
(2019) 07 PAT CK 0284

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 16283 Of 2016

Vinay Kumar Singh And Ors

APPELLANT

Vs

State Of Bihar Through Secretary And Ors

RESPONDENT

Date of Decision : 22-07-2019

Acts Referred:

Indian Forest Act, 1957 — Section 52(3)

Citation : (2019) 07 PAT CK 0284

Hon'ble Judges : Sanjay Priya, J

Bench : Single Bench

Advocate : Uma Shankar Singh, Alka Verma

Final Decision : Allowed

Judgement

Heard counsel for the parties.

As per prosecution case, on 26.02.2013, a joint raid was conducted by the Rohtas Police Force and officials of Rohtas Forest Division at Fazilpur Protected Forest and adjoining illegal mining areas at Village- Amara in Sasaram, Rohtas. During raid, persons involved in illegal mining attacked the raiding party by throwing stones on them. Firearms were also used by them for attacking the raiding party. During raid, altogether twenty-six vehicles (loaders, bulldozers, stone breakers, compressor machine, tractor-trailers, hammers etc.) were seized which included vehicle/machine of the petitioners. On the request made by the Range Officer of Forest, Sasaram, the Authorized Officer cum Divisional Forest Officer, Rohtas, initiated Forest Confiscation Case No.11/12(V) under Indian Forest Act, 1957.

The Authorized Officer-cum-Confiscating authority finding that sufficient proof was not produced in support of claim by petitioners confiscated the vehicle/machine under Section 52(3) of the Indian Forest Act, 1957, by order dated 15.10.2013.

The Petitioners filed appeal before the Collector, Rohtas, vide Forest Appeal

No.81 of 2013. The appellate authority found that witness No.2 produced by the petitioners in confiscation proceeding admitted that the vehicles/machines were seized from protected forest area. The appellate authority relying on aforesaid witness has dismissed the appeal by order dated 13.07.2015.

Revision was filed by the petitioners vide Forest Revision Case No.35 of 2015. The revisional authority dismissed the revision application on the same ground that vehicle/machine of the petitioners were seized from the protected forest area. The revisional authority has also held that petitioners has failed to establish that their vehicle/machine and compressor were not engaged in illegal mining and were not seized from protected forest area.

Being aggrieved by all the aforesaid three orders, instant writ application has been filed.

Counsel for the petitioners has submitted that the vehicle/machine was seized on 26.02.2012 and petitioners' lease agreement was valid till 27.02.2012. The vehicle/machine was not seized from the protected forest area, rather, same has been seized from the office of the petitioners M/s Devi Construction as mining work was going on behalf of the petitioners since lease was valid up to 27.02.2012.

This Court on perusal of the order of the confiscation authority (Annexure-2), appellate authority (Annexure-3) as well as revisional authority (Annexure-4) finds that none of these Courts have considered the submission of the petitioners that lease agreement of the petitioners with respect to mining in the aforesaid area was valid till 27.02.2019. The vehicles/machines were kept in the office of Respondents.

It is admitted position that vehicle/machine has been seized on 26.02.2012 from the place where office of the petitioners M/s Debi Construction is situated. Petitioners had parked various vehicles at his office for mining purpose legally on 26.02.2012. Vehicle of the petitioners (Stone breaker Machine) bearing Serial No.24954 and Engine No.10677659 has been confiscated by the confiscating authority.

This Court finds that only one ground has been given by all the three Courts while rejecting prayer of petitioners to release vehicle/machine that the same was recovered from protected forest area. There is no mention in all the three orders that the same was being used for illegal mining.

Therefore, the order dated 15.10.2013 passed by the Authorized Officer cum Confiscating Authority, Sasaram, in Confiscation Case No.11/12(V), order dated 13.07.2015 passed the appellate authority i.e. Collector, Sasaram, in Forest Appeal No.81 of 2013 and the order dated 16.05.2016 of the revisional authority passed in Forest Revision Case No.35 of 2015 are hereby set aside. The Respondent No.4 i.e. Authorized Officer cum Confiscating Authority, Sasaram, is directed to release the Vehicle (Stone breaker Machine) bearing Serial No.24954

and Engine No.10677659 of the petitioners after proper verification of the documents with regard to its ownership in favour of the petitioners subject to condition that petitioners will not transfer the ownership of the vehicle/machine or alienate the same during the pendency of criminal case in the Court below. The petitioner shall produce the vehicle/machine in Court as and when required. They will also file an Affidavit in this regard.

This writ application is, accordingly, allowed.