
(2019) 05 GAU CK 0006
In the Gauhati High Court
Case No : Writ Petition (C) No. 628 Of 2012

Smt. Hawa Khatun

APPELLANT

Vs

State Of Assam And Ors

RESPONDENT

Date of Decision : 03-05-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 397, 401, 482
Assam (Control Of Felling And Removal Of trees from Non-forest Land) Rules, 2002 — Rule 2(B), 5
Assam Wood Based Industries (Establishment And Regulation) Rules, 2000 — Rule 2(e), 3
Assam Forest Regulations, 1891 — Regulation 3(4)

Citation : (2019) 05 GAU CK 0006

Hon'ble Judges : Sanjay Kumar Medhi, J

Bench : Single Bench

Advocate : M. H. Ahmed, Sudipta Dutta, S. C

Final Decision : Dismissed

Judgement

1. Heard Shri M. H. Ahmed, learned counsel for the petitioner. Also heard Shri S. Dutta, learned Standing counsel, Forest Department, representing all the respondents.

2. The writ jurisdiction of this Court is sought to be invoked by the petitioner by means of this writ petition whereby, she has put to challenge an order dated 09.11.2011, passed by the learned Sessions Judge, Dhubri, in C.R. No. 16(1)/2011 dismissing the Appeal of the petitioner against the order dated 05.03.2011, passed in O.R. No. D/60/2010-11 by the Assistant Conservator of Forest, Dhubri Division (Authorised Officer) confiscating the Saw Mill accessories from the premises of the petitioner.

3. The brief facts, as projected in the writ petition, may be culled in the following manner.

4. The petitioner had procured a Bend Saw Mill with its accessories with a

purpose of installing the same after obtaining licence from the authority. The same was necessary for sawing the Non Saal Trees produced in the plantation of the Patta Land of the petitioner's husband. It is the case of the petitioner that the machine in question was fixed inside her premises with a nails and bolts for safe custody. It has further been stated that some branches of the Sisoo trees were brought by the petitioner's husband by observing all formalities.

5. On 29.07.2010, there was a raid by officials of the Forest Department in which the aforesaid machineries were seized. It is the allegation of the petitioner that such seizure was made without any notice to the petitioner who was the owner of the property. Consequently, the Assistant Conservator of Forests (Authorised Officer) had passed an order dated 05.03.2011, confiscating the seized articles. Under the statute holding the field, an Appeal was preferred by the petitioner before the Appellate Court (Court of the Sessions Judge, Dhubri) and the learned Court vide judgment dated 09.11.2011 had dismissed the Appeal of the petitioner. Such determination being final in nature, the extra-ordinary jurisdiction of this Court has been sought to be invoked by filing this writ petition.

6. Shri M. H. Ahmed, learned counsel for the petitioner, submits that apart from the gross procedural irregularities, the entire confiscation was done in violation of the prescribed law holding the field. He submits that the confiscation was done without issuing any notice to the petitioner. The version given by the petitioner that the machine in question was yet to put into operation as there was no electricity connected to it has been ignored by the authorities. It has also been submitted that the version of the petitioner that the timber in question was sawn in another saw mill having valid licence have been overlooked by the authorities while making the seizure. The case of the petitioner as projected in the writ petition is that the petitioner was unnecessarily made a victim.

7. Assailing the order dated 05.03.2011, passed by the Assistant Conservator of Forests (Forest Officer), the learned counsel submits that the findings are erroneous as the authority proceeded with the presumption that the saw mill in question was already installed and was functioning. The conclusion arrived at by the Forest Officer, as reflected in the order dated 05.03.2011, are not correct and cannot be linked with the facts in question.

8. The learned counsel, Shri Ahmed, has further submitted that even the Appellate Court, namely, the Court of the learned Sessions Judge, Dhubri in the order dated 09.11.2011, which is impugned in this writ petition came to an erroneous conclusion. The learned counsel submits that the said judgment is based on surmises and conjectures and cannot be sustained in the eyes of law. Mr. Ahmed, learned counsel, emphatically submitted that the explanation given by the petitioner that the license was already applied for and in such anticipation, the saw mill was installed but not operated is a plausible explanation and the same has been wrongly rejected by the authorities adjudicating the issue. Shri Ahmed, learned counsel, also by referring to paragraph 5 of the writ petition, submits that the husband of the petitioner had also approached the Hon'ble

Supreme Court seeking direction for grant of licence which was however rejected. Under such condition, the entire exercise of confiscation was wholly unreasonable and legally unsustainable.

9. Referring to the Assam (Control of Felling & Removal of trees from Non-forest Land) Rules, 2002, more specifically, Rule 2 (B) (iii) which gives the definition of forest read with Rule 5 which is with regard to permission for felling of trees, the learned counsel submits that in the instant case, the trees were in the Patta Land of the husband, which is admittedly non-forest land and therefore, the views taken by the confiscating authorities are absolutely untenable. Shri Ahmed, learned counsel, has also referred to the written statement submitted to the show cause notice, wherein, it has been categorically stated that the seized materials were actually sawn in M/s MAA Bhanumati Saw Mill which had a valid license and the materials were not forest produce and therefore, there was no commission of any forest offence. The written statement had also mentioned certain T.P. which were with regard to the confiscated timber. The learned counsel submits that the present is a fit case for intervention by this Court by the confiscation as well as the Appellate order to be bad in law.

Per contra, Shri S. Dutta, learned Standing counsel, Forest Department, submits that the writ petition is itself not maintainable as the proceedings in question is in connection with a confiscation and the correct course to challenge such findings by the Appellate Court is by filing either by invoking Section 482 or Sections 397/401 of the Cr.P.C. The learned Standing counsel, submits that the Appellate authority is the Sessions Judge and therefore, a writ petition cannot be the proper course of action to challenge the decision rendered by the Sessions Judge as the Appellate authority.

10. As regards the merits of the challenge, the learned Standing counsel submits that the procedure prescribed by law has been duly fulfilled and vehemently denies that there has been any procedural impropriety in the entire exercise of confiscation. Shri Dutta, learned Standing counsel, by referring to the affidavit-in-opposition filed on 11.05.2012 and the annexures appended thereto, more specifically, Annexure B, submits that in the present proceeding there is a admission, dated 30.07.2010, of commission of the offence by the petitioner before the Divisional Forest Officer, Dhubri and in view of such submission, no further arguments are required. However, in spite of that, Shri Dutta, learned counsel, by referring to the written statement submitted against the show cause notice dated 27.08.2010, submits that the explanation put forward by the petitioner is not a plausible explanation and not convincing at all. Nothing has been said as to why there was a requirement of affixing the equipment in question in a permanent manner. By referring to the seizure report, Shri Dutta, learned counsel, submits that not only the equipment in question and its accessories, timbers along with saw dust were also seized. The learned counsel submits that unless the timber is sawn in that place, the existence of saw dust will not be there and that by itself is a prima facie evidence of having sawing

activities by the machine in question. The learned Standing counsel by referring to the Assam Forest Regulation, 1891, more specifically, Regulation 3 (4) which defines forest produce, submits that there is not any ambiguity that a timber is a forest produce. Referring to the Assam Wood Based Industries (Establishment and Regulation) Rules, 2000, which contains the definition of such wood based industries in Rule 2 (e), submits that such industries include saw mills and under the said Rules of 2000, more specifically, Rule 3 thereof, a wood based industry cannot be established or run without a valid license granted under these Rules. For ready reference, Rule 3 of the Rules of 2000 is quoted herein below - "3. Restriction on establishment of Wood-based Industries-

(1) No Wood-based Industries shall be established or run without a valid licence granted under these rules.

(2) Wood-based Industry, both existing and proposed shall be established and run only in the specifical areas as notified by the government for such purpose."

11. The rival contention of the learned counsels have been duly considered and the materials placed before this Court have been carefully examined.

12. As regards the first objection on the maintainability of this writ petition on the ground of validity of alternative remedy in the form of filing a criminal petition or a criminal revision petition, this Court is of the opinion that mere availability of an alternative form by itself will not be a bar for exercise of powers Court of judicial review by a writ court. Moreover, in the instant case, it would be the High Court only which will have jurisdiction to examine the validity or otherwise of the Appellate order passed by the learned Sessions Judge, Dhubri. In view of the above, this Court is of the opinion that the objection raised by the learned Standing counsel cannot be sustained.

13. Consequently, the case needs to be examined in its merits. The starting of the case is the raid and submission of the report dated 18.08.2010. A raid is made based upon the specific input/information to find out if any offence under the forest laws have been committed. In that view of the matter, the requirement of issuing notice before making a raid cannot arise at all. Consequently, the first submission that the raid and seizure was made without notice to the petitioner cannot be sustained. The seizure report states that amongst others, sawn timbers of Sisoo and even saw dust have been detected and seized. Though an explanation was sought to be given that along with the timbers which were shown in another license saw mill, the saw dust were also transmitted back, such explanation is not at all believable. If no activity of sawing is carried out in a particular place, there cannot be any saw dust existing. Further, the timber in question is of Sisoo which is itself a valuable one and not firewood as sought to be projected by the learned counsel for the petitioner. The order passed by the Assistant Conservator of Forest, dated 05.03.2011, has taken into consideration all the relevant facts and has come to a finding of commission to forest offence and accordingly had passed the order of confiscation. There is no manner of

doubt that the seized materials is a forest produce and for operating a saw mill which is a wood based industries, proper license is required. For the instant case, the materials on records lead to a inevitable conclusion that the saw mill/sawing machine in question was operated without a license and therefore, there is no illegality or impropriety found in the order of confiscation passed by the Assistant Conservator of Forest who is the Authorised Officer.

14. The Appellate authority which is the Court of learned Sessions judge, Dhubri, in the judgment dated 09.11.2011 has not only taken all the relevant facts into consideration but has also discussed those before coming to the conclusion that the appeal had lacked any acceptable grounds.

15. Reliance has been sought to be placed in a case of Nathuni Singh Vs. Deputy Commissioner & Anr., reported in 1999 (3) GLT 604. On a bare reading of the said decision, this Court is of the opinion that there cannot be any application to the law laid down with the facts of the case and in fact, the impugned action is in conformity with such law which has been laid down by this Court in the aforesaid decision. The forest officer before confiscation has already come to a finding for commission of a forest offence which is the requirement of law as laid down in the case of Nathuni Singh (supra).

16. In view of the aforesaid discussion, this Court is of the opinion that the petitioner has failed to make out a case for interference by this Court and accordingly, the writ petition stands dismissed.