

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8545 of 2017

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Anup Kumar Gupta, son of Kanhai Prasad, resident of Village- East Mohan Bigha, Police Station- Dalimiya 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. Awanish Nandan Sinha -Gp21

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT

Date : 06-03-2018

Heard learned counsels for the parties.

The present Writ application has been filed for a direction to the respondent authorities, particularly, respondent no. 2, the Divisional Forest Officer-cum-Authorized Officer, Rohtas Forest Division, Sasaram for release of the truck of the petitioner bearing Registration No. JH 12B 8153 which was seized in connection with Dehri Forest Case No. 112 of 2017 registered under Sections 33,41 and 42 of the Indian Forest Act, 1927 (Bihar Amendment) Act, 1989 (Bihar Act No. 9 of 1990) (hereinafter referred to as 'the Act').

The Forest case got initiated on the written report of one Lallan Mochi, Forester, Tilouthu Forest Range submitted to the SDJM, Dehri-On-Sone Rohtas on 11.4.2017, alleging therein that while he was on patrolling duty along with



other police officials, in the meantime, he saw four trucks being rashly driven towards Dehri. The four trucks were intercepted. Out of the four, three drivers escaped from the scene, while one of them was arrested. On search it was found that all the four trucks including the truck in question were loaded with stone chips, crushed in different sizes from the stones of Gaighat Protected Forest area. Consequently, the trucks were seized and the Divisional Forest Officer-cum-Authorized Officer was requested to confiscate the seized truck and the stone chips under Section 52(3) of the Act.

It is submitted by learned counsel for the petitioner that the petitioner is the owner of the truck in question. 400 cft stone chips were loaded on 11.4.2017 from the business premises of M/s Eklabya Stone and Mines Pvt. Ltd. The stone chips were to be delivered to one Raj Kumar, at Purvi Mohan Bigha, Dehri for construction purposes. The vehicle was illegally seized in spite of the fact that the challan was produced by the driver, hence no case under the Act is made out. Thereafter, a confiscation proceeding has been initiated, which is numbered as Confiscation Case No. 112 of 2017. It is further submitted that the vehicle in question is rotting in open air and the petitioner is ready to furnish adequate surety for provisional release of the vehicle.

It is further submitted on behalf of the petitioner that during the pendency of the confiscation proceeding, a petition for provisional release of the truck in question was filed in the court of the Authorized Officer-cum-Divisional Forest Officer, Rohtas on 3.6.2017, but the same has not been disposed of till date.



Learned counsel for the petitioner has relied upon the order dated 17.4.2015 passed in CWJC No. 3544 of 2015 as contained in Annexure-5, whereby the Authorized Officer-cum-Divisional Forest Officer, Rohtas has been directed to pass order for release of the vehicle, pending confiscation proceeding, with certain conditions. Since the application of the petitioner for provisional release of the truck in question has not been disposed till date, hence, the present writ application.

It appears that the writ application was registered on 21.6.2017 but till date no counter affidavit has been filed. However, learned counsel for the respondents State submits that the stone chips were being carried without any valid challan. Due to such menace of illegal mining, the ecology and environment are getting adversely affected in the State of Bihar. Moreover, in view of the provision stipulated under Section 52 C of the Act, only the Authorized Officer, the Appellate authority and the Revisional authority, are authorized to pass an order for release of the vehicle in question.

The basic issue involved in the present writ application is whether in view of the specific provisions under Section 52 of the Act which mandates that the Authorized Officer-cum-Divisional Forest Officer is authorized to conduct the confiscation proceeding and once the confiscation proceeding has been initiated, whether this Court should exercise the discretionary jurisdiction under Article 226 of the Constitution of India directing provisional release of vehicle.

It is well settled law that once the confiscation proceeding is



initiated and such initiation is brought to the notice of the Magistrate by the Forest Department authority, the jurisdiction of any other Court gets ousted. This Court is of the view that the discretionary jurisdiction under Articles 226 and 227 of the Constitution of India has to be exercised in special circumstances and for good reasons. The same cannot be exercised for making the provision under the Special Act otiose and redundant as has been held by 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.

There is no doubt that no provision under any other law can override the constitutional discretionary jurisdiction under Article 226 and 227 of Constitution of India, however, such discretionary jurisdiction is subject to self-imposed restrictions one of which is that if an effective alternative efficacious remedy is available then in such circumstance, writ jurisdiction cannot be exercised. However, the alternative remedy does not operate as a bar in certain circumstances, such as, for 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 when the vires of an Act is under challenge, as has been dealt with in the case of Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Ors., reported in (1998) 8 Supreme Court Cases 1.

This Court is of the view that in the interest of environment and ecology, the court should be reluctant in passing order for release of the vehicles involved in forest related offences as it gives an impetus to such persons



who are indulged in illegal mining or transporting forest produce illegally, as has been held by the Apex Court in the case of Section Forester and Anr. Vs. Mansur Ali Khan reported in (2004) 1 Supreme Court Cases 293. Paragraph 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 similar circumstances, a bench of this court in the case of Pramod Kumar alias Parmod Kumar Vs. State of Bihar (Cr. Misc. No. 45284 of 2016) considered the issue whether during the pendency of confiscation proceeding under the Act, direction can be issued for release of the seized truck/vehicle in exercise of the inherent powers under Section 482 of the Cr.P.C., 1973, and on considering several



judgments of the Apex Court, it has been held that in view of the specific provision under Sections 52A to 52D of the Act, no release order can be passed in exercise of the said jurisdiction.

However, this does not mean that the Authorized Officer-cum-Divisional Forest Officer can keep the confiscation proceeding or the application for provisional release of the vehicle in question, pending for an indefinite period, allowing the vehicle to rot in open air, inasmuch as, in case the confiscation authority comes to a finding that the stone chips were not being carried out illegally, then in that circumstance the loss incurred by the vehicle owner, like the petitioner, cannot be compensated. This has been deprecated by a bench of this Court in the case of Dhananjay Kumar and Ors. Vs. The State of Bihar and Ors. and its analogous cases, reported in 2013(4) PLJR 849, wherein a time frame has been framed for disposing of such proceeding and for considering the question of provisional release of the vehicle.

In view of the discussions made above, this Court is not inclined to direct the respondent authorities to release the vehicle in question. However, the respondent no. 2, the Authorized Officer-cum-Divisional Forest Officer, Rohtas at Sasaram is expected to conclude the confiscation proceeding expeditiously, preferably, within a period of three months of the receipt/production of the copy of the order if it has already not been concluded. In the meantime, it is further expected from him to dispose of the petition dated 3.6.2017, as contained in Annexure 4 filed for



provisional release of the vehicle in question within two weeks of the receipt/production of a copy of the order if it has not been disposed of till date.

Accordingly, the writ application is disposed of.

(Dinesh Kumar Singh, J)

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Uploading Date	
Transmission Date	

