

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7515 of 2017

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Pawan Kumar son of Bharat Singh resident of village - Muzaffarpur, Police Station - Baruhi, Police Station - Sahar, District - Bhojpur, Ara.

... .. 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. Rajan, AC to GA 11

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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. Rajan, learned AC to SC15.

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 to release the truck of the petitioner bearing Registration No. BR-03G-6847 during the pendency of the confiscation proceeding arising out of Forest Case No. 44 of 2017.

The factual matrix of the case would unveil that Lallan Mochi, Forester of Tilauthu Forest Range gave an information to the learned SDJM, Dehri-on-Sone, Rohtas on 17.4.2017 to the effect that on the same day on the information



received from the Officer-in-charge of Dehri Town Police Station, he went to NH- 2 near Palipur, and found three vehicles, parked loaded with stone chips. On search being made, two challans with regard to the stone chips were found and it was suspected that the stone chips were being taken from Fazilpur Protected Forest area. Consequently, all the three vehicles were seized 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. Consequently, confiscation proceeding has been initiated.

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 a forest produce. Statement has been made in paragraph 13 of the writ petition that during confiscation proceeding the petitioner filed an application for release of the vehicle in question before the respondent no. 2 but the same has not been disposed of till date. It is further submitted that 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.

Learned counsel for the respondents State submits that the petitioner has not brought on record the number of the confiscation proceeding, however,



admits that the confiscation proceeding has already been initiated, hence, the present writ application is not maintainable.

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 Act where there is a specific provision that the Divisional Forest Officer-cum-Authorized Officer has the jurisdiction to conduct the confiscation proceeding, 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 State and citizens to protect and improve the environment.

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.

The issue of bar of Jurisdiction under Section 52 C 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 cautioned the High Court to exercise the power of release of vehicles in Forest related offences in exceptional cases. 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. As per the provisions of the Act, with the initiation of the confiscation proceeding, even the concerned Magistrate becomes *functus officio* so far as the confiscation is concerned.

It is well settled law that the criminal case/forest case and confiscation proceeding are separate entity, inasmuch as both can be initiated together or one without the other.



So far as the question of seized stone chips is concerned, whether it is a forest produce or not, it is a question of fact, which requires leading of evidence by the Divisional Forest Officer-cum-Authorized Officer in confiscation proceeding and the same cannot be resolved in exercise of discretionary jurisdiction under Article 226 of the Constitution of India. For the said purpose, the Divisional Forest Officer-cum-Authorized Officer or the appellate authority is empowered.

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 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 Divisional Forest Officer-cum-Authorized Officer, Rohtas to dispose of the application of the petitioner for provisional release of the vehicle in question dated 24.4.2017, 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)

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AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

