

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 509 OF 2022

Range Forest Officer, Forest Department, Dhule
Through Mahesh Baburao Patil and another

.. Petitioners

Versus

Abhaykumar Singh and others

.. Respondents

Mr. Vivek V. Bhavthankar, Advocate for the Petitioners.

Mr. Mukul S. Kulkarni, Advocate for Respondent Nos. 1 to 4.

Mr. Y. G. Gujarathi, APP for Respondent No 5.

CORAM : KISHORE C. SANT, J.

DATED : 22nd DECEMBER, 2022.

P. C. :-

1. Heard.

2. This is a writ petition filed by the petitioners challenging an order dated 09.03.2022 passed by the learned Sessions Judge, Dhule thereby allowing the appeal filed by the respondent Nos. 1 to 4 and directing the authorities of the petitioners to release the vehicles which are seized by the petitioners under Section 61 (A) of the Indian Forest Act, 1927 (for short "Act of 1927"). This order was passed after the remand of the matter by this Court by order dated 10.12.2021.

3. It is submitted by the petitioners that, it is clear from the discussion in the order dated 10.12.2021 in paragraph No. 5 that the learned Sessions Court had not considered that the order of

confiscation was passed by the Authorized Officer in terms of Section 61 (A) of the Act of 1927 and not interim custody of the vehicles in terms of Section 53 of the Act and therefore, the impugned order was set aside and matter was remanded for fresh enquiry. Thus, learned advocate submits that, the learned Sessions Court has not answered as to under which provisions the action was taken by the petitioners and has allowed the appeal.

4. On going through the operative order passed by this Court, it is clearly seen that the matter was remanded back to the learned Appellate Court for deciding it afresh. It was limited only to the extent of deciding the provisions under which the action was taken. The learned Sessions Judge has now considered the entire matter on its own merits and has come to a conclusion that the notice as required under Section 61-B of the Act of 1927 was not issued. Since the notice dated 16.02.2018 was served upon the persons who were not the owners of the vehicles in question. The respondents pointed out that the notices were issued to liasoning officer and two drivers on 16.02.2018 and both were not owners of the vehicles. Section 61-B of the Act of 1927 prescribes that notice be issued in writing to the person from whom it was seized and proviso provides that no order confiscating a motor vehicle shall be made except, after giving a notice

in writing to the registered owner thereof. For the purpose of convenience Section 61-B of the Act of 1927 is reproduced as below :

“61B. Issue of show cause notice before confiscation under section 61A.—

(1) No order confiscating any forest-produce or tools, ropes, chains, boats, vehicles or cattle shall be made under section 61-A except after notice in writing to the person from whom it was seized informing him of the grounds on which it is proposed to confiscate it and considering his objections, if any:

Provided that, no order confiscating a motor vehicle shall be made except, after giving a notice in writing to the registered owner thereof, if in the opinion of the authorized officer it is practicable to do so, and considering his objections, if any.

(2) Without prejudice to the provisions of sub-section (1), no order confiscating any tool, rope, chain, boat, vehicle or cattle shall be made under Section 61-A if the owner of the toll, rope, chain, boat, vehicle or cattle proves to the satisfaction of the authorised officer that it was used in carrying forest-produce without the knowledge or connivance of the owner himself, his agent, if any and the person in charge of the tool, rope, chain, boat, vehicle or cattle, and that each of them taken all reasonable and necessary precautions against such use.”

5. Thus, it is clear that, notice ought to have been issued on the registered owner of the vehicle.

6. Learned advocate for the petitioners submits that, in fact, the notice was served on the persons who were authorized by the company, however, from the record it is seen that, the respondent No. 1 was given the authority on 23.02.2018. Thus, on the date of issuance of

notice he was not the owner, nor the person authorized by the owner and therefore, it was on that ground, the learned Sessions Judge has allowed the appeal by order dated 09.03.2022.

7. The main ground in the petition is that the learned Court below that is the learned Sessions Judge while considering the appeal has not specifically answered as to under which section the action was taken. Upon asking the petitioners as to under what provisions the petitioners have issued the notice. It is clearly answered that it is under Section 61-A - 61-B of the Act of 1927.

8. Thus, there is no confusion even in the mind of the petitioners, nor in the mind of the learned Appellate Court that it was an action under Section 61-A or 61-B of the Act of 1927. If it was an action under Section 61-A of the Act of 1927, then necessarily the authorities are required to follow the procedure as prescribed under Section 61-B of the Act of 1927. Thus, there is no substance in the submissions that the Court has not answered this question. In the opinion of this Court it makes hardly any difference when the matter was directed to be heard afresh on merits.

9. On behalf of the respondents argument is advanced on merits that the Forest Department had recognized this Site No. 294 in the year

2014 itself as a road. It is also pointed out from the report of the authorities itself that there were no any trees or any forest produce found in that Site No. 294 as appeared from the report submitted on 16.01.2017.

10. It is thus submitted by the respondents that there was no question of any damage to the forest produce when nothing was standing there. Learned advocate also further invited attention to the communications dated 07.05.2013 and 15.04.2014 to show that, already the said site is a sanctioned road. Thus, he submits that even on merits no fault would be found in the impugned judgment and order.

11. On hearing the parties, this Court finds that the learned Sessions Court has not committed any illegality while passing the order. Even from the arguments of the petitioners, it is seen that the main argument is that the learned Appellate Court has not considered as to under what provisions the action was taken and has not answered the same. It is totally without merit and this Court does not find any merit since the Court has taken into consideration the entire matter and considered the merits in the matter.

12. The writ petition is thus devoid of merits and is rejected.
13. The writ petition is disposed off accordingly.

(KISHORE C. SANT, J.)

PS.B.