

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7769 of 2017

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Dhruv Kumar, Son of Kanhai Prasad, resident of village- East Mohan Bigha,
Dehri-on-Sone, Police Station- Dehri, 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-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
For the Respondent/s : Mr. Dhurjati Kr. Prasad- Gp14

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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. Ranjan Kumar Singh, learned AC to PAAG2.

The present Writ application has been filed for commanding upon the respondent authorities for release of the truck of the petitioner bearing Registration No. HR-38L-4379 which was seized in connection with Forest Case No. 29 of 2017. However, confiscation proceeding was also initiated vide Confiscation Case No. 96 of 2017 which is pending before the Divisional Forest Officer-cum-Authorized Officer, Rohtas.

The factual matrix of the case is that one Lallan Mochi, gave a written information to the learned SDJM, Dehri-on-Sone on 23.3.2017 that while he was on patrolling duty along with other officials at Fazilpur Protected Forest area on the same day, he noticed two vehicles being rashly driven on G.T. Road when signal



was given to stop, but one of the drivers could manage to escape, while the other driver was apprehended. The vehicles in question, loaded with stone chips, were brought to the police station from the Fazilpur Protected forest area. Seizure was made and necessary information was given to the Magistrate for initiation of confiscation proceeding. Consequently, Forest Case No. 29 of 2017 was registered for 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'). However, confiscation proceeding was initiated being Confiscation Case No. 96 of 2017, wherein a petition was filed by the petitioner on 05.05.2017, as contained in Annexure 4, in confiscation proceeding for release of the truck in question before the Divisional Forest Officer-cum-Authorized Officer, Forest Division, Sasaram, but the said petition has not been disposed till date and the truck in question is rotting in open air. Hence, the present writ application.

It is submitted by learned counsel for the petitioner that petitioner is the owner of the truck bearing Registration No. HR-38L-4379. The stone chips were loaded on the vehicle under valid challan from the business premises of Ramkrit Singh, Billi Markundi (UP) on 22.3.2017. Hence, it is submitted that the stone chips were not loaded within the area of Protected Forest. The petitioner is ready to give adequate security and he is having valid documents with regard to the truck in question. The petitioner has relied upon an order passed by a bench of this Court dated 17.4.2015 in C.W.J.C. No. 3544 of 2015, as contained in Annexure-5, whereby the Divisional Forest Officer, Rohtas-cum-



Authorized Officer, Rohtas has been directed to release the said vehicle pending confiscation proceeding with certain conditions.

Though a counter affidavit has been filed on behalf of respondent no. 3 but the same does not suggest whether the confiscation proceeding has been concluded or not.

It is well settled law 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 any other Court gets ousted.

The basic issue involved in the present writ application is whether in view of the specific provisions as contained in Sections 52 and 52A to 52D of the Act, which envisages specific provisions of seizure and its procedure for the property liable for confiscation, provisions for Appeal and Revision as well as the power of Appellate and Revisional Authority whether this Court should exercise the discretionary jurisdiction under Article 226 of the Constitution of India.

In order to protect and improve the environment and ecology, the Forest Act, 1927 was enacted and consequently, (Bihar Amendment) Act, 1989 Bihar Act 9 of 1990 was brought in existence. By 42nd amendment, Articles 48A and 51A were incorporated in the Constitution of India imposing duty on the State and every citizen of India to protect and improve the environment. Articles 48A and 51A of the Constitution of Indian read as follows:



“48A Protection and improvement of environment and safeguarding of forests and wild life.- The State shall endeavor to protect and improve the environment and to safeguard the forests and wild life of the country.

51A. Fundamental duties.- It shall be the duty of every citizen of India-

- (a) to abide by the Constitution and respect its ideals and institutions, the national Flag and the National Anthem;
- (b) to cherish and follow the noble ideals which inspired our national struggle for freedom;
- (c) to uphold and protect the sovereignty, unity and integrity of India;
- (d) to defend the country and render national service when called upon to do so;
- (e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;
- (f) to value and preserve the rich heritage of our composite culture;
- (g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;
- (h) to develop the scientific temper, humanism and the spirit of inquiry and reform;
- (i) to safeguard public property and to abjure violence;
- (j) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavor and achievement.
- (k) who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.”



The above mentioned amendments in the Constitution reflects the intention of the Parliament that a duty has been cast not only upon the State but also upon the citizens to protect and improve the environment and natural resources of the country and that is why through Bihar Amendment, a stringent provision was made to protect the forest.

Section 52C of the Act bars the jurisdiction of Courts in certain circumstances. Section 52C reads as follows:

“52-C. Bar of jurisdiction of Courts etc. in certain circumstances –

(1) On receipt of intimation under sub-section (4) of section 52 about initiation of proceeding for confiscation of property by the magistrate having jurisdiction to try the offence on account of which the seizure of property which is subject matter of confiscation, has been made, no Court, Tribunal (other than the authorized officer. Appellate Authority and Revisional Authority referred to in section 52, 52A and 52B) shall have jurisdiction to make orders with regard to possession, delivery, disposal or distribution of the property in regard to which proceedings for confiscation or any other law for the time being in force.

Explanation – Where under any law for the time being in force, two or more courts have jurisdiction to try forest offence, then on receipt of information under sub-section (1) of Section 52 by one of the Courts of Magistrates having such jurisdiction shall be construed to be receipt of intimation under that provision by all the Courts and the bar to exercise jurisdiction shall operate on all such Courts.

(2) Nothing in sub-section (1) shall affect the power saved under section 31.”



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 jurisdiction of 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 release of vehicle in forest offences has been deprecated by the Supreme Court in the case of Section Forester and Anr. Vs. Mansur Ali Khan reported in (2004) 1 Supreme Court Cases 293. 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 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 was 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.

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 Article has to be exercised on well established principles and subject to certain self imposed restrictions. Hence, no writ can be issued to make a valid statutory enactment redundant or 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, such discretion is usually not exercised. 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.....”

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 Divisional Forest Officer-cum-Authorized 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. In the meantime, it is further expected to dispose of the petition dated 5.5.2017 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.

Accordingly, the writ application is disposed of.

(Dinesh Kumar Singh, J)

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