

THE HIGH COURT OF TRIPURA
A G A R T A L A

W. A. No. 71 of 2012

Petitioner-Appellant :

Sri Mataram Reang,

Son of Sandan Roy Reang, resident of Village-East
Hampara, West Karbook, P.O & P.S-Karbook, Sub-
Division-Amarpur, District-South Tripura.

By Advocate :

Mr. Somik Deb, Adv.

Respondents :

1. The State of Tripura,

Represented by the Principal Secretary to the
Government of Tripura, Department of Forest,
having his office at Capital complex, Gurkhabasti,
P.O-Kunjaban, PS-East Agartala, Sub-Division-
Agartala, District-West Tripura, Pin Code-799006.

2. The Principal Chief Conservator of Forest.

Government of Tripura, having his office at Aranya
Bhawan, Pandit Nehru Complex, P.O-Kunjaban, P.S-
East Agartala, Sub-Division-Agartala, District-West
Tripura, Pin Code-799006.

3. The Divisional Forest Officer,

Government of Tripura, having his office at Gumati
Division, Jatanbari, P.O-Jatanbari, PS-Nutanbazar,
Sub-Division-Amarpur, District-South Tripura, Pin
Code-799104.

By Advocate :

Mr. S. Chakraborty, Govt. Adv.

B E F O R E
THE HON'BLE CHIEF JUSTICE MR. DEEPAK GUPTA
THE HON'BLE MR. JUSTICE S. C. DAS

Date of hearing &
Judgment & Order : **30th September, 2015.**

Whether fit for reporting :

Yes	No
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JUDGMENT & ORDER (ORAL)

(Deepak Gupta, C.J.)

By means of this writ appeal the petitioner has challenged the order dated 16.07.2012 passed by the learned Single Judge of this Court whereby the writ petition filed by the petitioner (appellant herein) was dismissed.

[2] At the outset we may notice two factors: (1) that the learned Single Judge was not right in holding that the order of confiscation passed against the petitioner had not been challenged by the petitioner; (2) that the learned Single Judge erred in holding that the guidelines issued on 20th October, 2010 would apply because the show cause notice was issued on 22.07.2011 and the confiscation order was passed on 23.08.2011. The effect of the law has to be taken with respect to the date when the law was violated and not when the order or judgment regarding the violation is passed and therefore, we are not in agreement with the learned Single Judge as far as this aspect of the matter is concerned.

[3] The facts necessary for decision of the case are that the petitioner is a tribal. He owns a small piece of land and one of the pieces of land owned by him is CS Plot No.188. On this plot of land there was one Chamal tree (variety of teak). He applied for permission to fell the said tree sometime in January, 2010 and the Forest Department got an inquiry conducted and found that the tree existed on the private land of the petitioner. Therefore, he was granted permission to fell one Chamal tree. This permission was granted on 21.01.2010 and he was allowed to fell the tree within 30(thirty) days from the date of issuance of the order.

[4] The admitted fact is that the petitioner did not fell the tree within thirty days but felled the tree after the time granted in the said sanction order had expired.

[5] In the meantime, the Government issued a notification on 20th October, 2010 pursuant to the direction issued by the Apex Court in Civil Writ Petition No.202 of 1995. It also appears that an enquiry was conducted with regard to lot of trees being felled in Korbook Forest Division and during the inquiry it was found that a large number of trees from Government land had been felled. Unfortunately, for the petitioner his case was tagged with those cases. Even though there is no allegation against the petitioner that he had felled any tree from Government land. Admittedly he had felled the tree from his own jote land and his only fault was that he had not felled the tree within the time granted to him. Thereafter the order of confiscation was passed on 26.10.2010.

[6] The petitioner challenged this order in this Court and this order relates to confiscation of large number of land holders and large number of trees. The tree registration certificate of the petitioner is also included therein. Therefore, he has challenged the impugned order.

[7] The main issue is whether the notification dated 20th October, 2010 is retrospective or not. There can be no doubt that such a notification cannot be retrospective unless the language of the notification makes it retrospective. The notification comes into effect from the date of its publication in the official gazette and, therefore, obviously the intention of the State was not to make it retrospective. However, that will not cure the defect because the

petitioner had not felled the tree within the time granted. This offence may have occurred prior to the issuance to the notification dated 26th October, 2010 but even after felling a tree the holder of the tree is required to take permission from the Forest Department to extract the tree, transport the timber etc. and the guidelines come into play on 20th October, 2010.

[8] Having held so, the relevant guideline would be guideline 8.2(a) which reads as follows:

"8.2 On enquiry, if the trees are found felled from:

a. Private land, the authorized officer shall be at liberty to release the timber obtained from such trees, to the legal title holder(s), after recovery of an amount equal to 25% of the royalty payable for the tree/timber. However, such released timber shall not be eligible for purchase or use by any wood based unit, traders or registered timber transporters. ***"**

It appears that the confiscating officer did not take into consideration the fact that the tree which the petitioner had felled was from his own jote land even though it may have been felled after the period in which he was to fell had expired. This is not a case of felling a tree from Government land. In a sense it is not even a case of illicit felling but only of violating the sanction order. Even so, though strictly speaking Guideline 8.2 may come into force only when there is violation of the guidelines. We are of the view that as far as the present writ appeal is concerned it can be disposed of in terms of Clause 8.2.

[9] We accordingly allow the writ appeal, set aside the order of the learned Single Judge and direct that the authorized officer shall assess 25% of the royalty. This royalty shall be assessed by taking into consideration the rates existing in the year 2010 and thereafter the petitioner shall be directed to pay 25% of the royalty within 15(fifteen) days of the production of the certified

copy of this order before the authorized officer. Thereafter the petitioner shall have 15(fifteen) days to deposit the 25% of the royalty and on deposit of the royalty the petitioner shall be permitted to extract the timber and take it for his own use within one month thereafter. It is however, made clear that the petitioner shall use this timber only for his own personal use and shall not sell it to any wood based unit, traders etc. In this behalf he shall also file an affidavit before the authorized officer.

[10] The writ appeal is disposed of in the aforesaid terms. No order as to costs.

JUDGE

CHIEF JUSTICE