

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3121 of 2015

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Gopal Singh @ Gopal Kumar. Son of Chhabhi Singh @ Chhabhi Nath Singh.
Resident of village - Darigaon, P.S.- Darigaon, P.S.- Darigaon, District -
Rohtas.

.... Petitioner

Versus

1. The State of Bihar through Principal Secretary Forest and Environment
Department, Govt. of Bihar, Patna.
2. Forest Conservator-cum-Addl. Secretary, Environment & Forest
Department, Govt. of Bihar, Patna.
3. District Magistrate Rohtas at Sasaram.
4. Authorised Officer, Cum-Divisional Forest Officer Rohtas, Forest
Division, Sasaram.
5. District Forest Officer Rohtas at Sasaram.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Arun Kumar, Adv.

For the Respondent/s : Mr. Upendra Pratap Singh, AC to SC25

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER

6 18-11-2016 Heard Mr. Arun Kumar, learned counsel for the petitioner
and Mr. Upendra Pratap Singh, learned AC to SC25, for the State.

In the nature of the order which this Court proposes to
pass it would not be required to delve deep into the merit of the
case. Suffice it to say that a proceeding was initiated for
confiscation of the Mahindra tractor of the petitioner bearing
Model No. B 275 D.I., having registration No. BR-24-J-2654,
Engine No. R.D.T.-33757, Chasis No. R.D.T.-33757 (H/9),
Trolley registration No. BR-24G-2310, the details of which are
also present in the impugned orders passed by the statutory
authorities under the Indian Forest Act, 1927 (hereinafter referred



to as 'the Act'). The tractor of the petitioner was allegedly found loaded with illegally mined forest produce. The tractor was confiscated vide order passed by the Authorized Officer cum Divisional Forest Officer, Rohtas at Sasaram in Confiscation Case no. 25/2011 initiated under section 52(3) of the Act as it stands amended under the Bihar Amendment Act, 9 of 1990 and which order has been affirmed in appeal by the Collector, Rohtas when Appeal Case No. 5/2012 of the petitioner has been dismissed and even the revisional authority i.e. Principal Secretary, Department of Forest and Environment has dismissed the Revision Case no. 18/2014 preferred by the petitioner.

Although there is concurrent finding of fact by the statutory authorities to uphold the confiscation but while doing so and even while taking note of the statement made by the driver of the petitioner as regarding loading of the stone boulders in question, the explanation has not been tested against the backdrop of the amended provisions underlying Section 52(5) of the Bihar Act 9 of 1990, which inter alia runs as follows:

"52(5) No order of confiscation under sub-section (3) of any tools, arms, boats, vehicles, ropes, chains or any other article (other than the forest produce seized) shall be made if any person referred to in Clause (b) of sub-section (4) proves to the satisfaction of the authorized



officer that any such tools, arms, vehicles, ropes, chains or other articles were used without his knowledge or connivance or as the case may be, without the knowledge or connivance of his servant or agent and that all reasonable and necessary precautions had been taken against the use of the objects aforesaid for commission of the forest offence."

Be that as it may, for the present I shall not be delving into the merits of the orders under challenge for the reason that the revisional authority i.e. Principal Secretary, Department of Forest and Environment, has committed a serious error of record while disposing of the revision petition of the petitioner. A plain reading of the order does confirm that while the revisional authority has discussed the case of the petitioner at the beginning of the order as well as while concluding on the issue raised but in between, the revisional authority has committed a serious error of record in taking note of the facts relating to a separate case arising from Appeal Case No. 12/2014 which relates to confiscation of a JCB machine and was passed against one Digvijay Singh. Apparently while revisional authority has discussed the foundational facts relating to a different case but the conclusive opinion is made in context with the case of the petitioner.

The error being apparent on the face of record, the order dated 31.12.2014 passed by the revisional authority in Revision

Case No. 18/2014 is quashed and set aside. The matter is remitted back to the revisional authority to proceed afresh and for disposal of the revision petition in accordance with law with an opportunity of hearing to the petitioner, who shall present himself alongwith a copy of this order before the revisional authority on or before 28th November, 2016.

The writ petition is allowed.

(Jyoti Saran, J)

Surendra/-

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