did not disclose his status or how he is associated with the plaintiff in their business operations. There is no document, even there is no averment in this regard.

32. But the defendants No. 1 to 4 (the respondents No. 1 to 4 in the appeal) did not admit that they had given any nod as regards the said arrangement. It has been rather disputed that the plaintiff had applied for felling down 20,000 trees during the first financial year vis-à-vis the licence. Those respondents have categorically stated that the licence bearing No. 1 of 2006 (valid up to 31.04.2007) was issued in favour of Chunilal Banik. Hence, they have denied the statement that the plaintiff had completed the required preparation including the setting up of saw mills and machineries spending huge money with great expectation to earn large profit by running Saw Mill after observing all formalities and the guidelines of the forest department. According to those respondents, the said agreement cannot be held enforceable through the plaintiff against the defendants No. 1 to 4.

33. The respondent No.2 has got the authority to suspend the licence or refuse renewal on legally tenable grounds. They have categorically stated that the plaintiff had no licence to operate any saw mill in the new arrangement. No action of the respondents as regards the licence can be challenged by the plaintiff for obvious reasons. Even the claim for compensation or damages based on the action of the respondents is far fetched, unsustainable and is liable to be rejected. The calculation of the estimated damage and compensation has not been made within legal pesincts but on a hypothesis on assuming their right and as such, the suit is liable to be dismissed.

34. The defendants No. 1 to 3 have categorically disputed that during the period from 24.05.2008 till 03.12.2012, the plaintiff could not operate the saw mill in the notified industrial area and that the plaintiff had obtained a licence having approved by the High Powered Committee.

35. It has been stoutly contended that the plaintiff cannot challenge any action of the defendants No. 1 to 4 as the plaintiff had no licence and so called arrangement for utilization of the licence is grossly illegal and hence, the suit be shot down at the threshold.

36. It has been further stated in the written statement by those respondents [the defendants] that the loss of profit from sale of timber and offset is entirely baseless and as such, the official defendants are, otherwise also, not liable to make good of any loss that the plaintiff has at all suffered.

37. So far as the damages are concerned, the supply of sawn woods to one M/S Metalworth Industries Ltd., Chennai have absolutely nothing to do with the licence. Moreover, the plaintiff cannot raise any claim on the basis of the licence as the licence was never the property of the plaintiff at any point of time. As a whole, the entire claim is a hoax being entirely baseless, false and

speculative. That apart, in respect of the forest goods, nobody can claim privilege. The State has the authority in the public trust to take any drastic action in order to conserve the forest.

38. In the written statement, the official defendants, the respondents No. 1 to 4 in this appeal, have made a categorical statement as follows:

"In these perspectives, the forest authority did permit continuance or renewal of the licence in question in the name of original licence holder on accepting fees from the attorney or agent of him in the year 2012, expecting that the licence holder himself will operate the industrial unit after a gap of time instead of allowing anybody else or to the plaintiff. The forest authority had also to bring into consideration the stomachs of the workers and employees engaged but had no scope to over-ride or violate the related rules, as noted in the earlier paragraphs herein. If this plaintiff yet obstinately continues operation of the unit keeping the licence holder off the tract and if this licence holder also indulges in this mode of operation of the unit the forest authority will have no other option but to rescind or cancel this licence ultimately. It is unfortunate that this plaintiff on mis-interpreting this total situation has brought this baseless or causeless suit which is liable to be dismissed with costs."

39. Be that as it may, that para as reproduced above puts forward the view straightway that in the event of breach in the rule in continuum the punitive action will be inevitable. Those statements do not have any relevance for purpose of determining the relief as sought for in the plaint viz. damage for the wrongful act of the principal defendants No. 1 to 4 or decree for the damages to the extent of Rs.195,72,33,332.00, realizable from the principal defendants.

40. Based on these rival contentions, the Civil Judge, Sr. Div. Unakoti Judicial District had framed the following issues for purpose of adjudication of the suit:

(i) Is the suit maintainable in law?

(ii) Has the plaintiff cause of action in his favour?

(iii) Is the suit barred by limitation?

(iv) Whether the agreement dated 18.10.2004 in between Sri Chunilal Banik (now deceased), predecessor of proforma-defendant No.5 being the proprietor of "Industrial Sawmill" and the plaintiff firm "M/S fortuna Agro Plantations Limited" is a valid agreement to be acted upon?

(V) Whether the principal-defendants are liable to compensate the plaintiff firm for loss of their business due to staying the renewal of licence issued in favour of Chunilal Banik for the period w.e.f. 24.05.2008 to 03.09.2012?

(vi) Whether the plaintiff firm is entitled to get compensation for the damages to the tune of Rs.195,72,33,332.00 (Rupees one hundred ninety five crores seventy two lacs thirty three thousands and three hundred thirty two only) from the principal-defendants as per schedule of the plaint?

(vii) What other relief/reliefs the plaintiff firm is entitled to get?

41. It is to be noted that the plaintiff has examined only one witness and admitted some documentary evidence [Exhibit 1 to Exhibit 16]. The principal defendants have also adduced one witness and admitted some documents in the evidence namely, Exhibit A to Exhibit-I.

42. On appreciation of the evidence, as referred before, the civil judge, Sr. Div. Kailashahar, Unakoti Tripura has dismissed the suit on clearly deciding the issues No. 3 and 4 against the plaintiff.

43. It has been held by the civil judge, Sr. Div. that the suit is not maintainable as the plaintiff failed to show the authorization of one Ajoy Malakar who signed the plaint and gave evidence on behalf of the plaintiff. That apart, an attorney cannot adduce evidence beyond his personal knowledge. It has been further observed that Article 137 of the Limitation Act will apply in the suit and hence, it has been stated that even though the suit cannot be maintained as that has been verified by a person who is not duly authorized by the plaintiff, at least no such document has been placed in the record, but the suit is not barred by limitation.

44. The most pertinent issue, apart from what has been observed in respect of issue No. 1, is issue No. 4 which has been framed for examining the validity of the agreement dated 18.10.2004 no issue on Benami had been framed. Hence, this point requires no consideration, more so, there is no challenge in this regard. While answering to that issue No.4, the Civil Judge, Sr. Div. has observed that on the basis of the agreement dated 18.10.2004 and by virtue of the power of attorney executed by Chunilal Banik on 01.11.2004 in favour of the plaintiff, they were operating the business and applied for the licence in favour of M/S Industrial Saw Mill on 07.04.2006 before the competent authority and also paid the requisite fee. According to the Tripura Forest (Establishment and Regulation of Saw Mills and Other Wood Based Industries) Rules, 1985, the licence granted under those rules is not transferable. Rule 6(3) provides as follows:

"6(3) A licence granted under these rules -

(a) shall be valid for one financial year during which it is granted

(b) shall not be transferable, and

(c) shall be renewable for a period not exceeding one financial year at a time on payment of renewal fee of rupees one hundred only and such renewal shall be in Form IV for each unit."

45. It is apparent from the agreement that the arrangement that had been made was otherwise enforceable under the Indian Contract Act to obligate the original licensee to execute the irrevocable power of attorney in favour of the plaintiff. This arrangement is, according to the civil judge, a transfer which has been prohibited by Rule 6(3) of the said rules. Hence, the agreement itself is unlawful under Section 23 of the Indian Contract Act.

46. The observation made in para 9 of the judgment dated 07.01.2019 is of serious relevance in appreciation of the appeal and as such, the said passage is reproduced hereunder:

"9. Apart from this, Section 5 of the Transfer of Property Act says transfer of property means an act by which a living person conveys property, but such transfer shall not effect any law of the time being in force relating to transfer of property to or by companies, associations or bodies of individuals. Even Section 6 of the Transfer of Property Act says that no transfer can be made (1) in so far as it is opposed to the nature of the interest affected thereby, or (2) for an unlawful object or consideration within the meaning of Section 23 of the Indian Contract Act or (3) to a person legally disqualified to be transferee. In view of my above discussion I am of the view that the agreement dated 18.10.2004 is not a valid agreement to be acted upon. This issue is answered accordingly."

47. Mr. S Deb, learned senior counsel appearing for the appellant, in the perspective fact as noted above, has contended that Industrial Saw Mill owned by Chunilal Banik was allowed to shift to Industrial Estate for Wood Based Industries at Mouja Murticherra. At the time, an agreement was entered into between Chunilal Banik, owner and licensee of the Industrial Saw Mill and the plaintiff, M/s. Fortuna Agro Plantation Ltd. Simultaneously, Chunilal Banik had executed one irrevocable power of attorney (Exhibit-6) for operating the business by dint of the licence as issued in favour of Chunilal Banik. The attorney was given the power to look after the shifting and establishment of the saw mill at Kailashahar. He was under obligation to submit all returns and look after the entire management of the said saw mill. It has been also obligated that all acts that would be done in execution of the agreement dated 18.10.2004 shall be deemed to have been ratified by Chunilal Banik, the licensee.

48. In the deed of agreement, as Mr. Deb, learned senior counsel has pointed out, such transfer of authority had taken place subject to payment of Rs.12,000/- per month to Chunilal Banik. It has been also provided that the said agreement will come into force when the licence will be issued in favour of Chunilal Banik.

49. From a reading of the said agreement, it will be apparent that Chunilal Banik will have no authority and control over the management and operation of the said saw mill for operation of which he had been given the licence.

50. According to Mr. Deb, learned senior counsel, the agreement is a management agreement and there is no transfer of the licence in violation of rule 6(3)(b) of the Tripura Forest (Establishment and Regulation of Saw Mills and Other Wood Based Industries) Rules, 1985. Mr. Deb has contended

that the attorney of Chunilal Banik, namely, Ajoy Malakar had applied for renewal of licence on 25.02.2012.

51. The renewal was sought for from 01.04.2007 as the earlier licence dated 26.08.2006 had expired on 31.03.2007. The licence was earlier renewed till 31.03.2007. Thereafter, the licence was renewed in terms of the direction contained in the communication dated 27.04.2012 (Exhibit-J) by revoking the order dated 23.09.2009 (Exhibit-M).

52. Mr. Deb, learned senior counsel has submitted that the Civil Judge has committed serious error of law by holding that the agreement that was entered between Chunilal Banik and the plaintiff is unlawful inasmuch as, by clause 10 of the agreement Chunilal Banik, the licensee has been barred to take any decision in respect of day to day operation of the saw mill. Chunilal Banik was prohibited from any interference in smooth running of the unit. In clause 11 of the said agreement Chunilal Banik has been obligated to execute a general and irrevocable power of attorney in favour of the plaintiff and by virtue of the power of attorney, the attorney may apply for renewal of the licence etc.

53. According to Mr. Deb, learned senior counsel no transfer has taken place within the meaning of Section 5 of the Transfer of Property Act. Despite that the Civil Judge has observed that no transfer can be made in so far as it is opposed to the nature of interest created by the licence or for an unlawful object or consideration within the meaning of Section 23 of the Indian Contract Act had taken place.

54. Quite emphatically, Mr. Deb, learned senior counsel has submitted that the agreement was not executed for any unlawful object or consideration which may come within the meaning of Section 23 of the Indian Contract Act.

55. Thereafter, Mr. Deb, learned senior counsel has submitted that by the Will dated 18.01.2008 the saw mill has been bequeathed to his two sons, namely, Babul Kumar Banik and Pradip Kumar Banik. But the said will as it appears from the record was not formally admitted in the evidence.

56. Mr. Deb, learned senior counsel has submitted that in State of M.P. & Ors. Vs. Bindal Agro Chemical Ltd. and Anr., reported in (1996) 5 SCC 362 the apex court has directed the government of Madhya Pradesh to recommend the application of the respondent to the Government of India for change of location of the Vanaspati Unit from Dewas to Mandideep. The licence granted for Dewas was amended to be operated at Mandideep.

57. In our considered view, the said decision does not have any relevance in the context of the present suit inasmuch as the respondent in that case, in whose favour the supreme court had issued the direction, had the licence in his name and he was the person who sought the permission for relocation of his industry.

58. The moot point in this appeal is that whether by way of the said agreement, the entire privilege of the licensee can be acquired on payment of fees by obliterating the licensee's control over the industrial unit.

59. Mr. S.P. Dutta Purakayastha, learned counsel appearing for the official respondents has submitted that the said agreement is ex facie unlawful and as such by the said agreement whatever rights had been created in favour of the plaintiff cannot be acted upon. It is a clear transfer in disguise and such transfer is completely prohibited by Section 6 of the Transfer of Property Act. No permission had been taken from the licensing authority before such transfer had taken place. As such, the ratio of Bindal Agro Chemical Ltd. (supra) cannot be applied in the present case.

60. Mr. Purakayastha, learned counsel has submitted that when the prohibition of transfer has been made by the statute, in violation thereof, any transfer even under guise will make the entire transaction untenable. In this regard, he has made reference to *Malappa (Dead) by LRs. vs State of Karnataka & Anr.*, reported in (2005) 10 SCC 158; *Tashi Delek Gaming Solutions Ltd. & Anr., Vs. State of Karnataka & Ors.*, reported in (2006) 1 SCC 442; and *State of Andhra Pradesh Vs. K. Varalakshmi* reported in (2014) 15 SCC 591

61. Those decisions are remotely connected to the question that we are considering. In *Tashi Delek Gaming Solutions Ltd. (supra)* it has been held that the orthodox rule of interpretation regarding the locus standi of a person to reach the court has undergone a sea change with the development of constitutional law in our country and the constitutional courts have been adopting a liberal approach in dealing with the cases or dislodging the claim of a litigant merely on hypertechnical grounds. If a person approaching the court can satisfy that the impugned action is likely to adversely affect his right which is shown to be having source in some statutory provision, the petition filed by such a person cannot be rejected on the ground of his not having the locus standi. In other words, if the person is found to be not merely a stranger having no right whatsoever to any post or property, he cannot be non-suited on the ground of his not having the locus standi.

62. In *Malappa (supra)* it has been held that when prohibition of transfer of land has been violated, the government had every right to take action declaring the sale as null and void in order to resume the land after following the due process.

63. In *K Varalakshmi (supra)* also the protection clause was upheld and it has been held that the government may take the action for any violation in order to resume the land but that should be done following the process of law, inasmuch as the provisions relating to the protection is structured to encompass all sorts of transaction of the assigned land to the landless poor.

64. In *Satyan Vs. Deputy Commissioner & Ors.*, reported in (2020) 14 SCC 210, the apex court while dealing with prohibition of transfer of certain land has observed that as the permission was not taken, nullification of the sale deed is liable to be affirmed, even if the challenge was made after 15 years.

65. Having appreciated the submissions and the evidence as placed in the said commercial suit, the two pertinent questions which arise for determining the appeal are as follows:

(i) Whether the assignment of the licence (Exhibit-

2) by the said agreement (Exhibit-7) is a transfer in violation of Rule 6(3)(b) of the Tripura Forest (Establishment and Regulation of Saw Mills and other Wood Based Industries) Rules, 1985? and

(ii) Whether for such violation, the agreement read with the power of attorney (Exhibit-6) is hit by Section 23 of the Indian Contract Act which deals with the lawfulness of a contract?

66. Section 23 of the Indian Contract Act provides that an agreement is lawful unless is forbidden by law or is of such a nature that if permitted it would defeat the provisions of law. No doubt, the contract has not been expressly forbidden, but the transfer has been prohibited. It is perfectly settled that the contract/agreement by which the plaintiff seeks to enforce his rights as claimed, for realizing the damage, etc. is expressly or by implication forbidden by law. No court will lend its assistance to give its effect. It is equally settled that a contract is void if prohibited by the statute, even if there is provision for imposing penalty. It may, therefore, be safely laid down that if the contract is rendered illegal, it is lifeless for all purposes. In our considered view provision relating to prohibition of transfer is unequivocal and stringent. No different, by way of interpretation, is permissible.

67. If the contract be the profit sharing mechanism it may not be wholly illegal in view of rule 6(3)(b), but the agreement that has been entered into between the plaintiff and Chunilal Banik is not at all a profit sharing contract, but taking away all the authority of licence, which is a transfer in disguise. Even the right to apply for renewal has been taken away by dint of the power of attorney which is irrevocable in nature. The combined reading of the agreement and the power of attorney would reveal that the licensee did not have any power or control over the operation of the Industrial Saw Mill for which the licence has been issued.

68. Thus, it can safely be held that the said agreement read with the power of attorney offends the statute and as such, the said agreement being forbidden by law is not only void but also invalid. No legal relation can be recognized based on the said agreement.

69. In the present case, the transfer is prohibited as stated. But, by the said agreement licence has been transferred on yearly payment of some amount, which can be termed as consideration for unlawful object. As such transfer is prohibited by law, the agreement is not enforceable in any manner. Hence, the plaintiff cannot insist for granting any relief based on the said agreement read with the power of attorney.

70. It is apparent that regarding the locus standi of the attorney or the plaintiff, the Civil Judge, Sr. Div. has made some observations and those have been challenged by the appellant.

71. We are of the view that since we have declared the said agreement read with the power of attorney as invalid in the eye of law within the precincts of Section 23 of the Indian Contract Act, the plaintiff had no locus standi to proceed with the suit.

72. The respondents No. 1 to 4 [the defendants No. 1 to 4 in the suit] for the reasons best known to them, did allow the arrangements to go on. They ought to have cancelled the licence the moment

they had knowledge of such arrangement as ushered in the form of said agreement and the power of attorney. That, however, cannot in any way, be used as estoppel as there is no estoppel against the provision of law.

73. Since, the plaintiff did not have any legal right over the licence or the business operated on the strength of licence, the plaintiff cannot claim any damages, even if assumed there had been any financial loss or damage, for any action of the respondents No. 1 to 4.

74. Having observed thus, this appeal stands dismissed being devoid of merit.

Draw the decree accordingly.

Thereafter, send down the LCRs.

JUDGE

CHIEF JUSTICE

lodh