

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
(Constitutional Writ Jurisdiction)
APPELLATE SIDE**

Present:

The Hon'ble Justice Krishna Rao

WPA 565 of 2023

Surjeet Singh

-Versus-

The State of West Bengal & Ors.

Mr. Amales Roy
Mr. Deborshi Dhar
Ms. Oshmita Mukherjee
Mr. Nigam Mittal

.....For the Petitioner.

Mr. Joyjit Chowdhury, Ld. AAG
Ms. Bedashruti Bose
Mr. Hirak Barman

.....For the State.

Hearing Concluded On : 20.06.2024

Judgment on : 05.09.2024

Krishna Rao, J.:

1. The petitioner has filed the present writ application praying for the following reliefs:

“(a) An order or orders, direction or directions declaring that Section 59A(3) and (4) of the Indian Forest (West Bengal Amendment) Act, 1988 are ultra vires to the right to property as guaranteed under Article 300A of the Constitution of India;

(b) An order or orders, direction or directions declaring that the provision "Provided that it will not be necessary to make a report of such seizure to the Magistrate in the following cases, namely:- "(i); (ii) when the offence falls under the purview of section 59A, (iii), as inserted in place of proviso to sub-section 2 of section 52 of Indian Forest Act, 1927 vide Indian Forest (West Bengal Amendment) Act, 1988 is contrary the procedural safeguard as provided in sub-section 2 of section 52 of the Indian Forest Act, 1927 (resemblance of Section 157 of the Code of Criminal Procedure, 1973), arbitrary and oppressive;

(c) A writ and/or order or orders, direction or direction in the nature of certiorari commanding the respondents and each of them to transmit and certify the records of the case so that conscionable justice may be done by quashing the impugned order dated 20.12.2022, passed by the Appellate Authority, the respondent no. 4 in Misc. Appeal No. 59 of 2019 confirming the order of confiscation of the vehicle of the petitioner dated 26.08.2019, passed by the respondent no. 2;

(d) A writ and/or order or orders, direction or direction in the nature of prohibition prohibiting the respondents and each of them from giving effect to and/or further effect to the impugned order dated 20.12.2022, passed by the Appellate Authority, the respondent no. 4 in Misc. Appeal No. 59 of 2019 confirming the order of confiscation of the vehicle of the petitioner dated 26.08.2019, passed by the respondent no. 2;

(e) A writ and/or writs, order or orders, direction or directions in the nature of mandamus directing the

respondents and each of them from giving effect to and/or further effect to, rescind, recall, set aside the impugned order dated 20.12.2022, passed by the Appellate Authority, the respondent no. 4 in Misc. Appeal No. 59 of 2019 confirming the order of confiscation of the vehicle of the petitioner dated 26.08.2019, passed by the respondent no. 2;

(f) Rule NISI in terms of prayer (a), (b), (c), (d) and (e) as above;

(g) An order of injunction till disposal of Rule restraining the respondents and each of them from giving effect and/or further effect to the impugned order dated 20.12.2022, passed by the Appellate Authority, the respondent no. 4 in Misc. Appeal No. 59 of 2019 confirming the order of confiscation of the vehicle of the petitioner dated 26.08.2019, passed by the respondent no. 2;

(h) An order of injunction till disposal of Rule directing the respondents and each of them to release the subject vehicle to the registered owner, the petitioner on furnishing bank guarantee subject to the satisfaction of the Authorised Officer, the respondent no. 2;

(i) Ad-interim order in terms of prayer (g) and (h) as above;

(j) Costs and incidental to this petition;

(k) Such other order or further order or orders as to Your Lordships may deem fit and proper.”

2. The petitioner is the registered owner of the heavy vehicle bearing Registration No. HR-67B-3919. The petitioner engaged a driver, namely, Dinesh Kumar. The vehicle was engaged for transportation of Poultry feed from Unnat Feeds, Panipath to Unnat Poultry Feeds, Guwahati, Amingaon, Assam on 3rd June, 2019. The vehicle reached at Amingaon, Guwahati on or about 7th/8th June, 2019 and unloaded the goods. Unnat Poultry Feed, Guwahati with the consent of the

petitioner hired the vehicle for transportation of corn at Agartala, Tripura.

3. The Union Transport of India, Tinsukia, Assam hired the vehicle of the petitioner for transportation of Khayer wood from Tinsukia to Kundli, Sonipat, Haryana. For the purpose of transportation of Khayer Wood consignment note, tax invoice and transit pass of Forest Department, Nagaland were provided by the Union Transport of India.
4. On 14th August 2019, the petitioner was informed by the concern authority of the Union Transport of India that the vehicle of the petitioner was seized by the Forest Department. On receipt of information, the petitioner came to Belacoba Range and met with the Forest Ranger on 27th August 2019. On reaching, the Authorized Officer has issued show cause notice to the petitioner under Section 59(B)(2) of the Indian Forest (West Bengal Amendment) Act, 1988 with respect to confiscation proceeding. The petitioner has submitted his reply to the said show cause notice.
5. The Authorized Officer has also issued a summon dated 4th September, 2019 for personal hearing on 6th September, 2019 which was received by the petitioner on 25th September, 2019 but as per the record of the Forest Officials, the statement of the petitioner was recorded on 6th September, 2019.
6. On 26th September, 2019, the Authorized Officer had passed an order of confiscation of the vehicle under Section 59A(3) of the Indian Forest

(West Bengal Amendment) Act, 1988. Being aggrieved with the said order of confiscation, the petitioner had preferred an appeal before the Appellate Authority but the Appellate Authority had also confirmed the order of confiscation by an order dated 20th December, 2022.

7. Now the petitioner has raised an issue that Section 59A(3) and (4) of the Indian Forest (West Bengal Amendment) Act, 1988 are *ultra vires* to the right to property as guaranteed under Article 300A of the Constitution of India.
8. Sub-Section (3) of Section 59A provides that if the Authorized Officer is satisfied that a forest offence has been committed irrespective of the fact whether a prosecution has been instituted for commission of such offence or not, he may direct confiscation of vehicle in committing the offence. Sub-Section (4)(a) of Section 59A empowers the Authorized Officer to sell such confiscated vehicle by public auction. However, Clause (b) of Section 59A provides for refund of the amount fixed in the auction in the event the order of confiscation of vehicle is set aside or annulled under Section 59C or Section 59D thereof.
9. Section 59F contemplates that if the order of confiscation of the vehicle passed under Section 59A is confirmed under Section 59D, the proceeds of sale of the vehicle shall vest in the State Government from all encumbrances.
10. Mr. Amales Roy, Learned Advocate representing the petitioner submits that a confiscation proceeding is an independent of criminal

proceeding. The confiscation proceeding is a civil liability which is being incidental and ancillary to the conviction or acquittal. The process of confiscation and the process of prosecution are two separate procedures. He submits that there is no provision in the Indian Forest (West Bengal Amendment) Act, 1988 as like Section 6C of the Essential Commodities Act, 1955 to the effect that the confiscated vehicles or the proceeds of sale, vested in the State Government would be returned the registered owner thereof in the event, the criminal trial ends in acquittal.

- 11.** Mr. Roy submits that under the scheme of the Amendment Act of 1988, it would not be necessary to make a report of such seizure to the Magistrate in the case when the offence falls under the purview of Section 59A. He submits that Amendment of Section 54 and 56 of the principal Act further excludes the jurisdiction of Criminal Court in case of offence falls under the purview of Section 59A.
- 12.** Mr. Roy submits that illegal seizure amounts to deprivation of the property and by a reason of an order of confiscation, the owner thereof is deprived of his right of property as contained in Article 300A of the Constitution of India in as much as there is no such provision in the Amendment Act of 1988 that in case of acquittal in a criminal prosecution, the confiscated vehicle or the proceeds of sale will be returned to the owner.

13. Mr. Roy submits that Section 52 of the Indian Forest Act, 1927 resembles to Section 157 of the Code of Criminal Procedure. He submits that the purpose for sending the report to the concerned Magistrate is to keep the concerned Magistrate informed about the investigation of the cognizable offence so that the Magistrate may be able to control the investigation and if required, to issue appropriate directions. He submits that not only fair trial but fair investigation is also part of the Constitutional rights guaranteed under Article 20 and 21 of the Constitution of India. He submits that investigation must be fair, transparent and judicious and it is minimum requirement of rule of law. The Investigating Agency cannot be permitted to conduct an investigation in a biased manner. In support of his submission, Mr. Roy relied upon the judgment in the case of ***Pala Singh & Anr. -vs- State of Punjab*** reported in ***(1972) 2 SCC 640***.

14. Mr. Roy submitted that the legislation maker enacted Section 52(1) and (2) of the principal Act i.e. of the Indian Forest Act, 1927 in the light and spirit of the legislative object of Section 157 of the Code of Criminal Procedure. He submits that criminal prosecution is the safeguard against arbitrary and malafide exercise of powers by the Forest Officers and in case of serious irregularity in the investigation. By such Amendment of the Act, 1988, the Forest Officers have no obligation to make a report of seizure to the Magistrate in case of the offence falls under the purview of Section 59A.

- 15.** Mr. Roy submitted that Amendment of Section 52 of the principal Act read with Sections 54 and 56 of the principal Act wherein and whereby for making a report of seizure to the Magistrate has been excluded and resultantly the efficacy of criminal prosecution no longer remains in the case of the offence falls under the purview of Section 59A is liable to be declared unconstitutional under Articles 20 and 21 of the Constitution of India and against the procedural safeguard inasmuch as unbridled power has been given the Forest Officer in case of offence under Section 59A without any check and balance of the norms.
- 16.** Mr. Roy submitted that in the present case, it is clear from record that the statement of Sanjay Dutta, Forest Ranger dated 6th September, 2019, no seizure has been made at the time of interception of the vehicle near Tekatoli More, Maynaguri in terms of Section 52 (1) of the principal Act, although sub-section (3) of Section 52 of the Amendment Act of 1988 provides the power to the Forest Officer/ Police Officer to cause seizure of the goods and documents relating to goods carried, if the Forest Officer has reason to believe that a vehicle has been or is being used for the transport of any forest produce in respect of which a forest offence has been committed.
- 17.** Mr. Roy submitted that the expression “reason to believe’ means that the belief must have been arrived at judicially after considering all the materials and on prima facie satisfaction of the authority concern. In support of his submission, Mr. Roy relied upon the judgment in the

case of ***State of Maharashtra & Ors. -vs- Maharashtra Hybrid Seeds Company Private Limited*** reported in ***(2020) 18 SCC 635***.

18. Mr. Roy submitted that a Forest Officer brought the said vehicle with the goods from the place of interception to Belacoba Range which is about 15 Kms. away from the alleged place of interception without causing any seizure Memo. He submits that there is a procedural illegality or irregularity allegedly in causing measurement of the timber, loaded in the said vehicle at Belacoba Range without making any seizure at this point. He submits that there is every possibility that “Swam teak blocks” might not be found in the said vehicle while Khayer wood loaded in the said vehicle was supported by valid transit pass. He submits that neither any seizure Memo was provided to the driver or to the petitioner nor any seizure Memo was disclosed in the present proceeding along with the affidavit in opposition. He submits that neither the Authorized Officer nor the Appellate Authority has considered such procedural illegality either in the order of confiscation of the vehicle or in the order of the Appellate Authority wherein the order of confiscation was confirmed.
19. Mr. Roy submitted that in the show cause notice, it is mentioned that the Seizing Officer had a reasonable believe that the loaded forest product i.e. 10 nos. of teak blocks was collected from the State Government forest illegally but the Authorized Officer has not arrived at the concrete findings in support of the material documents or any tangible evidence either in the show cause notice or in the order of

confiscation as to how the said swam teak blocks were collected from the State Government forest.

20. Mr. Roy submitted that the summon was issued on 4th September, 2019 by fixing the date of personal hearing on 6th September, 2019 but the said summon was served upon the petitioner on 25th September, 2019 but the respondents have failed their affidavit-in-opposition to explain as to how on 6th September, 2019, the statement of the petitioner was recorded by the Forest Officials. He submitted that the Seizing Officer is vested with unbridled and unfettered powers with the scope of arbitrary and improper use of such power since it was not necessary to make a report of such seizure to the Magistrate in the case of the offences under Section 59A of the Amendment Act, 1988.

21. Mr. Roy has relied upon the following judgments in support of his submission:

- i. *(2004) 4 SCC 129 (State of W.B. & Ors. –vs- Sujit Kumar Rana).*
- ii. *(2022) 13 SCC 310 (Abdul Vahhab –vs- State of Madhya Pradesh).*
- iii. *(2017) 14 SCC 502 (State of Madhya Pradesh & Ors. –vs- Kallo Bai).*
- iv. *(2016) 7 SCC 703 (Cellular Operators Association of India –vs- Telecom Regulatory Authority of India & Ors.).*
- v. *2022 SCC OnLine SC 130 (Sate of Manipur & Ors. –vs- Surjakumar Okram & Ors.).*

- vi. (1972) 2 SCC 640 (*Pala Singh & Anr. –vs- State of Punjab*).
- vii. MANU/RH/0430/1997 (*Sawal Ram –vs- State of Rajasthan*).
- viii. (2010) 12 SCC 254 (*Babubhai –vs- State of Gujarat & Ors. With State of Gujarat & Ors. – vs- Ganeshbhai Jakshibhai Bharwad & Ors. With A.M. Bharwad & Ors. –vs- State of Gujarat & Ors.*).
- ix. (2020) 18 SCC 635 (*State of Maharashtra & Ors. –vs- Maharashtra Hybrid Seeds Company Private Limited*).
- x. (1979) 3 SCC 431 (*M. Karunanidhi –vs- Union of India & Anr.*).
- xi. 2024 SCC OnLine SC 114 (*Naresh Chandra Agrawal –vs- Institute of Chartered Accountants of India and Ors.*).
- xii. (2002) 1 SCC 495 (*State of W.B. –vs- Gopal Sarkar*).
- xiii. (2004) 4 SCC 129 (*State of W.B & Ors. –vs- Sujit Kumar Rana*).”

22. *Per contra*, Mr. Joyjit Chowdhury, learned Advocate representing the State submitted that the Forest Ranger, Range Officer, Belacoba Range being the Head of the Special Task Force, North Bengal has initiated a case against the petitioner on 31st July, 2019 and was forwarded to the Authorized Officer i.e. the Divisional Forest Officer, District of Jalpaiguri and Siliguri Sub-Division of Darjeeling District in the form of a report being No. 419/BLC-15 dated 1st August, 2019 for initiation of appropriate proceeding in accordance with law.

- 23.** Mr. Chowdhury submitted that as per report of the Range Officer on 31st July, 2019 at around 10:30 P.M., the Range Officer, Belacoba Range received a secret information while on patrolling at NH-31 along the Mayaguri Road that some persons are unlawfully transporting illegal forest-produce in the truck having Registration No. HB-67B/3919 and accordingly the said vehicle was intercepted near Jhajaangi at NH-31. He submits that during the search of the vehicle, it was found that 10 nos. of teak blocks measuring 0.773m³ was being illegally transported without any transit pass by hiding along with six tons of Khayer wood which was under a valid Transit Pass. The teak blocks were not covered under any Transit Pass and those did not have any Government hammer impression on the teak wood blocks. He submits that at the time of interception of the vehicle, the vehicle was abandoned at the National Highway and accordingly a General Diary was made with the Rajganj P.S. being Belacoba Range Memo No. 420/BLC-15 dated 1st August, 2019 and thereafter the vehicle was brought to Belacoba Range and was forwarded to the Authorized Officer in terms of the provisions of Section 59A of the Indian Forest Act, 1927 amended vide Section 17 of the Indian Forest (West Bengal Amendment) Act, 1988.
- 24.** Mr. Chowdhury submitted that show cause notice was issued to the petitioner and after hearing of the petitioner, it was found that the petitioner failed to satisfy how the forest-produce was unauthorizedly transported in the said vehicle and accordingly, the Authorized Officer

has passed an order on 26th September, 2019 by confiscating the vehicle of the petitioner in exercise of the powers vested under Section 59A(3) of the Indian Forest (West Bengal Amendment) Act, 1988. He submits that being aggrieved and dissatisfied with the order passed by the Authorized Officer dated 26th September, 2019, the petitioner has challenged the said order before the Learned Additional District Judge, 3rd (Special) Court, Jalpaiguri being Misc Appeal No. 59 of 2019 and the Learned Judge by an order dated 20th December, 2022, dismissed the appeal preferred by the petitioner and upheld the order passed by the Authorized Officer.

25. Mr. Chowdhury submitted that the petitioner has participated in the entire process of confiscation as provided under the Act and the West Bengal State Amendment Act and having failed to obtain favourable order, the petitioner has filed the present application which is not maintainable under law. He submits that Amendment has been brought after following due process of law and has all the procedural safeguards as required under law. He submits that sufficient opportunity was provided to the petitioner to submit the documents and other materials but the petitioner failed to produce sufficient evidence before the Authorized Officer which was also upheld by the Learned Judge in an appeal filed by the petitioner against the order of confiscation.

26. Mr. Chowdhury submits that the Indian Forest Act, 1927 and the subsequent amendment by the State of West Bengal is a special

legislation with aims and objects and the same has to be read along with its aims and objects. He submits that the petitioner cannot use improper and self-motivated interpretations which are contrary to the aims and objects of the Act. He submits that the petitioner failed to establish the merit of his case as per the established procedure provided under law, now the petitioner has taken the resort of Constitutional Court to challenge the entire procedural vires of the Acts without any valid and cogent reason.

27. Mr. Chowdhury relied upon the judgment in the case of ***State of West Bengal -vs- Gopal Sarkar*** reported in ***(2002) 1 SCC 495*** and submitted that the Hon'ble Supreme Court held that on a fair reading of provision of Section 59A (3) of the Act it is clear that in case where any timber or other forest produce which is the property of the State Government is produced under Sub-Section (1) and an Authorized Officer is satisfied that a forest offence has been committed in respect of such property he may pass order of confiscation of the said property (forest produce) together with all tools, ropes , chains, boats, vehicles and cattle used in committing the offence. He submits that the power of confiscation is independent of any proceedings of the prosecution for the forest offence committed.

28. Mr. Chowdhury submitted that the show cause notice issued to the petitioner stipulates 30 days' time to give reply but the petitioner himself choose to file the reply on the very next day and the respondents after considering the show cause submitted by the

petitioner and also following due process of law by sending summons to the petitioner, the Authorized Officer has passed an order of confiscation. He submits that the petitioner was present at the office of the respondent on 27th August, 2019 where he was served with the notice to show cause which was replied by the petitioner on 28th August, 2019 and the petitioner also requested the respondent no. 3 to grant short date of hearing as he has come from far of place and would return after completion of procedure and considering the request of the petitioner, the Authorized Officer provided a short date and the same was duly communicated to the petitioner. The petitioner has duly signed the deposition recorded by the office of the Authorized Officer on 6th September, 2019. He submits that the petitioner has never stated that the statement is not of the petitioner or he has not made any statement before the Authority.

- 29.** Mr. Chowdhury submitted that the entire proceeding was conducted as per the procedure of Indian Forest (West Bengal Amendment) Act, 1988 being the special law and hence the general procedure of Cr.P.C., would not be applicable in the present facts and circumstances of the case.
- 30.** Mr. Chowdhury submitted that Article 254 of the Constitution of India deals with inconsistency between laws made by the Parliament and laws made by Legislatures of the States. He submits that the conditions which must be satisfied before any repugnancy could arise when a clear and direct inconsistency between Central Act and the

State Act, inconsistency is absolutely irreconcilable and the inconsistency between the provisions of the two Acts is of such nature as to bring the two Acts into direct collision with each other and a situation is reached where it is impossible to obey the one without disobeying the other.

31. Mr. Chowdhury has relied upon the judgment in the case of ***M. Karunanidhi -vs- Union of India & Ors.*** reported in **1979 (3) SCC 431** and submitted that it is well settled that presumption is always in favour of the Constitutionality of the statute and the onus lies on the person assailing the Act to prove that it is unconstitutional.
32. Mr. Chowdhury relied upon the judgment in the case of ***The State of West Bengal & Ors. -vs- Sujit Kumar Rana*** reported in **(2004) 4 SCC 129** and submitted that forest is a national wealth which is required to be preserved. In most of the cases, the State is the owner of the forests and forest produces. Depletion of forests would lead to ecological imbalance and now it is well settled that the State is enjoined with a duty to preserve the forests so as to maintain ecological balance and, thus, with a view to achieve the said object forests must be given due protection. The provisions for confiscation have been made as a deterrent object so that felling of trees and deforestation is not made.
33. Heard the Learned Counsels for the respective parties, perused the materials on record and the judgments relied by the parties. The first issue raised in the present writ application is whether Section 59A (3)

and (4) of the Indian Forest (West Bengal Amendment) Act, 1988 are ultra vires.

- 34.** Section 59A to Section 59G are inserted by the West Bengal Act 22 of 1988. Section 59A to 59G of the Indian Forest (West Bengal Amendment) Act, 1988, reads as follows:

“59A. (1) *Notwithstanding anything contained in the foregoing provisions of this chapter or in any other law for the time being in force, where a forest-offence is believed to have been committed in respect of the timber or other forest-produce which is the property of the State Government, the Forest-officer or the Police-officer seizing the timber or other forest-produce under sub-section (1) of section 52 shall, without any unreasonable delay, produce the same, together with all tools, ropes, chains, boats, vehicles and cattle used in committing the offence, before an officer of a rank not inferior to that of an Assistant Conservator of Forests, authorised by the State Government in this behalf by notification in the Official Gazette (hereinafter referred to as the authorised officer).*

(2) *The State Government may, for any local area, authorise one or more officers under sub-section (1).*

(3) *Where any timber or other forest-produce which is the property of the State Government is produced before an authorised officer under subsection (1) and the authorised officer is satisfied that a forest-offence has been committed in respect of such property, he may, whether or not a prosecution is instituted for the commission of such offence, order confiscation of the property togetherwith all tools, ropes, chains, boats, vehicles and cattle used in committing the offence.*

(4) (a) *Where the authorised officer, after passing the order of confiscation of the property together with all tools, ropes, chains, boats, vehicles and cattle as aforesaid under sub-section (3), is of opinion that it is expedient in the public interest so to do, he may order such property or*

any part thereof and such tools, ropes, chains, boats, vehicles and cattle to be sold by public auction.

(b) Where the order of confiscation of any property or tools, ropes, chains, boats, vehicles or cattle under sub-section (3) is set aside or annulled under section 59C or section 59D, the proceeds of sale by auction shall, after deduction of the expenses of auction and other incidental expenses relating thereto, if any, be paid to the owner of such property or tools, ropes, chains, boats, vehicles or cattle or to the person from where the same was seized as may be specified in the order under section 59C or section 59D.

59B. *(1) No order confiscating any property or tools, ropes, chains, boats, vehicles or cattle shall be made under section 59A except after giving a notice in writing to the owner of, or the person from whom, such property or tools, ropes, chains, boats, vehicles or cattle have been seized, for showing cause as to why the same should not be confiscated and considering his objections, if any:*

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

Explanation.—"Motor vehicle" shall have the same meaning as in the Motor Vehicles Act, 1939.

(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 59A if the owner thereof proves to the satisfaction of the authorised officer that such tool, rope, chain, boat, vehicle or cattle was used in carrying the timber or other forest-produce without the knowledge or connivance of the owner himself or his agent, if any, or the person in charge thereof and that each of them had taken all reasonable and necessary precautions against such use.

59C. *Any Forest-officer of a rank not inferior to that of the Conservator of Forests specially empowered by the State Government in this behalf*

by notification in the Official Gazette may, suo motu, or on application by the aggrieved person call for and examine any record of any order under section 59A and may make such inquiry or cause such inquiry to be made and may pass such order as he deems fit:

Provided that no such record shall be called for after the expiry of thirty days from the date of the order under section 59A, and no order under this section shall be passed if, in the meantime, an appeal has been preferred under section 59D against any order under section 59A:

Provided further that no order prejudicial to any person shall be passed under this section without giving him an opportunity of being heard.

59D. *(1) Any person aggrieved by an order under section 59A or section 59C may, within thirty days from the date of communication to him of such order, prefer an appeal to the District Judge having jurisdiction over the area in which the property and the tools, ropes, chains, boats, vehicles or cattle have been seized and the District Judge shall, after giving the appellant and the Officer who passed the order an opportunity of being heard, pass an order confirming, modifying or annulling the order appealed against.*

(2) The order of the District Judge under subsection (1) shall be final and shall not be called in question by any Court.

59E. *Notwithstanding any order under section 59A or section 59C or section 59D, nothing in any of the said sections shall be deemed to prevent the award to any person affected by such order of any punishment to which such person is liable under this Act or any other law for the time being in force.*

59F. *When an order for the confiscation or sale by auction of any property or any tools, ropes, chains, boats, vehicles or cattle is passed under section 59A and is confirmed in whole or in part on revision under section 59C or on appeal under section 59D, such property or tools, ropes, chains, boats, vehicles or cattle or the proceeds of sale, as*

the case may be, shall vest in the State Government free from all incumbrances.

59G. *Notwithstanding anything to the contrary contained in this Act or in the Code of Criminal Procedure, 1973 or in any other law for the time being in force, the officer authorised under section 59A or the Forest-officer specially empowered under section 59C or the District Judge to whom an appeal may be preferred under section 59D shall have and any other officer or Forest-officer or Court, tribunal or authority shall not have jurisdiction to make orders with regard to the custody, possession, delivery, disposal or distribution of any property or tools, ropes, chains, boats, vehicles or cattle seized under section 52."*

- 35.** Chapter IX of the Indian Forest Act, 1927 provides for penalties and procedures. Sub-section (2) of Section 52 of the Indian Forest Act, 1927 contemplates that every officer seizing any property under this Section shall place on such property a mark indicating that the same has been so seized, and shall, as soon as may be, make a report of such seizure to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made.

Provided that, when the forest-produce with respect to which such offence is believed to have been committed is the property of the Government, and the offender is unknown, it shall be sufficient if the officer makes, as soon as may be, a report of the circumstances to his official superior.

- 36.** The scheme of Section 59A to Section 59G of the Indian Forest (West Bengal Amendment) Act, 1988, the Authorized Officer has been given powers to confiscate the seized timber or forest-produce and the

vehicle on a subjective satisfaction that the said timber or forest-produce is the property of State Government without initiation of any criminal prosecution for the commission of such forest offence. It is provided that a proceeding for confiscation can be initiated irrespective of the fact as to whether criminal prosecution for commission of the forest offence has been lodged or not. The confiscation proceeding is independent of a criminal proceeding. Section 59A (4)(b) provides that where the order of confiscation of any property or tools, ropes, chains, boats, vehicles or cattle under sub-section (3) is set aside or annulled under Section 59(c) or Section 59(d), the proceeds of the sale by auction shall, after deduction of the expenses of auction and other incidental expenses relating thereto, if any be paid to the owner of such property or tools, ropes, chains, boats, vehicles or cattle to the person from where the same was seized as may be specified in the order under Section 59C or Section 59D.

- 37.** On a fair reading of the provisions of Section 59A (3), it is clear that in a case where any timber or other forest-produce which is the property of the State Government is produced before an Authorized Officer under sub-section (1) and an Authorized Officer is satisfied that a forest-offence has been committed in respect of such property he may pass an order of confiscation of the said property together with all tools, ropes, chains, boats, vehicles and cattle used in committing the offence. The power of confiscation is independent of any proceeding of prosecution for the forest offence is committed.

- 38.** It is the contention of the petitioner that the illegal seizure amounts to deprivation of the property and by reason of an order of confiscation, the owner thereof is deprived of his right of the property as contained in Article 300A of the Constitution of India. It is further contention of the petitioner that there is no provision in the amended Act of 1988 that in case of acquittal in a criminal case, the confiscated vehicle or the proceeds of the sale will be returned to the owner.
- 39.** Section 59B provides that no order confiscating any property or tools, ropes, chains, boats, vehicles or cattle shall be made under Section 59A except after giving a notice in writing to the owner or the person from whom, such property or tools, ropes, chains, boats, vehicle or cattle have been seized for showing cause as to why the same should not be confiscated and considering his objection, if any. In the said Section, it is also provided that no order confiscating any 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 objection, if any.

Section 59C provides for revision and Section 59D provides for appeal against the order passed under Section 59A and 59C.

- 40.** Article 254 of the Constitution of India, reads as follows :

“254. Inconsistency between laws made by Parliament and laws made by the Legislatures of States. - (1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made

by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

(2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State:

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State.

41. In the case of ***State of Tamil Nadu –vs- P. Krishnamurthy*** reported in **(2006) 4 SCC 517**, the Hon'ble Supreme Court held that :

“15. *There is a presumption in favour of constitutionality or validity of a subordinate legislation and the burden is upon him who attacks it to show that it is invalid. It is also well recognised that a subordinate legislation can be challenged under any of the following grounds:*

(a) Lack of legislative competence to make the subordinate legislation.

(b) Violation of fundamental rights guaranteed under the Constitution of India.

(c) Violation of any provision of the Constitution of India.

(d) *Failure to conform to the statute under which it is made or exceeding the limits of authority conferred by the enabling Act.*

(e) *Repugnancy to the laws of the land, that is, any enactment.*

(f) *Manifest arbitrariness/unreasonableness (to an extent where the court might well say that the legislature never intended to give authority to make such rules).*

16. *The court considering the validity of a subordinate legislation, will have to consider the nature, object and scheme of the enabling Act, and also the area over which power has been delegated under the Act and then decide whether the subordinate legislation conforms to the parent statute. Where a rule is directly inconsistent with a mandatory provision of the statute, then, of course, the task of the court is simple and easy. But where the contention is that the inconsistency or non-conformity of the rule is not with reference to any specific provision of the enabling Act, but with the object and scheme of the parent Act, the court should proceed with caution before declaring invalidity.”*

42. The Hon’ble Supreme Court in the case of ***Naresh Chandra Agarwal –vs- Institute of Chartered Accountants of India & Ors.*** reported in **2024 SCC OnLine SC 114**, the Hon’ble Supreme Court has summarized the following legal principles in adjudicating cases where subordinate legislation are challenged on the ground of being “*ultra vires*” the Parent Act :

“(a) *The doctrine of ultra vires envisages that a Rule making body must function within the purview of the Rule making authority, conferred on it by the parent Act. As the body making Rules or Regulations has no inherent power of its own to make rules, but derives such power only from the statute, it must necessarily function within the*

purview of the statute. Delegated legislation should not travel beyond the purview of the parent Act.

(b) *Ultra vires may arise in several ways; there may be simple excess of power over what is conferred by the parent Act; delegated legislation may be inconsistent with the provisions of the parent Act; there may be non-compliance with the procedural requirement as laid down in the parent Act. It is the function of the courts to keep all authorities within the confines of the law by supplying the doctrine of ultra vires.*

(c) *If a rule is challenged as being ultra vires, on the ground that it exceeds the power conferred by the parent Act, the Court must, firstly, determine and consider the source of power which is relatable to the rule. Secondly, it must determine the meaning of the subordinate legislation itself and finally, it must decide whether the subordinate legislation is consistent with and within the scope of the power delegated.*

(d) *Delegated rule-making power in statutes generally follows a standardized pattern. A broad section grants authority with phrases like ‘to carry out the provisions’ or ‘to carry out the purposes.’ Another sub-section specifies areas for delegation, often using language like ‘without prejudice to the generality of the foregoing power.’ In determining if the impugned rule is intra vires/ultra vires the scope of delegated power, Courts have applied the ‘generality versus enumeration’ principle.*

(e) *The “generality versus enumeration” principle lays down that, where a statute confers particular powers without prejudice to the generality of a general power already conferred, the particular powers are only illustrative of the general power, and do not in any way restrict the general power. In that sense, even if the impugned rule does not fall within the enumerated heads, that by itself will not determine if the rule is ultra vires/intra vires. It must be further examined if the impugned rule can be upheld by reference to the scope of the general power.*

(f) *The delegated power to legislate by making rules ‘for carrying out the purposes of the Act’ is a general delegation, without laying down any guidelines as such. When such a power is given, it*

may be permissible to find out the object of the enactment and then see if the rules framed satisfy the Act of having been so framed as to fall within the scope of such general power confirmed.

(g) However, it must be remembered that such power delegated by an enactment does not enable the authority, by rules/regulations, to extend the scope or general operation of the enactment but is strictly ancillary. It will authorize the provision of subsidiary means of carrying into effect what is enacted in the statute itself and will cover what is incidental to the execution of its specific provision. In that sense, the general power cannot be so exercised as to bring into existence substantive rights or obligations or disabilities not contemplated by the provisions of the Act itself.

(h) If the rule making power is not expressed in such a usual general form but are specifically enumerated, then it shall have to be seen if the rules made are protected by the limits prescribed by the parent Act.”

- 43.** In the present case, the petitioner has challenged the ultra vires of Section 59A (3) and (4) of the Indian Forest (West Bengal Amendment) Act, 1988 wherein the power of confiscation has been provided to the Authorized Officer and after the order of confiscation of the property with all materials can be sold by public auction.

It is well settled that presumption is always in favour of the constitutionality of a statute and the onus lies on the person assailing the Act to prove that it is unconstitutional. Before any repugnancy can arise, following conditions must be satisfied:

- i. That there is a clear and direct inconsistency between the Central Act and the State Act.*
- ii. That such an inconsistency is absolutely irreconcilable.*

- iii. *That the inconsistency between the provisions of the two Acts is of such a nature as to bring the two Acts into direct collision with each other and the situation is reached where it is impossible to obey the one without disobeying the other.*

44. Section 2(3) of the Act reads thus:

“2.(3) ‘forest offence’ means an offence punishable under this Act or under any rule made thereunder;”

45. Sub-section (2) of Section 52 of the Act provides as under:

“52. (2) Every officer seizing any property under this section shall place on such property a mark indicating that the same has been so seized, and shall, as soon as may be, make a report of such seizure to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made:

Provided that, when the forest produce with respect to which such offence is believed to have been committed is the property of Government, and the offender is unknown, it shall be sufficient if the officer makes, as soon as may be, a report of the circumstances to his official superior.”

46. Sub-section (2) of Section 52 of the Act has been amended by the State of West Bengal in terms whereof the proviso thereto has been amended in the following terms:

“Provided that it will not be necessary to make a report of such seizure to the Magistrate in the following cases, namely—

- (i) *when the forest produce with respect to which each offence is believed to have been committed is the property of the State Government and the offender is unknown, it shall be sufficient to make a report of the circumstances to the official superior;*

- (ii) *when the offence falls under the purview of Section 59-A;*
- (iii) *when the offender agrees in writing to get the offence compounded;”*

47. Section 55 of the Act reads as under:

“55. Forest produce, tools etc., when liable to confiscation.—(1) All timber or forest-produce which is not the property of Government and in respect of which a forest offence has been committed, and all tools, boats, carts and cattle used in committing any forest offence, shall be liable to confiscation.

(2) Such confiscation may be in addition to any other punishment prescribed for such offence.”

48. The State of West Bengal inserted Sections 59-A to 59-G in the principal Act. Sub-section (1) of Section 59-A reads thus:

“59-A. Confiscation by Forest Officer of forest produce in the case of forest offence believed to have been committed.—(1) Notwithstanding anything contained in the foregoing provisions of this Chapter or in any other law for the time being in force, where a forest offence is believed to have been committed in respect of the timber or other forest produce which is the property of the State Government, the Forest Officer or the police officer seizing the timber or other forest produce under sub-section (1) of Section 52, shall, without any unreasonable delay, produce the same, together with all tools, ropes, chains, boats, vehicles and cattle used in committing the offence, before an officer of a rank not inferior to that of an Assistant Conservator of Forests, authorized by the State Government in this behalf by notification in the Official Gazette (hereinafter referred to as the authorized officer).”

49. Sub-section (3) of Section 59-A provides that if the authorized officer is satisfied that a forest offence has been committed irrespective of the

fact whether a prosecution has been instituted for the commission of such offence or not, he may direct confiscation of the property together with all tools, ropes, chains, boats, vehicles and cattle used in committing the offence. Sub-section (4)(a) of Section 59-A empowers the authorized officer to sell such confiscated property or any part thereof by public auction. Clause (b) of sub-section (4) of Section 59-A, however, provides for refund of the amount fixed in the auction in the event, the order of confiscation of such property or tools etc. is set aside or annulled under Section 59-C or Section 59-D thereof.

- 50.** Section 59-B postulates issue of notice to the owner of the property which is sought to be confiscated. The proviso appended thereto provides that no order of confiscation 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. Sub-section (2) of Section 59-B provides that in the event a person against whom an order of confiscation has been initiated proves to the satisfaction of the authorized officer that tool, rope or vehicle etc. was used in carrying the timber or other forest produce without the knowledge or connivance of the owner himself or his agent, if any, or the person in charge thereof and that each of them had taken all reasonable and necessary precautions against such use, no order confiscating the same shall be made. Section 59-C provides for a revision. Section 59-D provides for an appeal against such order to the District Judge having jurisdiction over the area in which the property

and the tools etc. have been seized against an order of confiscation. The District Judge after giving the appellant and the officer who passed the order an opportunity of being heard, may pass an order confirming, modifying or annulling the order appealed against. Sub-section (2) of Section 59-D attaches finality to the order passed by the District Judge and further provides that the same shall not be called in question in any court. Section 59-F provides that the confiscated property and proceeds of sale shall vest in the Government. Section 59-G of the Act creates a bar on the jurisdiction of court in certain cases, which is in the following terms:

“59-G. Bar of jurisdiction in certain cases.—*Notwithstanding anything to the contrary contained in this Act or in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, the officer authorized under Section 59-A or the Forest Officer specially empowered under Section 59-C or the District Judge to whom an appeal may be preferred under Section 59-D shall have and any other officer or Forest Officer or court, tribunal or authority shall not have jurisdiction to make orders with regard to the custody, possession, delivery, disposal or distribution of any property or tools, ropes, chains, boats, vehicles or cattle seized under Section 52.”*

51. Sections 67 and 68 read as under:

“67. Power to try offences summarily.—*The District Magistrate or any Magistrate of the First Class specially empowered in this behalf by the State Government may try summarily, under the Code of Criminal Procedure, 1898 (5 of 1898), any forest offence punishable with imprisonment for a term not exceeding six months, or fine not exceeding five hundred rupees, or both.*

68. Power to compound offences.—(1) *The State Government may, by notification in the Official Gazette, empower a Forest Officer—*

(a) to accept from any person against whom a reasonable suspicion exists that he has committed any forest offence, other than an offence specified in Section 62 or Section 63, a sum of money by way of compensation for the offence which such person is suspected to have committed, and

(b) when any property has been seized as liable to confiscation, to release the same on payment of the value thereof as estimated by such officer.

(2) On the payment of such sum of money, or such value, or both, as the case may be, to such officer, the suspected person, if in custody, shall be discharged, the property, if any, seized shall be released, and no further proceedings shall be taken against such person or property.

(3) A Forest Officer shall not be empowered under this section unless he is a Forest Officer of a rank not inferior to that of a Ranger and is in receipt of a monthly salary amounting to at least one hundred rupees, and the sum of money accepted as compensation under clause (a) of sub-section (1) shall in no case exceed the sum of fifty rupees.”

52. The provisions of law referred to hereinbefore leave no manner of doubt that upon seizure of forest produce, timber or vehicles etc. the authority concerned has an option to report the factum of such seizure both to the Magistrate concerned as also the authorized officer, save and except in the cases which would fall within the purview of the proviso appended to sub-section (2) of Section 52 of the Act, as amended by the State of West Bengal. The report in relation to such

seizure is required to be made either for: (1) confiscation of the seized property; (2) prosecution of the offender; or (3) for both.

53. The legislature has inserted the aforementioned provisions with a laudable object. Forest is a national wealth which is required to be preserved. In most of the cases, the State is the owner of the forests and forest produce. Depletion of forests would lead to ecological imbalance. It is now well settled that the State is enjoined with a duty to preserve the forests so as to maintain ecological balance and, thus, with a view to achieve the said object forests must be given due protection. Statutes which provide for protection of forests to maintain ecological balance should receive liberal construction at the hands of the superior courts. Interpretive exercise of such power should be in consonance with the provisions of such statutes not only having regard to the principle of purposive construction so as to give effect to the aim and object of the legislature; keeping the principles contained in Articles 48-A and 51-A(g) of the Constitution of India in mind. The provisions for confiscation have been made as a deterrent object so that felling of trees and deforestation is not made.

54. An order of confiscation of forest produce in a proceeding under Section 59-A of the Act would not amount either to penalty or punishment. Such an order, however, can be passed only in the event a valid seizure is made and the authorized officer satisfies himself as regards ownership of the forest produce in the State as also commission of a forest offence. An order of confiscation is not to be

passed automatically, and in terms of sub-section (3) of Section 59-A a discretionary power has been conferred upon the authorized officer in relation to a vehicle. Apart from the ingredients which are required to be proved in terms of sub-section (3) of Section 59-A by reason of the proviso appended to Section 59-B, a notice is also required to be issued to the owner of the vehicle and furthermore in terms of sub-section (2) thereof an opportunity has to be granted to the owner of the vehicle so as to enable him to show that the same has been used in carrying forest produce without his knowledge or connivance and by necessary implication precautions therefor have been taken.

Against an order of confiscation, an appeal is provided and only an order of the appellate court, who is a Judicial Officer, becomes final and binding but attaching finality to an order of the Appellate Court would not preclude a person aggrieved to move the High Court in judicial review.

Sufficient safeguards both substantive and procedural have, thus, been made against an arbitrary exercise of power.

- 55.** In view of the above, this Court does not find any reason to declare sub-section (3) and sub-section (4) Section 59A of the Indian Forest (West Bengal Amendment) Act, 1988 as *ultra vires*.
- 56.** Now the question whether the order of confiscation passed by the Authorized Officer dated 26th September, 2019 and the order passed

by the Learned Additional District Judge, 3rd (Special) Court, Jalpaiguri dated 20th December, 2022, required any interference.

57. The Authorized Officer has issued show cause notice upon the petitioner. As per the show cause notice issued by the Authorized Officer dated 27th August, 2019, the Range Officer, Belacoba Range and Head of Special Task Force, Belacoba, Baikunthapur Division, lodged a complaint dated 1st August, 2019, on the allegation that 31st July, 2019 at about 10.30 p.m. at night, the vehicle bearing No. HR-67B-3919 was in process of carrying timber having no valid authority and none was found to authenticate to produce on transit, the Seizing Officer had a reasonable belief that the loaded forest-produce was collected from State Government Forest illegally and accordingly the same were seized under Section 52(1) of the State Amendment of Indian Forest Act, 1927. In the said notice, it was also mentioned that the vehicle was carrying 10 numbers of Teak Blocks measuring volume of 0.773 M³ besides 6 metric tons of Khayer. Accordingly, a confiscation proceeding under Section 59A of the West Bengal Amendment Act of the Indian Forest Act, 1927 has been initiated. The registered owner of the vehicle is directed to submit a reply as to why vehicle should not be confiscated in favour of the State.

58. The petitioner being the registered owner of the vehicle has submitted his reply to the Authorized Officer stating that after 20 days of the incident, the petitioner came to know from the Union Transporters that his vehicle has been apprehended by the Forest Department. He

stated that his vehicle was loaded by the Union Transporters and after the loading of the vehicle, the bills were provided to the driver and driver had no knowledge what type of the wood have been loaded in the vehicle. His vehicle has been engaged to transport of the materials from one place to another place against which he is getting rent from the said vehicle. He is further stated that the said vehicle is only source of income of his.

- 59.** After receipt of the reply, the Authorized Officer had issued summons dated 4th September, 2019 address to the petitioner to appear before him on 6th September, 2019 at 02:00 P.M. As per the case of the Authorized Officer, the petitioner has appeared before the Authorized Officer on 6th September 2019 and has recorded his statement on the same date. The case of the petitioner is that though the summon was issued on 4th September, 2019 with the direction to appear on 6th September, 2019 but the said summons was sent to the petitioner by speed post which was received by the petitioner on 25th September, 2019 and as such question of recording of statement of the petitioner on 6th September, 2019, does not arise. Learned Counsel for the petitioner also pointed out that the statement contained four pages and in the last page of the statement though there is a seal recorded as “RECORDED IN MY PRESENCE”.

*Authorized Officer,
District of Jalpaiguri and
Siliguri Sub-Division of
District of Darjeeling.*

But no signature of the Authorized Officer is appearing in the said statement. It is the contention of the petitioner that on 6th September, 2019, the petitioner has not given any statement to the Authorized Officer but the Authorizer Officer has made the said document only for the purpose of confiscation of the vehicle of the petitioner illegally.

- 60.** In reply to the same, Learned Counsel for the respondents submitted that though summon was sent to the petitioner by speed post but the petitioner was present in the office of the Authorized Officer and accordingly, the statement was recorded.

On record, there is no document to show that the summons dated 4th September, 2019, was served upon the petitioner on or before 6th September, 2019. In the impugned order of confiscation dated 26th September, 2019, the Authorized Officer has stated that on receipt of reply, summons for hearing was issued to the petitioner to appear on 6th September, 2019 and the petitioner stated that the vehicle was given to the syndicate operation at Tinsukia in Assam and the petitioner claimed that he had no knowledge about the loading of the teak. The Authorized has not recorded any finding when the said summon was served upon the petitioner on contrary, the petitioner has disclosed the document to show that the office of the Authorized Officer, send summons to the petitioner by speed post being speed post receipt No. EW896302801IN and the same was delivered to the petitioner on 25th September, 2019. Thus, it is doubt whether the

petitioner was present before the Authorized Officer on 6th September, 2019 or not.

- 61.** As per record on the same day statement of other three persons were recorded, namely, Witness No.1 Tutun Biswas, Forest Guard, Witness No.2, Nilkanth Roy, Forest Guard and witness No.3, Sanjay Dutta, Forest Ranger. Statements of all three witnesses were recorded by computer typing and in the statement of none of the witnesses it is not recorded that who has recorded the statement of said witnesses. The statement of the petitioner is hand written and there is seal of the Authorized Officer but there is no signature of the authorized officer to establish that it was recorded by Authorized officer or is recorded in presence of the Authorized Officer or whether it was read over and explained to the petitioner.
- 62.** It is the specific case of the State that Mr. Sanjay Dutta, Forest Ranger on receipt of secret information of transportation of illegal timber on 31st July, 2019, along with other two forest guards and three SAP personnel apprehended the vehicle wherein 0.773 M3 of teak blocks were found and no valid document or transit pass was produced. Accordingly, the truck and the materials were seized. On the basis of the report of the Ranger Officer, the Authorized Officer has initiated the case. There is no document to show that the Forest Ranger has seized the said vehicle along with the materials. The Authorized Officer in the order dated 26th September, 2019, recorded that the vehicle was

seized by the Forest Ranger but there is no seizure list on record. Though the authorized officer alleged to have recorded the evidence of the witnesses who were present at the spot where the vehicle was intercepted as witness Nos. 1, 2 and 3 but none of the witnesses has identified any seizure memo or the alleged Teak Block. By an order dated 21st May, 2024, this Court directed the State to clarify in the written notes of argument with respect to the seizure of the vehicle and whether any criminal proceeding is initiated against the petitioner. The respondent nos. 2 and 3 have filed the written notes of argument but has not specified whether any seizure memo was prepared by the Range Officer with respect to the said vehicle or any criminal case is initiated against the said petitioner.

- 63.** In show cause notice dated 27th August, 2019, it is mentioned that the Range Officer has seized the vehicle under Section 52(1) of the Indian Forest Act, 1927. Section 52(1) of the Indian Forest Act, 1927 reads as follows:

“(1) When there is a reason to believe that a forest-offence has been committed in respect of any forest-produce, such produce, together with all tools, boats, carts or cattle used in committing any such offence, may be seized by any Forest-officer or Police-officer.”

- 64.** The Authorized Officer has proceeded with the matter on the basis of the seizure of the vehicle in which the alleged 0.773 M³ Teak Block was found in the vehicle but there is no document on record i.e. the seizure memo which is mandatory to prove the seizure.

In the case of **State of Maharashtra and Others -vs- Maharashtra Hybrid Seeds and Others** reported in **(2020) 18 SCC 635**, the Hon'ble Supreme Court held that:

“35. *The sine qua non of Section 14(1)(c) of the Seeds Act — “to enter and search in places at all reasonable times” is that the Seed Inspector must have “reason to believe that an offence under the Seeds Act has been or is being committed”. The expression “has reason to believe that an offence under the Seeds Act has been or is being committed....” implies a belief arrived at after consideration of the available materials with the sense of responsibility. For entering and search of any place, the statute stipulates “reason to believe that an offence under the Act has been or is being committed”, “reason to believe” means that the belief must have been arrived at judicially after considering all the materials and on prima facie satisfaction of the authority concerned. Section 26 of the Penal Code defines that “a person is said to have ‘reason to believe’ a thing, if he has sufficient cause to believe that thing but not otherwise”. Since the “sealing of premises” is a drastic step, such power can be exercised only in rare and exceptional cases and only on satisfaction of the Seed Inspector that such power of sealing is necessary to carry out the purposes of the Seeds Act or the Rules made thereunder.”*

- 65.** The Authorized Officer has recorded the statement of Sanjay Dutta, the Forest Ranger, Tutun Biswas, Forest Guard, Nilkant Roy, Forest Guard on 6th September, 2019 and all the witnesses have stated about the seizure of the vehicle along with the alleged teak blocks but no seizure list was produced or placed on record to prove the seizure and thus this Court hold that there is a doubt of the seizure on the basis of

which the Authorized Officer has proceeded with the matter and passed an order of confiscation.

66. The Learned District Judge while upholding the order of confiscation failed to consider the aspect with regard to the seizure. The Learned District Judge in his order, held that a case was started under Section 33(1) of the Indian Forest Act, 1927, Rule 3 of PDPT Act, 1984, punishable under Section 11(1) West Bengal Transit Rule, 1959 read with Sections 41, 42 and 76 of the Indian Forest Act, 1927 as amended in 1988. This Court failed to appreciate how to the Learned District Judge come to the conclusion for initiation of the criminal case as mentioned above, though there is no whisper either in the order of confiscation, passed by the Authorized Officer or the report submitted by the Ranger Officer. After going through the order of the Learned District Judge, this Court by an order dated 21st May, 2024, directed the State to clarify whether any criminal case is initiated against the petitioner or not but the State has also failed to clarify with regard to the same.

67. The Learned District Judge in its order dated 20th December, 2022 came to other findings to that of the Authorized Officer. It was not the case of the Authorized Officer that the petitioner being the owner has not disclosed the name of the driver/helper of the vehicle. But the Learned District Judge has come to the conclusion, the petitioner failed to disclose the name of the driver or helper to the Forest

Authority and due to the said Act, the Learned Judge has held that the petitioner has involved and had the knowledge of the said offence.

- 68.** The Learned District Judge has also not considered whether the petitioner was actually present before the Authorized Officer on 6th September, 2019 or not. The petitioner has produced the document to show that summon was served upon the petitioner only on 25th September, 2019, the procedure which the Authorized Officer has adopted for recording the statement of witnesses are also doubtful as the Authorized Officer has not signed in the statement of the witness to say that the same was recorded by the Authorized Officer.
- 69.** Considering the above, this Court finds no seizure list on the basis of which the Authorized Officer has passed an order of confiscation is brought on record to prove that actually on the alleged date of incident the Range Officer has seized the vehicle along with alleged Teak Block. It is also doubt that the petitioner was actually appeared before the Authorized Officer on 6th September 2019 through the summons was served upon the petitioner on 25th September 2019. No documents were produced to say that the summons was served upon petitioner prior to 6th September 2019. The alleged statement is also doubtful, there is no signature of the person, who has recorded the statement in whose presence the alleged statement was made.
- 70.** In view of the above, this Court finds that the order passed by the Authorized Officer dated 26th September, 2019 and the order passed

by the Learned District Judge dated 20th December, 2022, are deserved to be set aside and accordingly set aside.

71. WPA No. 565 of 2023 is partly allowed.

(Krishna Rao, J.)