

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7444 of 2015

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1. Bhuneshwar Mistry son of Late Sukhdeo Mistry resident of Mohalla - Shantinagar Paliganj, P.S.- Paliganj, District - Patna.

.... Petitioner

Versus

1. The State of Bihar, through the Principal Secretary, Environment & Forest Department, Government of Bihar, Patna.
2. The Principal Chief Conservator of Forest, Bihar 4th Floor, Technology Bhawan, Bailey Road, Patna.
3. The Divisional Forest Officer, Patna Forest Division, Patna.
4. The Forester, Masaurhi-cum-Paliganj Range, Masaurhi, District - Patna.
5. The Police Sub-Inspector, Paliganj, District - Patna.

.... Respondents

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Appearance :

For the Petitioner : Mr. Vinay Mistry

For the Respondents : Mr. Upendra Pratap Singh AC to SC-25

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR
MANDAL
ORAL ORDER

6 31-07-2015

Heard the counsel for the petitioner and the State.

The Saw Mill of the petitioner has been seized jointly by the forester and the Sub Inspector of Police vide Annexure-6. The same is under challenge in this Court.

Learned counsel for the petitioner has relied on Annexure-5 in order to submit that the forester or the police has no role to play in such seizure/sealing. It is contrary to Section 8 of the Bihar Saw Mill (Regulation) Act, 1990 (for short 'the Act'). In the said case (Annexure-5) this Court found favour with these submissions and directed to return the seized material to the

petitioner of the case forthwith.

In spite of indulgence granted to the respondent-State no counter affidavit has been filed.

Mr. Mistry counsel for the petitioner draws attention of the Court to Annexure-5. The Court can profitably extract hereinbelow the finding of the learned Judge:-

“The contention of the counsel for the State cannot be appreciated for the simple reason that the writ application has remained pending for adjudication for seven years and no steps have been taken despite indulgence shown on several occasions to file counter affidavit. If they have not bothered to bring any material to show that Annexure-1 is not the document by which search and seizure was made, then search and seizure carried out by the Forester is illegal, unjustified and in breach of section 8 of the Act. Writ is allowed. Annexure-1 is quashed.

Respondents are directed to return of the seized materials to the petitioner forthwith, preferably, within a period of four weeks from the date of production of a copy of this order.”

A web copy of the order dated 16.4.2013 passed in CWJC No. 4682 of 2013 (Shambhu Sharma Vs. The state of Bihar & Ors) has been handed in by the learned counsel for the petitioner to demonstrate that similar seizure of the articles of the Saw Mill by the forester has been held to be without the authority of the law. Copy of the said order is placed on record marked ‘X’

for identification. Learned counsel for the State is not in a position to dispute the aforesaid contention of the petitioner.

Consequently, the application is allowed. The order of seizure (Annexure-6) is quashed. The authority are directed to return the seized material/articles in favour of the petitioner forthwith on production of a copy of this order before the concerned authority/respondent.

Before parting with this case this Court may observe that if the respondents are entitled to effect such seizure then the present order shall not preclude them from proceeding afresh strictly in accordance with the provision of the Act.

(Kishore Kumar Mandal, J)

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