

Ashok Kumar Gupta Vs. State of Jharkhand and Ors

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Court : Jharkhand

Decided On : Aug-25-2017

Appellant : Ashok Kumar Gupta

Respondent : State of Jharkhand and Ors

Judgement :

W.P.(C) No. 2725 of 2001 (In the matter of an application under Article 226 of the Constitution of India) ----- Ashok Kumar Gupta, Son of Nand Kishore Prasad Gupta, resident of village- Baligarh, PS- Bhawnathpur, District- Garhwa . . . Petitioner --Versus-- 1. The State of Jharkhand 2. The Divisional Forest Officer, North Forest Division, Garhwa 3. The Forester, Bhawnathpur Forest Range, North Forest Division, Garhwa 4. Deputy Commissioner, Garhwa 5. Divisional Authority-Cum-Secretary, Ministry of Forest and Environment Department, Government of Jharkhand, Ranchi . . . Respondents For the petitioner : - Mr. Praveen Shankar Dayal, Advocate For the State-respondent : - Mr. Srijit Choudhary, Sr. S.C.-III, M/s. Kaustav Roy & C.S.Singh, J.C. to Sr. S.C.-III PRESENT HONBLE MR. JUSTICE RAJESH SHANKAR ----- By Court : Heard learned counsel for the parties.

2. The present writ petition has been filed for quashing the order dated 17.04.2000 passed in Confiscation Revision Case No.(C)- 13 of 1999 whereby the Respondent no.5 dismissed the revision application filed against the order dated 05.02.1999 passed in Confiscation Appeal No. 18 of 1998 by the Deputy Commissioner, Garhwa (respondent no.4) confirming the order dated 25.05.1998

passed by the respondent no.2 in Confiscation Case No. 01 of 1998 by which the vehicle of the petitioner was confiscated.

3. Learned counsel for the petitioner submits that a prosecution report no. 165P dated 03.01.1998 was lodged by one Md. Sharfuddin, Forester of Bhawanathpur, Forest Circle under Gharwa District. In the said report it was alleged that on 03.01.1998 at about 6.30 p.m. while he was on visit inside the Makari Protected Forest Area alongwith other persons, he saw a tractor bearing registration no.BR-15-5836 alongwith a trailer loaded with stone chips and as such he stopped the vehicle and asked for valid permit but no permit 2 was shown by the driver and as such the vehicle was seized and the driver was remanded to the judicial custody. Thereafter, an inquiry was conducted on 09.01.1998 and on the basis of the sketched map of the place of occurrence, the same was found under plot no.1696 which comes under the protected forest. Thereafter, a confiscation proceeding was started being Confiscation Case No.01 of 1998 and the petitioner was given notice by the Court of authorized officer- cum-Divisional Forest Officer, Garhwa, North Forest Division on 02.02.1998, which was replied by him. Both the parties adduced their evidences and finally the vehicle i.e. tractor along with the trailer was confiscated vide order dated 25.05.1998 by the respondent no.2. The petitioner preferred appeal before the respondent no.4 vide Confiscation Appeal No. 18 of 1998 but the same was also dismissed on 05.02.1999 against which the petitioner filed Confiscation Revision No. (C) 13 of 1999, which was also dismissed by the respondent no. 5 holding that the tractor along with trailer of the petitioner was engaged in the commission of forest offence in Makari Protected Forest area. Learned counsel for the petitioner while arguing the case, has put much emphasis on the fact that the petitioner has not committed any forest offence as alleged in the prosecution report. In fact, the petitioners tractor along with trailer was seized while carrying stone chips from the private land of one Miri Vishwakarma being plot no. 2179, Khata no. 280 which is outside the protected forest. However, none of the respondent authorities appreciated the said factual aspect raised by the petitioner.

4. The learned counsel appearing on behalf of the State- respondents submits that section 52(1) of Indian Forest Act, 1927 (Bihar Amendment, 1990) authorizes a

forest officer, police officer to seize any article used in commission of forest offence and as the forester is a forest officer within the meaning of Indian Forest Act, 1927 has rightly seized the tractor and trailer of the petitioner loaded with stone chips. It is further submitted that the reports of the Block 3 Development Officer and the Forest Protection Committee are without jurisdiction as all these reports are of later dates after the commission of offence. The stone chips was seized from the land of Makari Protected Forest which is notified under Section 29 of the Indian Forest Act, 1927 by Government of Bihar vide its notification no.150/C/PF-10/54/52-R dated 09.01.1953. It is further submitted that the map enclosed in the chargesheet indicates about the mining in about 0.05 decimals of forest land.

5. Having heard the learned counsel for the parties and on going through the relevant documents placed on record, it appears that in the prosecution report dated 03.01.1998 prepared by the Forester, Bhawnathpur, Garhwa, the total amount of loss caused to the Department of Forest has been mentioned as Rs.24,000/-, which includes the cost of stone chips as well as the penalty imposed under the Forest Conservation Act, 1980. On perusal of the order of confiscation dated 25.05.1998 passed by the Divisional Forest Officer, Garhwa, North Forest Division (respondent no.2), it appears that the petitioner contended before the said authority that his tractor was intercepted/seized while it was fetching stone chips from the private land pertaining to Khata no. 280, plot no. 2179 of one Miri Vishwakarma. It was further contended by the petitioner that the said Miri Vishwakarma also filed an application before the said authority to the effect that he was preparing his land for cultivation and used the tractor of the petitioner bearing registration no. BR-15- 5836 to remove the stones from the surface of the said land. The Malguzari receipt of the said land was also attached with the said application filed by Miri Vishwakarma. The said receipt was in the name of Mukund Ram/Mahendra Mistri and the said land was being cultivated for more than three years. The specific case of the petitioner before the confiscating authority (respondent no.2) was that the stone chips was not being carried from the forest area rather the same was being carried from the raiyati land of one Miri Vishwakarma situated at plot no. 2179 of Khata no.

280. However, on 4 perusal of the impugned order of confiscation dated 25.05.1998, it appears that the respondent no.2 rejected the said contention of the petitioner merely on the ground that those were only the afterthoughts at the instance of petitioner to make out a case that the stone chips was being taken from the raiyati land adjacent to the forest land. Thus, in my considered opinion, the confiscating authority- respondent no.2 committed an error in not determining the vital factual issue as to whether the stone chips was being removed from the raiyati land of one Miri Vishwakarma or from the forest land. The contents mentioned in the prosecution report prepared by the Forester, Bhawnathpur, Garhwa, could not have been treated as so sacrosanct as not to make any inquiry from his level with regard to the fact as to whether the stone chips was being removed from the raiyati land or from the forest land.

6. Learned counsel for the petitioner also invites the notice of the Court to the letter of the B.D.O, Bhawnathpur dated 11.07.1998 submitted to the Sub-Divisional Officer, Nagar Utari confirming the fact that the plot no. 2179 of Khata no. 280 is a raiyati land. Moreover, the report of Forest Protection Committee suggests that the stone chips was being carried by the tractor bearing registration no. BR-15- 5836 from the land of Miri Vishwakarma situated at Plot no. 2179 of Khata no.

280. The said report also reveals that the stone chips was not being removed from the forest area. It is immaterial that the said documents are subsequent to alleged commission of forest offence as the occasion for obtaining the said documents arose only after the vehicle of the petitioner was seized and the confiscation proceeding was started. Though the said documents were not produced before the confiscating authority, yet the same were put on record before the appellate as well as the revisional authorities. In that view of the matter, at least the appellate and revisional authorities were under legal obligation to remand the matter to the confiscating authority for determination of the aforesaid factual aspects being one of the major contentions of the petitioner in support of his plea of innocence in 5 commission of alleged forest offence. In absence of any factual determination as to whether the forest produce was being removed from the forest area or from the raiyati land adjacent to the forest area, in my considered view, the confiscating authority committed a vital error in passing an order confiscating the tractor and

the trailor of the petitioner. Perusal of the order of the appellate authority dated 05.02.1999 and the order passed by the revisional authority dated 17.04.2000 also reveals that though the said factual contentions were repeatedly raised by the petitioner but the same were not considered.

7. In view of the aforesaid facts and circumstances, the order dated 25.05.1998 passed by the respondent no.2 in Confiscation Case No. 01 of 1998 cannot be legally sustained and thus, the same is hereby quashed and set aside. The order dated 05.02.1999 passed by the respondent no. 4 in Confiscation Appeal no. 18 of 1998 and the order dated 17.04.2000 passed by the respondent no.5 in Confiscation Revision Case no. (C)-13 of 1999 are also set aside.

8. The respondent no. 2 is directed to release the security deposited by the petitioner in terms with the order dated 28.06.2001.

9. The writ petition is allowed with aforesaid observation and direction. (Rajesh Shankar, J.) Jharkhand High Court, Ranchi Dated:

25. 08.2017 Ritesh/A.F.R.

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