

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.9429 of 2020

Jihatram Meher

....

Petitioner

-versus-

***State of Odisha, represented
through the Secretary to
Government, Forest and
Environment Department,
Secretariat Building, Bhubaneswar
and others***

....

Opposite Parties

CORAM: JUSTICE S. PUJAHARI

ORDER

15.02.2022

Order

No.

02.

1. This matter is taken up through hybrid mode.
2. This writ petition has been filed by the Petitioner with a prayer to quash the order dated 6th February, 2020 passed by the learned District Judge, Nuapada in F.A.O. No.7 of 2019 as well as the order dated 21st August, 2019 passed by the Authorized Officer-cum-Assistant Conservator of Forest, Khariar Forest Division in OR Case No.584KH of 2017-18.
3. The contention of the Petitioner is that the tractor was seized while it was transporting some fire woods and some green logs by the forest officer, pursuant to which, a confiscation proceeding having been initiated against the forest produced along with the tractor, the same was confiscated vide order dated 21st August, 2019 passed by the Authorized

Officer-cum-Assistant Conservator of Forest, Khariar Forest Division, Khariar in O.R. Case No.584^{kh} of 2017-18. The Petitioner has challenged the same before the District Judge, Nuapada (Appellate Authority) and the Appellate Authority also confirmed the same taking note of the facts and law in this regard. Petitioner against such order has come to this Court by filing this writ petition.

4. Learned counsel for the Petitioner submits that the confiscation to be illegal on the ground that aforesaid logs were not forest produce and, as such, for transportation of the same without Timber Transit Permit, no offence under the Orissa Timber Transit and other Forest Produce Transit Rules, 1980 (hereinafter referred to as "T.T. Rules") was committed. Therefore, the confiscation proceeding is without authority. Alternatively, it is submitted that even if it is held that a forest offence was committed using the vehicle in question but the same being not authorized by the owner, the act of the driver is not binding on the owner as he had done the same in excess of the agency, in view of the provision of the Contract Act.

5. Per contra, learned counsel for the State submits that the aforesaid contentions are fallacious inasmuch as Section 2(g)(i)(a) of the Orissa Forest Act speaks that the timber whether brought from forest or not and transit of the same must be accompanied by timber transit permit issued under Rule-4 of the T.T. Rules is sine qua non. So also the Indian Contract Act

that act done in a excess of the agency by the agent is not binding on the principal, has no application in view of the Section 52(2-c) of the Orissa Forest Act. Hence, the writ petition is liable to be dismissed, submits the learned counsel for the State.

6. Before addressing the contention of the parties, it would be apposite to mention here that it is not disputed that the vehicle of the Petitioner was seized while transporting the timbers, as defined under the Orissa Forest Act and the same was not accompanied by the Timber Transit Permit as required under the T.T. Rules.

7. Learned counsel for the Petitioner has argued that no Timber Transit Permit is required for transportation of the same inasmuch as it was brought from a private land and, as such, not a forest. Such contention is fallacious inasmuch timber is a forest produce whether brought from forest or not as defined under Section 2(g)(i)(a) of the Orissa Forest Act. For transportation of the same, the T.T. Permit is sine qua non under Rule-4 of the T.T. Rules except in cases covered under Rule-5 of the T.T. Rules. Admittedly, the Petitioner's case is not covered by Rule-5 of the T.T. Rules. For such violation of the T.T. Rules, confiscation proceeding was initiated against the vehicle as well as the forest produce and the same mandate a confiscation as the Petitioner could not discharge the burden to wriggle out the confiscation as specified under Section 56 (2-

c) of the Orissa Forest Act. The same has also been confirmed by the learned District Judge, Nuapada considering the facts as well as the law in this regard.

8. In such premises, the contention that is advanced by the learned counsel for the Petitioner assailing the confiscation on the ground that the logs seized being not forest produce as it was brought from a private land and, as such, no Timber Transit Permit is required under the T.T. Rules. Hence, the confiscation proceeding initiated was misconceived, which has been contested by the learned counsel for the State taking this Court to the definition of the forest produce and also T.T. Rules, appears to be misconceived. On the said ground the order of confiscation is not assailable.

9. The next contention that is advanced by the learned counsel for the Petitioner that since the driver was not authorized to do any illegal act, if at all he had done the aforesaid illegal act, the same is not binding on the owner in view of the provision of the Contract Act as the act done in excess of the agency is not binding on the principal, also appears to be misconceived, as specific provisions has been provided under Section 56(2-c) of the Forest Act for such illegal act of the agent, the owner cannot wriggle out the confiscation, even in the absence of his knowledge or connivance, to which, a notice of the court has been drawn by the learned counsel for the State.

10. Section 56(2-c) of the Orissa Forest Act reads as thus:-

“Without prejudice to the provisions of Sub-section (2-b) no order of confiscation under Sub-section (2-a) of any tool, rope, chain, boat, vehicle or cattle shall be made if the owner thereof proves to the satisfaction of the authorised officer that it was used without his knowledge or connivance or the knowledge or connivance of his agent, if any, or the person in charge of the tool rope, chain, boat, vehicle or cattle, in committing the offence and that each of them had taken all reasonable and necessary precautions against such use.”

11. This Court interpreting the aforesaid section in the case of ***State of Orissa v. Kiram Shankar Panda, reported in 71 (1991) CLT 187***, has held that if a forest offence is committed even with the knowledge or connivance of the driver of the vehicle, the vehicle would be liable for confiscation even though the owner might not have any knowledge or connivance. In that decision, it was further pointed out that to wriggle out the order of confiscation, it must be further proved that each of the concerned persons named in Sub-section (2-c) of Sec. 56 of the Forest Act had taken all reasonable and necessary precautions against the use of the vehicle in respect of commission of the forest offence. The aforesaid is lacking in this case inasmuch as the Petitioner failed to discharge the burden on him as contained in Section 56(2-c) of the Orissa Forest Act and rather admitted that his driver had done the aforesaid act.

12. In view of the aforesaid authoritative pronouncement of this Court which has been followed in a line of decisions thereafter till date by this Court, the contention that is advanced taking resort to the provisions of act of excessive agency as contained in Contract Act, therefore, is no assistance to the Petitioner.

13. Accordingly, this writ petition challenging the order of the Authorized Officer under Annexure-2 which has been confirmed in the F.A.O. by the learned District Judge, Nuapada under Annexure-1 fails.

14. Hence, the writ petition stands dismissed. But, in the facts and circumstances, there shall be no order as to cost.

(S. Pujahari)
Judge

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