
(2020) 02 GAU CK 0032
In the Gauhati High Court
Case No : Criminal Petition No. 349 Of 2016

Hanif Ali Laskar

APPELLANT

Vs

Divisional Forest Officer, Hailakandi And 6 Ors

RESPONDENT

Date of Decision : 27-02-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 94, 115
Assam Forest Regulation (Amendment) Act, 1995 — Section 40, 45(3), 49(4), 49(A),
49(B), 49(C)
Code Of Civil Procedure, 1908 — Section 9, 47
Arbitration Act, 1940 — Section 30
Constitution Of India, 1950 — Article 227

Citation : (2020) 02 GAU CK 0032

Hon'ble Judges : Songkhupchung Serto, J

Bench : Single Bench

Advocate : M Khanikar

Final Decision : Dismissed

Judgement

1. This is a civil revision petition filed under section 115 of the Code of Civil Procedure, 1908 read with Article 227 of the Constitution of India,

directed against the order dated 08.06.2016, passed by the learned Civil Judge, Hailakandi in Misc Case No. 38/2013 which is connected with Title

Execution Case No. 31/2013 arising out of Title Suit No. 26/2010 of the Court of Civil Judge, Hailakandi.

2. Heard Mr. N. Dhar, learned counsel for the petitioner and also heard Mr. S. Biswas, learned Standing counsel who appears for all the respondents.

3. The facts and circumstances which led to the filing of this civil revision petition briefly stated are as follows;

On 22.07.2010, while the petitioner was transporting 152 pieces of teak wood on a hired truck bearing Registration No. AS-24/0764 to Silchar from his

village Mauja Shyampur under Katlicherra Revenue Circle, the respondent No.3 detained the truck and seized the timber. Thereafter, on 15.09.2010,

the petitioner served a notice to the respondents but since no positive action was taken for releasing the truck and his timber he filed a Title Suit No.

26/2010 before the Court of Civil Judge, Hailakandi on 23.11.2010 wherein he prayed for a decree directing the respondents to pay him damage for

pecuniary and non pecuniary loss suffered by him due to the detention of the hired truck and his seized timbers. The suit was contested by the

respondents. On 18.03.2013, the suit was disposed with a decree passed in his favour in which it was declared that he was entitled to get a sum of Rs.

22,27,000/- from the defendants for the loss suffered by him due to the seizure and detention of the hired truck and his timber. It was also decreed that

the defendants/respondents should pay the said amount to the plaintiff within 2(two) months from the date of passing of the judgment and decree.

Since the judgment and decree were not honoured by the respondents, the petitioner filed Title Execution Case No. 31/2013. While, the execution case

was pending, the respondents filed a Misc Application No. 30(A)/2013 praying for dismissal of the execution proceeding and at the same time praying

for stay of the execution proceeding till the disposal of the misc application. The main contention of the petitioner in the misc application (respondents

herein) was that under section-49(4) of Assam Forest Regulation (Amendment) Act, 1995, the District Forest Officer is the authority to deal with any

issue in respect of the seized forest produce and if any of the parties is not satisfied with the decision of the District Forest Officer they can approach

the District Judge under section 49(C) of the same Act. As such, the judgment and decree of the learned Civil Judge were passed without jurisdiction

and it cannot be executed. After hearing the parties, the learned Civil Judge passed the impugned order wherein he came to the conclusion that the

learned Civil Judge who tried the Title Suit had no jurisdiction to try the same, therefore, the judgment and decree passed in the suit are not

enforceable. Being aggrieved by this order, the petitioner is before this Court.

The relevant portions of the impugned order are reproduced here below;

â??3. After hearing both sides at length, it transpires that the subject matter is the Forest Produce and squarely falls within the Assam

Forest Regulation, 1891. There is no pale of controversy that on 22/07/2010 he

loaded 152 pieces of teak logs in vehicle No. AS/0764 for selling at Silchar though they had TP of only 50 pieces of log issued by the authority. On the way to Silchar, Range Officer, Matijuri and his staff detained the vehicle with logs along with TP dated 22/07/2010. In respect of detained forest produce, an offence report was submitted vide offence report No. M/12 dated 11/04/2010 which was accepted by the Divisional Forest Officer, Hailakandi and summoned the plaintiff to appear before him on 08/09/2010 for disposal of the said matter. The decree holder appeared but no appropriate step was taken. The owner of seized vehicle with forest produce instituted CR Case No. 1023/2010 before the learned C.J.M, Hailakandi against the plaintiff and prayed for issuance of search warrant u/s-94 of Cr.P.C for recovery of the vehicle but the learned C.J.M, Hailakandi rejected the prayer as the vehicle was seized u/s-49 of Assam Forest Regulation (Amended Act) 1995 which ousted jurisdiction of Criminal Court in respect of seizure, detention etc. of forest produce. However, O.P/D.H has contended that the truck loaded with logs kept detained without following the procedure as per Assam (Control of Felling and removal of trees from non-forest lands) Rules, 2002. The DFO, Hailakandi/petitioner accepted offence report No. M/12 dated 11/06/2010 and summoned the O.P/D.H quite illegally to appear before him on 08/09/2010 for disposal of the said matter. The O.P/D.H appeared accordingly, the DFO, Hailakandi fully confirmed about the seized properties, but till date no appropriate actions were taken from their side to handover the seized properties to the O.P/D.H. For the negligence and deficiency of service of the JD/petitioner caused pecuniary and no pecuniary damages to the O.P/D.H for which he instituted the Title Suit No. 26/2010 claiming damages.

4. Now the crux point to be determined- whether the court of Civil Judge was the competent court having jurisdiction to decide the T.S No.

26/2010 which was virtually arose of confiscating proceeding.

It's pertinent to state that the power conferred to the Executing Court under section 47 C.P.C is very limited. It's only applicable to

question relates to execution, discharge or satisfaction of the decree and it must arise between the parties to the suit in which decree was

passed or their representatives. Further, it's a settled proposition of law that Executing Court cannot go behind the decree unless it is

shown that it is passed by a court having inherent lack of jurisdiction, which would make it a nullity. (Relied on Bhawarlal Bhandari

â"versus- Universal Heavy Mechanical Lifting Enterprises, (1999) 1 SCC 558). In the present case, it's evident that the Decree Holder

did not take the recourse of special enactment/law i.e. The Assam Forest Regulation, 1891. He has directly filed the T.S No. 26/2010 in the

Court of Civil Judge and after trial obtained a judgment and decree dated 18-03-2013. As per Section-49-B, any person aggrieved of the

order passed by the Forest Officer not below the rank of Forest Range Officer, shall prefer a review petition before a Conservator of

Forest. Further, against the said order, Appeal may be preferred in the Court of District Judge within 30 days as per section 49-C of the

Assam Forest Regulation, 1891. Rather than doing that the O.P/D.H directly instituted T.S No. 26/2010 in the Court of Civil Judge and got

the decree in his favour. Thus, in view of the provision under section-49-A, 49-B and 49-C of the Assam Forest Regulation, 1891, I find, the

learned court Civil Judge has lack of inherent jurisdiction to try the suit. Consequently, the execution of decree in T. Ex. Case No. 31/13

passed in T.S No. 26/2010 is not enforceable being nullity. Accordingly, the instant Misc. Case stands disposed of.â"

4. The learned counsel for the petitioner submitted that the Executing Court which passed the impugned order has erred in having held that the trial

court did not have jurisdiction because it is not for the Executing Court to go behind the judgment but to execute the same as it were. The learned

counsel in support of his submission relied on the judgment of the Honâ"ble Supreme Court passed in the case of Bhawarlal Bhandari â"versus-

Universal Heavy Mechanical Lifting Enterprises, reported in (1999) 1 SCC 55.8 The relevant portions of the judgment of paragraph-9 are reproduced

here below;

â"9. The award dated 17.4.1985 was filed in the court on 23.3.1989 by the arbitrator and the court proceeded to deal with the question

whether the award should be made rule of the court or not. Notice was issued by the court to the respondent to show cause as to why this

award should not be made rule of the court. There is no dispute that this notice was served on the respondent. Despite such service of notice, for reasons best known to the respondent, it did not think it fit to contest the proceedings nor did it file any objection under Section 30 of the Arbitration Act, 1940. In the result, the court passed an award decree on 2.6.1989 on account of absence of any contest by the judgment debtor. It is true that this award decree was sought to be executed years thereafter. But the said delay on the part of the decree-holder in executing the decree within the permissible period for limitation in execution of such decree cannot give any sustainable right to the judgment-debtor to challenge the execution proceedings on that ground. The contention of Shri Javali, learned senior counsel for the respondent that the award was a mock one and was not intended to be enforced cannot be sustained as that stage has gone for the respondent. In execution proceedings such a contention requiring the executing court to go behind the decree cannot be sustained. The question whether the award decree was filed by the arbitrator on his own or not was a mixed question of law and fact. The Division Bench in the impugned judgment itself has noted that if the award was filed by the arbitrator suo motu the award decree cannot be said to be barred by limitation but if, on the other hand, the award was filed by the arbitrator at the instance of the appellant- decree-holder then the question of limitation would arise. The aforesaid observation of the Division bench itself indicates that this is a mixed question of law and fact. That was an issue to be raised before the award was made a rule of Court. But such a plea can never make the decree a nullity especially when the respondent for reasons best known to it did not think it fit to file objections under Section 30 of the Arbitration Act, 1940. It is well settled that the executing court cannot go behind the decree unless it is shown that it is passed by a court having inherent lack of jurisdiction, which would make it a nullity. In the case of *Ittavira Mathai v. Varkey Varkey and anr.* reported in (1964) 1 SCR 495, a Bench of four learned Judges of this Court speaking through Mudholkar, J. observed that when the question of limitation was not raised before the trial court or before the High Court it could not be raised for the first time before this Court even in the hierarchy of proceedings

arising from the suit when such question of limitation raised before the Court was not pure question of law but was a mixed question of law

and fact. In the case of Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehman and others, reported in (1971) 1 SCR 66, J.C. Shah, J.

speaking for a three-Judge Bench of this Court made the following pertinent observation in connection with the jurisdiction of the executing

court, when called upon to execute the decree and on the question as to under what circumstances the executing court can go behind the

decree sought to be executed. The observation at page 68 of the report deserves to be extracted in extenso:

“6. Court executing a decree cannot go behind the decree : between the parties or their representatives it must take the decree according

to its tenor, and cannot entertain any objection that the decree was incorrect in law or on facts. Until it is set aside by an appropriate

proceeding in appeal or revision, a decree even if it be erroneous is still binding between the parties. When a decree which is a nullity, for

instance, where it is passed without bringing the legal representatives on the record of a person who was dead at the date of the decree, or

against a ruling prince without a certificate, is sought to be executed an objection in that behalf may be raised in a proceeding for

execution. Again, when the decree is made by a Court which has no inherent jurisdiction to make it, objection as to its validity may be

raised in an execution proceeding if the objection appears on the face of the record : where the objection as to the jurisdiction of the Court

to pass the decree does not appear on the face of the record and requires examination of the questions raised and decided at the trial or

which could have been but have not been raised, the executing Court will have no jurisdiction to entertain an objection as to the validity of

the decree even on the ground of absence of jurisdiction. In Jnanendra Mohan Bhaduri and another v. Rabindra Nath Chakravarti the

Judicial Committee held that where a decree was passed upon an award made under the provisions of the Indian Arbitration Act, 1899, an

objection in the course of the execution proceeding that the decree was made without jurisdiction, since under the Indian Arbitration Act,

1899, there is no provision for making a decree upon an award, was competent. That was a case in which the decree was on the face of the

record without jurisdiction.

The learned counsel also referred to the judgment of this High Court passed in the case of Milan Kanti Das â?"versus- Pandav Chandra Paul,

reported in 2013(1) GLT 476. The contents of the paragraph-16 of the judgment are reproduced here below;

â??16. The petitioner judgment-debtor neither challenged the decree as nullity nor said that the decree in question cannot be executed in

his petition under section 47 of the Code for want of jurisdiction, and in absence of such challenge the executing Court has no other option

except to execute the decree. The aforesaid views of this Court get support from the decision of the Apex Court in Vasudev Dhankibhar

Modi â?"versus Rajabhai Abdul Rehman and Others, reported in AIR 1970 SC 1475 wherein the Apex Court noted, inter alia,

â??A Court executing a decree cannot go behind the decree : between the parties or their representatives it must take the decree according

to its tenor, and cannot entertain any objection that the decree was incorrect in law or on facts. Until it is set aside by an appropriate

proceeding in appeal or revision, a decree even if it be erroneous is still binding between the parties.

In the said decision, the Apex Court also noted that when the decree is made by a Court which has no inherent jurisdiction to make it,

objection as to its validity may be raised in an execution proceeding if the invalidity appears on the face of the record: where the objection

as to the jurisdiction of the Court to pass the decree does not appear on the face of the record and requires examination of the questions

raised and decided at the trial or which could have been but have not been raised, the Executing Court will have no jurisdiction to entertain

an objection as to the validity of the decree even on the ground of absence of jurisdictionâ??.

5. The learned counsel further submitted that the Executing Court which is none other than the court which passed the decree cannot declare its own

decree a nullity, it is the appellate court which only has the jurisdiction to do so. Therefore, the impugned order is erroneous and against the settled

principles of law. In support of his submission, the learned counsel referred to paragraph-8 of the judgment passed in the case of Rafique Bibi (dead)

by LR. "versus- Sayed Waliuddin (dead) by LR. & Others, reported in (2004) 1 SCC 28.7 The contents of the paragraph-8 are reproduced here

below;

8. A distinction exists between a decree passed by a Court having no jurisdiction and consequently being a nullity and not executable

and a decree of the Court which is merely illegal or not passed in accordance with the procedure laid down by law. A decree suffering from

illegality or irregularity of procedure, cannot be termed inexecutable by the executing Court; the remedy of a person aggrieved by such a

decree is to have it set aside in a duly constituted legal proceedings or by a superior Court failing which he must obey the command of the

decree. A decree passed by a Court of competent jurisdiction cannot be denuded of its efficacy by any collateral attack or in incidental

proceeding.

6. It is also submitted by the learned counsel that when the question of jurisdiction of civil court is raised the courts would normally lean in favour of

the construction which would uphold retention of jurisdiction of the civil court. The burden of proof in cases where jurisdiction of a civil court is

questioned lies with the party who asserts that civil court's jurisdiction is ousted. However, in this case, the respondents (the decree debtors) failed

to discharge such burden. Therefore, the Executing Court has committed error in having held that the trial court has no jurisdiction. In support of his

submission, the learned counsel referred to paragraph-22 of the judgment passed by the Hon'ble Supreme Court in the case of Dwarka Prasad

Agarwal & Another "versus- Ramesh Chander Agarwal & Others, reported in (2003) 6 SCC 220. The contents of the paragraph-22 are

reproduced here below;

22. The dispute between the parties was eminently a civil dispute and not a dispute under the provisions of the Companies Act. Section 9

of the Code of Civil Procedure confers jurisdiction upon the civil courts to determine all dispute of civil nature unless the same is barred

under a statute either expressly or by necessary implication. Bar of jurisdiction of a civil court is not to be readily inferred. A provision

seeking to bar jurisdiction of civil court requires strict interpretation. The court, it is well-settled, would normally lean in favour of

construction, which would uphold retention of jurisdiction of the civil court. The burden of proof in this behalf shall be on the party who

asserts that the civil court's jurisdiction is ousted. (See Sahebgouda (dead) by Lrs. and others vs. Ogeppa and others (2003(3) Supreme 13).

Even otherwise, the civil court's jurisdiction is not completely ousted under the Companies Act, 1956.â??

7. The learned counsel for the petitioner also submitted that the vehicle hired by the petitioner for carrying his timber was detained for a long time and

for that he had to pay the hiring charge for every passing day. Besides, his timber which would have sold in good value in the market if sold in time

have been damaged by the sun and rain due to the seizure and detention made by the respondents. Therefore, the petitioner had to seek a remedy

from a competent civil court. Anybody having a grievance has a remedy under the law and that is why he approached the civil court for redressal of

his grievances. Therefore, the Executing Court should have executed the decree.

The learned counsel further submitted that it was only the civil court who has the jurisdiction to give compensation and not the Forest department. In

support of his submission, the learned counsel referred to paragraph-11 of the judgment passed by the Honâ??ble Supreme Court in the case of

Bhagubhai Dhanabhai Khalasi & Another â?"versus- State of Gujarat & Others, reported in (2007) 4 SCC 24.1 The contents of the paragraph-11 of

the judgment are reproduced here below;

â??11. In Dwarka Prasad Agarwal (D) by Lrs. and Another v Ramesh Chander Agarwal and Others [(2003) 6 SCC 220], this Court held;

22. The dispute between the parties was eminently a civil dispute and not a dispute under the provisions of the Companies Act. Section 9 of

the Code of Civil Procedure confers jurisdiction upon the civil courts to determine all disputes of civil nature unless the same is barred

under a statute either expressly or by necessary implication. Bar of jurisdiction of a civil court is not to be readily inferred. A provision

seeking to bar jurisdiction of a civil court requires strict interpretation. The court, it is well settled, would normally lean in favour of

construction, which would uphold retention of jurisdiction of the civil court. The burden of proof in this behalf shall be on the party who

asserts that the civil courts jurisdiction is ousted. (See Sahebgouda v. Ogeppa)

Even otherwise, the civil courts jurisdiction is not completely ousted under the Companies Act, 1956.

The learned counsel further submitted that since the petitioner had a grievance of civil nature he has the right to institute a civil suit in a competent civil

court and the civil court has the jurisdiction to try such case since there is no express or implied bar by any statute. In support of his submission, the

learned counsel referred to the paragraph-12, 13 & 14 of the judgment passed by the Honâ??ble Supreme Court in the case of Rajasthan State Road

Transport Corporation & Another â??versus- Bal Mukund Bairwa (2), reported in (2009) 4 SCC 299. The contents of the three paragraphs are

reproduced here below;

â??12. Section 9 of the Code is in enforcement of the fundamental principles of law laid down in the maxim Ubi jus Ibi remedium. A litigant,

thus, having a grievance of a civil nature has a right to institute a civil suit in a competent civil court unless its cognizance is either

expressly or impliedly barred by any statute. Ex facie, in terms of Section 9 of the Code, civil courts can try all suits, unless bared by statute,

either expressly or by necessary implication.

13. The civil court, furthermore, being a court of plenary jurisdiction has the jurisdiction to determine its jurisdiction upon considering the

averments made in the plaint but that would not mean that the plaintiff can circumvent the provisions of law in order to invest jurisdiction on

the civil court although it otherwise may not possess. For the said purpose, the court in given cases would be entitled to decide the question

of its own jurisdiction upon arriving at a finding in regard to the existence of the jurisdictional fact.

14. It is also well settled that there is a presumption that a civil court will have jurisdiction and the ouster of civil court's jurisdiction is not

to be readily inferred. A person taking a plea contra must establish the same. Even in a case where jurisdiction of a civil court is sought to

be barred under a statute, the civil court can exercise its jurisdiction in respect of some matters particularly when the statutory authority or

Tribunal acts without jurisdictionâ??.

The learned counsel also referred to paragraph-17 of the judgment passed by this High Court in the case of Muslim Ali & Another â??versus- Ashok

Leyland Finance Limited & Others, reported in 2012 (5) GLT 184. The contents of the paragraph-17 are reproduced here below;

“(17) There is no doubt that fraud and justice never dwell together (*Fraus et jus nunquam cohabitant*). It is a settled principle that fraud

and deceit defend or excuse no man (*Fraus et dolus nemini patrocinari debent*). It is also a settled law that the Civil Court has inherent

jurisdiction to decide any dispute of civil nature concerning parties in particular facts and circumstances of the case though it would

apparently appear that such Civil Court is expressly or implicitly barred to entertain such suit. The decision by the Civil Court has to be

taken on particular facts and circumstances of the case where it would amount gross miscarriage of justice unless a civil suit is entertained.

In all the above reported cases, specific particulars of forgery and fraud were brought on record but in the case in hand no such

particulars of forgery or fraud prima facie brought on record. Whatever has been alleged in the Title Suit or in the petition before this

Court are of facts which ought to be stated before the Arbitrator while the arbitration proceeding was entertained but the petitioners waived

their right as they did not participate in the arbitral proceeding”.

8. The learned counsel also submitted that the Forest department has the power to seize wood or timber which are illegally sold or transported and

also have the power to confiscate them if found to be illegally sold or transported. But in this case, the timbers were grown in a non-forest land of the

petitioner for which due permission was granted and all formalities under the Forest Law were complied with even while transporting the same.

Therefore, there was no reason why the timbers of the petitioner and the truck hired by him should have been detained or seized. Even if it is assumed

for a moment that the Forest department had a reason to seize and detained the timbers and the truck they should have proceeded as per the law

provided but that did not happen in this case and that has led to huge monetary loss to the petitioner which cannot be redressed under the Forest Act

but only through civil court. Therefore, there is nothing wrong in the decree passed by the learned trial court.

The learned counsel further submitted that the case before the civil court was on compensation and not on confiscation, therefore, the learned civil

court was very much within its jurisdiction in passing the judgment and decree. The learned counsel referred to paragraph-6 of the judgment passed by

the Honâ??ble Supreme Court in the case of Ramesh Gobindram (deceased by LRs.) â??versus- Sugra Humayun Mirza Wakf, reported in AIR

2010 SC 2897 in support of his submission. The contents of the paragraph-6 are reproduced here below;

â??6. Even in cases where the statute accords finality to the orders passed by the Tribunals, the Court will have to see whether the Tribunal

has the power to grant the reliefs which the Civil Courts would normally grant in suits filed before them. If the answer is in negative

exclusion of the Civil Courts jurisdiction would not be ordinarily inferred. In Rajasthan SRTC v. Bal Mukund Bairwa (2), (2009) 4 SCC

299, a three-Judge Bench of this Court observed:

There is a presumption that a civil court has jurisdiction. Ouster of civil court's jurisdiction is not to be readily inferred. A person taking a

plea contra must establish the same. Even in a case where jurisdiction of a civil court is sought to be barred under a statute, the civil court

can exercise its jurisdiction in respect of some matters particularly when the statutory authority or tribunal acts without jurisdiction.

9. Mr. S. Biswas, learned counsel appearing for all the respondents submitted at the very outset that the civil court passed the judgment and decree

without jurisdiction, therefore, the judgment & decree is a nullity and it is not executable. To demonstrate, the learned counsel thereafter referred to

section-49 of the Assam Forest Regulation, 1891 and submitted that the timbers of the petitioner and the truck used were seized under this provision

and under this provision it is the Forest Officers who are competent to decide whether an offence has been committed or not and whether to

confiscate the timber and the vehicle used for transporting the same. Thereafter, in case, the owner of the timber is not satisfied he may appeal before

the District Judge under section-49(c) of the same regulation, therefore, the petitioner should have approached the forest authorities for release of his

timbers and truck but instead filed the civil suit in the civil court which has no jurisdiction on the matter.

The learned counsel further submitted that the petitioner was authorized to carry only 50 pieces of timbers but he was found carrying 152 pieces. As

such, the concerned officer of Forest department were of the view that he had violated the provision of section-40 of the Assam Forest Regulation

(Regulation VII of 1891). Therefore, the timbers and the truck used for transporting the same were seized and a report was submitted to the

Divisional Forest Officer-cum-authorized Officer, Hailakandi Division. And thereafter, the offence report was drawn up and submitted to the

authorized officer i.e. Divisional Forest Officer, Hailakandi, for confiscation proceeding under section-49 of the Assam Forest Regulation and it was

thereafter that the order No. M/12 of 2010, dated 10.05.2011 was passed by the authorized officer wherein the excess timbers of 76 pieces were

confiscated and 50 pieces of timbers covered under transport permit issued were released to the owner and the vehicle used for carrying the timbers

was released and the petitioner was fined a sum of Rs. 5,000/-. Therefore, if the petitioner was not satisfied with the order of the authorized officer

under the regulation he should have gone on appeal to the District Judge and not resort to filing of the civil suit to a civil court which has no jurisdiction.

The learned counsel further submitted that no compensation can be given to the petitioner in a case like this as the same is barred by section-45(3) of

the Assam Forest Regulation, 1891. The learned counsel in support of his submission referred to the judgment of the Honâ??ble Supreme Court in

the case of Vasudev Dhanjibhai Modi â??versus- Rajabhai Abdul Reehman & Others, reported in 1970(1) SCC 670, the relevant paragraph is

paragraph- 7. This judgment has been already cited by the learned counsel for the petitioner and it has been already reproduced.

10. In reply, the learned counsel for the petitioner submitted that in the trial before the civil court no pleading was made by the respondents as to the

alleged lack of jurisdiction of the trial court. The learned counsel also submitted that confiscation can take place only when the person who is

associated with the timber is convicted. In this case, the petitioner was not convicted, therefore, the question of confiscation of his timbers does not

arise. In support of his submission, the learned counsel cited the judgment passed in the case of Nathuni Singhâ??versus- Deputy Commissioner &

Another, reported in 1999 (3) GLT 604. The contents of the relevant paragraphs-1 to 4 are reproduced here below;

â??1. This revision petition has been filed by Nathuni Singh only against the order of the Deputy Commissioner, Karbi Anglong, Diphu

dated 19.07.91. The case of the prosecution in brief was that on the night of 23.10.90 Forest staff caught red handed Truck No. NLN 1939

along with its driver Surendra Kumar Das and some labourers. Ruck was alleged to have been loaded with six pieces of logs and was

proceeding towards Dimapur in a clandestine manner through jungle route avoiding forest check. According to the case of the prosecution

the logs were brought from Daldoli Reserve Forest. The said truck and logs were seized and the accused persons were arrested. The

petitioner was admittedly not present and was summoned at a later stage, he being the owner of truck.

2. The learned trial court after found only Surendra Kumar Das guilty of the offences under section 25/40/41 of the Assam Forest

Regulation. The petitioner has admittedly not been found guilty of any offence whatsoever. He has been acquitted primarily on the ground

that there was no direct involvement proved against him. However, the learned Deputy Commissioner while invoking the provision of section

51 of Assam Forest Regulation ordered the confiscation of the truck belonging to the petitioner to the State. It was ordered that the truck be

auctioned.

3. The counsel for the petitioner Mr. J. M. Choudhury, senior advocate has argued that once the petitioner has been acquitted of the

charge, his truck could not be confiscated. The argument has got force and deserves to be accepted. A bare reading of section 51 of the

Assam Forest Regulation 1891 makes it clear that the convicting court order the confiscation of the truck used in the commission of the

offence on finding owner guilty. The word any "person" if convicted of a forest offence clearly envisages that section 51 would come

into play only if a "person; is convicted of forest offence. If the petitioner had been convicted of any forest offence only then. Section 51

could be resorted to for ordering confiscation. Section 51 in view of the innocence of the petitioner could not be invoked by the learned

Deputy Commissioner. This is the only interpretation which can be given to section 51.

4. For the reasons recorded above the revision petition is allowed. The order of the Deputy Commissioner, in so far as it pertains the

petitioner, is hereby set aside.

11. I have considered the submissions of the learned counsel in the light of the facts and circumstances of the case and the relevant laws. Section-40

of the Assam Forest Regulation, 1891 empowers the State Government to control all the forest produce in transit by land or water and also to make

rules to regulate the transit of any forest produce and such rules may prohibit the import, export, collection or moving of forest produce without a pass

from an officer authorized to issue the same, or otherwise than in accordance with the conditions of such pass and when the rules made there under

are violated such forest produce together with all tools, boats, motorized boats, vessels, cattle, carts, rafts, machinaries, vehicles, trucks, ropes, chains

or any other implements, articles or materials used in the commission of such offence may be seized by any Forest Officer not below the rank of a

Forester or any Police Officer not below the rank of a Sub-Inspector of Police under the Assam Forest Regulation, 1891. And after the seizure, the

Officer who seized the forest produce and the tools or machinaries or vehicle is required to submit a report and produce the property seized articles

before an Officer not below the rank of Assistant Conservator of Forests authorized by the State Government on that behalf by a notification in the

Official Gazette, and when it is, having regard to the quantity or the bulk or of any other genuine difficulty, not practicable to produce the property

seized before the Authorized Officer, or where it is intended to launch prosecution against the offender, immediately make a report of such seizure to

the Magistrate having jurisdiction to try the offence on account of which the seizure has been made.

It is also provided that where the Authorized Officer upon production before him of the property seized or upon receipt of a report about seizure, as

the case may be, and after such personal inspection or verification as he may deem fit and necessary, is satisfied that a forest offence has been

committed in respect thereof, he may by order in writing and for reasons to be recorded therein, confiscate the forest produce so seized together with

all tools, vehicles, cattle, trucks, motorized boats, carts, rafts, vessels, ropes, chains or any other implements or articles used in committing such

offence. A copy of the order of confiscation shall, without any undue delay be forwarded to the Circle Conservator of Forests of the Circle in which

the forest produce has been seized and the Magistrate having jurisdiction to try the offence on account of which the seizure has been made. But such

order confiscating property should be passed by the Authorised Officer only after intimation in the prescribed form about the initiation of the

proceeding for confiscation of property to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made and

issue a notice in writing to the person from whom the property is seized, and such person is given a reasonable opportunity of making a representation.

Against the order passed under the provision of section-49 any person aggrieved may approach the Conservator of Forest specially empowered by the

State Government under section 49-C or may approach the District Judge under section 49-B by way of filing an appeal. The provisions of section 49,

49-B and 49-C are given here below;

49. Seizure of property liable to confiscation. (1) When there is reason to believe that a forest offence has been committed in respect of

any forest produce, such produce together with all tools, boats, carts and cattle used in the commission of such alleged offence may be seized

by any Forest Officer or Police Officer.

(2) Every officer seizing any property under this section shall place on such property, or the receptacle, if any, in which it is contained 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 person accused of the offence on account of which the seizure has been made:

Provided 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

superiors.

(3) Any Forest Officer or Police Officer may, if he has reason to believe that a vehicle has been or is being used for the transport of any

forest produce in respect of which any forest offence has been committed, require the driver or any other person or persons in-charge of

such vehicle to stop the vehicle and cause it to remain stationary as long as may reasonably be necessary to examine the contents in the

vehicle and inspect all records relating to the goods carried, which are in possession of such driver or other person in charge of the vehicle.

(4) Subject to the provisions of sub-Sections (5) and (6), where the authorised Officer upon production before him of the property seized or upon receipt of a report about seizure as the case may be, and after such personal inspection or verification as he may deem fit and necessary, is satisfied that a forest offence has been committed in respect thereof, he may, by order in writing and for reasons to be recorded therein, confiscate the forest produce so seized together with all tools, vehicles, cattle, trucks, motorised boats, carts, machineries, rafts, vessels, ropes, chains or any other implements or articles used in committing such offence. A copy of the order of confiscation shall, without any undue delay, be forwarded to the Circle Conservator of Forests of the Circle in which the forest produce has been seized and the Magistrate having jurisdiction to try the offence on account of which the seizure has been made.

(5) No order confiscating any property shall be made under the preceding provisions unless the authorised officer-

(a) sends an intimation in the prescribed form about the initiation of the proceeding for confiscation of property to the Magistrate having

jurisdiction to try the offence on account of which the seizure has been made;

(b) issue a notice in writing to the person from whom the property is seized, and to any other person who may appear to the authorised

officer to have some interest in such property and in cases of motorised boats, vessels, vehicles, trucks, etc., having a registered number to

the registered owner thereof;

(c) affords to the persons referred to in Clause (b) above a reasonable opportunity of making a representation within such reasonable time

as may be specified in the notice, against the proposed confiscation; and

(d) gives to the officer effecting the seizure and the person or persons referred to in Clause (b) or (c) above, a reasonable opportunity of

being heard on a date or dates to be fixed for the purpose.

(6) Notwithstanding anything contained in the foregoing provisions, no order of confiscation under sub-section (4) of any tools, boats,

motorised boats, vessels, cattle, carts, rafts, machineries, vehicles, trucks, ropes, chains, or any other implements, articles (other than timber

or forest produce) shall be made if any person referred to in Cl. (b) of sub-section (5) proves to the satisfaction of the authorised officer

that such tools, vehicles, machineries, trucks, vessels, boats, motorised boats, rafts, carts, cattle ropes, chain or any other implements, or

articles were used without his knowledge or connivance or abetment, or as the case may be, without his knowledge or connivance or

abetment of his servant or agent and that all reasonable and due precautions had been taken against the use of the object aforesaid for the

commission of forest offence.

49-B Review- Any Forest Officer not below the rank of a Conservator of Forest 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 or any

order under section 49(4) and may make such enquiry or cause such enquiry to be made and may pass such order as he deems fit :

Provided that no order under this section shall be made if in the meantime an appeal has been preferred under section 49-C :

Provided further that no order prejudicial to any person shall be passed without giving him a reasonable opportunity of being heard. :

49-C. Appeal -" Any person aggrieved by an order under section 49(4) or section 49-B 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 has been

seized and the District Judge shall after giving a reasonable opportunity of being heard to the parties, pass such order either varying,

confirming, modifying, annulling or setting aside the order appealed against and the order of the Court so passed shall be final.

Explanation- The time required for obtaining the certified copy of the order of confiscation or the order passed under section 49-B shall be

excluded while computing the period of thirty days referred to in this section."

12. Some of the undisputed facts are; the petitioner was given permission to transport only 50 pieces of timbers but he was found carrying 152 pieces

of timbers in a truck bearing Registration No. AS-24/0764 and for that the Officer

of Forest Department seized the timbers and the truck used for carrying the same; after the seizure were made the matter was reported to the Authorized Officer i.e. the Divisional Forest Officer, Hailakandi Division; the authorized officer passed the order under section 49 on 10.05.2011; the civil suit was filed on 23.11.2010 and the judgment and decree were passed on 25.03.2013.

The order dated 10.05.2011 of the Authorized Officer reveals that the owner of the seized vehicle appeared before the Authorized Officer on 30.09.2010 but did not appear in the proceedings thereafter. Further, the order dated 10.05.2011 reveals that the Authorized Officer ordered confiscation of 76 pieces which was the excess number of timbers-above the permission granted and released of 50 pieces of timbers covered under the transport permit to the owner and the released of the vehicle to its owner and imposition of a fine of Rs. 5,000/- on the petitioner. The operative portion of the order is reproduced here below;

â??ORDER

Based on the above finding I Dr. S.U. Choudhury, Divisional Forest Officer & Authorised Officer, Hailakandi Forest Division pronounced the ORDER as-

i). The excess timber 76 pieces are hereby confiscated to the State, the F.R.O Matijuri is directed to prepare lot by 76 Nos. of excess timber

for immediate disposal & released the 50 pieces of timber covered under T.P to the timber owner.

ii). As the excess timber loaded without knowledge of the vehicle owner & hence the vehicle is hereby released u/s 49(6) of AFR (Amended

1995) but with an undertaking that in future no illegal/irregular timbers will be loaded to the vehicle. The F.R.O Matijuri is to execute the

undertaking & also to execute the paper for handing over the vehicle to the owner on producing original R.C.

iii). For violation of transit Rules u/s 40 the penalty Rs. 5,000/- (Five thousand) imposed on the claimant of timber Hanif Ali Laskar. The

F.R.O, Matijuri is to realized the amount before releasing the vehicles with R.T. & to submit the report in due course.

The ORDER pronounced by me in exercise of power conferred as Authorised Officer-cum- D.F.O Hailakandi Forest Division on this day of

10th May, 2011 under my hand and seal.

Sd/- Divisional Forest Officer & Authorised Officer, Hailakandi Forest Division,
Hailakandi.â??

Further, it is also seen from the order that a copy of the order was forwarded to the Chief Judicial Magistrate, Hailakandi and the Conservator of

Forest, Southern Assam Circle and the Forest Range Officer. From the above stated facts and circumstances of the case, it can be concluded that the

respondents had proceeded under the relevant provisions of law. Therefore, if the petitioner was not satisfied he should have taken his options under

the law as aforementioned and not directly go to the civil court for claiming damages. It is only after succeeding in the proceedings as provided under

the law prescribed that he may approach the civil court for damage and not before.

Furthermore from the above undisputed facts, it appears that the petitioner approached the Civil Court while the proceeding under the Forest

Regulation was going on. The learned Civil Court at that point of time could not have assume jurisdiction as a proceeding under the Forest Regulation

was going on and, as it was still too early to take up the issue of damage at that point of time. From the judgments referred by both the learned

counsels, it is clear that a judgment passed without jurisdiction cannot be executed.

Therefore, I find no reason or reasons to interfere with the impugned order. Accordingly, the civil revision petition is dismissed.