

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.13648 of 2019**

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M/s Realty Advance Structure Enterprises Pvt. Ltd. through its Former  
Managing Director Dilip Kumar, son of Shri Basant Singh, resident of Shanti  
Kunj, Brahmsthan, Kurthaul, N.H.-83, P.S.- Parsa Bazar, Distt.- Patna

... .. Petitioner/s

Versus

1. The State of Bihar,
2. The Principal Secretary, Department of Forest and Environment, Patna
3. The Principal Secretary, Rural Works Department, Bihar, Patna
4. The District Magistrate, Gaya
5. The Authorized Officer-cum-Divisional Forest Officer, Forest Division,  
Gaya
6. Forest in House Officer, Gaya, Sadar
7. The Engineer in Chief, Rural Works Department, Bihar, Patna
8. The Executive Engineer Rural Works Department, Works Division,  
Neemchak Bathani, Gaya

... .. Respondent/s

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**Appearance :**

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| For the Petitioner/s | : | Mr. Sanjay Kumar, Advocate    |
| For the Respondent/s | : | Mr. Sanjay Kumar, AC to SC-15 |

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**CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA**

**ORAL JUDGMENT**

**Date : 22-07-2019**

Heard Sri Sanjay Kumar, counsel for the petitioner and Sri  
Sanjay Kumar, AC to SC-15, for the State.

Counsel for the petitioner submits that petitioner is a  
registered Contractor with Rural Works Department and Bihar  
State Bridge Corporation. He is Class-1 Contractor. The  
Respondent No.7 floated tender for construction of road from  
Kauwa Dol through Executive Engineer. Contract was awarded to



the petitioner. Petitioner was doing earth work for laying out the sketch for construction of road. The petitioner was digging the earth and filling the soil on the Kachha road for construction of new road at Kauwa Dol. Respondent No.5 seized the JCB Machine bearing serial No.1871492, Engine Sr. No.H00077691, Chasis No.HAR30X55KO bearing registration No. BR 01 GD 7854 on 16.06.2015. The show cause notice was issued to petitioner. It has been stated that there is violation of Section 33 of the Indian Forest Act.

Counsel for the petitioner submits that he was constructing road pursuant to contract awarded to him by Rural Works Department. There was no proper fencing at the place of occurrence to demarcate that particular area belongs to Forest Department and particular area belongs to Rural Works Department.

Counsel for the petitioner further submits that he has not committed any offence under the Forest Act. There is no allegation that he was taking away forest produce or doing illegal mining in the forest area.

From the order(s) passed by the confiscating authority, and the appellate authority, it appears that prayer to release the JCB



Machine was rejected by them only on the ground that JCB Machine was found digging the earth from forest area.

Petitioner has submitted that he was having no knowledge that particular land belonged to forest department.

This Court finds from submission of parties that there was no demarcation of land and even if earth was dug on forest land, it was not intentional, rather, it was on account of not knowing the area of the Forest Department. There was no intention on the part of the petitioner to commit illegal mining in the forest area or protected forest area.

In view of such, order dated 26.12.2015 passed by the Authorized Officer cum Confiscating Authority, Gaya, in Forest Confiscation Case No.55 of 2015 as contained in Annexure-3 as well as order dated 25.04.2018 passed by the appellate authority i.e. the Collector, Gaya, in Forest Appeal No.01 of 2017 as contained in Annexure-5 are hereby set aside.

The Respondent No.5 is directed to release the JCB Machine bearing serial No.1871492, Engine Sr. No.H00077691, Chasis No.HAR30X55KO bearing registration No. BR 01 GD 7854 after proper verification of papers with regard to ownership in favour of the petitioner subject to condition that petitioners will not transfer the ownership of the JCB machine or alienate the same



during the pendency of confiscation case and criminal case in the Court below. The petitioner shall produce the JCB machine in Court as and when required. Petitioner will also file an Affidavit in this regard.

This writ application is, accordingly, allowed.

**(Sanjay Priya, J)**

**J. Alam/-**

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