



GAHC010097222021

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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : 1) WRIT PETITION (C) No. 3198/2021

Maruti Timber and Furnitures, A Proprietorship Concern,
Represented by its Power of Attorney Holder, Sri Partha Pratim
Gogoi, S/o Sri Jatin Gogoi, Office situated at - Hanchara Chariali,
P.S. - Teok, District - Jorhat, Assam - 785683.

.....Petitioner

-Versus-

1. The State of Assam, Represented by the Commissioner and Secretary, Department of Environment and Forest, Government of Assam, Dispur, Guwahati-781006, Assam.
2. The Divisional Forest Officer, Department of Environment and Forest, Government of Assam, Dispur, Guwahati – 781006, Assam.
3. The Director and Principal Chief Conservator of Forest Head and Forest Force, Kaziranga National Park and Tiger Reserve, P.O. - Bokakhat, District – Golaghat, Assam, Pin-785612.
4. The Forest Ranger, Western Range, Bagori, Kaziranga National Part and Tiger Reserve, Department of Environment and Forest, Nagaon, Assam, Pin-782136.



5. The Investigation Officer-cum-Forester-I, Western Range, Bagori, Kaziranga National Park and Tiger Reserve, Department of Environment and Forest, Nagaon, Assam, Pin-782136.

.....***Respondents***

6. Dilip Kumar Singhania, C/o Lt. Kedarnath Tulip Tower, Flat No. 505, Stadium Road, Bareilly, P.O. - Bareilly, Uttar Pradesh, Pin-243001.

7. Forest Range Officer, Government of Nagaland, Sitap Range, Longleng Division, Nagaland-798625.

.....***Proforma Respondents***

With

2) WRIT PETITION (C) No. 3228/2021

Dilip Kumar Singhania, S/o Lt. Kedarnath Singhania, R/o Tulip Tower, Flat No. 505, Stadium Road, Bareilly, P.O. Bareilly, Uttar Pradesh-243001.

.....***Petitioner***

-Versus-

1. The State of Assam, Represented by the Commissioner and Secretary, Department of Environment and Forest, Government of Assam, Dispur, Guwahati-781006.

2. The Divisional Forest Officer, Kaziranga National Park and Tiger Reserve, Nagaon, Assam, Pin-782136



3. The Director and Principal Chief Conservator of Forest Head and Forest Force, Kaziranga National Park and Tiger Reserve, P.O. - Bokakhat, District - Golaghat, Assam, Pin-785612

4. The Forest Ranger, Western Range, Bagori, Kaziranga National Park and Tiger Reserve, Department of Environment and Forest, Nagaon, Assam, Pin-782136.

5. The Investigation Officer Cum Forester I, Western Range, Bagori, Kaziranga National Park and Tiger Reserve, Department of Environment and Forest, Nagaon, Assam, Pin-782136

.....***Respondents***

6. Forest Range Officer, Department of Forest, Government of Nagaland, Sitap Range, Longleng Division, Nagaland-798625.

.....***Proforma Respondents***

Advocates :

Petitioner in W.P.[C] no. 3198/2021

: Mr. D.K. Das, Advocate.

Petitioner in W.P.[C] no. 3228/2021

: Mr. R.K. Agarwal, Advocate.

Respondent nos. 1 - 5

: Mr. D. Gogoi, Standing Counsel.

Environment and Forest Department

Respondent no. 7 in W.P.[C] no. 3198/2021

& Respondent no. 6 in W.P.[C] no. 3228/2021: Ms. M. Kechij,

Senior Government Advocate, Nagaland

Date of Judgment & Order

: 13.06.2023



BEFORE
HON'BLE MR. JUSTICE MANISH CHOUDHURY
JUDGMENT & ORDER [ORAL]

Both the two writ petitions – W.P.[C] no. 3198/2021 & W.P.[C] no. 3228/2021 - have been preferred under Article 226 of the Constitution of India making inter alia assailment of a show cause notice dated 16.06.2021 issued by an officer in the respondent Forest Department in the rank of Forester – I [the respondent no. 5] who is the Investigating Officer of a forest offence, registered as case no. WR/16/2021, on 14.06.2021, purportedly in the capacity of the Authorised Officer under the Assam Forest Regulation, 1891, as amended.

2. The case of the petitioner in the writ petition, W.P.[C] no. 3198/2021 is that the petitioner firm, a proprietorship concern, is engaged in the business of buying and selling of Non-Timber Forest produce and furniture products. The petitioner in the writ petition, W.P.[C] no. 3228/2021 is the owner of a vehicle bearing registration no. UP-25/CT-7676 [Truck] [hereinafter referred to as 'the subject-vehicle', for short].

3. By the impugned show cause notice dated 16.06.2021, the petitioner in the writ petition, W.P.[C] no. 3228/2021 was called upon to produce 'legality and proof of original forest produce' relating to 17.591 CuM of Khair [Acacia Catechu] which were seized by the said authority, that is, the respondent no. 5 on 14.06.2021. By the show cause notice dated 16.06.2021, the respondent no. 5 by referring to the provisions of Section 49 of the Assam Forest Regulation, 1891 has asked the petitioner in the writ petition, W.P.[C] no. 3228/2021 to show cause as to why the subject-vehicle and Khair [Acacia Catechu] logs

measuring 17.591 CuM so seized, shall not be confiscated to the State. As the petitioner in the writ petition, W.P.[C] no. 3198/2021 is the owner of seized Khair [Acacia Catechu] logs measuring 17.591 CuM sought to be confiscated, it has preferred the writ petition challenging also the legality and validity of the show cause notice dated 16.06.2021, like the petitioner in the writ petition, W.P. [C] no. 3198/2021.

4. As the subject-matter of challenge in the two writ petitions is common and the factual matrices are inter-connected, both the writ petitions are taken up together for final consideration at the admission stage itself, at the request and instance of the learned counsel for the parties.

5. The common facts which are projected in the two writ petitions can be stated, in brief, as follows : The petitioner firm, M/s Maruti Timber and Furnitures has claimed that it had brought 26,000 Kgs of Khair [Acacia Catechu] by paying requisite royalty from the State of Nagaland and according to it, Khair [Acacia Catechu] in the State of Nagaland is classified as Non-Timber Forest Product [B-Grade Quality] by the Forest Department, Nagaland. It is stated that the said quantity of Khair [Acacia Catechu] was obtained validly vide Transit Pass no. 142909 under Book No. 2801 dated 03.06.2019 and the said Transit Pass permitted the petitioner firm to transport the said quantity of Khair [Acacia Catechu] from Sitap, Nagaland via Sonari, Tinsukia to M/s JMB Industries, Khasra, Sonipat, Haryana through a vehicle bearing registration no. UP-25/CT-7676 [Truck], that is, the subject-vehicle, belonging to the petitioner in the other writ petition, W.P.[C] no. 3228/2021.



6. I have heard Mr. D.K. Das, learned counsel for the petitioner in the writ petition, W.P.[C] no. 3198/2021 and Mr. R.K. Agarwal, learned counsel for the petitioner in the writ petition, W.P.[C] no. 3228/2021. I have also heard Mr. D. Gogoi, learned Standing Counsel, Environment and Forest Department for the respondent nos. 1 – 5 in both the writ petitions; and Ms. M. Kechii, learned Senior Government Advocate, Nagaland for the respondent no. 7 in the writ petition, W.P.[C] no. 3198/2021 and the respondent no. 6 in the writ petition, W.P.[C] no. 3228/2021.

7. Both Mr. Das and Mr. Agarwal, learned counsel for the petitioners in the two petitions have submitted in similar lines. It is submitted that the Transit Pass dated 03.06.2019 permitted transportation of the said quantity of 26,000 Kgs of Khair [Acacia Catechu] by the subject-vehicle and the Transit Pass was valid till 06.07.2021. In support of such submissions, attention is drawn to the copies of the Transit Pass dated 03.06.2019, e-Way Bill dated 12.06.2021, Tax Invoice dated 12.06.2021, etc., annexed to the writ petitions. By referring to a notification issued by the Government of Nagaland published in the Nagaland Gazette on 30.04.2018, it is contended that Khair [Acacia Catechu] is included as Non-Timber Forest Product in the State of Nagaland. It is, thus, contended that the Khair [Acacia Catechu] carried in the subject-vehicle was Non-Timber Forest Produce in the State of Nagaland. When the said quantity of Khair [Acacia Catechu] was being transported through the subject-vehicle, the subject-vehicle was intercepted by a Forest Officer in the rank of Forester-I as the Investigating Officer, Western Range, Bagori, Kaziranga National Park & Tiger Reserve, Nagaon [the respondent no. 5] at Deopani area on the National Highway no. 37 under Jakhalabandha Police Station, Nagaon at around 07-30



P.M. on 14.06.2021. It is the case of the petitioners that on being so intercepted during the course of transportation of 26,000 Kgs of Khair [Acacia Catechu] logs by the Forester – I on 14.06.2021, the supporting documents like Transit Pass, e-Way Bill, Tax Invoice, etc. were shown to him stating that the said 26,000 Kgs of Khair [Acacia Catechu] logs were being transported for M/s JMB Industries, Khasra, Sonipat, Haryana. But the Forester – I / Investigating Officer seized both 26,000 Kgs of Khair [Acacia Catechu] logs and the subject-vehicle along with other documents vide a Seizure List dated 14.06.2021, prepared under his signature as the Seizing Officer. Subsequent to such seizure, the Forester – I / Investigating Officer issued the show cause notice upon the petitioner in the writ petition, W.P.[C] no. 3228/2021 on 16.06.2021 asking him to show cause as to why the subject-vehicle and Khair [Acacia Catechu] logs shall not be confiscated to the State. It is contended on behalf of the petitioners that the impugned show-cause notice dated 16.06.2021 issued by the Forester – I / Investigating Officer is without any authority and jurisdiction as he has not been vested with the power to issue such a show cause notice under the provisions of the Assam Forest Regulation, 1891, as amended. It is further contended that as the impugned show cause notice is non-est in law, all the consequential acts based on the show cause notice are also bad.

8. Mr. Gogoi, learned Standing Counsel, Environment and Forest Department appearing for the respondent authorities in the Forest Department has referred to the statements and averments made in the affidavit-in-opposition filed by the respondent no. 5, who is the Investigating Officer/Seizing Officer in the rank of Forester – I in the Forest Department, Assam. By referring to the statements and averments made therein, Mr. Gogoi has submitted that the authorized



officials from the Western Range, Bagori, Kaziranga National Park & Tiger Reserve seized forest produce i.e. Khair [Acacia Catechu] logs [1100 pieces] from the subject-vehicle on 14.06.2021 as the same were being found transported in violation of the provisions of Sections 33, 40, 41, 49[4] & 63 of the Assam Forest Regulation, 1891. The Seizure List was accordingly prepared thereafter. Reference is made of the letter issued by the Forest Range Officer, Sitap Range, Nagaland on 22.06.2021 certifying that Transit Pass no. 142909, to contend that there is no connection between the Transit Pass and the Khair [Acacia Catechu] logs seized from the subject-vehicle. As the Khair [Acacia Catechu] logs were found being transported through the subject-vehicle are allegedly Forest Produce, the show cause notice dated 16.06.2021 was the natural consequence as per law and the same was accordingly issued to the owner of the subject-vehicle asking him to show cause as to why the seized Khair [Acacia Catechu] logs and the subject-vehicle should not be confiscated to the State. In response to the show cause notice dated 16.06.2021, the owner of the subject-vehicle submitted his reply on 28.06.2021 contending that the Khair [Acacia Catechu] logs carried in the subject-vehicle were classified as Non-Timber Forest Produce as per letter dated 22.06.2021 of the Forest Range Officer, Sitap Range, Nagaland. After coming to know about service of the show cause notice dated 16.06.2021 upon the owner of the subject-vehicle, a reply to the same was submitted on behalf of the petitioner firm, who is the owner of the Khair [Acacia Catechu] logs carried in the subject-vehicle, on 28.06.2021. Mr. Gogoi has submitted that the respondent no. 5 after considering the grounds taken in their replies to the show cause notice dated 16.06.2021, by his order dated 29.07.2021 had rejected the same with a direction to initiate confiscation process under Section 49[4] of the Assam Forest Regulation, as amended, and



for issuance of notice under Section 31[a] to the owner of the subject-vehicle. It is submitted by Mr. Gogoi that the show cause was in the form prescribed under the Assam Forest Regulation, 1891, as amended.

9. I have duly considered the rival submissions advanced by the learned counsel for the parties and have also gone through the materials brought on record by the parties through their pleadings. I have also gone through the provisions of the Assam Forest Regulation, 1891, as amended, as well as the contents of the notice dated 16.06.2021.

10. The main issue that has fallen for consideration of this Court is the legality and validity of the impugned show cause notice dated 16.06.2021 issued by the respondent no. 5, a Forest Officer in the rank of Forester – I & the Investigating Officer/ Seizing Officer in a case registered as WR/16/2021 dated 14.06.2021 at the Western Range, Bagori, Kaziranga National Park & Tiger Reserve, Nagaon.

11. As the main issue is relatable to the show cause notice dated 16.06.2021, the contents of the said notice are reproduced hereinbelow in its entirety for ready reference :-

NOTICE

Date – 16.06.2021

To,

DILIP KUMAR SINGHANIA
C/O – Lt. Kedarnath
Vill – TULIP TOWER FLATE NO. 505, STADIUM ROAD BAREILLY
P/O – BAREILLY
Dist- BAREILLY
Pin No : 243001
State- UTTAR PRADESH



Ref No : WR/16/2021 dtd : 14/06/2021

You are hereby called upon to produce legality and proof of original of forest produce as per provisions of the Rules and Regulations having the force of law as 17.591 CuM Khair [Acacia catechu] has been carried and transported without valid documents in the vehicle [TATAMOTORS LTD/TATA LPT 3718 CR BS-IV 10X2] bearing Reg. No-UP-25-CT-7676, owned by you which was seized as claimed at Deopani area under Jakhalabandha P/S. Nagaon, Assam while moving through NH-37 on 14/06/2021 at about 7:30 PM u/s 49 of AFR [Amendment] Act, 1995 and the rules made under Section 40.41 of the Transit Rules of AFR [VII] of 1891 and title there to within 15 days from the date of issue of this notice to the office of the undersigned Range Office failing which necessary legal action will be taken against you without further notice to you.

Please also show-cause as to why the seized Vehicle No-UP-25-CT-7676 and Khair [Acacia catechu] log shall not be confiscated to the state.

Description of seized articles –

1. Total Khair [Acacia catechu] logs – 1100 nos. [17.591 CuM]
2. TATAMOTORS LTD/TATA LPT 3718 CR BS-IV 10X2
Vehicle – Registration No – UP-25-CT-7676

[Hirak Jyoti Das, Forester-I]

Investigating Officer

Western Range, Bagori,

Kaziranga National Park & Tiger Reserve

Nagaon Assam Pin - 782136

12. Section 49 of the Assam Forest Regulation, 1891, as amended, has provided for the seizure of property which are liable for confiscation. Section 49 of the Assam Forest Regulation, 1891, as amended, reads as under :

49. Seizure of property liable to confiscation :-

[I] When there is reason to believe that a forests offence has been committed in

respect of any forest produce' such produce, together with all tools, boats, motorised boats, vessels, cattle, carts rafts, machineries 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 and Police Officer not below the rank of a Sub-inspector of Police

[2] every Officer seizing any property under sub-section [1], 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, either produce the property seized before an officer not below the rank of Assistant Conservator of Forests authorised by the State Government in this behalf by notification in the Official Gazette [hereinafter referred to as the 'Authorised Officer'] or in case the seizure is made by a Police Officer' making a report to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made with an intimation to the 'Authorised Officer' or where it is, having regard to the quantity or the bulk or any other genuine difficulty, not practicable to produce the property seized before the 'Authorised 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.

Provided that where 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 circumstance 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 produced 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 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-section [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, 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, boats, carts, machineries, vessels, ropes, chains or any other implements of articles used in committing such offence. A copy of the order of confiscation shall, without any undue delay, be forwarded to the 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 Authorized 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 case of motorized 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 subsection [4] of any tools, boats, motorized 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 persons referred to in clause [b] of sub-section [5] proves to the satisfaction of the Authorized Officer that such tools, vehicles machineries, trucks, vessels, boats, motorised boats, vessels, carts, rafts, cattle, ropes, chains or any other implements, articles were used without

his knowledge or connivance or abetment or as the case may be- without the 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 the forest offence.]

13. Under sub-section [1] of Section 49 of the Assam Forest Regulation, 1891, 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, motorised boats, vessels, cattle, carts, rafts, machineries, 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 sub-section [2] of Section 49, every Officer seizing any property under sub-section [1], is required to place such property or the receptacle, if any, in which it is contained, a mark indicating that the same has been so seized and is thereafter, required to produce the property seized, as soon as may be, either before an officer not below the rank of Assistant Conservator of Forests authorised by the State Government in that behalf by notification in the Official Gazette as the 'Authorised Officer' or where it is, having regard to the quantity or the bulk or any other genuine difficulty, not practicable to produce the property seized before the 'Authorised 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. The proviso to sub-section [2] states that where 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

circumstance to his official superiors. Sub-section [3] stipulates that the seizing officer i.e. the Forest Officer or the 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.

14. The definition of 'Forest Officer' is provided in Section 3[1]. As per Section 3[1], 'Forest Officer' means any person appointed by name or as holding an office by or under the orders of the State Government to be a Conservator, Deputy Conservator, Assistant Conservator, Forest Ranger, Deputy Ranger, Forester, Assistant Forester, Forest Guard or to discharge any function of a Forest Officer under the Regulation or any rule thereunder. Thus, a Forester-I is an Forest Officer, as indicated in sub-section [1], sub-section [2] and sub-section [3] of Section 49 of the Assam Forest Regulation, 1891. The definition of 'Forest Produce' is provided in Section 3[4], which inter-alia includes catechu.

15. A Forest Officer in the rank of Forester-I can, therefore, definitely seize the requisite articles/machineries mentioned in sub-section [1] which includes any forest produce and truck, if he has reason to believe that a forest offence has been committed. A Forest Officer in the rank of Forester is also empowered under sub-section [3] to 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 if he has reason to believe that the vehicle has been or is being used for the transport of any forest produce in respect of which any forest offence has been committed. The provisions of sub-section [2] has also cast a duty upon the Seizing Officer if he is below the rank of Assistant Conservator of Forest, to either produce the property seized before an officer not below the rank of Assistant Conservator of Forests, authorised by the State Government by notification in the Official Gazette to act as the 'Authorised Officer', or to submit a report of such seizure to the jurisdictional Magistrate in respect of the situations envisaged therein. From a conjoint reading of the provisions in Section 3[1] and Section 49[2] of the Assam Forest Regulation, 1891, as amended, it is evident that no officer below the rank of Assistant Conservator of Forests can be authorized by the State Government as an Authorized Officer to exercise the powers conferred upon an Authorized Officer under the provisions of Section 49 of the Assam Forest Regulation, 1891, as amended. No other provisions in the Assam Forest Regulation, 1891, as amended, has been brought to the notice of the Court to submit that the power, authority and jurisdiction entrusted upon the Authorized Officer under Section 49 can be delegated to any other officer below the rank of Assistant Conservator of Forest.

16. It is in the above backdrop, the statutory provisions contained in sub-section [4] and sub-section [5] of Section 49 of the Assam Forest Regulation, 1891 are to be considered. From sub-section [4] of Section 49 of the Assam Forest Regulation, 1891, it is clear that after production before him of the property seized by the Seizing Officer, the Authorized Officer after such personal inspection or verification as he may deem fit and necessary, has to reach a

satisfaction that a forest offence has been committed in respect of the property seized and if he reaches such a satisfaction, the Authorized Officer by an order in writing and for the reasons to be recorded therein, can confiscate the forest produce so seized together with all tools, vehicles, cattle, trucks, motorized boats, boats, carts, machineries, vessels, ropes, chains or any other property/articles used in committing such forest offence. Sub-section [5] of Section 49 of the Assam Forest Regulation, 1891 has made it clear that before passing any order of confiscation, the Authorized Officer has to follow the procedure prescribed in Clause [a], Clause [b], Clause [c] and Clause [d] therein. A reading of sub-section [5] makes it clear that it is the Authorized Officer who is authorized to send an intimation in the prescribed form about the confiscated property to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made. The Authorised Officer is only empowered to issue a notice in writing, under Clause [b], 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 case of motorized boats, vessels, vehicles, trucks, etc. having a registered number, to the registered owner of the vehicle. As per Clause [c], it is the Authorized Officer who has to offer to the person to whom notices are sent under Clause [b], a reasonable opportunity of making a representation within the reasonable time, as may be specified in the notice, as against the proposed confiscation. Under Clause [d], the Authorised Officer is also to give a reasonable opportunity of being heard to the Officer making the seizure and the person or persons referred to in Clause [b] or [c] above. Any officer who is not an Authorised Officer is not empowered to consider a representation submitted in response to a notice under Section 49[5][b] against proposed cancellation.



17. It is true that ordinarily, a writ petition is not to be entertained against a show cause notice for the reason that show cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party, unless the same has been issued by a person having no authority or jurisdiction to do so. This Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India can, however, quash a show cause notice if it is found wholly without authority jurisdiction or for some other reason, it is wholly illegal.

18. A stand is taken in the counter affidavit filed by the respondent no. 5 i.e. the Forester-I and the Seizing Officer that a provision of appeal is provided in Section 49-C of the Assam Forest Regulation, 1891, as amended. Section 49-C of the Assam Forest Regulation, 1891 has inter alia provided that any person aggrieved by an order under Section Appeal 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. A look at the said provision for appeal makes it evident that it is an order passed under sub-section [4] of Section 49 of the Assam Forest Regulation, 1891 passed by the Authorised Officer confiscating the forest produce and tools, vehicles, cattle, etc. which is appealable under Section 49-C of the Assam Forest Regulation, 1891, as amended. The challenge in the cases in hand is to the show cause notice dated

16.06.2021 issued by the respondent no. 5, that is, the Forester-I purportedly under Section 49[5][b] whereby the Seizing Officer/Investigating Officer in the rank of Forester-I has asked the noticee to show cause as to why the seized articles viz. [i] Khair [Acacia catechu] logs – 1100 nos. [17.591 CuM] and [ii] the vehicle bearing registration no. UP-25-CT-7676 [Truck] i.e. the subject-vehicle shall not be confiscated to the State. The statutory provisions contained in Section 49 of the Assam Forest Regulation, 1891 has not given any power, authority and jurisdiction to the respondent no. 5 who is in the rank of Forester-I, in his capacity as the Seizing Officer/Investigating Officer to issue a show cause notice like the one involved here i.e. the show cause notice dated 16.06.2021. A Seizing Officer like the respondent no. 5 in the rank of Forester, who is not in the rank of Assistant Conservator of Forest authorized by the State Government by notification in the Official Gazette or any other officer of a rank above Assistant Conservator of Forest who can be an Authorized Officer, his role is limited to seizure of the articles suspected to be forest produce and suspected to be involved in the commission of a forest offence and after receipt of a notice from the Authorized Officer issuing show cause notice under sub-section [5][d] of Section 49, to appear before the Authorised Officer on being granted the opportunity of being heard provided by the Authorised Officer.

19. The rule of exclusion of writ jurisdiction due to availability of an alternative remedy is a rule of discretion and not one of compulsion. It is also settled that in an appropriate case, in spite of the availability of an alternative remedy, a writ court may still exercise its extra-ordinary and discretionary jurisdiction of judicial review, in at least four contingencies, namely, [i] where the writ petitioner seeks enforcement of any of the fundamental rights; or [ii] where there is failure of

principles of natural justice; or [iii] where the orders or proceedings are wholly without jurisdiction; or [iv] where the vires of an Act is challenged. In these circumstances, an alternative remedy does not operate as a bar. [Ref :- Whirpool Corporation vs. Registrar of Trade Marks, reported in [1998] 8 SCC 1; Harbanslal Sahnia & another vs. Indian Oil Corporation Ltd. & others, reported in [2003] 2 SCC 107; State of H.P. vs. Gujarat Ambuja Cement Ltd., reported in [2005] 6 SCC 499; Sanjana M. Wig Vs. Hindustan Petroleum Corporation Ltd., reported in [2005] 8 SCC 242; and M.P. State Agro Industries Development Corporation Ltd. vs. Jahan Khan, reported in [2007] 10 SCC 88.

20. As has been noticed above, the issuance of a show cause notice under Section 49[5][b] of the Assam Forest Regulation, 1891 is not even an appealable under Section 49-C of the Assam Forest Regulation, 1891. In the cases in hand, it is found that the issuance of the impugned show cause notice dated 16.06.2021 to show cause notice is not by the Authorised Officer and by an officer who cannot be delegated with the power, authority and jurisdiction to issue such a show cause notice under Section 49[5][b] under the Assam Forest Regulation, 1891 under any situation. Conferment of jurisdiction is a legislative function. Law does not permit any authority to assume a jurisdiction which has not been conferred with such jurisdiction. It is a settled proposition of law that if the manner of doing a particular act is prescribed under a statute, the act must be done in that manner and in no other manner. In case the foundation is removed, the superstructure falls. Meaning thereby, once the basis of a proceeding is gone, all consequential acts, actions and orders would fall to the ground automatically. This principle of consequential order which is applicable to judicial and quasi-judicial proceedings is equally applicable to the administrative



orders [Ref :- Kalabharati Advertising vs. Hemant Vimalnath Narichania, reported in [2010] 9 SCC 437 and Coal India Ltd. vs. Ananta Saha, reported in [2011] 5 SCC 142]. If an authority passes an order on a subject-matter having no jurisdiction, it would amount to nullity.

21. Considering the settled position of law, as discussed hereinabove, and finding that the show cause notice issued by the respondent no. 5 vide letter dated 16.06.2021 asking the noticee to show cause as to why the seized articles, mentioned above, shall not be confiscated to the State, to be wholly without power, authority and jurisdiction, the same is liable to be set aside. Thus, the show cause notice dated 16.06.2021 issued by the respondent no. 5 is accordingly set aside. With the setting aside of the show-cause notice dated 16.06.2021, all consequential actions taken on the basis of the show cause notice dated 16.06.2021 are also held to be bad and are, accordingly, set aside. With the findings arrived at and observations made, the writ petitions are allowed to the extent indicated above. There shall be no order as to cost.

JUDGE

Comparing Assistant