

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. 219 OF 2005

State of Bihar & Ors. ...Appellants

Versus

Musafir Ram & Ors. ...Respondents

With

C.A.No.220/2005

C.A.No.221/2005

C.A.No.222/2005

C.A.No.223/2005

O R D E R

These appeals involving common questions of law and fact are directed against an order dated 29.11.2004 passed by a Division Bench of the High Court of judicature at Patna in several Letters Patent Appeals affirming interim orders passed by the learned Single Judge of the said Court releasing Kendu Leaves seized from the respondents on the premise that the same being perishable in nature and as 70% of the amount had already been paid by the purchaser to the Panchayats the goods may be released subject to deposit of the rest 30% of the price.

The Division Bench noticed as under:

" Learned counsel for the appellants after argument says that if it is decided that the leaves were collected from the reserve forest then in such a situation the State will be at a loss. The submission of the learned counsel appears to be not tenable because if any order is passed that is always subject to final adjudication of the case. However, we make it clear that the entire deposit i.e. 100% of the consideration money by the purchasers would be subject to result of the writ petitions."

Before we embark upon the contentions raised before us, we may notice that this Court by an order dated 7.1.2005

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while granting 'Leave' in certain matters directed as under:

" Learned counsel for the respondent auction purchasers submit that they have deposited the entire 100 per cent consideration amount, therefore, pray for immediate release of the goods. If that be so, the forest produce, in question, shall be released with necessary transit permits within three days from today."

The said order, however, was further clarified by this Court in its order dated 11.1.2005 which is to the following effect:

" In our order dated 7.1.2005 inadvertently following further directions were not transcribed. Therefore, after hearing the parties, we think it appropriate that the following directions also be included in addition to the directions already issued on 7.1.2005.

In the event of State succeeding in the appeal, the State will be entitled for compensation that may be fixed by this Court at the time of final disposal.

If the Court ultimately finds that the sale consideration does not reflect the true price, the auction purchasers would have to pay the difference. At the same time if the respondents succeed and if the Court deciding the appeal finally considers it appropriate then the respondents will be entitled to damages, if any, suffered by virtue of the delayed delivery of the forest produce.

The above directions shall be included in our order dated 7.1.2005 as part of the same."

Indisputably, the aforementioned orders have been carried out.

Certain basic facts are, furthermore, not in dispute.

The State of Bihar by resolution dated 23.10.2003 in exercise of its power under Article 243(G) of the Constitution of India delegated its power in favour of Gram Panchayats opining that the Gram Panchayats are responsible for plantation, maintenance of plants of minor forest produce, extension work and training programmers for improvement of the economic states of the villagers.

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It was further stated:

" This delegation of power is not valid for sanctuary and national parks."

Learned counsel appearing on behalf of State of Bihar contends before us that the Central Empowered Committee constituted by this Court in the case of T.N. Godavarman Thirumalpad Vs. Union of India(C.A.No.202/1995) directed that the prohibited activities as specified therein which included collection of minor forest

produce should not be allowed to be undertaken in the protected areas which, indisputably, includes National Parks and Wildlife Sanctuaries.

We would place on record the Chart produced by the learned Counsel to show the factual matrix involving these Civil Appeals. It reads as under:

1. Respondent Name - Musafir Ram +5,R-6,R-7 Proforma

CWJC No. - 11122/2004

Order of S.J. - 14.10.2004

L.P.A.No. - 1131/2004 dt.1.11.2004

Impugned order - 29.11.2004

SLP No. - 26318/2004

C.A.No. - 219/2005

Remarks - 1100 bags @630/- per bag

2. Respondent Name - Sheonath Rai+3,R-5,R-11 Proforma

CWJC No. - 11232/2004

Order of S.J. - 14.10.2004

L.P.A.No. - 1129/2004 dt.1.11.2004

Impugned order - 29.11.2004

SLP No. - 26319/2004

C.A.No. - 220/2005

Remarks - 4600 bags @630/- per bag

3. Respondent Name - Shaukat Ali+17,R-19-26 Proforma

CWJC No. - 11081/2004

Order of S.J. - 7.10.2004

L.P.A.No. - 1130/2004 dt.1.11.2004

Impugned order - 29.11.2004

SLP No. - 26321/2004

C.A.No. - 221/2005

Remarks - 14,491 bags @ sale price per bag

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4. Respondent Name - Lakshman Bind+ 4, R-6 Proforma

CWJC No. - 10128/2004

Order of S.J. - 8.11.2004

L.P.A.No. - _____

Impugned order - 8.11.2004

SLP No. - 25882/2004

C.A.No. - 222/2005

Remarks - 305 bags @620/- per bag

5. Respondent Name - Kamraj Singh +4,R-6 Proforma

CWJC No. - 9825/2004

Order of S.J. - 8.11.2004

L.P.A.No. - _____

Impugned order - 8.11.2004
SLP No. - 25996/2004
C.A.No. - 223/2005
Remarks - 200 bags @620/- per bag

On an allegation that the respondents herein got Kendu leaves collected from the Kaimur Wild Life Sanctuary, raids were conducted by the Forest Range Officer and different quantities of MFP-Kendu Leaves were seized. Intimation, thereabout, was also given to the Chief Judicial Magistrate, Kaimur in terms of Section 52 of the Indian Forest Act.

The Chief Wildlife Warden also made inspection and submitted its report in regard thereto.

An application was filed by the Divisional Forest Officer, Kaimur in the Court of Chief Judicial Magistrate to allow the auction of the perishable goods. The same was challenged in the writ petition by the respondents herein, wherein, as noticed hereinbefore interim orders came to be passed by the learned Single Judge as also the Division Bench of the Patna High Court.

The learned counsel for the respondents, however, contends that the Panchyati Raj institutions keeping in view the provisions of Article 243 (G) read with Entry 7 of the XIth Schedule of the Constitution of India as also in view of the abovesaid resolution dated 23.10.2007 issued by the State of Bihar, are entitled to collect minor forest produce.

It has been disputed that the collection of Kendue leaves had been effected from the Kaimur Wildlife Sanctuary -4-

as alleged by the forest authorities. It was furthermore contended that the Mukhiyas of the respective villages are not being prosecuted as also the collections have been made upon obtaining all necessary permissions.

The impugned orders are interim ones. The question as to whether the authorities of the Forest department of the State of Bihar were legally empowered to carry out the searches and seizures in the teeth of the aforementioned resolution dated 23.10.2003 is a question which requires determination of the appropriate authority. Some disputed questions of fact are also involved in the writ petition filed by the concerned respondents herein which are pending decision before a learned Single Judge of the Patna High Court. The said writ petitions, we are informed at the Bar, are running on the daily board.

In this view of the matter, we are of the opinion that the interest of justice

would be subserved if the interim orders passed by this Court Court are made absolute subject of course to the ultimate decision of the Patna High Court in the aforementioned writ petition.

We would, however, keeping in view the fact that as the question involved is an important one request the High Court to consider the desirability of disposing of the matter as expeditiously as possible and preferably within a period of three months from the date of communication of this order.

The appeals are disposed of accordingly. No costs.

[S.B. SINHA]J.

[V.S. SIRPURKAR]J.

New Delhi,
April 3, 2008.