

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7565 of 2017

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Satendra Kumar, Son of Late Lal Mohar Singh, Resident of Dalmiya Nagar,
Police Station- Dalmiya Nagar, District- Rohtas.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Department of Forest and Environment, Bihar, Patna.
2. The Divisional Forest officer- cum-authorised Officer, Rohtas, Forest Division, Rohtas at Sasaram.
3. The Forester Tilauthu, Rohtas.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Kumar Tiwary
For the Respondent/s : Mr. Sanjay Kumar, AC to SC 15

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT

Date : 05-03-2018

Heard Mr. Sanjay Kumar Tiwary, learned counsel for the petitioner and Mr. Sanjay Kumar, learned AC to SC15.

The present Writ application has been filed for issuance of a direction to the respondent authorities, particularly, the respondent no. 2, the Divisional Forest Officer-cum-Authorized Officer, Rohtas Forest Division, Rohtas for release of the truck of the petitioner bearing Registration No. UP-67-4454 during the pendency of the confiscation proceeding arising out of Forest Case No. 44 of 2017.

The factual matrix of the case is that one Narbadeshwar Prasad Sinha, Forest Range Officer, Darigaon Forest Range, Sasaram gave information to C.J.M., Sasaram, Rohtas on 28.04.2017 that during patrolling on NH-2 near Pakhrari



gate, he saw three vehicles being driven rashly. All the vehicles were found loaded with stone chips, which were suspected to be taken from Fazilpur protected forest area, leading to registration of Forest Case No. 44 of 2017. The petitioner's truck was seized which was loaded with 225 cft. Stone chips, for the alleged violation of sections 33,41 and 42 of the Indian Forest (Bihar Amendment) Act, 1989 (Bihar Act No. 9 of 1990) (hereinafter referred to as the Act) and necessary information was given to the Magistrate for initiation of confiscation proceeding.

It is submitted by learned counsel for the petitioner that petitioner is the owner of the vehicle in question and the stone chips were being carried on valid challan. Hence, the seized stone chips cannot be treated to be the forest produce. It is further submitted that during confiscation proceeding the petitioner filed an application for release of the vehicle in question on 2.5.2017 before the respondent no. 2 but the same has not been disposed of till date. The truck of the petitioner is rotting in open air and the petitioner is ready to furnish adequate surety at the time of release of the vehicle in question. The petitioner has relied upon an order passed in C.W.J.C. No. 3544 of 2015, as contained in Annexure-5, whereby the DFO has been directed to release the vehicle pending confiscation proceeding with certain conditions.

Though a voluminous counter affidavit has been filed on behalf of respondent no. 3 but it does not suggest whether the confiscation proceeding has been disposed of or not or the petitioner's application for release of the vehicle in question has been disposed of. However, it is submitted that the



petitioner has not brought on record the number of confiscation proceeding.

Considering the rival submissions of the parties, this Court is of the view that once the confiscation proceeding has been initiated and the matter has been brought to the notice of the Magistrate by the authority of the Forest Department, the jurisdiction of other Court gets ousted. The basic issue involved in the present writ application is whether in view of the specific provisions as contained in Section 52 of the Indian Forest Act, 1927 substituted by the Act when there is a specific provision of conducting confiscation proceeding by the Divisional Forest Officer-cum-Authorized Officer, whether this Court should exercise the discretionary jurisdiction under Article 226 of the Constitution of India.

There is no doubt that no provision under any Special Act can override the remedy of prerogative writs under Article 226 of the Constitution of India but the power or discretion under the said Articles has to be exercised on well established principles and subject to certain restrictions. No writ can be issued to make a valid statutory enactment redundant and otiose.

It is well settled law that the High Court under Article 226 of the Constitution of India has a discretion to entertain or not to entertain a writ petition but the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available but the alternative remedy does not operate as a bar in certain circumstances, such as, enforcement of any of the Fundamental Rights or where there is violation of principles of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is under challenge



as has been dealt in the case of Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Ors. reported in (1998) 8 Supreme Court Cases 1. Paragraph 15 of the judgment reads as follows:

“15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.”

The issue of bar of Jurisdiction under Section 52C of the Act was under consideration before a bench of this Court in the case of Enamul Haque and Ors. Vs. State of Bihar and Ors. and analogous cases reported in 1995(2) PLJR 153 where it was held that Section 52C of the Act ousts the jurisdiction of any Court except the authorised officer, Appellate Authority and Revisional Authority referred to in Sections 52,52A and 52B of the Act. However, in exceptional circumstances and for good reason such power can be exercised . Paragraph nos. 22 and 23 of the judgment read as follows:



“22. The next question is as to whether the bar created under Section 52C will also oust the jurisdiction of this Court. This question will not detain me for long as it is well settled by now that Articles 226 & 227 of the Constitution of India are not one of such provisions which can be changed by ordinary legislation. The power can be curtailed only by amendment in the Constitution. The State amendment brought by State Act cannot curtail or take away the power of this Court under Articles 226 & 227 of the Constitution of India is to be exercised on well established principles and not arbitrarily and it is subject to the certain self imposed restrictions. Its object is to see that authorities and tribunals act within the bound of their jurisdiction. No writ can be issued to frustrate the object of the Act. Nor it can be to make a valid statutory enactment otiose and redundant. However, I do not mean to say that this Court is powerless to interfere in appropriate cases but such cases will be far and few.

23. In cases where on the face of material it appears that the confiscation proceeding is unjustified and wholly illegal then the helping hands of this Court will rescue the aggrieved persons but issuance of writ in all the cases releasing the vehicle or forest produce during the pendency of the confiscation proceeding before the authorised officer under the Forest Act will result in miscarriage of justice and will frustrate the object of the Act as stated above. When the parties approach this Court for release of the forest produce or the property including vehicles used in commission of the offence with regard to which the confiscation proceeding is pending, this Court is first instance will direct the confiscating agency to dispose of the proceeding at an earliest for the simple reason that once the confiscation proceeding is concluded the aggrieved person has right of appeal and the Appellate Court has power to pass an interim order. The provisions of Section 52 clearly shows that the legislature never intended that the forest produce and the articles used



in commission of the offence should be released in course of confiscation proceeding. However, when there is unreasonable delay resulting in miscarriage of justice the Court in appropriate case may release the vehicle till the conclusion of the confiscation proceeding with a clear stipulation that if an order for confiscation has been passed after conclusion of the confiscation proceeding the vehicle and the forest produce should be produced before the confiscating authority before filing an appeal as provided under Section 52A of the Act.”

The Supreme Court in the case of Section Forestor and Anr. Vs. Mansur Ali Khan reported in (2004) 1 Supreme Court Cases 293 held that vehicles in forest related offence should be released in exceptional circumstances. Paragraph No. 6 reads as follows:

“6.While in regard to the power of the High Court to release the vehicle in a given set of facts cannot be disputed, this Court as noticed by the High Court itself has laid down that such power can be exercised for good reasons and in exceptional cases only. In the instant case, the only reason given by the High Court for the release of the vehicle is on the ground that same was in the custody of the officers for more than one year and there was no likelihood of immediate disposal of the pending case. This by itself, in our opinion, would not be a ground for the release of the vehicle because this would be the case in almost all such cases involving forest offence. In exceptional cases, the act itself has made a provision for interim release of the vehicle on the existence of certain conditions mentioned therein. In the absence of such conditions being fulfilled, we do not think that the High Court as a matter of course could pass mechanical orders releasing such vehicles.”



In view of the discussions made above, this Court is not inclined to direct the respondent authorities to release the vehicle in question in exercise of jurisdiction under Article 226 of the Constitution of India pending confiscation proceeding, particularly, in view of the fact that for coming to a conclusion that the seized stone chips is a forest produce or not, it requires leading of evidence by the Divisional Forest Officer-cum-Authorized Officer in confiscation proceeding which can be appropriately be done at the stage of confiscation proceeding and by this Court in exercise of discretionary jurisdiction under Article 226 of the Constitution of India.

Section 52 of the Act does not stipulate any time frame for disposal of the confiscation proceeding by the Divisional Forest Officer-cum-Authorized Officer, but it does not mean that it should be kept pending for an indefinite period. Since the vehicle of the petitioner is rotting in open air, hence, it is expected from the respondent no. 2, the Divisional Forest Officer-cum-Authorized Officer, Rohtas to conclude the confiscation proceeding within a period of eight weeks of the receipt/production of a copy of this order. Though the petitioner has relied upon the order dated 17.4.2015 passed in CWJC No. 3544 of 2015, as contained in Annexure 5, whereby this Court directed the Divisional Forest Officer-cum-Authorized Officer, Rohtas to release the vehicle under certain conditions but since that order does not lay down any ratio, it is also expected from the respondent no. 2, the Divisional Forest Officer-cum-Authorized Officer, Rohtas to dispose of the application of the petitioner for provisional release of the vehicle in question dated 2.5.2017, as



contained in Annexure 4 expeditiously within a period of three weeks from the date of receipt/production of a copy of this order.

Accordingly, this writ application stands disposed of.

(Dinesh Kumar Singh, J)

anil/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

