

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14135 of 2015

=====

Bindeshwar Yadav, Son of Sri Hiranman Yadav, resident of Village- Shankarpur,
P.S. Imamganj, District- Gaya.

.... Petitioner

Versus

1. The State of Bihar.
 2. The District Magistrate, Gaya.
 3. The Sub-Divisional Officer, Sherghati, District- Gaya.
 4. The Block Supply Officer, Bankey Bazar, Block- Banke Bazar, District- Gaya.
- Respondents

=====

Appearance :

For the Petitioner : Mr. Sudhir Kumar Sinha, Advocate.

For the Respondents : Mr. Syed Arshad Alam, SC-3

=====

CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 27-08-2018

The present writ petition has been filed for the following reliefs –

“(i) For issuance of a writ of certiorari or setting aside the order dated 7th April 2015 passed by the Sessions Judge, Gaya in Cr. Appeal No. 69/14 whereby and whereunder appeal filed by petitioner has been dismissed.

(ii) For quashing the order dated 20.02.2014 passed by the District Magistrate, Gaya in Confiscation Appeal Case No. 65/2011 whereby and whereunder the respondent no. 2 has directed to confiscate the 75 quintals of wheat of the petitioner and also directed to sale and deposit the sale amount in the treasury.

(iii) For a direction to the respondent authority to hand over the 75 quintals wheat to the petitioner which was seized from the door of the petitioner in connection with Imamganj P.S. Case No. 45/2011 or to give the amount to



the petitioner with interest if the wheat of the petitioner has been sold in terms of the order dated 20.02.2014 passed in Confiscation Appeal Case No. 65/2011.

(iv) And for any other appropriate writ/writs, order/orders, direction/directions as this Hon'ble Court think fit and proper in the facts and circumstances of the case."

2. It is submitted that the petitioner is a farmer with sufficient landed property and the confiscated wheat was the agricultural produce from his own land. It is further submitted that wheat is not a controlled item nor subject to licensing requirements. It is further submitted that the petitioner is neither a foodgrain dealer nor has a shop or business for foodgrain and has not violated any provisions of the Essential Commodities Act and as such the order of confiscation and the appellate order are liable to be quashed.

3. Learned counsel for the respondents appears and has been heard.

4. Having heard the parties and on a consideration of the materials on record, this Court finds substance in the submissions made on behalf of the petitioner. It is well settled that a confiscation proceeding can be initiated only if there is violation of a statutory Order issued under Section 3 of the Essential Commodities Act, failing which the very initiation of the confiscation proceeding would be rendered without jurisdiction. The order of confiscation should specifically state as to which Control Order/Statutory Order under



Section 3 of the Essential Commodities Act has been violated. In this regard it would be apposite to refer to the order dated 11.11.2013 passed by this Court in C.W.J.C. No. 5791 of 2013 (*Ranjit Kumar & Anr. Vs. The State of Bihar and Ors.*) wherein it has been held as follows –

“Having heard the learned counsel for the petitioners, in my view, the writ petition must succeed. If we read the provisions of Sections 6-A and 6-B of the Essential Commodities Act it would be manifest that the sine qua non for initiating the confiscation proceeding is an order issued with reference to Section 3 of the Essential Commodities Act and there must be violation of statutory order before the Collector gets the jurisdiction to initiate confiscation proceedings. Thus, the order of confiscation must note that which and what order has been violated. A reference to the impugned order of the Collector and the appellate order of the learned Judge would show that neither the Courts have referred to any order much less the statutory order which can be said to have been violated and in what manner the same has been violated. Thus, there being no finding of any order, which can be said to have been violated much less statutory order under the Essential Commodities Act, the initiation of confiscation proceeding and the order of the Collector becomes without jurisdiction.”

5. In the instant case, learned counsel for the respondents have not been able to show from the impugned orders which statutory Order under Section 3 of the Essential Commodities Act was violated and for which the confiscation proceeding had been



initiated.

6. In the above circumstances, the impugned order of confiscation dated 20.02.2014 passed by the District Magistrate, Gaya in Confiscation Appeal No. 65/2011, must be held to be without jurisdiction and is accordingly quashed. Consequently, for similar reasons, the appellate order dated 07.04.2015 passed by the Sessions Judge, Gaya in Criminal Appeal No. 69/2014 is also quashed.

7. The District Magistrate, Gaya (respondent no. 2) is directed to ensure release of the subject wheat or in the event the same has been sold and the sale proceeds deposited in the Government Treasury, the amount of the sale proceeds in favour of the petitioner without delay.

8. The writ petition stands allowed as above.

(Vikash Jain, J)

Md. Ibrarul/BT

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	07.09.2018
Transmission Date	N.A.

