
(2005) 01 SHI CK 0005
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 1158 of 2004

Chhotu Ram

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 05-01-2005

Acts Referred:

Forest Act, 1927 — Section 52, 52A, 52B, 55, 56

Citation : (2005) 1 ShimLC 440

Hon'ble Judges : M.R. Verma, J;A.K. Goel, J

Bench : Division Bench

Advocate : R.L. Chaudhary, for the Appellant; M.S. Chandel, General and D.C. Pathik, A.A.G., for the Respondent

Final Decision : Allowed

Judgement

M.R. Verma, J.—The Petitioner, herein, has claimed the following reliefs:

(i) that the Respondents may be directed to provide the R.C. alongwith other essential documents of vehicle No. HP-24-4617(LP) to the Petitioner within a time bound period;

(ii) that the Respondents may be directed to get changed the Registration Certificate in the name of State Government and thereafter the same may be changed in the name of the Petitioner as per law; and

(iii) that the Respondents may be directed to take back vehicle No. HP-24-4617(LP) and pay Rs. 8,29,488/- alongwith 12% interest to the Petitioner in lieu of loss faced by the Petitioner.

2. It is not in dispute that truck No. HP-24-4617 had been confiscated to the Government of Himachal Pradesh vide order dated 11.7.2001 (Annexure P-I) passed by the Authorised Officer-cum-Divisional Forest Officer, Karsog. Appeal preferred by Badri Ram, Ex-owner of the truck, against the aforesaid confiscation order stood dismissed by the learned Sessions Judge, Mandi vide judgment dated

3.5.2002 (Annexure P-2). The truck was thereafter auctioned in a public auction and the Petitioner being the highest bidder and having deposited the bid money, the Authorised Officer/Divisional Forest Officer ordered the release of the truck to the Petitioner vide order dated 5.2.2003 (Annexure P-3/A) and the Petitioner took possession of the truck on 12.2.2003 vide Annexure P-4. Thereafter, he got it repaired to make it roadworthy after spending considerable amount. However, the Registration Certificate and other Documents of the truck were not handed over to the Petitioner with the result that the truck could not be applied, therefore, he made an application (Annexure P-24) to the Authorised Officer for delivery of such documents including Registration Certificate to him. Thereupon, the Authorised Officer vide his letter dated 3.11.2003 (Annexure P-25) requested Respondent No. 5 to "change the registration certificate and other documents of the said vehicle" in the name of the Petitioner. Respondent No. 5, vide letter dated 22.11.2003 (Annexure P-27) informed Respondent No. 3 that the truck is under hypothecation with a finance company, therefore, the truck could not be transferred in the name of any person unless said hypothecation is cancelled and an NOC is obtained. Respondent No. 3, vide letter dated 19.12.2003 (Annexure P-28) reiterated the request for transfer of the documents of the truck in favour of the Petitioner on the premises that since the truck having been confiscated was State property and the Petitioner is the auction-purchaser, therefore, no formalities like getting NOC etc. are required to be complied with by the Petitioner. However, Respondent No. 5 did not take any action in the matter and such inaction on its part is illegal, unconstitutional and bad in law. Hence the present petition.

3. The Respondents did not choose to file replies to the petition.

4. We have heard the learned Counsel for the Petitioner and the learned Advocate General for the Respondents.

5. The expression "confiscation" has not been defined under the Indian Forest Act (hereafter referred to as "the Act") or the Code of Criminal Procedure (hereafter referred to as "the Code"). Therefore, the expression as used in the Act and the Code has to be given its ordinary meaning with reference to the context. Thus, the expression "confiscation" as used in the Act and the Code, unless the context otherwise requires, means a seizure and appropriation of property in favour of the State as a punishment for breach of law. Therefore, a confiscation order will extinguish the right, title and interest, if any, in the confiscated property which shall be deemed to have vested in the State free from all encumbrances, unless and until the order of confiscation is set aside in accordance with law.

6. Insofar as confiscation of any property as a consequence of the breach of forest laws is concerned, the Act provides a self-contained procedure therefore and the consequences which follow the order of confiscation.

7. Sections 52A and 52B of the Act, as applicable in the State of Himachal

Pradesh, empower the Authorised Officer to order confiscation of property seized u/s 52 and the procedure therefor. Sections 59A of the Act as applicable in Himachal Pradesh provides for suo moto revision of the order of Authorised Officer by a superior Forest Officer and Section 59(2) as applicable in Himachal Pradesh provides for appeal by any person aggrieved by an order passed under Sections 52A and 59A.

8. Sections 55, 56 and 57 of the Act also provides for confiscation and disposal of the property in respect of which a forest offence has been committed and Section 59 provides for an appeal against the order passed under Sections 55, 56 and 57. An order passed in the appeal whether u/s 59 or Section 59(2) (supra) shall be final.

9. In view of the above legal position the order dated 3.5.2003 (Annexure P-2) passed by the learned Sessions Judge dismissing the appeal of the earlier owner u/s 59(2) (supra) and confirming the order dated 21.9.2000 (Annexure P-I) of the Authorised Officer confiscating the truck has become final.

10. Section 60 of the Act as applicable to the State of Himachal Pradesh which provides for the consequences of the confiscation of the property under Sections 52A, 55 and 57 of the Act reads as under:

60. Property when to vest in Government.-When an order for the confiscation of any property has been passed u/s 55 or Section 57, as the case may, and the period limited by Section 59 for an appeal from such order has elapsed, and no such appeal has been preferred, or when, on such an appeal being preferred, the Appellate Court confirms such order in respect of the whole or a portion of such property, such property or such portion thereof, as the case may be, shall vest in the Government free from all encumbrances. (Emphasis supplied)

11. On a bare reading of the above provisions, it is clear that once the order of confiscation has become final, the confiscated property or sale proceeds thereof vests in the State Government free from any encumbrance. Therefore, even if the confiscated property is subject to any encumbrance, such encumbrance shall stand extinguished by operation of law and the ownership of the confiscated property shall vest in the State Government free from all encumbrances. If such property is auctioned/sold/transferred by the State Government to a third party, such party shall own it free from any encumbrance, that is without any liability on account of any encumbrance whatsoever attached to the confiscated property before its confiscation.

12. Therefore, in view of the provisions of Section 60 (supra), on confiscation of the truck, it vested in the Government of Himachal Pradesh free from any encumbrance and the Petitioner being the auction-purchaser of the truck acquired ownership thereof free from any encumbrance.

13. In view of the above position, the refusal of and inaction on the part of Respondent No. 5 to issue the registration certificate in respect of the truck in

question in favour of the Petitioner is bad in law.

14. As a result this petition is partly allowed and Respondents No. 1 to 3 are directed to take steps at the first instance to get the Registration Certificate of truck No. HP-24-4617(LP) prepared in the name of the State Government of Himachal Pradesh and then formally transfer the ownership of the truck in favour of the Petitioner within 10 days of the passing of this judgment and Respondent No. 5 is directed to issue the Registration Certificate of the said truck in favour of the State Government within 5 days of the receipt of request by him in this regard from any of Respondents No. 1 to 3 and thereafter, as and when the Petitioner makes an application/ request for issue of Registration Certificate of the said truck in his favour, Respondent No. 5 shall do the needful in view of the observations herein above and in accordance with law within 5 days of the receipt of such application/request from the Petitioner. In view of the relief herein above granted, the claim for relief No. (iii) has become infructuous and which is accordingly dismissed.

15. Costs on parties.