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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (Cr.) No. 297 of 2016****Order Reserved on 22.08.2017****Order Delivered on 04.09.2017**

Smt. Sudha Devi Chaudhari W/o Mahendra Choudhary, Aged About 40 Years R/o Village Parthiya, Post Hood, Tehsil & District Gadhwā (Jharkhand).

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Collector, Raigarh, District Raigarh (Chhattisgarh)
2. Appellate Authority And Chief Conservator Of Forests Bilaspur Forest Circle Bilaspur, District Bilaspur, (Chhattisgarh)
3. Sub Divisional Forests Officer, Raigarh (Chhattisgarh)

---- Respondents**Writ Petition (Cr.) No. 298 of 2016**

Rajendra Sahu S/o Shri Puniram Sahu, Aged About 25 Years R/o Gram Post Kedar, Tehsil Sarangarh, District Raigarh, (Chhattisgarh)

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Collector, Raigarh, District Raigarh, (Chhattisgarh)
2. Appellate Authority And Chief Conservator Of Forests Bilaspur Forest Circle Bilaspur, District Bilaspur, (Chhattisgarh)
3. Sub Divisional Forests Officer, Raigarh (Chhattisgarh)

---- Respondents**Writ Petition (Cr.) No. 299 of 2016**

Purushottam Sahu S/o Shri Shivsingh Sahu, Aged About 55 Years R/o Gram Post Kedar, Tehsil Sarangarh, District Raigarh (Chhattisgarh)

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Collector, Raigarh, District Raigarh (Chhattisgarh)
2. Appellate Authority And Chief Conservator Of Forests Bilaspur Forest Circle Bilaspur, District Bilaspur, (Chhattisgarh)
3. Sub Divisional Forests Officer, Raigarh (Chhattisgarh)

---- Respondents

For the Petitioners : Shri Animesh Tiwari, Advocate.
For the Respondent /State : Shri Anil S. Pandey, Government
Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

ORDER

1. Heard.

2. These petitions have been brought under Article 227 of the Constitution of India with a prayer to quash the orders passed by respondents No.2 and 3 and the Sessions Court by which the vehicles of the petitioners seized in connection with forest offence were confiscated and the confiscation orders were upheld by the Appellate Court and the Revisional Court.

3. Learned counsel for the petitioners submits that Smt. Sudha Devi Choudhary - Petitioner in W.P.Cr. No. 297 of 2016 is the owner of Mahindra Tractor bearing registration No. J.H. 14C/3743; Rajendra Sahu - Petitioner in W.P.Cr. No. 298 of 2016 is the owner of Eicher Tractor bearing registration No.C.G. 13A/7760 and Trolley bearing registration No. C.G. 13-A/7761 and Purushottam Sahu - in W.P.Cr. No. 299 of 2016 is the owner of JCB Vehicle bearing registration No.C.G. 13L 8233. It is submitted that on 15.06.2015 the said vehicles were seized by the Forest Officer in connection with forest offence, while the vehicles were used for illegal transportation of *Moorum* (Laterite) in the forest area and Forest Offence No. 4523 of 2007 was also registered in this regard. Thereafter, the confiscation proceedings were started by respondent No.3. The petitioners defended their case but the

orders of confiscation were passed by respondent No.3 – Sub-Divisional Forest Officer holding that the forest offence was committed, which was either in the knowledge of the owners of the vehicles or by their colleagues. The said orders were challenged before respondent No.2 / Appellate Authority who has upheld the orders of respondent No.3. Thereafter, revision petitions i.e. Criminal Revision Nos. 89 of 2016, 91 of 2016 and 90 of 2016, respectively have been preferred before the Sessions Judge, Bilaspur, which were dismissed by the Sessions Judge on 20.9.2016.

4. Learned counsel for the petitioners also submits that no offence was committed in the forest area and it was not proved before respondent No.3. The area in which the vehicles were stopped and seized by the Forest Officers was not a forest area, hence, no case was made out for confiscation. Reliance has been placed on the judgment of the Supreme Court in **Sheel K.R. Roy vs. Secretary M.O. Defence** reported in **2007 (12) SCC 462**, in which it was held that fairness and reasonableness in the action of the State whether in a criminal proceeding or otherwise is the hallmark of Articles 13 and 14 of the Constitution of India. It is also submitted that no reasonable and fair investigation has been conducted in this matter and the orders have been passed arbitrarily by respondents No. 2 and 3 which have been erroneously confirmed by the Sessions Court. Hence, these writ petitions.

5. Learned State counsel has opposed the submissions made on behalf of the petitioners and submitted that Laterite was being mined in a forest area and the vehicles concerned were seized in the forest area which were used for theft of forest produce. Reasonable opportunity was afforded to the

petitioners and thereafter the orders have been passed. Hence, there is no need for interference by this Court under Article 227 of the Constitution of India.

6. Perused the record.

7. The confiscation order Annexure – A/2 shows that five witnesses were examined in support of the department. One of the witness Madan Singh Jaiswal has stated that the aforesaid vehicles were found in Compartment No. 1034 of forest area wherein it was found that Laterite was illegally excavated. On question being put on behalf of the petitioners, he stated that he did not see loading of Laterite in the said vehicles. Similar statement has been given by another witness Aatma Ram Sahu, the member of Forest Management Committee and he has also answered similarly to the questions put on behalf of the petitioners, that he did not see the vehicles being loaded with Laterite and admitted that the smining pot is under the area of submergence of the Dam. Witness Heeralal Sahu, Forester stated that he saw the vehicles at midnight and similarly Rajesh Kumar Pandey, Forest Officer has stated that he found vehicles with load of Laterite. Defence witnesses have stated that the Laterite was being excavated from the area of submergence of the Dam which is not a forest area. Although, it is orally stated that the area from which, the said vehicles were seized in connection with offence is forest area, but the spot inspection report Annexure-P/4 clearly shows that the area of mining was in the area of submergence of the Dam. A spot map and a map obtained from Water Resources Department, Sarangarh is also attached.

8. Considering the evidence in the confiscation proceedings, it appears that on mere statements made by some of the Forest Officers and witnesses the finding was given that the excavation of transportation of Laterite was being done by the petitioners from a forest area. Some of the witnesses of the department admitted that the mining area was the submergence area of the Dam and this has been clearly stated by the defence witnesses which should not have been disregarded. Hence, for these reasons, the proceedings carried out by respondent No.3 appears to be arbitrary which have been erroneously upheld by respondent No.2 and the Revisional Court. Hence, for these reasons, these petitions deserve to be allowed and are accordingly allowed. The impugned orders and the orders passed by respondents No.2 and 3 are hereby set aside. Respondents No. 2 and 3 are directed to handover the possession of the seized vehicles to the petitioners in each case within a period of 60 days from today.

Sd/-

(Rajendra Chandra Singh Samant)
Judge