

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1289 of 2015

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Gopal Yadav son of Masudan Yadav resident of Village - Mahuliya, P.S. - Chanan, District - Lakhisarai.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Department of Forest and Environment, Government of Bihar, Patna.
3. The District Magistrate, Lakhisarai at Lakhisarai, District - Lakhisarai.
4. The District Forest Officer, Lakhisarai at Lakhisarai, District - Lakhisarai.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ranjan Kumar Jha with Mr. Subodh Kumar Mishra, Advocates
For the State	:	Mr. Uday Bhan Singh , AC to G.P.-19

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA
ORAL JUDGMENT

Date : 03-01-2019

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

This writ application has been filed for issuance of a writ in the nature of *certiorari* to quash the order dated 15.12.2014 passed in Revision Case No. Forest Mu (C.)-05/2014 passed by the respondent no.2 and further to affirm the order dated 17.1.2014 passed in Misc. (Forest)Appeal case no. 3/13-14 passed by the Respondent no.3.

Learned counsel for petitioner submits that Revisional order passed by Principal Secretary, Department of Forest and Environment, Govt. of Bihar, Patna (respondent no.2) as contained in Annexure-5 in Forest Mu (c) no. 5/2014 is illegal as the same has been passed without properly appreciating the materials on record. The Revisional Court has not given sufficient



reason for differing with the observations of the Appellate Authority who had passed reasoned order after appreciating all the evidence produced by the parties. It has further been submitted that Revisional Court has illegally relied on the provisions of Section 69 of the Indian Forest Act, 1927 and has set aside the appellate order.

Learned counsel for the State, on the other hand, has submitted that petitioner could not produce valid paper with regard to the Tractor and valid Challan with regard to the stone chips loaded on the Tractor at the relevant time of the seizure. The order passed by the Revisional Court is in accordance with law.

Having heard both the parties and from perusal of the materials available on the record, it appears that one Confiscation case was initiated by the District Forest Officer, Lakhisarai vide Confiscation Case no. 6/2012 on the basis that on 7.2.2012 at about 1.15 P.M. one Balmiki Singh, Vanpal (Forester), Singhoul has seized one Mahindra Tractor of Model B-275 DI. Red colour, Serial No.- RDT24168MB, Engine No. 005558519R3C06500791 RIK 5250 on which 100 C.F.T. stone chips was loaded on Trailer near village- Basuachak. The driver and khalasi of the said Tractor fled away. There was no valid challan or other papers available in the Tractor. The raiding party prepared seizure list and seized the Tractor loaded with alleged stone chips under the provisions of



Forest Act and handed over the vehicle to Chanan P.S. with Zimanama.

Thereafter, a petition was filed by the owner before the officials of the Department that he was carrying the metal from Sheikhpura to Mananpur under a valid challan but the driver and Khalasi of the said vehicle fled away due to fear of police although challan was with him. Stone metal was not illegal. The challan of the metal was found valid on enquiry issued by Mining Department, Sheikhpura, Govt. of Bihar from the depot of Ajay Kumar Nirpur.

The Vanpal (Forester) Balmiki Singh send report to C.J.M. Lakhisarai in absence of challan at the time of seizure and registered case U/s 33, 41 and 42 of the Act. The owner of the vehicle appeared during the confiscation proceeding and produced all the relevant documents with regard to the seized Tractor and also the valid challan with respect to the metal found loaded on the aforesaid Tractor. In the Confiscation Proceeding, three witnesses were examined on behalf of the Forest Department i.e. M.K. Diwakar (Range Officer) (PW-1), Balmiki Singh (Forester)(PW-2) and Vakil Paswan (Forest Guard) (PW-3). The deposition of those witnesses have been annexed as Annexure -2 series to the writ petition.

All these witnesses, during their cross-examination, have



stated that challan produced by the driver was valid and stone chips loaded on the said Tractor was not from forest area. The Department, in spite of producing documents by the owner of the said vehicle and the aforesaid evidence given by the witnesses of the Forest Department, passed the order dated 22.2.2013 in Confiscation case no. 06/2012 for confiscation of the vehicle of petitioner (Annexure-3). The petitioner filed appeal before the Appellate Authority i.e. the District Magistrate, Lakhisarai at Lakhisarai (respondent no.3) under the Act vide Misc. (Forest) Appeal case no. 3/13-14 who has allowed the appeal by order dated 17.1.2014 (Annexure-4). Thereafter, the respondent-Department preferred revision before the Revisional Authority i.e. the Principal Secretary, Department of Forest and Environment, Govt. of Bihar, Patna (Respondent no.2) vide Revision case no. Forest Mu. (C)-5/2014 which was allowed by order dated 15.12.2014 (Annexure-5).

This court, on perusal of Annexure-5 finds that Revisional Court has set aside the order passed by the Appellate Authority only after relying on the provisions of Sections 69 of the Indian Forest Act.

Section 69 of the Indian Forest Act, 1927 reads as follows:-

“69. Presumption that forest-produce belongs to Government.- when in any proceedings taken under this Act, or in consequence of anything done under this Act, a question arises as



to whether any forest-produce is the property of the Government, such produce shall be presumed to be the property of the Government until the contrary is proved.”

This Court finds that Appellate order (Annexure-4) was passed after considering all the evidence and relevant papers filed by the parties before the Court. The Appellate Court has discussed in detail in the order that all the three witnesses examined on behalf of the Department have stated that stone chips loaded on the Tractor were not of forest area. The driver was holding valid challan at the time of aforesaid seizure. The Appellate Authority has come to the conclusion that the original order for confiscation of the vehicle only on the ground that the driver fled away from the place of occurrence without showing challan is not proper. The Appellate Authority has, accordingly, set aside the confiscation order and allowed the appeal and ordered for release of the seized tractor.

This Court further finds that the Appellate Court has passed the order after proper appreciation of the documents and the evidence produced by the parties.

The Revisional Court has committed illegality in setting aside the appellate order without properly appreciating the evidence produced by the parties after relying on the provisions of Section 69 of the Indian Forest Act, 1927 which was not at all applicable in the instant case at that stage. The case has already



been registered in the Court of learned C.J.M. Lakhisarai and proper trial is to be held before the Court of C.J.M., Lakhisarai. The order passed by the Revisional Court to confiscate the Tractor after setting aside the appellate order is totally illegal and not in accordance with law. Accordingly the same is hereby set aside.

The authority concerned is directed to release the Tractor of the petitioner seized in the confiscation proceeding forthwith as per direction made by the Appellate Authority vide order dated 17.01.2014 passed in Misc. (Forest) Appeal case no. 3/13-14.

The writ application is, accordingly, allowed.

(Sanjay Priya, J)

shyambihari/-

AFR/NAFR	AFR
CAV DATE	N/A
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