

## Mahesh Kumar Aahuja Vs The State of Jharkhand and Others

None

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**Court:** Jharkhand High Court

**Date of Decision:** Dec. 19, 2007

**Acts Referred:**

Constitution of India, 1950 – Article 300A

**Citation:** (2008) 2 JCR 140

**Hon'ble Judges:** Narendra Nath Tiwari, J

**Bench:** Single Bench

**Final Decision:** Allowed

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### Judgement

Narendra Nath Tiwari, J.

In this writ petition the petitioner has prayed for quashing the order dated 10.9.03/16.1.04 passed by the

respondent No.2 whereby the appellate order was set aside and the revision was allowed.

2. The petitioner's case is that the Tractor with Trailor No. 8489 loaded with stone was seized illegally from the leasehold area of the petitioner.

3. The case of the petitioner is that he runs crusher business in the name and style of M/S Mahesh Stone Industries. For that purpose lease has

been granted to the petitioner. He possesses the valid lease document. The petitioner has been also paying royalty for the lease hold area. In the

year 2000 on the basis of a false report of Range Officer, a confiscation proceeding was initiated against the petitioner alleging that on 18.5.2000

the petitioner's Tractor and Trailor bearing No. 8489 was seized with stone loaded from the Forest Area. The said case was registered as

Confiscation Case No. 35/2000. The petitioner denied the allegation in his reply to show cause stating, inter alia, that he petitioner holds a lease for

mining stone over an area of 70 decimal of Gairmazarua land and that the Tractor with Trailor was seized from the lease hold area. He also denied

the other allegations. The D.F.O, Dhanbad without considering the said facts and material on record arbitrarily passed an order dated 2.6.01

confiscating the petitioner's Tractor with Tailor on the allegation that the Tractor with Tailor was transporting the forest produce in contravention of

the provisions of the Forest Acts.

4. The petitioner then preferred appeal before the Deputy Commissioner-cum-appellate authority. The Deputy Commissioner heard the parties

and after discussing and considering the materials on record, came to the conclusion that there was no valid ground for confiscating the petitioner's

vehicle. The prosecution failed to prove that at the time when the said vehicle was seized, the same was carrying forest produce in violation of the

Forest Acts. The Deputy Commissioner also took into consideration that the petitioner was given a lease for mining stone and that it could not be

proved that he mined stone beyond his leasehold area and the stone loaded on the said vehicle was forest produce. The Deputy Commissioner,

thus, allowed the appeal and set aside the order of the confiscating authority and directed to release the petitioner's vehicle.

5. Against the said order, the respondents preferred revision before the Secretary, Forest and Environment Department. The said case was

registered as Revision Case No. (C)12/02. The revisional authority finally passed the impugned order dated 10.9.03/16.1.04 whereby he has

allowed the revision and set aside the appellate order.

6 Mr. R.S. Mazumdar, learned Counsel appearing on behalf of the petitioner, submitted that the order of the revisional authority is arbitrary and

unsustainable. Learned counsel submitted that when the respondents had alleged mining over an area within the reserved forest and had alleged

that the vehicle was loaded with forest produce, onus was on them to prove the same. But there is no iota of evidence, oral or documentary to

establish the said allegation. Since there was no legal evidence to prove the allegation, the appellate authority had set aside the order of the

confiscating authority and directed to release the said vehicle. Learned revisional authority only on conjectures surmises and assumptions came to

the conclusion that the petitioner had violated the provisions of the Forest Acts as on the arrival of Patrolling Party the petitioner had run away from

the place and did not return thereafter. The petitioner did not also assist in the enquiry, which itself is violative of the provisions of the Bihar Mines

and Minerals Concession Rules, 1972. Only in view of the said alleged conduct of the petitioner, the revisional authority has inferred that the

petitioner has violated the provisions of the Forest Acts and his action was not bonafide. On the said ground, he has set aside the well reasoned

appellate order. The order of the revisional authority being based on no material/evidence is wholly perverse and illegal.

7. Mrs. I. Sen Choudhary, learned S.C-III, submitted that the learned revisional authority has passed its order on the basis of the materials on

record. There was report that some mining was being done on the forest land. The Forest Patrolling Party raided the spot and Tractor and Trailer

loaded with stone was seized. The petitioner and others had run away leaving the Truck. The petitioner has not brought any evidence to prove that

the stone was not mined from forest land. In that way the petitioner has admitted the allegations made by the respondents. There was no necessity

to further prove and establish the allegations against the petitioner.

8. I have heard learned Counsel for the parties and perused the documents and materials on record. Confiscation of an article amounts to

deprivation of property. Right to property is valuable right of a citizen. Article 300A of the Constitution of India prohibits deprivation of property

save by authority of law. Confiscation of the property of a citizen cannot be made wantonly and casually unless there is cogent evidence on record

to substantiate the allegation of violation of some provisions of law. In the instant case not an iota of evidence has been brought on record to

establish the allegation that the petitioner had mined stone, loaded on Tractor & Tractor, from the area of reserved forest. Admittedly, the petitioner

holds a lease for mining over the portion of the same plot. The only allegation is that the petitioner had mined the stone from the area which was

beyond his lease hold area. The said allegation has not been established by bringing any evidence on record. The Deputy Commissioner has duly

considered the said fact and the provision of law and set aside the order of confiscation passed by the Confiscating Authority. The revisional

authority without any basis on record has acted on mere assumption and conjecture and held the petitioner guilty of violating the forest laws. He in

erred the same because the driver and the labourers, who were the occupants of the vehicle, had run away when the forest patrolling party arrived

at the place and none of them returned thereafter to co-operate in inspection. The presumption cannot be a substitute for the legal evidence. The

allegations against the petitioner cannot be said to be proved on that basis. The finding and conclusion of the revisional authority is, thus, wholly

baseless, perverse and unsustainable.

9. This writ petition is, thus, allowed. The impugned order dated 10.9.03/16.1.04 is set aside. Since vehicle in question has already been released,

any condition or liability thereof by way of security or otherwise stands discharged.