

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1116 of 2020

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M/s Mahendra Sharma Saw Mill Pipardih, P.S. Aurangabad, District- Aurangabad, a proprietorship firm through its Proprietor Mahendra Sharma aged about 48 years Gender Male son of Late Bigan Sharma, resident of Pipardih, P.S. Aurangabad, District- Aurangabad.

... .. Petitioner/s

Versus

1. The State of Bihar Through the Principal Secretary, Environment and Forest Department, Government of Bihar, Patna.
2. The Chairman of State Level Committee for Wood- based Industries Cum- Principal Chief Conservator of Forest, Bihar, Patna.
3. The Licensing Officer-cum- Divisional Forest Officer Aurangabad Forest Division, Aurangabad.
4. The Forester Aurangabad, District- Aurangabad.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Vinay Mistry, Advocate
For the Respondent/s : Mr.Anant Prasad Singh (S.C.15)

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 20-09-2022

Heard learned counsel for the parties.

Petitioner has prayed for the following reliefs:-

- i) For issuance of a writ in the nature of Certiorari for quashing of the Seizure List dated 29.10.2019 whereby Wheel, Ara Blade of the Saw Mill and 3 Pieces wood were seized by the Forester, Aurangabad under Section 8 of the Bihar Saw Mills (Regulation) Act,1990 as the Forester is not

authorized to make Inspection, Search and Seizure under Section 8 of the Bihar Saw Mills (Regulation) Act,1990.

- ii) For issuance of a writ in the nature of Mandamus ~~directing the~~ directing the Respondent No.3— Licensing Officer-cum-Divisional Forest Officer, Aurangabad Forest Division, Aurangabad to re-open the Saw Mill in favour of the petitioner as the Saw Mill has been seized by the Forester, Aurangabad on 29.10.2019 without issuing any show notice to the petitioner and the same is contrary to the order dated 2.9.2019 passed by this Hon'ble Court in CWJC No.17876 of 2019.
- iii) For issuance of a writ in the nature of Mandamus directing the Respondents not to take any coercive action against the petitioner in the facts and circumstances of the case.

iv) For issuance of such other writ(s), order(s), direction(s) as your Lordships may deem fit and proper.

The Saw Mill of the petitioner has been seized by the Forester vide Annexure-P/2. The same is under challenge in this Court.

Learned counsel for the petitioner has relied on a decision of this Court dated 31.07.2015 in CWJC No. 7444 of 2015 (Annexure-P/4) in order to submit that the Forester or the police has no role to play in such seizure/sealing. It is contrary to Section 8 of the Bihar Saw Mill (Regulation) Act, 1990 (for short the Act“).

In the said case (Annexure-P/4), this Court found favour with these submissions and directed to return the seized material to the petitioner of the case forthwith.

In spite of indulgence granted to the respondent-State no counter affidavit has been filed.

Mr. Mistry counsel for the petitioner draws attention of the Court to Annexure-P/4.

The Court can profitably extract

hereinbelow the finding of the learned Judge:-

“The contention of the counsel for the State cannot be appreciated for the simple reason that the writ application has remained pending for adjudication for seven years and no steps have been taken despite indulgence shown on several occasions to file counter affidavit. If they have not bothered to bring any material to show that Annexure-1 is not the document by which search and seizure was made, then search and seizure carried out by the Forester is illegal, unjustified and in breach of section 8 of the Act. Writ is allowed. Annexure-1 is quashed.

Respondents are directed to return of the seized materials to the petitioner forthwith, preferably, within a period of four weeks from the date of production of a copy of this order.”

Learned counsel for the petitioner also relies on the order dated 16.4.2013 passed in CWJC No. 4682 of 2013 (Shambhu Sharma Vs. The state of Bihar & Ors) to demonstrate that similar seizure of the articles of the Saw Mill by the forester has been held to be without the authority of the law.

Learned counsel for the State is not in a position to dispute the aforesaid contention of the petitioner.

Consequently, the application is allowed. The order of seizure dated 29.10.2019 (Annexure-P/2) is quashed. The authorities are directed to return the seized material/articles in

favour of the petitioner forthwith on production of a copy of this order before the concerned authority/respondent.

Before parting with this case, this Court may observe that if the respondents are entitled to effect such seizure then the present order shall not preclude them from proceeding strictly in accordance with the provision of the Act.

(Sanjay Karol, CJ)

(S. Kumar, J)

veena/Ishika-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	