

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL WRIT PETITION NO. 520 OF 2022
WITH
CRIMINAL WRIT PETITION NO. 541 OF 2022

CRIMINAL WRIT PETITION NO. 520 OF 2022

Shriram Enterprises through its
 authorized person, Sandip s/o
 Shriramsingh Parihar, having its office
 at-po. Chichgarh, Tahsil – Deori, District
 – Gondia.

... PETITIONER

VERSUS

1. Deputy Conservator of Forest,
 Gondia Division (Territorial), having
 its office at Van Bhavan, Gondia,
 Near Gayatri Temple, Kudwa,
 Gondia.
2. The Collector, Gondia, having its
 office at Collector Office, Gondia.
3. State of Maharashtra, through Range
 Forest Officer, Department of Forest,
 Renj Forest Office, Sadak Arjuni,
 Tahsil – Sadak Arjuni, District
 Gondia.
4. Assistant Conservator of Forest
 (Tendu & Campa), having its office
 at Van Bhavan, Gondia, Near Gayatri
 Temple, Kudwa Road, Gondia.

5. Sub-Divisional Officer, Sadak Arjuni / Morgaon Arjuni & Chairperson, Sub-Divisional Level Forest Rights Committee, having its office at Sub-Divisional Office, Morgaon, Arjuni.
6. Gramsabha Mahasangh, Ta. Deori through its Secretary, having its office at po. Shirpurbandh, Tahsil – Deori, District – Gondia.
7. Community Forest Rights Management Committee, Jambhali / Dodke, through its Secretary, Tahsil – Sadak Arjuni, District – Gondia.

AND

CRIMINAL WRIT PETITION NO. 541 OF 2022

Gram Sabha Maha Sangha, through its Secretary, Gajanan s/o Jagatram Shivankar, Age – 39 years, having its office at Shirpurbandh, Tahsil – Deori, District – Gondia

... PETITIONER_

VERSUS

1. Deputy Conservator of Forest, Gondia Division (Territorial), having its office at Van Bhavan, Gondia, Near Gayatri Temple, Kudwa, Gondia.
2. The Collector, Gondia, having its office at Collector Office, Gondia.
3. State of Maharashtra, through Range

Forest Officer, Department of Forest,
Forest Office, Sadak Arjuni, Tahsil –
Sadak Arjuni, District – Gondia.

4. Assistant Conservator of Forest
(Tendu & Campa), having its office
at Van Bhavan, Gondia, Near Gayatri
Temple, Kudwa, Gondia.
5. Sub-Divisional Officer, Sadak
Arjuni / Morgaon Arjuni &
Chairperson, Sub-Divisional Level
Forest Rights Committee, having its
office at Sub-Divisional Office,
Morgaon, Arjuni.
6. Forest Rights Committee, Jambhali /
Dodke, through its Secretary, Tahsil –
Sadak Arjuni, District – Gondia.
7. Shriram Enterprises through its
authorized signatory, Sandip s/o
Shriramsingh Parihar, having its
office at Chichgarh, Tahsil – Deori,
District – Gondia.

... RESPONDENTS

Criminal Writ Petition No.520 of 2022.

Shri Kaushubh Deogade, Advocate for the petitioner.
Mrs. M.H. Deshmukh, A.P.P for respondent nos. 1 to 5.
Shri Deepanshu Verma, Advocate for respondent no. 6.
Shri Adarsh Dubey, Advocate for respondent no. 7.

Criminal Writ Petition No. 541 of 2022.

Shri Deepanshu Verma, Avocate for the petitioner.
Mrs. M.H. Deshmukh, A.P.P for respondent nos. 1 to 5.
Shri Adarsh Dubey, Advocate for respondent no. 6

CORAM : VINAY JOSHI, J.
CLOSED FOR JUDGMENT ON : 23/08/2022
JUDGMENT PRONOUNCED ON : 30/08/2022.

JUDGMENT :

RULE. Rule is made returnable forthwith. Both the petitions are heard finally by consent of learned Counsel appearing for the respective parties.

2. The common challenge raised in both petitions is to the order dated 15.06.2022 passed by the learned Additional District Judge, Gondia by which the order regarding return of seized Tendu Leaves on Suprutnama has been reversed. Criminal Writ Petition No.520 of 2022 has been filed by the Private Company, who has purchased 79 bags of Tendu Leaves in auction conducted by respondent no. 6 – Gramsabha Mahasangh, Tq. Deori, whilst Criminal Writ Petition No.541 of 2022 is of Mahasangh, challenging the same order.

3. The facts in brief are that, on 18.05.2022, the respondent no.3 – Range Forrest Officer, Sadak Arjuni has seized 79 bags containing Tendu Leaves alleging illegal transportation of forest produce and thereby registered POR No.04302/107531/2022 for the

offence punishable under Section 41, 42 and 52 of the Indian Forest Act, 1927. The petitioner-Company has purchased seized goods in auction held by Gramsabha and while transporting, they have been seized. The petitioner has initially approached to the Magistrate in terms of Section 457 of the Code of Criminal Procedure, for release of Tendu Leaves on Suprutnama. He succeeded in securing the order of release dated 02.06.2022. Being aggrieved by the order of release, respondent no. 3 - Range Forest Officer has challenged the said order in Criminal Revision No.41 of 2022. The Revisional Court has reversed the said order by stating it to be erroneous, illegal and improper. The revisional order is subject matter of challenge in both the petitions.

4. There is no dispute that the petitioner – Company has purchased Tendu Leaves from respondent no.6 – Gramsabha who is a Mahasangh of several Gramsabha. It is also not in dispute that 79 bags of Tendu Leaves have been seized for alleged illegal transportation. Both sides have placed heavy reliance on the provisions of the Scheduled Tribes and Other Traditional Forests Dwellers (Recognition of Forest Rights) Act, 2006 (for short ‘the Act of 2006’). Besides that, the rules framed thereunder in terms of Section 14 of the Act of 2006, have been pressed into service. It is the petitioners’ contention that Gramsabha has every authority to collect minor forest produce as has

been permitted under the Act of 2006. It is stated that the Act of 2006 has recognized and vested the forest rights to the Traditional Forest Dwellers for ensuring their livelihood. It is submitted that Jambhali/Dodke Community Forest Rights Management Committee had applied for recognition of Community Forest Rights in the year 2012 itself, however no decision was taken by the Authority. It is the prime submission, that the Act of 2006 vests forest rights in the Gramsabha for which neither permission nor a transit pass is required for transportation, and therefore, the seizure is illegal.

5. On the other hand, the State has strongly resisted both petitions by contending that though the forest rights vests in the Gramsabha for betterment of the Forest Dwellers, however it is subjected to the procedure as contemplated under Chapter IV of the Act of 2006. It is argued that Section 6 of the Act of 2006 is a complete code to prescribe a procedure for vesting and recognition of forest rights. It is stated that Gramsabha has to pass a Resolution and forward it to the Sub-Divisional Level Committee for its examination and further for approval by the District Level Committee, which has not been done. Moreover, the transit pass was not issued in a requisite format and thus, the transportation is illegal. In short, it is contended that neither the forest rights of Gramsabha were recognized nor the proposal was

accepted and thus, the auction itself is illegal, making the petitioners' claim untenable.

6. Learned Counsel for the petitioner has heavily relied on Section 3(1)(c) of the Act of 2006 to lay its claim of ownership over the minor forest produce. My attention has been invited to Section 4 (5) and 4(7) of the Act of 2006 to contend that the forest rights are conferred free of all encumbrances and procedural requirements requiring payment of cess has been exempted. The petitioner has relied on the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules of the year 2007 (for short the Rules of 2007) framed under the Act of 2006. It is submitted that in terms of Rule 2(1)(d) of the Rules of 2007, Gramsabha is authorized for disposal of minor forest produce. Moreover, it is contended that in terms of Rule 2 (2) of the Rule of 2007, the procedural requirement of transit permit is not of mandatory nature nor it abridges right to dispose minor forest produce. The petitioner would contend that in terms of Government Resolution dated 02.01.2014, a full and complete freedom is given to the Gramsabha for disposal of minor forest produce. Likewise, my attention has been invited to revised Rules of the year 2012. It is contended that in terms of Government Resolution dated 24.06.2015, as per Clause 6, there is no requirement of

registration.

7. Undoubtedly, the object of the Act of 2006 is to recognize the forest rights of the Traditional Forest Dwellers. In order to regulate their rights, the Act has been introduced. Tendu Leaves falls within the ambit of “minor forest produce” as defined under Section 2(i) of the Act of 2006. Section 3 of the Act 2006 has recognized traditional forest rights. However, Section 6 lays down a procedure for vesting of such forest rights. Section 6(1) of the Act of 2006 indicates that Gramsabha shall be the authority to initiate the process of determining the forest rights by deciding the claims and it has to be forwarded to the Sub-Divisional Level Committee who in turn after examination, forwarded it to District Level Committee for final approval. The learned District Judge has rightly considered the statutory mandate of getting two layer approval for recognition of such rights. Though the rights vest in the Gramsabha, however they are subject to the approval by following the procedure prescribed by the Act of 2006.

8. In terms of Section 13 of the Act of 2006, the provision of the Act of 2006 are in addition and not in derogation of the Indian Forests Act, 1927, which bears a provision of seizure and confiscation in case of breach. The Rules of 2007 nowhere indicates that the Gramsabha or Mahasangh is immuned from the requirement of

recognition of forest rights as contemplated under Chapter IV of the Act of 2006. Always in case of conflict, the provisions of the Act would prevail over the rules as the Rules are in the nature of procedural aspect to further the provisions of the Act. It is apparent that the rights of the Gramsabha have not been recognized, hence the entire tender process is without authorization and thus, it would not confer any authority to petitioner to lay its claim. The petitioners have not brought to the notice any order passed by the State Government granting exemption for transit permit. Unless, community forest rights have been allotted to the Gramsabha in terms of the provisions of the Act 2006, they cannot have any claim there over. The close examination indicates that, the procedure has not been followed, and thus, the order of District Judge cannot be termed as erroneous and unsustainable in the eyes of law.

9. In view of that, both petition carries no merit, hence stand dismissed. Rule stands discharged. No order as to costs.

(VINAY JOSHI, J.)

LATER ON :

At this juncture, the learned Counsel appearing for the petitioner in Criminal Writ Petition No.520/2022 seeks for extension of

interim relief as the petitioner desires to challenge this order before the Apex Court. The record indicates that by way of interim relief, this Court has precluded to conduct the auction and the said order is prevailing till date. Having regard to the said fact, interim relief to continue for a period of three weeks from today.

(VINAY JOSHI, J.)

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