
(2011) 08 OHC CK 0003

In the Orissa High Court

Case No : Writ Petition (C) No. 11054 of 2011

Sobulan Naik @ Subulan Nayak

APPELLANT

Vs

State of Orissa and others

RESPONDENT

Date of Decision : 09-08-2011

Acts Referred:

Orissa Forest Act, 1972 — Section 56(2)

Citation : (2011) 2 OLR 554

Hon'ble Judges : P. Mohanty, J;B.K. Patel, J

Bench : Division Bench

Judgement

1. Heard Mr. Chhinchani, learned counsel for the petitioner, and Mr. Sangram Das, learned Additional Standing counsel for the opposite parties 2 and 3.

2. This writ petition has been filed praying for a direction to opposite party no. 2 to release the tractor and its trolley bearing registration no. OR-18-A-1225 & OR-18-A-1226 respectively in favour of the petitioner in terms of the order passed by the appellate authority u/s 56(2-e) of the Orissa Forest Act, 1972.

3. Admittedly, the tractor and the trolley in question had been confiscated by order dated 12.12.2008 passed by opposite party no. 2 against which the petitioner preferred Criminal Appeal No. 2 of 2009 before the Additional Sessions Judge, Rayagada, who, by order dated 09.11.2010, set aside the order of confiscation and directed opposite party no. 2 to release the tractor and its trolley in question in favour of the petitioner.

4. In the second paragraph-1 of the counter affidavit filed by the opposite party no. 2, relying on an order of this Court passed in W.P. (C) No. 17017 of 2006 (State V Satyanarayana Panda) it has been pleaded that the Additional Sessions Judge, Rayagada has no jurisdiction to decide appeal preferred u/s 56(2-e) of the Act and set aside the order of confiscation passed by the Authorized Officer. Therefore, the Authorized Officer has sought for necessary permission to challenge the order passed by the Additional Sessions Judge.

5. Mr. Chhinchani, learned counsel for the petitioner states that the petitioner has already moved a petition before opposite party no. 2 annexing the order of the appellate authority for release of the tractor and its trolley, but till now no action has been taken.

6. Perused the record. It is the admitted case of the parties that the Additional Sessions Judge, Rayagada while setting aside the order of opposite party no. 2 has directed release of the tractor and its trolley forthwith in favour of the petitioner. In W.P. (C) No 17017 of 2006, on which the State is relying, this Court held that the Court of the learned Ad hoc Additional Sessions Judge (FTC) have been created with an intention to expedite the speedy trial of sessions case, it would have no jurisdiction to dispose of the appeal under the Forest Act. But in the instant case, the appellate order has been passed by the Additional Sessions Judge, Rayagada. The post of District Judge includes Additional District Judge u/s 5 of the Civil Courts Act. Therefore, Additional Sessions Judge, Rayagada is competent to hear and dispose of the appeal and the ground taken in the counter is not sustainable in the eye of law.

7. Accordingly, this Court directs the Authorized Officer-cum-Assistant Conservator of Forests, Rayagada Division (opposite party no. 2) to release the tractor and its trolley in question in favour of its registered owner forthwith without further delay.

8. It is open for the petitioner to file a suit for damage in accordance with law, if he is so advised.

9. The writ petition is disposed of.

10. Issue urgent certified copy.