

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8534 of 2017

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Raju Kumar, Son of Late Ram Surat Singh, Resident of Mohalla- Fazalganj,
Police Station- Sasaram (Model), District- Rohtas.

... .. Petitioner

Versus

1. The State of Bihar, through the Principal Secretary, Forest Department, Government of Bihar, Patna.
2. The District Magistrate, Rohtas at Sasaram.
3. The Divisional Forest Officer-cum- Authorised Officer, Rohtas Forest Division, Sasaram, District- Rohtas.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajani Kant Singh, Adv.
For the Respondent/s : Mr. Sarvesh Kr.Singh, AAG-13

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT

Date : 06-03-2018

Heard Mr. Rajani Kant Singh, learned counsel for the
petitioner and learned AC to AAG-13 for the respondent-State.

The present writ application has been filed for a
direction to respondent no.3, the Divisional Forest Officer-cum-
Authorized Officer, Rohtas Forest Division, Sasaram for release of
the truck of the petitioner bearing Registration No. UP-60L-8706,
which was seized in connection with Forest Case No. 66 of 2017,
registered under Sections 33, 41 and 42 of the Indian Forest (Bihar
Amendment) Act, 1989, Bihar Act, 1990 (hereinafter referred to as
'the Act').

The factual matrix of the case would unveil that One
Lallan Mochi, the Forester of the Tilauthu Forest Range submitted
a written information to the learned Sub-Divisional Judicial



Magistrate, Dehri-On-Sone on 30.05.2017, alleging therein that while on patrolling duty on 30.05.2017, he saw one truck loaded with stone chips was going in a high speed and in a rash manner way towards Dehri, then he informed the Officer-in-Charge, Nasriganj and on chase, the truck bearing Registration No. UP-60L-8706, was intercepted when it was found that 700 C.F.T. stone chips was loaded, which was suspected to be loaded from Fajilpur reserve forest, and consequently, Forest Case No. 66 of 2017 was registered under Sections 33, 41 and 42 of the Act and thereafter, learned Sub-Divisional Judicial Magistrate, Dehri-On-Sone was requested to initiate the confiscation proceeding. Consequently, learned Sub-Divisional Judicial Magistrate, Dihri-On-Sone was informed with regard to initiation of confiscation proceeding and the confiscation proceeding was initiated, however, the number of confiscation proceeding has not been brought on record. The petitioner filed an application for release of the vehicle before the Divisional Forest Officer -cum- Authorized Officer, Rohtas Forest Division on 07.06.2017, as contained in Annexure-4, but till date, no order has been passed for release of the vehicle of the petitioner. Hence, the present writ application.

It is submitted by learned counsel for the petitioner that the petitioner is the owner of the vehicle in question. The stone



chips was being loaded on 30.05.2017 from crusher machine of M/s Jai Maa Mangala Gauri Stone Works, Karma Kala, Chhatarpur, Palamu (Jharkhand), under a valid challan. The said challan was produced at the time of seizure, but since the challan was in the name of one Raju Kumar, hence it has illegally been seized. The petitioner had no knowledge about transportation since the stones chips was being transported at the behest of the driver, hence the petitioner is entitled for release of the vehicle under Section 52(2) of the Act. The vehicle in question is rotting in the open air. It is further submitted that the petitioner is ready to deposit the adequate and reasonable surety against the release of the said vehicle to the concerned authority.

Learned counsel for the petitioner has relied upon the order dated 16.02.2015, passed by Bench of this Court in C.W.J.C. No. 377 of 2015, as contained in Annexure-5, whereby during pendency of the confiscation proceeding, this Court directed the Divisional Forest Officer -cum- Authorized Officer, Rohtas for passing an order for release of the vehicle under certain conditions within a period of eight weeks.

Learned counsel for the respondent-State, relying upon the counter affidavit filed on behalf of respondent no.3, submits that Section 52 of the Act, provides the mechanism of confiscation



appeal and revision by the authorities specified therein. Section 52(C) of the Act ousts the jurisdiction of any Court except the Authorized Officer, Appellate Authority, Revisional Authority referred to Sections 52, 52A and 52B of the Act. It is further submitted by learned counsel for the respondent-State that he is not having any instruction whether the petitioner's application for the release of the vehicle in question has been disposed of or not, but if the petitioner's application for disposal of the provisional release of the vehicle has not been disposed of, it shall be disposed of within a time frame.

Having heard learned counsel for the parties, the basic issue is whether in view of the specific provision under the Special Act, this Court should exercise discretionary jurisdiction under Article 226 of the Constitution of India for release of the vehicle. Secondly, whether in view of the provisions under Section 52(C) of the Act whether this Court should exercise such discretionary jurisdiction.

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 certain self-imposed restrictions and one of which is that if an effective and efficacious remedy is available, such discretionary



jurisdiction should not be usually exercised except in certain exceptional circumstances, such as, a situation of enforcement of any of the Fundamental Rights or where there is violation of principles of nature justice or where the order of proceedings are wholly without jurisdiction or the vires of an Act is under challenge, but none of these grounds have been taken by the petitioner in the present case. Hence, this Court is not inclined to interfere by exercising discretionary jurisdiction under Article 226 of the Constitution of India.

So far as bar of jurisdiction under Section 52(C) of the Act is concerned, it ousts the jurisdiction of any Court except the Authorized Officer, Appellate Authority and the Revisional Authority, referred to Sections 52, 52A and 52B of the Act. The said issue was considered by 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 has been held that discretionary jurisdiction under Article 226 and 227 of the Constitution of India cannot be exercised to frustrate the object of Special Act, otherwise it will make a valid statutory enactment otiose and redundant. However, it was further held that the jurisdiction under Article 226 and 227 of the Constitution of India can be exercised in appropriate cases, but in exceptional



circumstances, like whether the confiscation proceeding is unjustified and wholly illegal.

True it is that under the Forest Act, no time limit is prescribed for concluding the confiscation proceeding, but the department of Forest, vide Memo No. 2856, dated 10.09.2012, fixed a time frame for disposal of such proceeding and considering the same, a bench of this Court in the case of Dhananjay Kumar and others Vs. State of Bihar and Others and other analogous cases, reported in 2013(4) PLJR 849 laid down the parameter for a time frame for initiation and conclusion of the proceeding under Section 52 of the Act.

In order to protect and improve the environment and ecology, the Indian Forest Act, 1927 was enacted and consequently, (Bihar Amendment) Act, 1989, Bihar Act, 9 of 1990 was brought in existence. 42nd Amendment was introduced in the Constitution of India bringing Articles 48A and 51A imposing duty on the State and every citizens of India to protect and improve the environment.

The Forest Act has been enacted to check the Forest offences for an effective maintenance of environmental equilibrium and ecology, but at the same time, the seizure of the vehicle interferes with the legitimate right to carry on any



occupation, trade or business affect the rights guaranteed under Article 19(1)(g) of the Constitution of India, hence such seizure deprives the owner to use his vehicle in any manner he likes which is deprivation of one's property and hence violation of the rights under Article 300A of the Constitution of India.

True it is that the Supreme Court had deprecated the final order of release of the vehicles under the Forest Act, as it amounts to encouraging the offenders to commit the offences under Forest Act, but such power can be exercised for good reasons in exceptional circumstances. However, even the Divisional Officer -cum- Authorized Officer or the Appellate Authority or the Revisional Authority has to strike a balance between the purpose of the Forest Act to protect the forest and ecology, environment and to affect the right of a citizen to carry on the business, keeping in view of the fact that allowing the vehicle to rot and deteriorate will not serve any purpose and if ultimately the case fails or in the interest of justice and to protect wastage of public money.

Learned counsel for the petitioner has relied upon the order of this Court, as contained in Annexure-5, wherein the Divisional Forest Officer -cum- Authorized Officer, Rohtas was directed to pass an order for release of the vehicle on certain



conditions, but the said order does not lay down any ratio and hence, in view of the discussions made above, I do not find the present case as an exceptional one to pass such order during pendency of the confiscation proceeding, hence, this Court is not inclined to interfere.

However, it is expected from the Divisional Forest Officer -cum- Authorized Officer, Rohtas to conclude the pending confiscation proceeding arising out of Forest Case No. 66 of 2017 within a period of eight weeks from the date of receipt/production of a copy of this order. It is also expected from the Divisional Forest Officer -cum- Authorized Officer, Rohtas to dispose of the application for release of the vehicle within a period of four weeks from the date of receipt/production of a copy this order.

Accordingly, with the above observation and direction, the present writ application is disposed of.

(Dinesh Kumar Singh, J)

Amrendra/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

