

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1666 of 2014
In
Civil Writ Jurisdiction Case No. 17524 of 2014

Madan Kumar Sah, son of late Kamleshwari Prasad Sah,
resident of Village- Hathiayanda, P.S.- Bihariganj, District-
Madhepura.

.... Appellant.

Versus

1. The State of Bihar
2. The Principal Secretary, Department of Food and Civil
Supply, Government of Bihar, New Secretariat, Patna.
3. The District Magistrate, Madhepura.
4. The Sub-Divisional Officer, Udakishunganj, Madhepura.
5. The District Supply Officer, Madhepura.
6. The Marketing Officer, Puraini, District- Madhepura.
7. The Block Development Officer, Puraini, Madhepura.
8. The Incharge Officer, Legal Cell, District- Madhepura.

.... Respondents

Appearance :

For the Appellant/s : Mr. Sanjeev Kumar Mishra

For the Respondent/s : Mr. Jawahar Pd. Karn

CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI

AND

**HONOURABLE MR. JUSTICE SAMARENDRA PRATAP
SINGH**

C.A.V. ORDER

**(Per: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP
SINGH)**

3 07-01-2015

This appeal is preferred against the order,
dated 19.11.2014, passed in C.W.J.C. No. 17524 of 2014,
which was heard analogous with two other writ petitions.
By the order under appeal, a learned single Judge of this
Court has disposed of the writ application with liberty to
the writ petitioner to raise his grievance, in appeal, against

the order passed in confiscation proceeding under Section 6 A of the Essential Commodities Act, 1955 (hereinafter referred to as 'the Act').

2. The writ application was filed for quashing the order, dated 19.09.2014, whereby the appellant's two Tractors, one bearing registration No. BR 11J-8266 with a trailer, bearing registration No. BR 11J- 8551 (wrongly typed, in seizure list, as BR11J-8557) and another tractor, bearing registration No. BR 43D-1435, along with its trailer, were confiscated.

3. So far as the facts are concerned, suffice it to mention that the premises of M/s Suraj Rice Mill, at Puraini, were raided. At the time of raid, the writ petitioner-appellant's said two tractors, along with trailers, were found standing. Following the raid, food-grains, along with the tractors and the trailers aforementioned, were seized. The seizure gave rise to Puraini P.S. Case No. 73 of 2014, dated 01.08.2014, under Section 7 of the Act.

4. The case of the writ petitioner is that the owner of the Rice Mill had hired his (i.e., writ petitioner's) *tractors* and *trailors* for the purpose of transportation of rice from M/s Suraj Rice Mill to Bihar State Food and Civil Supplies Corporation Ltd., Madhepura. The confiscating officer passed the final order in confiscation proceeding and *tractors* and *trailors* were confiscated.



5. Being aggrieved, the writ petitioner-appellant moved this Court seeking to get the order of confiscation set aside and quashed by invoking this Court's extra ordinary jurisdiction under Article 226 of the Constitution of India. As statutory appeal is provided, under Section 6 A of the Act, against the final order passed by the Confiscating Officer, the learned single Judge disposed of the writ application with liberty to the writ petitioner-appellant to avail the remedy of statutory appeal.

6. We have heard the learned counsel for the parties and perused the materials on record. It would appear from the order-sheet that no notice was given to the appellant in confiscation proceeding. The *tractors* and the *trailors* of the writ petitioner were confiscated without providing any opportunity of hearing to the writ petitioner-appellant, which is noticeably in violation of the principles of natural justice.

7. The writ petitioner was clearly denied the opportunity to meet the allegations and produce his version of the defence in the confiscation proceeding. This lapse ought to be treated as having caused serious prejudice to the writ petitioner-appellant inasmuch as he is disabled by not allowing him to bring on record all the facts, which, according to the writ petitioner-appellant, were relevant for

correct conclusions to be reached in the confiscation proceeding.

8. Since an appeal is required to be decided on the basis of facts as may be placed in the confiscation proceeding, it logically follows that the confiscation proceeding ought to have been interfered with directing the Confiscating Officer to provide effective opportunity of hearing to the writ petitioner-appellant before making any final order in the confiscation proceeding.

9. In the result and for the foregoing reasons, this appeal is partly allowed. The impugned order, dated 19.11.2014, passed by the learned single Judge, in C.W.J.C. No. 17254 of 2014, as well as the order, dated 19.09.2014, passed in confiscation proceeding, so far as the same relates to the appellant, are hereby set aside with direction to the Confiscating Officer to proceed afresh against the writ petitioner-appellant by providing him with effective opportunity of hearing. Pending hearing of the confiscation proceeding, it will remain open to the appellant to apply to the Confiscating Officer seeking release of the *tractors* and *trailors* on furnishing adequate surety and if such an application is made, the Confiscating Officer shall make such order as may be warranted by the facts and attending circumstances of the case.

10. With the above observations and

directions, this appeal shall stand disposed of.

(Samarendra Pratap Singh, J.)

I. A. Ansari, J.: I agree.

(I.A. Ansari, J.)

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