

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3174 of 2022

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Sarvar Ansari son of Zabbar Ansari @ Abdul Zabbar Ansari resident of Village Salaiya, P.O. Salaiya, P.S. Kothi, District Gaya (Bihar).

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Environment and Forest Department, Government of Bihar, Patna.
2. The District Magistrate, Gaya.
3. The Divisional Forest Officer, Gaya.
4. The Forest Range Officer, Imamganj Range, Imamganj, Gaya.
5. The Forest Officer, Imamganj Forest Range, Imamganj, District Gaya.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Abhishek Anand, Advocate
	:	Mr. Md. Javed Jafar Khan, Advocate
For the Respondent/s	:	Mr. Sarvesh Kumar Singh, AAG 13
	:	Mr. Arya Achint, AC to AAG 13

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

5 26-02-2024 Heard Mr. Abhishek Anand, along with Mr. Md. Javed Jafar Khan, learned Counsels appearing on behalf of the petitioner and Mr. Sarvesh Kumar Singh, learned AAG 13 along with Mr. Arya Achint, learned AC to AAG 13 appearing on behalf of the respondent/s.

2. Learned counsel appearing on behalf of the petitioner submits that petitioner had participated in the confiscation proceeding initiated pursuant to the seizure dated 24.01.2021. The tractor bearing Registration No. BR-02GC-0109, loaded with sand, was seized by the Beat Officer in accordance with the Section 52 of the Indian Forest Act, 1927

(Bihar Amendment) Act, 1989. Learned counsel appearing on behalf of the petitioner submits that the petitioner is the owner of a tractor bearing Registration No.BR-02GC-0109, Chassis No. MEA11FA1KL2322249, Engine No.533414209 allegedly loaded with illegal sand, which was seized in course of patrolling by the Beat Officer. Pursuant to the seizure dated 24.01.2021, the confiscation proceeding was initiated by the Divisional Forest Officer, Gaya, in Confiscation Case No.20 of 2021 under Section 52 of the Indian Forest Act, 1927 (Bihar Amendment) Act, 1989, with respect to the seized vehicle and the sand. The petitioner, even being the owner of the seized vehicle, was not given any notice and without giving any opportunity of hearing to him, he could not satisfy the Divisional Forest Officer that he possesses all the documents, with respect to the sand, as well as, valid documents relating to the tractor like registration certificate, insurance paper and pollution certificate. The tractor and trolley were confiscated allegedly having violated the provisions of Sections 33B, 41, 42 of the Indian Forest Act, 1927 (Bihar Amendment) Act, 1989, vide order dated 17.07.2021. The petitioner, against the ex-parte confiscation order dated 17.07.2021, has preferred an Appeal before the District Magistrate, bearing Forest Confiscation

Appeal No.04 of 2021 and statement, in that respect, has been made in paragraph no.14 to the writ petition. The learned counsel informs that the Appeal is still pending and it has not been adjudicated by the District Magistrate.

3. Mr. Sarvesh Kr. Singh, learned AAG-13 submits that the writ petition is not maintainable on the account of delay and laches, though he agreed that the District Magistrate is required to expeditiously dispose of the appeal in accordance with law.

4. Having considered the rival submissions made on behalf of the parties, as well as, the fact that the seizure was effected on 25.01.2021 and the tractor loaded with sand, with respect to which the petitioner or his driver had not produced even a chit of paper that the sand loaded on the seized tractor was in accordance with the provision of the Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation & Storage) Rules, 2019, nor he had brought on record the mining lease agreement or any permit, duly issued by the concerned Mining Officer of the District. The tractor, alongwith the trolley loaded with sand, were seized in the Reserved Forest Area. It is gainful to reproduce the judgment passed by the Apex Court, in the case of *Sunderbhai Ambalal Desai v. State of Gujarat*,

(2002) 10 SCC 283, particularly in paragraph nos. 17 and 21, has made the following observations and issued directions, which are reproduced herein below:

“17. In our view, whatever be the situation, it is of no use to keep such seized vehicles at the police stations for a long period. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicles, if required at any point of time. This can be done pending hearing of applications for return of such vehicles.

21. However, these powers are to be exercised by the Magistrate concerned. We hope and trust that the Magistrate concerned would take immediate action for seeing that powers under Section 451 CrPC are properly and promptly exercised and articles are not kept for a long time at the police station, in any case, for not more than fifteen days to one month. This object can also be achieved if there is proper supervision by the Registry of the High Court concerned in seeing that the rules framed by the High Court with regard to such articles are implemented properly.”

However, considering the fact that an Appeal is still pending before the Collector concerned, I don't find it proper to interfere with the order.

5. Accordingly, the Collector is directed to expeditiously dispose of the Appeal in accordance with the law, taking into consideration the documents produced by the petitioner relating to the tractor, such as, Registration Certificate, validity of the Registration, as well as, the valid certificates duly issued by the Pollution Control Board, along

with valid Insurance Certificate, which were required to be valid atleast on the date of seizure i.e. 24.01.2021 or thereafter.

6. Appeal is pending since the year 2021, the District Magistrate is directed to pass order in accordance with law, well within a period of two weeks from the date of production of this order and in case, he finds that the petitioner has no case, then in that case, he must not wait even for a moment to keep the seized vehicle at the police station for a long time and proceed to auction sale, in accordance with the law. If the petitioner has filed any application for interim relief(s), the same should be disposed of by him, in accordance with the law.

7. With the aforesaid direction/observation, the present writ petition stands disposed of.

(Purnendu Singh, J.)

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