

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14094 of 2018

Govind Narayan Singh Son of Shree Gopal Narayan Singh Resident of
Village and P.O. Jamuhar, P.S. Dehri-On-Sone, District- Rohtas.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Department of Environment and Forest ,
Government of Bihar, Patna.
3. The District Magistrate, Rohtas at Sasaram.
4. The Authorized Officer-Cum-Divisional Forest Officer,Rohtas Forest
Division, Sasaram, District- Roh

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Rajani Kant Singh, Advocate
For the Respondent/s	:	Mr.Sarvesh Kumar Singh -AAG-13 Mr. Tej Pratap Singh, AC to AAG-13

CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA
ORAL JUDGMENT

Date : 13-08-2019

Heard learned counsel for the petitioner and learned
counsel for the respondents.

Learned counsel for the petitioner submits that the
writ petition has been filed for issuance of an appropriate writ in
the nature of certiorari for quashing the order dated 03.11.2017
passed by Learned Principal Secretary, Department of
Environment and Forest, Government of Bihar, Patna in Forest
Revision Case No. 04 of 2016 as contained in Annexure-4
whereby and whereunder learned Principal Secretary,
Department of Environment and Forest, Government of Bihar,
Patna, has dismissed the revision of the petitioner affirming the



order dated 19.11.2015 passed by learned District Magistrate, Rohtas at Sasaram in Forest Confiscation Appeal Case No. 39/2013 as contained in Annexure-3 and order dated 23.03.2013 passed by learned Authorized -Officer-Cum-Divisional Forest Officer, Rohtas Forest Division, Sasaram in confiscation Case No. 11 of 2012 as contained in Annexure-2 arising out of Forest Case No. 16/2012 in which the Hitachi Hundai known as Earth Mover Machine (Excavator) of the petitioner bearing Model No. R 210/7, Engine No. NGDID00886 Serial No. 601D00886 has been confiscated and further for directing the Authorized Officer-Cum Divisional Forest Officer, Rohtas Forest Division Sasaram to release the Hitachi Hundai known as Earth Mover Machine (Excavator) of the Petitioner bearing Model No.R210/7, Engine No.NGDID00886 Serial No.601D00886 in favour of the petitioner.

Petitioner is owner of the Hitachi Hundai known as Earth Mover Machine (Excavator) bearing Model No. R 210/7, Engine No. NGDID00886 Serial No. 601D00886. On the alleged date of occurrence the Machine of the petitioner was parked in the premises of office and staff quarter of the petitioner bearing Khata No. 153, Plot No. 841, area 10 decimals, Mauza-Amari, situated near protected forest area. The various officials under joint operation conducted raid on



26.02.2012 at 9 A.M. on getting information of illegal mining activities with vehicles and machines in Protected Forest area and confiscated total 26 vehicles including vehicle of petitioner on charge of illegal mining of Protected Forest area of Fazilpur near Amra Village between old GT Road of Sasaram and Fazilpur Protected Forest area. The joint force were attacked by the persons involved in the illegal mining works and finally 26 vehicles/machines involved in the illegal mining in the Protected Forest area were seized for violation of provisions of Indian Forest Act, 1927.

The petitioner's vehicle was seized on 26.02.2012 in connection with Forest Case No. 16/2012 under Sections 33, 41 and 42 of the Forest Act, 1927 (Annexure-1).

It is alleged that after seizing the aforesaid Hitachi Hundai, confiscation proceeding was initiated by Respondent No.4 under Confiscation Case No. 11 of 2012 (T) in which show cause notice was given to the petitioner. He filed his show cause on 26.02.2012 but learned D.F.O., Rohtas did not give opportunity to the petitioner to adduce evidence which is evident from the order dated 23.03.2013 passed by learned D.F.O. Rohtas and *ex parte* order was passed on 23.03.2013 (Annexure-2) by which the machine of the petitioner had been confiscated. Thereafter, the petitioner preferred appeal bearing



Forest Confiscation Appeal Case No. 39 of 2013 before the Learned District Magistrate, Rohtas at Sasaram which was dismissed on 19.11.2015 i.e. Annexure-3 to this writ petition. Being aggrieved by the aforesaid order of the Appellate Authority dated 19.11.2015 passed in Forest Confiscation Appeal Case No. 39/2013, the petitioner filed Forest Revision Case No. 04/2016 before the learned Principal Secretary, Department of Environment and Forest, Government of Bihar, Patna (Respondent No.2) but he did not apply his independent judicial mind and dismissed the revision of the petitioner vide order dated 03.11.2017 (Annexure-4) affirming the order of Respondent Nos. 3 and 4.

The machine of petitioner is lying in open sky since 26.02.2012 and getting damaged due to rain and dust.

The counsel for the State submits that there is concurrent finding of three Courts that petitioner has committed offence under Forest Act.

This Court after considering the submission of petitioner and State finds that alleged machine was not seized from protected forest area rather it was seized between old S.T. road of Sasaram and Fazilpur Protected Forest Area. The respondents have failed to appreciate that the seized Hitachi is earth mover machine, which is used for road construction. It



cuts the soil and levels the surface to facilitate the road construction. It is not a tool or machine which is used in mining operation.

The alleged stone chips does not come under the category of forest produce. The stone materials are minor and minerals and its removal are punishable under Section 9(2) of Section 40 of the Minor Minerals Concession Rules, 1972. In the event of special provision to regulate prohibition of illegal mining, transportation and storage of mines minerals, the Forest Act will not apply.

The vehicle of petitioner cannot be seized/confiscated by the forest authority. The respondents have failed to appreciate that to confiscate any vehicle engaged in illegal mining operation, the authority ought to have satisfied that contravention of provisions of Sections 33, 41 and 42 of Forest Act has been done.

In the instant case there is nothing to show that any provision of Forest Act has ever been contravened. The Forest Department for initiating confiscation proceeding is duty bound to give the specific description of plot number from where the alleged mining operation was done and that place must be notified under Section 29 and 30 of the Forest Act.

In the instant case there is nothing to show that from



where the illegal mining operation was done.

The D.F.O. has passed ex parte order dated 23.03.2013 (Annexure-2) without affording opportunity to petitioner to produce his document which is in violation of principles of natural justice.

The Appellate and Revisional Authority without applying their mind have affirmed the order of confiscating authority in mechanical manner.

The respondents have failed to appreciate that in the prosecution report it has not been mentioned that machine in question was used for illegal mining by whom where and in what manner. Legally, unless the guilt of alleged illegal mining is proved, no tool, equipment, vehicles etc. can be confiscated.

In the instant case, no offence under Forest Act is made out on the basis of prosecution report.

The respondents have failed to appreciate that stone materials are minor minerals and its removal are punishable under Section 9(2) of Section 40 of the Bihar Minor Minerals Concession Rules, 1972.

It is settled principle of law that when there is specific provision to regulate prohibition of illegal mining, transportation and storage of minor minerals, the Forest Act will not apply.



Therefore, this Court finds that impugned orders as contained in Annexure- 2, 3 and 4 are not in accordance with law and are accordingly set aside.

This writ application is, accordingly, allowed.

Respondent No. 4 is directed to release the machine/vehicle of petitioner within two weeks from the date of receipt/production of copy of this order after proper verification of all the relevant documents produced by the petitioner with regard to ownership and registration of machine/vehicle in favour of petitioner.

The petitioner will file affidavit before the authority that he will produce the vehicle as and when required in criminal case and shall not dispose off the same during pendency of aforesaid criminal case.

(Sanjay Priya, J)

Kamlesh/-

AFR/AFR	AFR
CAV DATE	N/A
Uploading Date	27.08.2019
Transmission Date	N/A

