

GAHC010115252024



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/2994/2024

MD. AINUL HOQUE
SON OF MD. SAYED ALI, VILLAGE- BIHIYA GAON, POLICE STATION-
TEZPUR, DISTRICT- SONITPUR (ASSAM)

VERSUS

THE STATE OF ASSAM AND 3 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY, HOME
DEPARTMENT, DISPUR, ASSAM-6

2:THE COMPETENT AUTHORITY AND ADMINISTRATOR
SMUGGLERS AND FOREIGN EXCHANGE MANIPULATOR (FORFEITURE
OF PROPERTY) ACT
1976 AND NDPS ACT
1985

3:THE SUPERINTENDENT OF POLICE
SONITPUR
ASSAM

4:THE OFFICER-IN-CHARGE/IO
JAMUGURI POLICE STATION
SONITPUR AT TEZPUR
PIN NO

Advocate for the Petitioner : MR. R BARUAH

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

ORDER

Date : 12.06.2024

Heard Mr. R. Baruah, learned counsel for the petitioner. Also heard Mr. S.C. Keyal, learned Standing Counsel, NDPS.

2. This writ petition is filed by the writ petitioner putting into challenge order dated 25.11.2022, passed by the Competent Authority and Administrator, Smugglers and Foreign Exchange, Manipulators (Forfeiture of Property) Act, 1976 and N.D.P.S. Act, 1985 under the Department of Revenue, Ministry of Finance, Government of India.

3. This order was passed under Section 68 F (2) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (as amended), by which the list of properties mentioned in the order comprising of one commercial tractor bearing registration number AS-12-CC-0301 having Chassis No.BZVDJ1143326S3 and Engine No. 3105ELU24A1132263F20 has been frozen under the provision of the act.

4. The writ petition has been filed by the petitioner on the ground that the petitioner was not heard and the freezing of the movable asset was absolutely uncalled for and thereby umpiring his sources of livelihood as the petitioner is earning his livelihood by hiring the tractor.

5. Mr. S.C. Keyal, learned Standing Counsel, NDPS submits that against orders passed under Section 68 F (2) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (as amended) there is an appellate forum provided for under Section 68 (O).

- 6.** Learned counsels for the parties have been heard. Pleadings on record have been perused.
- 7.** The provisions of the NDPS Act, more particularly, that of Section 68 (F) and 68 (O) have been carefully perused.
- 8.** Under Section 68 (O) there is a provision for an appeal by any person aggrieved by an order of the competent authority made under Section 68 (F) to be preferred within a period of 45 days from the date on which the order is served on him, may prefer an appeal to the Appellate Tribunal.
- 9.** In view of such statutory mandate providing a forum for appeal, the aggrieved person is ordinarily required to be directed to approach the statutory forum provided for. The learned counsel for the petitioner has not been able to give reasons as to why the statutory remedy provided under section 68 (O) was not availed of and in the absence of any justifiable reasons why exercise of jurisdiction by High Court under Article 226 of the Constitution of India is called for.
- 10.** The learned Counsel for the petitioner submits that copy of this order was initially not served on him. However, during the course of the trial which is presently pending before the competent trial Court, copy of this order has been served upon him and the same is enclosed to the writ petition.
- 11.** From the prescription of the Act, under Section 68 (O) ordinarily, an appeal is to be filed by the person aggrieved within the period of 45 (forty five) days from the date on which the order is served. The Appellate Tribunal is also empowered to entertain an appeal after the expiry of 45(forty five) days, but not after 60 (sixty) days from the date aforesaid if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal.

12. Under such circumstances, at this stage, this Court is not inclined to entertain the writ petition. In view of the submissions of the learned counsel for the petitioner that a copy of the impugned order dated 25.11.2022 was not served upon the petitioner initially, but only during the Trial, writ petition is disposed of by relegating the petitioner to prefer an appeal as provided for under Section 68 (O) under NDPS Act 1985. If such an appeal is preferred, the appellate Tribunal prescribed therein, be pass necessary orders as per the provision of law. The period of limitation will commence from the date the copy of the order is served upon the petitioner or in the event it was not served then from the date of the knowledge of the petitioner.

13. Writ petition is accordingly disposed of at this stage without issuing notice.

JUDGE

Comparing Assistant