

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4270 of 2018

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Amar Nath Singh Son of Krishna Nand Singh, Resident of Village- Patel Nagar, Dalla, P.S.- Chopan, District- Sonebhadra U.P.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Environment and Forest, Government of Bihar, Patna.
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- Rohtas.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajani Kant Singh, Advocate
For the Respondent/s : Mr. Raghwanand, GA-11

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA
ORAL JUDGMENT

Date : 06-08-2019

This writ petition has been filed for quashing the order dated 3.11.2017 passed by the Principal Secretary, Department of Environment and Forest, Patna, in Forest Revision Case No. 21 of 2016 (Annexure-5) by which he has dismissed the Revision application of the petitioner affirming the order dated 3.5.2016 passed by the Collector, Rohtas at Sasaram, in Forest Confiscation Appeal No. 37 of 2015 (Annexure-4). Petitioner has also made prayer in this writ petition for quashing the order dated 19.3.2015 passed by the learned Authorized Officer-cum-Divisional Forest Officer, Rohtas, Forest Division, Sasaram, in Confiscation Case No. 18 of 2015 (Annexure-3) arising out of Kochas P.S. Case No. 3 of 2015 in which the Truck of the petitioner bearing Registration No. UP-64-H/7353 has been



confiscated, and further, for issuance of direction to the Respondent No. 4 i.e. Authorized Officer-cum-Divisional Forest Officer, Rohtas Forest Division, Sasaram to release the Truck of the petitioner bearing Registration No.UP-64H/7353 in his favour.

Heard Mr. Rajani Kant Singh, learned counsel for the petitioner and Mr. Raghwanand, G.A.-11 for the State.

Counsel for the petitioner submits that only stone materials were loaded on the truck of the petitioner which is not forest produce. He also submits that for initiating confiscation proceeding, the Forest Department is duty bound to give the specific description of plot number from where the stone materials were loaded and that place must be notified under Sections 29 and 30 of the Forest Act. In the instant case there is nothing to show that from where the stone materials were loaded which vitiates the entire prosecution report. He further submits that Forest Authority has no jurisdiction to seize the truck of the petitioner bearing Registration No.UP-64-H-7353 out of protected forest area. He further submits that Respondents have failed to appreciate that the stone chips are minor minerals and its removal are punishable under Section 9(2) of Section 40 of Minor Mineral Concession Rules, 1972. It is settled principle of law that when there is special provision to regulate prohibition of illegal mining, transportation and storage of mines and minerals, then the Forest Act will not apply and the vehicle cannot be seized/confiscated by the Forest Authority.



Counsel for the petitioner further submits that Respondents have failed to appreciate that to confiscate any vehicle engaged in transporting stone materials, the court ought to have satisfied that the contravention of provisions of Sections 33, 41 and 42 of Forest Act was done but in this case, there is nothing to show that any provision of Forest Act was ever contravened.

Counter affidavit has been filed on behalf of the Respondent Nos. 3 and 4 stating that order has been passed by the authority after proper consideration of the case of both the parties and after giving opportunity of hearing to the petitioner in Confiscation Case.

Submission of the petitioner is that his truck was confiscated by the Confiscating Officer, from Kochas Chowk for which Kochas P.S. Case No.3 of 2015 was registered. Petitioner is owner of commercial Truck bearing Registration No. UP-64-H-7353 which was loaded with stone chips, for which, Challan No. 0056549 was issued by Lallu of Baradih Mines, Maa Bhandari, Ahraura, Mirzapur (U.P.) which was purchased by Amit of Jagdishpur (Bihar.) The District Panchayat, Mirzapur, Varanasi and Chandauli have issued receipts No.41774, 2092 and 14191 on 26.12.2014 respectively for carrying mines materials. The driver of the vehicle produced Challan before the Confiscating Authority and made request to release the truck, but, the aforesaid truck was not released by him.

This Court finds from perusal of the orders of confiscating authority, Appellate Authority and Revisional Authority that none of



them have considered the challan submitted by the petitioner in proper perspective. The Revisional Court has disbelieved the papers only on the ground that photocopies of all documents which were submitted with the show cause, their original copies were not shown at the time of seizure in Thana which indicates that these papers were procured after seizure of the vehicles. It is admitted position that vehicle was seized from Kochas Chowk which was not declared as Forest Area. The Truck of the petitioner was loaded with stone chips which is not forest produce.

Therefore, there is no violation of Section 33 of Indian Forest Act. There are separate Provisions under Sections 9(2) and Section 40 of the Minor Mineral Concession Rules, 1972, for removing the minor mineral.

Therefore, this Court is of the view that order dated 19.3.2015 passed by the District Forest Officer, Rohtas (Annexure-3) in Confiscation Case No. 18 of 2015, order dated 3.5.2016 passed by the Appellate Authority in Forest Confiscation Appeal No. 37 of 2015 and the Revisional Order dated 03.11.2017 passed by the Principal Secretary, Environment and Forest Department, Bihar, Patna, in Forest Revision Case No. 21 of 2016 are not in accordance with law. They have not been passed after proper consideration of facts and documents submitted by the petitioner. The petitioner has produced valid challan for loaded stone chips on the truck in question.



Therefore, the aforesaid orders as contained in Annexure-3, 4, and 5 are hereby set aside.

The Respondent No. 4 i.e. the Authorized Officer-cum-Divisional Forest Officer, Rohtas Forest Division, Sasaram, District Rohtas is directed to release the truck of the petitioner bearing Registration No. UP-64-H-7353 within a period of 15 days from the date of receipt/production of copy of this order after proper verification of the relevant documents with regard to ownership of truck of petitioner. The petitioner will file affidavit that he will produce the vehicle as and when required by the trial court or the confiscating authority and will not dispose off the vehicle till disposal of the Forest Case or Confiscation Case.

This writ petition is accordingly allowed.

(Sanjay Priya, J)

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CAV DATE	N.A.
Uploading Date	17/ 08/2019
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