

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1378 of 2023

Arising Out of PS. Case No.-707 Year-2021 Thana- MUFFASIL District- West Champaran

Rajeshwar Yadav Son of Late Yugal Yadav Resident of Village- Chawani
Ward No. 5, PS- OP Kalibag, Distt- West Champaran , (Bettiah)

... .. Petitioner

Versus

1. The State of Bihar through the Additional Chief Secretary Dept. of Mines and Minerals, Govt. of Bihar at Patna
2. The District Magistrate, West Champaran at Bettiah
3. The Superintendent of Police, West Champaran , Bettiah
4. The District Mining Development Officer, West Champaran at Bettiah
5. The Station House Officer, Mufassil (Manuapool) PS, Distt- West Champaran at Bettiah

... .. Respondents

Appearance :

For the Petitioner	:	Mr. Akash Chaturvedi, Advocate
For the State	:	Mr. Gyan Prakash Ojha, GA-7
		Mr. Ajit Kumar, AC to GA-7
For the Mines	:	Mr. Brij Bihari Tiwari, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2 15-12-2023 Heard learned counsel for the petitioner, learned counsel for the State and learned counsel for the Department of Mines.

2. The petitioner in the present case is questioning the order dated 24.04.2023 passed by the learned District Magistrate, West Champaran, Bettiah in case no. CRM 1385 of 2021-22 by which learned District Magistrate, West Champaran, Bettiah has passed order for releasing the tractor, subject to fulfillment of the conditions mentioned in the order.

3. Learned counsel for the petitioner submits that the

tractor of the petitioner has been seized under the provisions of the Bihar Mineral (Concession, Prevention of illegal Mining, Transportation and Storage) Rules, 2019 (as amended up-to-date) vide Rule 7 of the Amendment Rules, 2021.

4. It is submitted that sub-Rule (2) of Rule 56 provides that whoever contravenes sub-Rule (1) of Rule 56 shall be punished with an imprisonment for a term which may extend to two years or with a fine which may extend up to Rs.5 lakhs or with both. Proviso to sub-Rule (2) of Rule 56, however, confers power upon the Mining Officer of the District or the Assistant, Deputy, Additional Director or Director Mines or any other authorised officer by the Government to compound the offence committed under sub-Rule (1) of Rule 56 either before or after the institution of the prosecution. The compounding fee and cost of the mineral are to be deposited.

5. Learned counsel submits that under sub-Rule (4) of Rule 56, all the properties seized under Rule 56 shall be liable to be confiscated by an order of the Collector if the amount equal to twenty five times of royalty in lieu of cost of mineral, rent, royalty, compensation for environmental degradation and tax chargeable on the land occupied without lawful authority etc. along with compound fee is not paid by the offender within a period of one month from the date of commission of such

offence. Proviso to sub-Rule (2) of Rule 56 provides that on payment of these dues within the said period of one month, all properties seized shall be ordered to be released and shall be handed over to the offender or the owner of the property.

6. It is pointed out that from the counter affidavit filed on behalf of the Department of Mines sworn by the Mineral Development Officer, District Mining Office, Bettiah, it would appear that vide Annexure 'R/A', the Mining Development Officer has communicated to the petitioner that in compliance of the order of the District Magistrate, West Champaran, Bettiah in case No. CRM 1385 of 2021-22, he would be liable to pay a sum of Rs.30,310/- which he had not deposited.

7. Learned counsel for the petitioner submits that Annexure 'R/A' to the counter affidavit has not been served upon him and he is coming to know about this for the first time today when the copy of counter affidavit of respondent nos. 2 and 4 is served upon him. It is submitted that the petitioner is ready to deposit Rs.30,310/- for the purpose of release of the vehicle in question.

8. Learned counsel for the Department of Mines as well as the State are present. It is submitted on behalf of the Department of Mines that a confiscation order has been passed but in the counter affidavit neither there is any statement to this

effect nor any copy of the confiscation order has been brought on the record.

9. Learned counsel for the Department of Mines has tried to support his contention with reference to the impugned order but very soon he realised that the impugned order is not an order of confiscation, moreover, two months thereafter Annexure 'R/A' to the counter affidavit was issued which has not been served upon the petitioner.

10. Having regard to the materials noticed hereinabove, this Court is of the considered opinion that the petitioner is required to be given an opportunity to deposit Rs.30,310/- as per Annexure 'R/A' to the counter affidavit. This Court, therefore, directs that if the petitioner deposits Rs.30,310/- in terms of Annexure 'R/A' to the counter affidavit within a period of four weeks from today, the vehicle in question shall be released in his favour on showing document of ownership.

11. This writ application stands disposed of accordingly.

(Rajeev Ranjan Prasad, J)

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