

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7614 of 2017

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Narendra Kumar Singh son of Sri Nand Keshwar resident of village - Pali
Road, 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. Chittranjan Sinha- Paag2

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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. JH-11A-3799 which was seized in connection with Forest Case No. 29 of 2017 for which now Confiscation Case No. 96 of 2017 is pending before the Divisional Forest Officer-cum-Authorized Officer, Rohtas.

The factual matrix of the case is that two vehicles were intercepted loaded with stone chips on 23.3.2017 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'). It appears 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 but the other driver was apprehended. The vehicle in question loaded with stone chips was 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.

It is submitted by learned counsel for the petitioner that petitioner is the owner of the vehicle in question. The stone chips were loaded on the vehicle under valid challan from the business premises of M/s Banshidhar Construction (P) Ltd. Situated in Mauza Sadhali Area Madanpur, District – Aurangabad on 22.3.2017. Hence, it submitted that the stone chips were not loaded within the area of Protected Forest. The stone chips were transported under valid challan after being loaded from the business premises of M/s Banshidhar Construction (P) Ltd. Situated at Mauza Sadhali Area Madanpur, District – Aurangabad. It is further submitted by learned counsel for the petitioner that the petitioner is ready to give adequate security and is having the valid documents with regard to the truck 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. However, 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.

The writ application has been registered on 18.05.2017 but till date no counter affidavit has been filed, hence this Court is not inclined to adjourn the matter any further.

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 Section 52 of the Act when there is a specific provision of conducting the confiscation proceeding where the authority lies with the Divisional Forest Officer-cum-Authorized Officer, 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 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



every citizen of India 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.

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 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 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.”

In view of the discussions made above, particularly, the restrictions imposed in Section 52C of the Act, 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 pending confiscation proceeding before the Authorized Officer-cum-Divisional Forest Officer, Rohtas.

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 Authorized Officer-cum-Divisional Forest Officer, Rohtas to dispose of the application of the petitioner for provisional release of the vehicle in question dated 5.5.2017, 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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CAV DATE	
Uploading Date	
Transmission Date	

