

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8472 of 2020

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Anil Kumar Singh, Son of Late Surya Keshwar Singh, Resident of Mohalla-
Gaurakshani Sasaram, P.S.- Sasaram (Model), District- Rohtas

... .. 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 : Mr.Rajani Kant Singh, Advocate
For the S t a t e : Mr. Sarvesh Kumar Singh, AAG-13

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 26-03-2021

The writ application has been filed seeking quashing of the order dated 28.04.2020 passed by the Principal Secretary to the Government of Bihar, in the Department of Environment and Forest, in Forest Revision Case No.5 of 2018, by which the revision application has been dismissed, affirming the order dated 01.09.2017 of the District Magistrate, Rohtas in Forest Confiscation Appeal Case No.50 of 2015. The order dated 05.10.2015 passed by the Authorized Officer-cum-Divisional Forest Officer, Rohtas Forest Division, in Confiscation Case No.158 of 2015(A) has also been assailed.



2. The brief factual background is that the Forester, Darigaon, as per the prosecution report, was patrolling in Basantpur protected forest area on 17.08.2015. He spotted two vehicles laden with stone metal and boulders leaving the forest area. He chased the trucks and informed the Station House Officer, Nokha Police Station on mobile phone regarding the two trucks. Accordingly the trucks were intercepted on Sasaram-Ara road with the help of police team. 500 Cubic Feet (C.Ft.) stone metal was found laden on the truck. It appeared to be converted/hand broken stones. Since the hand broken stones were brought from the Basantpur protected forest, the truck, bearing Registration No.JH-02P-7074, laden with 500 C.Ft. stone metal was seized by the Forester under Section 52(1) of the Indian Forest Act, 1927 (hereinafter referred to as “the Act”) for violation of Sections 33, 41 and 42 of the Act. Forest Case No.77F/15 was thus instituted. The Range Officer of Forests, Sasaram Forest Range requested the Authorized Officer-cum-Divisional Forest Officer (Respondent No.4) by his communication dated 20.08.2015 to initiate confiscation proceeding against the seized vehicle and forest produce as per Section 52(3) of the Act. Confiscation Case No.158 of 2015 thus came into existence. Intimation regarding the same was communicated to the Chief Judicial Magistrate, Rohtas as per



Section 52(4)(a) of the Act. Notice as contemplated under Section 52(4)(b) and (c) of the Act was served against unknown by the Respondent No.4 under communication dated 10.09.2015 (Annexure R/2 to the counter affidavit.)

3. Petitioner replied to the said notice on 11.09.2015. He appeared in the hearing of the case. He was afforded hearing. By order dated 05.10.2015, the Divisional Forest Officer confiscated the truck, bearing Registration No.JH-02P-7074, and 500 C.Ft. stone.

4. The petitioner filed an appeal before the Appellate Authority-cum-District Collector, Rohtas. The Appeal Case, bearing Case No.50 of 2015, was rejected on 01.09.2017.

5. Petitioner thereafter availed the remedy of revision. Forest Revision Case No.05 of 2018 was filed before the Revisional Authority-cum-Principal Secretary to the Government of Bihar, in the Department of Environment and Forest. After hearing the parties, Revision was also rejected under order dated 28.04.2020, upholding the appellate authority's order dated 01.09.2017 and confirming the order of confiscation dated 05.10.2015 passed by the Authorized Officer.

6. The petitioner's counsel has submitted that the petitioner carries on the business of transportation. At the time his



truck was seized, it was under the control of the Driver and the petitioner had no knowledge as to what was the contents being transported on the truck in question. Stone chips were loaded on 17.08.2015 by Vijay Singh of Bikramganj from M/s Aman Stone Chips at Mandeya in Chhatarpur, Palamu which lies in the State of Jharkhand. While the truck was *en route* its destination, it was illegally seized by Nokha police.

7. He submits that the truck was seized nearly 100 Kms. away from the protected forest on the Sasaram-Ara road and not in the protected forest area. Further, stone is not a forest produce. In view of these facts, he submits that the forest authorities had no jurisdiction to seize the truck from the road, that also when the laden stone was not a forest produce, rather purchased from Aman Stone Chips in the State of Jharkhand, for which the petitioner had a valid *Challan*. He has placed reliance on decision of this Court in the case of ***Alok Kumar Singh vs. State of Bihar***, reported in ***2019(4) PLJR 1026***, more specifically paragraphs 6 to 9 of the said judgment in support of his contention that the stone chips are not forest produce and that the same is a minor mineral, mining of which is regulated by the provisions of the Bihar Minor Mineral Concession Rules, 1972. He has also relied upon decision of the Apex Court in the case of ***the Divisional Forest Officer, South***



Kamrup Division, Gauhati and others v. Moolchand Saraugi Jain, reported in *AIR 1971 Supreme Court 694*, on the same point. This decision has been followed by the Gauhati High Court in the case of *Bejiram Ingty v. State of Assam*, which is reported in *AIR 1982 Gauhati 88*, which also has been relied upon by the petitioner's counsel.

8. This Court would find that the facts of the case in *the Divisional Forest Officer v. Moolchand Saraugi Jain* (supra) are that the Divisional Forest Officer had invited tenders for the purchase of rights to quarry stone from certain areas. The respondent therein, submitted a tender and offered a particular rate. The tender was accepted for minimum quantity of 1,25,800 C.Ft. of stone allotted to the respondent out of the quarry. He was required to pay Rs.31,250/-. Intimation regarding such acceptance was duly communicated to the respondents. Some dispute was raised by a third party, which led to stay of the tender for a period of about three months. The respondent then declined to accept the settlement of the quarry. Said denial was considered to be breach of the terms of the sale notice. The amount of Rs.31,250/- was quantified for the minimum quantity 1,25,800 C.Ft. of stone allotted to the respondent out of the quarry at the rate of Rs.5.25 per rupee of royalty and was sought to be recovered for alleged



breach of the terms of the sale notice as an arrear of land revenue under Assam Forest Regulation VII of 1981. Considering the provisions in the Rule, the Apex Court has held as follows :

“The Rule in our judgment does not apply to recovery of the amount alleged to be due for failure to carry out the obligations of the tender by proceedings under the Assam Forest Regulation 1891. It is again difficult to hold that “stone” is forest produce withing the meaning of the Act. In any event the Rule does not give rise to any liability to pay a sum of money. It merely imposes a limitation upon the power of the officers of the Forest Department to grant leases in respect of certain forest produce. The lease may not be granted except in accordance with the general or special orders of the Conservator who alone is empowered to authorise a sale in respect of such a lease. It is a rule relating to the exercise of power to grant leases. The High Court was, in our judgment, right in observing that the amount of damages for breach of the terms of the sale notice is not an amount due under the Regulation, or rule 10 made thereunder.”

9. This judgment of the Apex Court is on the issue whether amount of alleged damages for breach of the terms of sale notice, was an amount due under the Regulation or Rule made thereunder, for the purposes of recovery as an arrear of land revenue, or not. The said judgment is not an authority on the point that hand broken stone chips recovered from the petitioner’s truck is not a forest produce/prohibited under Section 33(b) of the Forest Act inviting penalty in terms of Section 33.



10. It was the same issued which fell for consideration before the Gauhati High Court in the case of ***Bejiram Ingty*** (supra). It was in the context of the Assam Forest Regulation or Rules framed thereunder that the Court was considering whether alleged arrear, for purchase or breach of the terms of sale of forest produce, specifically “stone”, could be recovered as an arrear of land revenue.

11. So far as the decision rendered in the case of ***Alok Kumar Singh*** (supra) is concerned, this Court must take notice of the facts of that case, which can be gathered from the judgment. The truck in that case was going towards Sasaram-Ara road laden with stone chips purchased from the business premises of one M/s Jai Maa Bhawanti Construction in Jharkhand, for which valid transport *Challan* was issued and had been produced. Thus, it was pleaded by the petitioner that the stone chips was not a forest produce having been purchased from the said M/s Jai Maa Bhawanti Construction and in respect of which a valid transport *Challan* was issued.

12. From bare perusal of the judgment, it is apparent that in the said case there is no plea on behalf of the State that the truck was seen within the forest are laden with stone, or leaving any forest area laden with the stone chips and that the same had



subsequently been intercepted pursuant to a chase on the road, as are the facts in the instant case. It was in this context that this Court in the case of **Alok Kumar Singh** (supra) has observed as follows:

“7. The stone chips admittedly are not forest produce rather it comes under minor minerals. Section 40(2) of Bihar Minor Mineral Concession Rules, 1972 provides penalty for unauthorized extraction and removal of minor minerals.”

13. In the instant case, the fact stated in the forest case is that the Forester has seen that stone chips were laden on the truck, while it was in the protected forest from where it had fled away. It was chased by the Forester and only after mobile phone communication with Nokha Police Station on Sasaram-Ara road, it was intercepted. It is also the case of the respondents that no *Challan* was produced when the truck was intercepted and seized.

14. On these basic facts, the instant case is distinguishable from the case of **Alok Kumar Singh** (supra). The Forester had seen the truck in question in Basantpur “Protected Forest”. It is the specific stand of the State in its supplementary counter affidavit that there is no approved and valid stone mining lease operational in the said protected forest or any of the protected forests in the forest area of Rohtas Forest Division.



15. Apart from that, the State has also placed on record a Notification dated 18.09.1968 issued under Section 30(c) of the Act at Annexure R/5 of the supplementary counter affidavit filed on behalf of Respondent Nos.1 to 4. By the said notification quarrying of stone has been prohibited within the protected forests in the District of Shahabad from where the truck in question had fled away laden with the hand broken stones. Such prohibition is in accordance with Section 30(c) of the Act, which reads as follows:

***“(30). Power to issue notification
reserving trees, etc.-- The [State Government] may, by
notification in the Official Gazette,--***

(a).....

(b).....

*(c) prohibit, from a date fixed as aforesaid,
the quarrying of stone, or the burning of lime or
charcoal, or the collection or subjection to any
manufacturing process, or removal of, any forest-
produce in any such forest, and the breaking up or
clearing for cultivation, for building, for herding cattle
or for any other purpose, of any land in any such
forest.”*

16. These averments made in the supplementary counter affidavit have not been denied or responded to by the petitioner though copy of the same has been served on the petitioner's counsel on 02.03.2021.



17. The petitioner otherwise has not raised any procedural infirmity in the confiscation proceedings, appellate order or the revisional order, all of which have been assailed in the instant proceedings.

18. The submission that stone is not a forest produce under the Act is not supported by the decision, relied upon by the petitioner's counsel. The State Government has duly prohibited quarrying of stone by a notification dated 18.09.1968 issued under Section 30(c) of the Act. The facts leading to the confiscation is that the stone chips was being carried by the petitioner's truck from within the forest area. Upon chase, the truck has been intercepted by Nokha Police on Sasaram-Ara road and no valid *Challan* in respect of the stone chips was produced by the petitioner or his Driver at the time of seizure of the truck in question.

19. The notification dated 18.09.1968 issued under Section 30(c) of the Act, when considered with the provisions contained in Section 2(4)(b)(iv) of the Act in the background, make it abundantly clear that the fact that the hand broken stones was being brought from a protected forest, leaves no room for doubt to consider that the same would come within the expression "forest produce". Section 2(4)(b) (iv) of the Act reads as follows :



2. Interpretation clause.- *In this Act, unless there is anything repugnant in the subject or context,--*

(4) “forest-produce” includes--

(a)

(b) the following when found in, or brought from, a forest, that is to say,--

(i) trees and leaves, flowers and fruits, and all other parts or produce, not hereinbefore mentioned, of trees,

(ii) plants not being trees (including grass, creepers, reeds and moss), and all parts or produce of such plants,

(iii) wild animals and skins, tusks, horns, bones, silk cocoons, honey, and wax, and all other parts of produce of animals, and

(iv) peat, surface soil, rock and minerals (including limestone, laterite, mineral oils and all products of mines or quarries);”

20. In the circumstances, there is no occasion for this Court to interfere with the order passed in Confiscation Case No.158 of 2015(A),which is dated 05.10.2015 or the appellate order dated 01.09.2017. The revisional order dated 28.04.2020 also does not require any interference.

21. The writ petition therefore is dismissed.

(Madhuresh Prasad, J)

PNM

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