

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

WRIT APPEAL NO.166 OF 2016

Appellant:

Shri Samarendra Kumar Dey,
Son of late Girija Mohon Dey,
Village Ditakcherra Bazar,
P.O. Ditakcherra Bazar (Harangajao)
District North Cachar Hills, Assam

Respondents:

1. The State of Assam,
(Represented by the Principal Secretary to the Govt. of Assam,
Forest Department, Dispur, Guwahati-6)
2. The Principal Secretary to the Govt. of Assam
Forest Department, Dispur, Guwahati-6
3. The Principal Chief Conservator of Forests, Assam
Rehabari, Guwahati -8.
4. The Chief Conservator of Forests (Wildlife), Assam
Rehabari, Guwahati-8
5. The Conservator of Forests,
Southern Assam Circle, Silchar, Assam
6. The Divisional Forest Officer,
Cachar Forest Division, Silchar, Assam.

BEFORE
HON'BLE THE CHIEF JUSTICE MR. AJIT SINGH
HON'BLE MR. JUSTICE MANOJIT BHUYAN

For the Appellant	...	Mr. N Dhar, Mr. TU Laskar and Ms.U Baruah, learned counsel
For the Respondents	...	Ms.RB Bora, learned Government Advocate, Assam for the respondents.
Date of hearing & Judgment	...	25.5.2017

JUDGMENT AND ORDER

(Ajit Singh, C.J.)

This intra-court appeal is directed against the order dated 21.1.2014 passed by the learned Single Judge of this High Court, whereby he has

dismissed appellant's WP(C) No.1824/2009 confirming the order of confiscation of elephants as passed by the Forest Officer.

2. On 23.10.2003, an information was received by a competent Forest Officer regarding illegal felling of trees within the inner-line of reserved forest and also carrying of such felled trees by the elephants. The Forest Officer therefore with his team immediately rushed to the spot. There he found that two elephants were being used by some men for carrying logs of illegally felled trees in the reserved forest. Seeing the Forest Officer and his team, those men taking advantage of jungle, managed to escape. The Forest Officer then seized 23 logs as well as the elephants for being used in the commission of forest offence. The appellant claimed himself to be the owner of one of the two seized elephants. Since forest offence was committed by felling the trees illegally, the Authorised Officer, after issuing notices to the appellant and all other concerned persons, vide order dated 30.12.2003, confiscated the seized logs along with two elephants. This order of confiscation was passed by the Authorised Officer in exercise of powers conferred under Regulation 49 of the Assam Forest Regulation, 1891. Aggrieved with the order of confiscation of elephants, the appellant filed appeal but the appellate court dismissed the same. Thereafter, he filed WP(C) No.1824/2009, which the learned Single Judge has dismissed by the impugned order.

3. Regulation 49 of the Assam Forest Regulation, 1891 deals with the seizure of property liable to confiscation. It reads as under:-

"49. Seizure of property liable to confiscation - (1) 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.

(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 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 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.

(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, is 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, motorised boats, boats, carts, machineries, rafts, vessels, ropes, chains or any other implements or articles used in committing such offence. A copy of the order of confiscation shall, without any undue delay, be forwarded to the Circle 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 Authorised 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 cases of motorised 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 sub-section (4) of any tools, boats, motorised 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 person referred to in clause (b) of sub-section (5) proves to the satisfaction of the Authorised Officer that such tools, vehicles, machineries, trucks, vessels, boats, motorised boats, rafts, carts, cattle, ropes, chain 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 precaution had been taken against the use of the object aforesaid for the commission of forest offence.”.

4. From the above quoted regulation, it is evident that when a forest offence is committed in respect of any forest produce, such produce together with all tools, vehicles, machineries, trucks, vessels, boats, motorised boats, rafts, carts, cattle etc. can be seized by a Forest Officer not below the rank of Forester. The Authorised Officer then after issuing notice to the person interested in the seized property, may by order in writing and for reasons to be recorded therein, confiscate the forest produce seized together with the tools, vehicles, machineries, trucks, vessels, boats, motorised boats, rafts, carts, cattle etc. used in commission of forest offence. Sub-regulation (6), however, says that if any person proves to the satisfaction of the Authorised Officer that such tools, vehicles,

machineries, trucks, vessels, boats, motorised boats, rafts, carts, cattle etc. were used in the commission of such offence without his knowledge or connivance or abetment, no order of confiscation of tools, vehicles, machineries, trucks, vessels, boats, motorised boats, rafts, carts, cattle etc. shall be made.

5. In the case at hand, the appellant despite being served with the notice of confiscation proceedings and repeated opportunities given to him did not bother to appear before the Authorised Officer. In the result, the Authorised Officer after perusing the materials produced before him, by a well reasoned order confiscated the forest produce together with two elephants. The appellant, admittedly, did not prove before the Authorised Officer that he is owner of one of the two seized elephants and that elephant was used in the commission of forest offence without his knowledge. The Authorised Officer was, therefore, fully justified in ordering the confiscation of the elephants. The elephants and the logs were seized within the inner-line of reserved forest. The elephants were being used in carrying the illegally felled forest trees. The elephants were thus being used in the commission of forest offence. The appellant did not make any attempt to prove to the satisfaction of the Authorised Officer that his elephant was used in the commission of such offence without his knowledge or connivance or abetment. The confiscation of the seized elephants was, therefore, inevitable and no relief can be granted to the appellant.

6. The appeal has no merit and is accordingly dismissed.

JUDGE

CHIEF JUSTICE

skd