

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8537 of 2017

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Anwar Hussain, Son of Md. Aziz Mian, Resident of Village- Khorkhar,
Police Station- Markacho, District- Kodarma (Jharkhand).

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Forest Department,
Government of Bihar, Patna.
2. The District Magistrate cum Collector, Gaya.
3. The Divisional Forest Officer, Gaya Forest Division, Gaya.
4. The District Forest Officer, Gaya.
5. The Forester, Wazirganj, District- Gaya.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Manish Kumar No-2, Adv.

For the Respondent/s : Mr. Chittranjan Sinha –PAAG-2

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**CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR
SINGH**
ORAL ORDER

2 28-07-2017 Heard Mr. Manish Kumar No.2, learned Counsel,

appearing on behalf of the petitioner and learned AC to PAAG-2

for the respondents.

The present writ application has been filed for a
direction to respondent authorities, particularly, the Secretary,
Department of Forest, Government of Bihar, to release the vehicle
bearing Registration No. JH-12E-1363(Highwa) in favour of the
petitioner, which was seized by the Forester, Wazirganj, in Forest
Case No.131 of 2015, during the pendency of Revision Case No.
05 of 2017. The petitioner claims to be the owner of the said
vehicle.



The factual matrix would unveil that on 01.12.2015, the Forester, Wazirganj, transmitted Letter No.45, to the Chief Judicial Magistrate, Gaya, and submitted a Seizure Memo stating therein to the effect that on 30.11.2015 at about 11.45 PM, the informant along with Officer-in-charge of Wazirganj police station, other police and forest personnel proceeded for patrolling and reached Karjara forest area and found that MORAM has been loaded on a Highwa. Thereafter, the Highwa was seized along with loaded MORAM leading to registration of Forest Case No. 31 of 2015. Subsequently, Confiscation Case No.87 of 2015 was initiated. Consequently, vide order dated 09.04.2016, passed by the Authorized Officer-cum-Divisional Forest Officer, Gaya in Confiscation Case No.87 of 2015, the Highwa of the petitioner was confiscated. Against the order of Confiscation, the petitioner preferred Confiscation (Forest) Appeal No.05 of 2016, which was dismissed vide order dated 27.04.2017, passed by the District Magistrate-cum-Collector, Gaya.

However, the petitioner, during pendency of the Appeal, preferred CWJC No. 9139 of 2016, wherein, a Bench of this Court directed the District Magistrate, Gaya-cum-Appellate Authority under the Indian Forest Act, 1927, to consider and dispose of the appeal of the petitioner in accordance with law and



after giving opportunity of hearing to the contesting parties, within a period of three months from the date of receipt/production of a copy of the order. In case for any reason the appeal is not disposed of within the period stipulated hereinabove, the Appellate Authority would consider the prayer of the petitioner for provisional release of his vehicle in question and dispose of the same within one month thereafter in accordance with law.

It is submitted by learned Counsel appearing on behalf of the petitioner that Appeal of the petitioner was dismissed and the vehicle was not released. Thereafter, the petitioner preferred a revision against the order passed in Appeal, which was registered as Revision Case No. 05 of 2017, on 18.05.2017, before the Secretary, Department of Forest, Government of Bihar, but the same is still pending and the vehicle being in question is junked. The petitioner has also drawn the attention of this Court to the issue with regard to the power of executive to confiscate the vehicle with reference to the provisions under section 6A of the Essential Commodities Act, as the same has been referred to the larger Bench by a Division Bench of this Court, vide order dated 19.09.2016, passed in Letters Patent Appeal No. 1647 of 2015 in following terms :-

“(1) Whether the Collector, who has seized any animal, vehicle, vessel or other conveyance



used in carrying essential commodity, has the jurisdiction to release such animal, vehicle, vessel or other conveyance, and if so, on what conditions? (2) Whether the Separation of judicial and executive functions will empower the Collector to confiscate the animal, vehicle, vessel or other conveyance without trial as the deprivation of a property can be ordered by a Court only after trial of the criminal case? (3) Whether the provisions of Section 6-D of the Act, so as to inflict any other punishment after confiscation, would stand the legal scrutiny on the touchstone of double jeopardy. (4) Whether the power of confiscation of the goods and the vehicle vesting with the Collector as an Executive Authority can be said to be legal in view of the principle of separation of executive and judicial power and/or that the power of confiscation of the goods and the vehicle can be exercised only by the Court.”

Subsequently, considering the aforesaid reference of the issue to a larger Bench, a co-ordinate Bench of this Court released the truck vide order dated 26.07.2017, passed in CWJC No. 735 of 2017 after staying the further proceeding of Confiscation Case No.114 of 2017.

Since, in the aforementioned case, the confiscation proceeding was pending, whereas in the present case the vehicle along with seized MORAM has already been confiscated and subsequently, the confiscation was upheld in Appeal, this Court is not inclined to interfere with the issue of release during the pendency of revision application.

However, it is expected from the Secretary,



Department of Forest, Government of Bihar, to dispose of the Revision of the petitioner within a period of six weeks of receipt or production of the copy of the order. In case, for any reason, the Revision could not be disposed of within the period stipulated hereinabove, the Revisional Authority, the Secretary, Department of Forest, Government of Bihar would consider the prayer of the petitioner for provisional release of his vehicle in question in accordance with law.

Accordingly, the writ application is disposed of.

(Dinesh Kumar Singh, J)

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