



2026:AHC:48455-DB

AFR

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - C No. - 28236 of 2025

Bihari Lal

.....Petitioner(s)

Versus

State Of U.P. And 4 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Amit Kumar Singh
Counsel for Respondent(s)	:	S.C.

Court No. - 2

HON'BLE ATUL SREEDHARAN, J.

HON'BLE SIDDHARTH NANDAN, J.

(Per: Hon'ble Siddharth Nandan, J.)

1. Heard Sri Amit Kumar Singh, learned counsel for the petitioner and Ms. Kritika Singh, learned Additional Chief Standing Counsel for the State. In pursuance of the order dated 23.02.2026, Sri Kasarla Raju, Divisional Director Social Forestry Division, Deoria is present.

2. Present petition has been filed seeking issuance of writ of certiorari, quashing the order dated 31.05.2025 passed by the respondent no.4, by way of which his online application seeking permission for felling of 10 teakwood trees, has been denied in spite of the recommendation by the Sub Divisional Forest Officer, Section Incharge Bankata, Range Bhatni.

3. The brief conspectus of facts giving rise to the present writ petition are that the property belongs to one Sharda Investment Company Ltd., Calcutta and the petitioner is the power of attorney holder of the company. He had moved an online application dated 13.02.2025 before the Sub Divisional Forest Officer, Section Incharge Bankata, Range Bhatni seeking permission to cut 10 teakwood trees and in pursuance whereof, a report dated 15.02.2025 was submitted, which has been annexed as annexure-4 to the affidavit filed along with the aforesaid writ petition.

4. A perusal of the aforesaid report clearly states that the applicant's land has 10 standing teakwood trees, for which he has made an application, which was also verified on the spot by the concerned authority and thereafter, a recommendation was made to the Regional Forest Officer, Bhatni Range.

5. However, vide impugned order, the application of the petitioner was rejected on the premise that the dispute pertaining to the land is pending before the High Court and Civil Court, Tehsil Bhatpar Rani, District Deoria.

6. The respondent no.4 has filed his personal affidavit to contend that an objection was filed by one Sri Jata Shanker Singh in the mutation proceedings initiated by the petitioner, which was rejected vide order dated 29.12.2023 passed by Tehsildar Judicial, Bhatpar Rani in Case No. T2015052005000002 filed under Section 34 of the U.P. Land Revenue Act, 1901 (hereinafter referred to as the Act, 1901). He has further contended that the said Jata Shanker Singh has filed an appeal under Section 207 of the U.P. Revenue Code, 2006 (hereinafter referred to as the Code, 2006). However, he has not disputed the fact that there is no interim order in the aforesaid appeal, which is pending, as on date.

7. He has further contended that the land in question was declared surplus vide order dated 17.02.1994 passed under Section 10 (2) of the Ceiling Act in Case No. 5/92; however, in an appeal, the order dated 17.02.1994 was set aside, vide order dated 24.05.1995. The writ petition, filed against the order dated 24.05.1995, has also been dismissed and has attained finality.

8. He has further contended that since Gata No. 17 Mi/10 Acres is a minjumla plot and therefore, he was not in a position to ascertain as to whether the trees in question are located over the area of Gata No. 17Mi, which is being claimed by the petitioner. However, this contention is not part of reasoning in the impugned order and is being supplemented, by way of an old argument.

9. Primarily, we find that the impugned order merely states that the permission is denied on account of the fact that certain proceedings are pending before the High Court as well as before the SDM, Tehsil Bhatpar Rani, District Deoria; but as stated hereinabove that no interim order was operating in the pending First Appeal under Section 207 of the Code, 2006;

and the objection of the said Jata Shanker Singh already stood rejected and accordingly, mere pendency of the appeal cannot be construed as a stay or an interim order, as such, the same could not have been the basis for the rejection of the claim of the petitioner. In the affidavit filed before us, there is no mention of any proceedings pending before the High Court; but however as far as the writ petition filed by the State in proceedings declaring some surplus land from Gata No. 17 Mi, was concerned, the same has admittedly been dismissed and no further challenge was made to the decision of the High Court; and accordingly, there is no pendency as stated in the impugned order, before the High Court.

10. The question which arises before us is, in case the property has not been physically partitioned, is it within the domain of the authority concerned to reject the application of the petitioner for cutting certain number of trees, over his plot. Though the said reasoning is not born out from the impugned order, but however an effort was made by the learned Additional Chief Standing Counsel to state that on account of the non-partition of the plot in question, the permission was rejected. The same stand has been reiterated by the respondent no.4, who is present before the Court.

11. It is no longer *res integra* that the impugned order has to justify itself on the basis of the reasoning given therein and here is a case where the affidavit also does not supplement the reasoning purportedly based on which the impugned order has been passed.

12. However, in the interest of justice, we proceed to examine the said issue and we find that firstly, since the proceedings which were initiated under Section 34 of the Act, 1901 and said to be pending in appeal under Section 207 of the Code, 2006 are summary in nature and could not have been taken into account to dispute the title of the petitioner, and moreso ever when there was no interim order in the appeal, the impugned order could not have been passed, merely on the basis of the pendency of the appeal.

13. As far as the reasoning given with respect to the pendency of the proceedings before the High Court, the same is absolutely against the evidence of record, since the writ petition filed by the State in the ceiling proceedings was also dismissed and has attained finality.

14. Now coming to the last question that in absence of any physical division of land whether a permission can be granted or not.

15. We are constrained to observe that the petitioner may have been required to demonstrate that in case he is seeking permission with respect to a plot which is a minjumla plot, he is in possession over the said area of land on which the trees are planted and for the same he is seeking a permission under the relevant provisions of the Act, for cutting down the said trees. The restrictions on felling and removal of trees have been outlined in Section 4 of the Uttar Pradesh Protection of Trees Act, 1976 (hereinafter referred to as the 'Act, 1976') and the procedure for permission to fell or remove trees has been provided under Section 5 of the Act, 1976; and thereafter, under Section 10 of the Act, 1976 penalty for felling or removal of trees in contravention of Section 4 has been prescribed, which is punishable with imprisonment, which may extend to six months or with fine, which may extend to one thousand rupees or with both. For ready reference, Sections 4, 5 and 10 of the Act, 1976, are reproduced below:

"4. Restriction on felling and removal of trees - Except as provided in this Act or the rules made thereunder, no person shall—

(a) fell any tree standing on any land, whether included in a holding or not;

(b) cut, remove or otherwise dispose of any tree other than a tree which is completely dead and has fallen without the aid of human agency on any such land.

5. Procedure for permission to fell remove trees - (1) Any person entitled to fell a standing tree or to cut, remove or otherwise dispose of a fallen tree, may make an application to such officer in such form as may be notified by the State Government, for permission to fell such standing tree or to cut, remove or otherwise dispose of such fallen tree and the officer to whom such application is made, shall, within twenty days after making such enquiry as he thinks fit, forward the application along with his report to the competent authority.

(2) The competent authority shall, within fifteen days from the date of receipt of the report under sub-section (1), grant or refuse the permission applied for;

Provided that the competent authority may, if he is not satisfied with the report made under sub-section (1), make such further enquiry as he thinks fit:

Provided further that such permission shall not be refused without affording the opportunity of hearing to the applicant:

Provided also that such permission shall not be refused if the tree constitutes danger to person or property:

Provided further that except in such areas as may be notified by the State Government in this behalf, such permission shall not be required for felling of any tree with a view to appropriating the wood or leaves thereof for bona fide use for purposes of fuel, fodder, agricultural implements or other domestic use:

Provided also that such immediate steps as are necessary to remove any obstruction or nuisance or to prevent any danger may be taken without such permission.

(3) Where the competent authority fails to take any decision under sub-section (2) within the time specified therefor, it shall be deemed that the permission applied for, has been granted.

(4) Every permission granted under this Act shall be subject to such conditions, including taking of security for ensuring regeneration of the area and replanting of trees or otherwise, as may be specified from time to time by the State Government by notification.

10. Penalty for felling or removal of trees in contravention of Section 4 - *Whoever fells or causes to be felled any standing tree, or cuts, removes or otherwise disposes of any fallen tree, in contravention of the provisions of section 4, or contravenes any condition of any permission granted under this Act, shall be punished with imprisonment which may extend to six months or with fine which may extend to one thousand rupees or with both."*

16. A perusal of Section 5 demonstrates that any person entitled to fell a standing tree or to cut, remove or otherwise dispose of a fallen tree, may make an application to such officer under the prescribed format seeking permission to fell such standing tree and the officer to whom such application is made, shall, within 20 days after making such enquiry as he thinks fit, forward the application along with the report to the competent authority.

17. In the facts of the present case, we find that such a report was already forwarded by the Sub Divisional Forest Officer, Section Incharge Bankata, Range Bhatni and thereafter, the competent authority was required to take a decision within 15 days from the date of the receipt of the report.

18. It is also open to the competent authority that in case he is not satisfied with the report made under Section 5 (1) of the Code, 2006, he may make further enquiry. However, the provision to Section 5 (2) of the Act, 1976 clearly provides that permission shall not be refused without affording the opportunity of hearing to the applicant. In the present case, we find that no opportunity of hearing was given to the petitioner prior to passing of the impugned order. However, he could have made a further enquiry, seeking

report on physical partition, as provided under Section 30(2) of the Code, 2006.

19. In view of the aforesaid, we find that the impugned order cannot be sustained in the eyes of law and accordingly, the impugned order dated 31.05.2025 passed by the respondent no.4 is set aside. The petitioner will be at liberty to approach the concerned authority with a fresh application, demonstrating particularly, that the plot over which trees are standing is in his exclusive possession and also giving specific particulars pertaining to the pendency of the cases with respect to the plots in question and whether there is any interim order operating in the said pending proceedings i.e. demonstrating that there is no legal impediment.

20. In case, there is no interim order in the pending proceedings for mutation, which otherwise is in the nature of a summary proceeding also, the competent authority shall proceed to decide the application. In case, the State has a claim over any part of the land, which is a part of Gata No. 17 Mi, they shall proceed to get the demarcation done at their own behest, within a period of four weeks from the date of the application and thereafter, within a period of two weeks take a decision on the application made by the petitioner regarding permission as contemplated under the Act, 1976; giving due consideration to the recommendation dated 15.02.2025 (Annexure-4).

21. Before parting with the aforesaid case, we find that the conduct and approach of the respondent no. 4 while passing the impugned order, was not in consonance with law and even otherwise, he has tried to carve out a new case before this Court, that the rejection was on account of non-partition of minjumla plot under Section 30 sub clause (2) of the Code, 2006. Since, we do not intend to pass an order which may otherwise infringe the right of the State, we refrain ourselves from passing any further order vis-a-vis the respondent no.4 but he is cautioned that in future he must take steps which are in consonance with the provisions of the law.

22. With the aforesaid observations, the writ petition stands **allowed**.

(Siddharth Nandan,J.) (Atul Sreedharan,J.)

March 10, 2026

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