

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7776 of 2017

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Sanjay Kumar Son of Nageshwar Singh Resident of Village-Rakashiya,
Police Station-Dulhin Bazar, District-Patna.

... .. 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, Sasaram, District - Rohtas.
3. The Forester Darigaon, Rohtas.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sanjay Kumar Tiwary
For the Respondent/s	:	Mr. SARVESH KR.SINGH-AAG13
		Mr. Tej Pratap Singh, AC to AAG 13

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT

Date : 06-03-2018

Heard learned counsels for the parties.

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 Forest Division, Rohtas for release of the truck of the petitioner bearing registration number BR-25A-4467, seized in connection with Forest Case No. 47 of 2017 during the pendency of the confiscation proceeding.

The factual matrix of the case would unveil that Narbadeshwar Prasad Sinha, Forester of Darigaon Forest Range gave information to the learned Chief Judicial Magistrate,



Sasaram, Rohtas on 23.4.2017 to the effect that on 22.4.2017, while he was on patrolling duty along with other members of the patrolling team, he saw three trucks being driven rashly. The drivers of all the three trucks succeeded in fleeing leaving the trucks on road. On search, it was found that the three trucks in question were loaded with stone chips which were suspected to be taken from Fazilpur protected forest, leading to registration of Forest Case No. 47 of 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') and necessary information was given to the Magistrate for initiation of confiscation proceeding. Consequently, confiscation proceeding was initiated. However, the petitioner has not brought on record the number of confiscation case.

It is submitted by learned counsel for the petitioner that the 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. It is further submitted that during confiscation proceeding the petitioner filed an application for release of the vehicle in question before the respondent no. 2, Divisional Forest Officer-cum-Authorized Officer, Rohtas but the same has not been disposed of till date. 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.

Though a voluminous counter affidavit has been filed on behalf of respondent no. 3 but it does not suggest whether the confiscation proceeding has been disposed of or not or whether the petitioner's application for release of the vehicle in question has been disposed of. However, it is submitted that the petitioner has not brought on record the number of confiscation proceeding.

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 Indian Forest Act substituted by (Bihar (Amendment) Act, 1989 (Bihar Act 9 of 1990) when there is a specific provision authorising the Divisional Forest Officer-cum-Authorized Officer to conduct confiscation proceeding,



whether this Court should exercise the discretionary jurisdiction under Article 226 of the Constitution of India.

With a view to safeguard 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.

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.

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 a 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 whether 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.

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. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on



some old decisions of the evolutionary era of the constitutional law as they still hold the field.”

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.

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. 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 expeditiously within a period of three weeks from the date of receipt/production of a copy of this order. Though the date of filing of the application for release of the vehicle has been brought on record but since the writ application is pending since last eight months, it must have been filed prior to that.

Accordingly, this writ application stands disposed of.

(Dinesh Kumar Singh, J)

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CAV DATE	
Uploading Date	
Transmission Date	

