

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9375 of 2017

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Shorab Khan, Son of Sharfraz Khan, Resident of Village-Dangra Dobhi,
District-Gaya.

... .. 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-Authorized 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, Adv.

For the Respondent/s : Mr. Sarvesh Kr. Singh, AAG-13

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT

Date : 06-03-2018

Heard Mr. Sanjay Kumar Tiwary, learned counsel for
the petitioner and learned AC to AAG-13 for the respondent-State.

The present writ application has been filed for a
direction to the respondent authorities for release of the truck of
the petitioner bearing Registration No. UP-67B-9663, which was
seized in connection with Dehri Forest Case No. 42 of 2017,
wherein confiscation proceeding has been initiated being
Confiscation Case no. 112 of 2017.

The factual matrix of the case would unveil that One
Lallan Mochi, the Forester of the Tilauthu Forest Range submitted
a written information to the learned Sub-Divisional Judicial
Magistrate, Dehri-On-Sone on 11.04.2017, alleging therein that
while on patrolling duty on 11.04.2017, he saw four vehicles



loaded with stone chips coming rashly from Chandani Chawk and going towards G.T. Road, Sasaram, when all the four vehicles were signaled to stop, but only the driver of the first vehicle was apprehended and rest of the drivers escaped from the scene. The said vehicle was checked and it was found being loaded with stone chips, which was loaded from Sasaram Protected Forest area and subsequently, the seizure of the vehicle along with the loaded stone chips were made and consequently Forest Case No. 42 of 2017 was registered under Sections 33, 41 and 42 of the Indian Forest (Bihar Amendment) Act, 1989, Bihar Act, 1990 (hereinafter referred to as 'the Act').

One of the four vehicles seized, the vehicle bearing Registration No. UP-67B-9663 belongs to the petitioner. Consequently, the intimation was given to the Magistrate for initiation of confiscation proceeding and consequently, Confiscation Case No. 112 of 2017 was initiated. During pendency of the confiscation proceeding, the petitioner filed a petition for provisional release of the vehicle in question before the Divisional Forest Officer -cum- Authorized Officer, Rohtas Forest Division on 17.06.2017, as contained in Annexure-4, but till date, no order has been passed for release of the vehicle of the petitioner. Hence, the present writ application.



It is submitted by learned counsel for the petitioner that the petitioner is the owner of the vehicle in question, though, the first owner of the vehicle in question was one Ashok Kumar Singh, from whom the petitioner purchased and subsequently ownership of the vehicle in question has been transferred in his name. The stone chips were being transported under a valid challan being loaded from the premises of one Pawan Kumar situated at Gaya and was to be unloaded at Subhash Nagar, Dehri-On-Sone and the vehicle in question has been seized only on suspicion. It is further submitted that there is nothing on record to prove that it has been loaded or mined from Sasaram protected forest area. The petitioner is ready to deposit the adequate and reasonable surety to the concerned authority. The vehicle is rotting in the open air. The petitioner had no knowledge about the stone chips being carried through his truck as it was loaded at the behest of the driver.

Learned counsel for the petitioner has relied upon the order dated 17.04.2015, passed by Bench of this Court in C.W.J.C. No. 3544 of 2015, as contained in Annexure-5, whereby during pendency of the confiscation proceeding, this Court directed the Divisional Forest Officer -cum- Authorized Officer, Rohtas for passing an order for release of the vehicle under certain conditions in Forest Case No. 08 of 2014, Confiscation Case No. 21 of 2014.



It is submitted by learned counsel for the State that Section 52 of the Act, provides the mechanism of confiscation appeal and revision by the authorities specified therein. Section 52(C) of the Act ousts the jurisdiction of any Court except the Authorized Officer, Appellate Authority, Revisional Authority referred to in Section 52, 52A and 52B of the Act. It is further submitted by learned counsel for the respondent-State that he is not having any instruction whether the petitioner's application for the release of the vehicle in question has been disposed of or not, but if the petitioner's application for disposal of the provisional release of the vehicle has not been disposed of, it shall be disposed of within a time frame.

Having heard learned counsel for the parties, the basic issue is whether in view of the specific provision under the Special Act, this Court should exercise discretionary jurisdiction under Article 226 of the Constitution of India for release of the vehicle. Secondly, whether in view of the provisions under Section 52(C) of the Act whether this Court should exercise such discretionary jurisdiction.

It is well settled law that the High Court under Article 226 of the Constitution of India has a discretion whether to entertain or not to entertain a writ petition, but the High Court has



certain self-imposed restrictions and 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 nature justice or where the order of proceedings are wholly without jurisdiction or the vires of an Act is under challenge, but none of these grounds have been taken by the petitioner in the present case. The reference may have to the case of Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Ors. (1998) 8 Supreme Court Cases 1.

Section 52(C) of the Act ousts the jurisdiction of any Court except the Authorized Officer, Appellate Authority and the Revisional Authority, referred to Sections 52, 52A and 52B of the Act. The said issue was considered 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, where it has been held that discretionary jurisdiction under Article 226 and 227 of the Constitution of India cannot be issued to frustrate the object of Special Act, otherwise it will make a valid statutory enactment otiose and redundant. However, it was further held that the jurisdiction under Article 226 and 227 of the Constitution of India can be made in appropriate cases, but in exceptional



circumstances, like whether the confiscation proceeding is unjustified and wholly illegal.

True it is that under the Forest Act, no time limit is prescribed for concluding the confiscation proceeding, but the department of Forest, vide Memo No. 2856, dated 10.09.2012, fixed a time frame for disposal of such proceeding and considering the same, a bench of this Court in the case of Dhananjay Kumar and others Vs. State of Bihar and Others and other analogous cases, reported in 2013(4) PLJR 849 laid down the parameter for a time frame for initiation and conclusion of the proceeding under Section 52 of the Act. Paragraph 8 of the judgment reads as follows:-

“This Court is of the considered opinion that overall balance has to be maintained in between the conflicting interest of the State in the form of protecting wildlife, ecology, environment, flora and fauna of the forest and the national wealth in the form of forest resources on the one hand and the rights of citizens of the Country guaranteed under the Constitution and the laws on the other. It appears to this Court that, the Department, with a view to strike a fine balance of conflicting interests, has already issued the said letter, contained in memo no. 2856 dated 10.09.2012 (which is worth going through, but not being extracted here due to being very detailed one). On the lines of the said letter, this Court is also of the view that the confiscation proceedings, being a proceeding directly interfering with the rights of a citizen under Articles 19(1)(g) and 300-A of the Constitution of India, should take precedence



over any administrative engagements of the confiscating authority and should be held and disposed of positively within the time limit laid down by the Department in the said letter. Some of the petitioners have raised grievance that, in spite of seizure of the vehicles long back, they have not received any notice of initiation of confiscation proceeding and/or despite their appearance in the proceeding and filing their defence no progress has been made and proceeding remains at a stand-still. Some of them have also raised a grievance that, upon verification, their permit and challan have been found as valid and operative during the period, still order for interim release of the vehicle has not been passed. Some of them have also raised a grievance that in their defence they have categorically denied that their vehicles were seized from any forest area or while indulging into any activity amounting to any forest offence, still the prosecution is not producing any positive evidence to establish the date, place and time of seizure of the vehicles and they are being forced upon to prove the negative. In the circumstances, taking into account overall aspect of the matter, this Court is of the view that the Divisional Forest Officer should adopt the following procedure, in addition to the procedure laid down in the Act by State Amendment, in cases pending before him or instituted henceforth for some forest offence(s):-

(I) After the vehicle is seized with or without incriminating articles from forest area on the suspicion of being used in commission of any forest offence and an FIR is instituted with the local police, the institution of the FIR and the seizure must be reported immediately to the competent authority for registering a forest case.

(II) On receipt of the report, the competent authority must register the case on that very day and thereafter get the



ownership of the vehicle verified from the concerned Transport Office and send a registered notice alongwith seizure memo to the owner of the vehicle through registered post with acknowledgment due positively within two weeks. In the notice, the owner should be allowed two weeks time, from the date of receipt of the notice, to appear in the proceeding and file his defence. It is very common that the notices by post are not served or the noticee avoids to receive the same. Hence, simultaneously, with the issue of notice by registered post, the competent authority must get a notice published in the local newspapers with regard to seizure of the vehicles with the registration number, chassis number and engine number and other details as may be available and the date, place and time of seizure of the vehicle with brief of charges and the number of proceeding initiated in the matter. If within 15 days of publication of notice in the newspaper, the owner or any claimant of the vehicle does not appear before the competent authority in the proceeding, the competent authority shall be at liberty to proceed ex parte. If the competent authority is able to find out from the papers seized with the vehicle or from any source that the vehicle has been purchased under hire purchase agreement with any insurance company, he shall also send information to the said company, simultaneously, through registered post that the vehicle has been seized for forest offence(s) and is a subject of a confiscation proceeding before him.

(III) In case, the owner/claimant appears and files his defence totally denying seizure of his vehicle on the date, time and place alleged, the prosecution shall lead evidence first in support of the factum of seizure of the vehicle from a forest area at the particular time and date and loaded with incriminating article, if any. Once the prosecution produces



evidence to this effect, onus will shift, in terms of Section 52(5) of State Amendment, on the owner/claimant of the vehicle to establish his defence of innocence.

(IV) Evidence in the case must commence within 15 days of the filing of the defence by the owner/claimant. Thereafter, the proceeding should continue and progress without any unnecessary delay and must conclude within four months from the date of institution of the case before the competent authority.

(V) In case the proceeding does not conclude within the said four months, for no fault of the owner/claimant of the vehicle and in spite of his full co-operation, the competent authority shall release the vehicle on provisional basis together with its attachments, if any, to the owner of the vehicle on the following terms:-

(i) He shall ascertain the depreciated value of the vehicle as on the date of institution of the case in his court, calculated by Insurance Company where the vehicle is insured or by any competent authority and shall direct the owner to furnish bank guarantee of that amount.

(ii) He shall also direct the owner to furnish two sureties in his support out of which one should be a Government official.

(iii) He shall also direct for deposit of security in the form of ownership papers of immovable property, standing in the name of the owner of the vehicle, equal to the depreciated value of the vehicle.

(iv) He shall also direct the owner to furnish an undertaking that, on the date of final orders in the confiscation proceeding, he shall produce the vehicle with all its attachment, as released on provisional basis, and in the same condition, for any appropriate orders by the competent authority.



(v) On the owner meeting all these conditions the vehicle with all its attachments shall be released to him on provisional basis within one week positively which shall be subject to the final result of the confiscation proceeding.”

In order to protect and improve the environment and ecology, the Indian Forest Act, 1927 was enacted and consequently, (Bihar Amendment) Act, 1989, Bihar Act, 9 of 1990 was brought in existence. 42nd Amendment was introduced in the Constitution of India bringing Articles 48A and 51A imposing duty on the State and every citizens of India to protect and improve the environment.

The Forest Act has been enacted to check the Forest offences for an effective maintenance of environmental equilibrium and ecology, but at the same time, the seizure of the vehicle interferes with the legitimate right to carry on any occupation, trade or business affect the rights guaranteed under Article 19(1)(g) of the Constitution of India, hence such seizure deprives the owner to use his vehicle in any manner he likes which is deprivation of one's property and hence violation of the rights under Article 300A of the Constitution of India.

True it is that the Supreme Court had deprecated the final order of release of the vehicles under the Forest Act, as it amounts to encouraging the offenders to commit the offence under Forest Act, but such power can be exercised for good reasons in



exceptional circumstances. However, even the Divisional Forest Officer -cum- Authorized Officer or the Appellate Authority or the Revisional Authority has to strike a balance between the purpose of the Forest Act to protect the forest and ecology, environment and to affect the right of a citizen to carry on the business, keeping in view the fact that allowing the vehicle to rot and deteriorate will not serve any purpose and if ultimately the case fails or in the interest of justice and to prevent wastage of public money.

Learned counsel for the petitioner has relied upon the order of this Court, as contained in Annexure-1, wherein the Divisional Forest Officer -cum- Authorized Officer, Rohtas was directed to pass an order for release of the vehicle on certain conditions. The said order does not lay down any ratio and in view of the discussions made above, I do not find the present case as an exceptional one to pass such order during pendency of the confiscation proceeding, hence, this Court is not inclined to interfere.

However, it is expected from the Divisional Forest Officer -cum- Authorized Officer, Rohtas to conclude the proceeding of Confiscation Case No. 112 of 2017 arising out of Dehri Forest Case No. 42 of 2017 within a period of eight weeks from the date of receipt/production of a copy of this order. It is



also expected from the Divisional Forest Officer -cum- Authorized Officer, Rohtas to dispose of the application for release of the vehicle within a period of four weeks from the date of receipt/production of a copy this order.

Accordingly, with the above observation and direction, the present writ application is disposed of.

(Dinesh Kumar Singh, J)

Amrendra/-

AFR/NAFR	
CAV DATE	
Uploading Date	24.04.2018
Transmission Date	

