

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12982 of 2018

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Kunal Kumar, son of Ayodhya Prasad, resident of Silwai, P.S. Halsi, District Lakhisarai.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Food and Consumer Protection Department, Govt. of Bihar, Patna.
2. The Collector-cum-District Magistrate, Lakhisarai.
3. The Marketing Officer, Nagar Panchayat, Lakhisarai.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dhananjaya Nath Tiwari, Adv

For the Respondent/s : Mr. S. RAZA AHMAD- AAG5, Adv

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 13-07-2018

The present writ petition has been filed for release of seized Tata 407 vehicle of the petitioner bearing registration no. BR-53A-8513 in connection with Lakhisarai (Kawaiya)P.S. Case No. 116 of 2018 under Section 7 of the E.C. Act giving rise to Confiscation Case No. 18 of 2018.

2. Learned counsel for the petitioner submits that the issue whether the Collector is empowered to direct confiscation, which is a judicial function, has been referred to a larger Bench by order dated 19.09.2016 passed in LPA No. 1647 of 2015. Pending decision by the larger Bench, a Division Bench of this Court in LPA No. 2383 of 2016 has taken the view that the vehicle can be released considering that they deteriorate while in custody with the officials of the Department and finally the confiscation proceedings are decided in favour of the owners of



the vehicle. It is further submitted that the condition imposed for release of the vehicle by deposit of equivalent amount of the market value of the vehicle in cash is arbitrary and onerous.

3. Learned counsel for the respondents appears and has been heard.

4. The Division Bench in its order dated 17.04.2017 passed in LPA No. 2383 of 2016 referred to above, has directed as follows –

“Keeping view the aforesaid, we direct for the release of the vehicle (Regn. No.BR-02AA-6312) in accordance to the conditions stipulated in para 5 of the order passed on 21.2.2017 in L.P.A. No.306 of 2017 and impose a further condition that apart from the security bond a solvent surety shall be furnished by the petitioner to the satisfaction of the competent authority.”

5. In L.P.A. No. 306 of 2017 referred to above, the vehicle in question was directed to be released provisionally on the following terms –

“5. In the meanwhile we order that the vehicle in question (BR 26H-4109) be released provisionally to the satisfaction of the Authorized Officer-cum-Divisional Forest Officer, Rohtas at Sasaram on fulfillment of the following conditions :-

(i) The appellants shall furnish all the necessary papers/documents of ownership and security bonds (which will not include Bank Guarantee) as may be deemed fit and proper by the Divisional Forest Officer-cum-Authorized Officer, Rohtas Forest



Division, Sasaram, District - Rohtas.

(ii) The appellants shall undertake, in writing, that the vehicle, in question, shall neither be alienated nor be transferred in favour of any third party during the pendency of the confiscation proceeding and that the vehicles, in question, shall be produced as and when called upon or required in the confiscation proceeding or otherwise. List after the decision of L.P.A. No. 1647 of 2015.”

6. In the above view of the matter and considering that the challenge to the Collector’s jurisdiction to pass an order of confiscation is itself pending before a larger Bench of this Court, the present writ petition is disposed of with a direction to release the pick up van on the same terms as the aforesaid direction in LPA No. 2383 of 2016. Such release shall abide by the final decision in L.P.A. No. 1647 of 2015.

(Vikash Jain, J)

Chandran

AFR/NAFR	NAFR
CAV DATE	NA
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