

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4859 of 2016

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1. Champa Devi, W/o Birendra Singh
 2. Birendra Singh, S/o Shobhnath Singh
 3. Chandan Kumar Singh @ Chandan Singh, S/o Birendra Singh
All residents of Village- Paharaicha, P.O.- Shirihara, P.S.- Chand,
District- Kaimur Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar through District Magistrate, Kaimur, Bhabua.
2. District Forest Officer, Kaimur Division, District- Kaimur, Bhabua.
3. Assistant Conservator of Forest, Kaimur Forest Division at Bhabua.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Chandra Shekhar Verma
For the Respondent/s : Mr.Yogendra Pd. Sinha,AAG-15

CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA
ORAL JUDGMENT

Date : 04-04-2019

1. Heard Mr. Radha Mohan Pandey, learned counsel for the petitioners and Mr. Chandrashekhar Verma, counsel appearing on behalf of the State.

2. On last date, it has been submitted on behalf of the State that counter affidavit has been filed but the same is not on record. However, copy of the counter affidavit is available with the petitioner. The State has filed copy of counter affidavit in Court today.

3. The petitioner is aggrieved by the order as contained in (Anexure-10) passed by the Revisional Authority by which he has refused to release the tractor/trailer and two Mobile sets of the petitioners.



4. Counsel for the petitioners submits that petitioners were holding valid registration paper with regard to tractor/trailer as well as Motorcycle in question. He has enclosed Annexure-1 and 4 which are Sale Certificates with respect to the tractor and Motorcycle in favour of the petitioner No.2. He further submits that as per own estimate of the Forest Department, the Boulder found loaded in the tractor was valued at Rs.4,000/- whereas the tractor which has been seized by the Forest Authority is valued at more than Rs.5,00,000/-. Similarly, the Motorcycle of the petitioner which is lying in the open sky is also purchased for consideration amount of Rs.25,000/-.

5. Counsel for the petitioners submits that after considering the aspects, the Appellate Authority by the order as contained in Annexure-7 (Forest Confiscation Appeal No. 13 of 2012) has directed for release of the tractor/trailer of the petitioners by order dated 8.7.2013.

6. The District Forest Officer filed Revision against aforesaid order and the Revisional Authority by order as contained in Annexure-8 in Revision Case No. 12 of 2013, has remanded the case directing the Authority to enquire that if the Challan of Ahiroura (Mehandipur) Mirzapur dated 15.7.2011 has been checked at 11:45 p.m. at Check Post and entry is available



in Check Post, then claim of the Opposite Parties who are petitioners would be true.

7. Counsel for the petitioners submits that as per remand order, the enquiry was conducted and it has been found that there is entry at Sl. No. 18 dated 15.7.2011 at 11:45 p.m. in Transit Register of Collection Officer, Mehandipur, Ahrioura Check Post, which also finds mention in fourth paragraph of the impugned order.

8. The District Forest Officer, Kaimur at Bhabua, by the order as contained in Annexure-9 in (Forest Case No. 39F of 2011 arising out of Confiscation Case No. 27 of 2011) has passed fresh order after remand dated 25.8.2014, affirming the earlier order passed by him on 24.3.2012 directing for Confiscation of the tractor/trailer, TVS Motorcycle and two Mobiles Phones of the petitioners. Thereafter, petitioners challenged the aforesaid order before the Revisional Authority by Revision Case No. 27 of 2014, copy of which, has been enclosed as Annexure-10 to the writ petition. The Revisional Authority earlier after considering the Revision Application, has remanded the matter of Forest Confiscation Case No. 12 of 2013 (Annexure-8) directing the authority to report after holding enquiry that if the Challan of Ahiroura (Mehandipur) Mirzapur



dated 15.7.2011 has been checked at 11:45 p.m. at Check Post and if its entry is available at the Check Post, then claim of the petitioners would be true and in that case directed the authorities to pass appropriate order.

9. In the impugned order (Annexure-10), the Revisional Authority has mentioned in paragraph-10 that in compliance of the earlier order passed in Revision Case No. 12 of 2013, the copy of Challan No. 0779753 dated 15.7.2011 was made available to Mining Officer, Mirzapur. He was requested to submit a report after examination. The report was received from Mining Officer, Mirzapur, in which it was mentioned that loaded tractor/trailer in question was checked at AHIROURA on 15.7.2011 at 11:45 p.m.

10. Thereafter, the Revisional Court by order dated 16.10.2015 passed in Revision Case No. 27 of 2014, has rejected the Revision Application after taking into consideration the observations made by the District Forest Officer.

11. This Court finds that earlier Revisional Authority has remanded the matter for enquiry only for limited purpose to ascertain whether the Challan of AHIROURA (Mehandipur) Mirzapur has been checked out at 11:45 p.m. at Check Post and if its entry is available at the Check Post, then



claim of the petitioners would be true and after making a copy of the aforesaid Challan available, the report was submitted by the Mining Officer, Mirzapur to the effect that loaded tractor in question was checked at Ahiroura Check Post on 15.07.2011 at 11:45 p.m. The District Forest Officer after considering certain new facts as mentioned in order dated 25.8.2014 passed in Confiscation Case No. 39F of 2011 (Annexure-9) has passed fresh order affirming the earlier order dated 24.3.2012 passed by him. The Revisional Authority has after relying on observation of District Forest Officer in its order dated 25.08.2014 passed in Forest Case No. 39F of 2011 arising out of Forest Confiscation Case No. 27 of 2011, has rejected the Revision application filed by the petitioners.

12. This Court finds that Revisional Authority has not taken into consideration the earlier observation made in Revision Case No. 12 of 2013 (Annexure-8). The Revisional Authority has by earlier order only directed the authority to report after holding enquiry that if the Challan of Ahiroura (Mehandipur) Mirzapur dated 15.7.2011 has been checked at 11:45 p.m. at Check Post and if entry is available at Check Post, then claim of the petitioners would be true and in that case directed the authority to pass appropriate order. The report from



Mining Officer, Mirzapur, was received indicating that loaded tractor/trailer in question was checked at Ahiroura on 15.7.2011 at 11:45 p.m. Therefore, the impugned order dated 16.10.2015 passed by the Revisional Authority as contained in Annexure-10, is illegal and hereby set aside.

13. The District Forest Officer, Kaimur Division, Bhabhua, is directed to release the tractor/trailer, TVS Motorccyle and two Mobile sets confiscated by the Authority to the petitioners within a period of six weeks from the date of receipt/production of copy of this order after proper verification of the papers with regard to the same. The petitioners will file affidavit before the Authority concerned that he will produce those vehicles and Mobiles before the criminal court, in the event criminal case is pending against the petitioners for the same as and when required.

14. This writ application is accordingly allowed.

S.Ali/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	10/04/2019
Transmission Date	

(Sanjay Priya, J)

