

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

Writ Petition (M/S) No. 2163 of 2022
(Under Article 226 of Constitution of India)

Mohd. Aslam

.....Petitioner

-Versus-

State of Uttarakhand and others

.....Respondents

Present: Mr. Dushyant Mainali, learned counsel and Mr. Girish Chandra Lakhchaura, learned counsel for the petitioner.
Mr. Pradeep Hairiya, learned Standing Counsel for the State.

Dated: 23rd September, 2022

Hon'ble Sri Sanjaya Kumar Mishra, J.

By filing this writ application, the petitioner has prayed for the following reliefs: -

“(i) Issue a writ of certiorari quashing the order dated 11.07.2022 passed by the respondent no. 4 only to the extent wherein the confiscated timber has been directed to be disposed as per Section 69 of Indian Forest Act, 1927 (Uttaranchal Amendment 2001) (contained as Annexure No. 1 to this writ petition).

(ii) Issue a writ, order or direction in the nature of mandamus directing and commanding the respondents to immediately release the timber confiscated by the effect of the impugned order dated 11.07.2022 and to refund the amount of Rs. 50,000/- deposited as compensation/fine.

(iii) Issue a writ, order or direction in the nature of mandamus directing and commanding the respondents to refrain away from recovery Mandi Tax from the petitioner on Khair Wood during his purchase or transport.”

2. It is apparent that the order impugned, as the Annexure no. 1, dated 11.07.2022, has been passed without giving a notice to the petitioner, who claims to be the owner of the Timber that was seized. Only the Timber has been seized in this case and the vehicle has already been released in favour of the owner of the vehicle.

3. Learned counsel for the petitioner drawing the attention of this Court to Sub-section 4 of Section 52A of the Indian Forest Act, 1927 (hereinafter referred to "the Forest Act") as applicable to the State of Uttarakhand, would submit that, a notice is required to be given to the owner of the property seized, before passing an order of confiscation. For the purpose of clarity, the Sub-section 4 of the Section 52A of the Forest Act is quoted herein below: -

"52A. Procedure on seizure- (1).....

(2).....

(3).....

(4) No order under Sub-section (1) shall be made without giving notice, in writing, to the person from whom the property is seized, and to any other person who may appear to the authorized officer to have some interest in such property."

4. At this stage admitted by all and sundry that no notice was given to the petitioner before the order of confiscation was passed by the Authorized Officer.

5. In that view of the matter, the writ petition is allowed. The order dated 11.07.2022 is hereby quashed.

6. The matter is remanded back to the respondent no. 4, Divisional Forest Officer, Tarai West Forest Division, Ramnagar, District Nainital, who is also the Authorized Officer, for reconsideration of the matter, after allowing the petitioner a proper opportunity of hearing.

7. The petitioner is hereby directed to produce a certified copy of this order before the respondent no. 4, within a period of ten days and also produced his objection/written statement/show cause along with supporting document.

8. On such an event, respondent no. 4 shall re-consider the matter, and, after affording reasonable opportunity of hearing to the petitioner shall disposed of the same, by speaking and reasoned order, within 30 days of the production of certified copy of this order.

9. It is needless to say that the order that has been set-aside does not require to be stayed.

(Sanjaya Kumar Mishra, J.)

23.09.2022

(Grant urgent certified copy of this order, as per Rules)

