IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C). No. 31370 of 2026
CNR No. ODHC010746952026

(An application under Articles 226 and 227 of Constitution of India)

AFR **Odyssey Leisure Pvt. Ltd., Cuttack ..... Petitioner**

-Versus-

State of Odisha & others ..... Opposite Parties

For Petitioner : Mr. U.K. Samal, Sr. Advocate
With M/s. M. Mohapatra, S.P. Patra
N. Samal, Advocates

For Opp. Parties : Mr. S.N Patnaik, AGA

CORAM:

JUSTICE SASHIKANTA MISHRA

JUDGMENT
20.11.2026

SASHIKANTA MISHRA, J. The petitioner seeks to challenge the order dated 09.09.2026 passed by the Authorised Officer-cum-Assistant Conservator of Forests, Puri Wildlife Division, Puri, whereby his prayer for release of the Dozer Machine bearing Chassis No.14303 and Engine No.25233213, seized by the Forest Officials on 21.06.2026, was rejected on the

ground that confiscation proceedings in respect of the machine has been initiated under Section 56 of the Odisha Forest Act, 1972. He also seeks a direction for release of the Dozer Machine and to declare the initiation of the confiscation proceeding as illegal.

2. The facts of the case, briefly stated, are that the petitioner claims to be the owner in possession of certain parcels of Rayati land situated in Mouza Batali-Bhuan, Tahasil Gop, District Puri, under Khata Nos.134/113, 134/112, 134/152, 134/154, 134/107, 134/106 and 134/105. For undertaking road levelling work on the said land, he had engaged a Dozer Machine belonging to M/s Samal Builders on hire under an arrangement dated 04.06.2026. On 21.06.2026, while the machine was being used for the said purpose, the Forest Officials seized it and initiated a case being O.R. Case No.10BK of 2026-27 registered at Balukhand Wildlife Range for commission of offence under Section 27(1) of the Odisha Forest Act, 1972, on the allegation of fresh clearing and destruction of forest habitat, besides recovery of approximately five quintals of Casuarina firewood and one cubic metre of excavated sand.

The petitioner disputes the allegations and states that the seizure was effected from his private Rayati land and not from any forest area, stating that, although the land was included in the notification dated 15.11.1978 issued under Section 4 of the Act, no final notification under Section 21 declaring it as Reserved Forest has yet been issued. Having approached the Forest Authorities seeking the seizure documents and release of the machine without any favourable response, the petitioner filed W.P.(C) No.25099 of 2026, which was disposed of on 10.08.2026 with a direction to the Authorised Officer-cum-Assistant Conservator of Forests, Puri Wildlife Division, to consider his representation dated 22.07.2026 and to pass a speaking and reasoned order in accordance with law. Pursuant thereto, the petitioner submitted the certified copy of the order and relevant documents, and, in response to the Authorised Officer's letter dated 21.08.2026, clarified by his reply dated 31.08.2026 that the machine belonged to M/s.Samal Builders and had been engaged on hire, enclosing the supporting documents. However, by the order dated 09.09.2026, the prayer for release was rejected on the

ground that confiscation proceedings under Section 56 of the Act had been initiated and the question of release could be considered on its conclusion. Said order is impugned in the present writ petition.

3. Counter affidavit is filed by opposite party Nos.1 to 3 stating that the writ petition is not maintainable on the grounds of disputed questions of fact. It is stated that the Dozer Vehicle was seized on 21.06.2026 from inside Balighai Proposed Reserve Forest (PRF), along with approximately five quintals of Casuarina firewood and one cubic metre of excavated sand and O.R. Case No.10BK of 2026-27 was registered for commission of forest offence under Section 27(1) of the Odisha Forest Act, 1972. It is stated that Balighai PRF was notified under Section 4 of the Act by notification dated 15.11.1978 and was subsequently re-notified on 18.05.2026 following a DGPS survey duly ratified by the Forest and Revenue Authorities. Placing reliance on Section 5 of the Act, they dispute the petitioner's claim that the place of seizure formed part of his private Rayati land and justify the initiation of confiscation proceeding under Section 56 of the Act. It is also stated that the Assistant

Conservator of Forests, was appointed as the Authorised Officer by order dated 25.06.2026 and on receipt of the ownership documents establishing M/s Samal Builders as the owner of the Dozer, a show-cause notice dated 02.09.2026 was issued to the owner under Section 56(2-b) of the Act. It is further stated that the impugned order dated 09.09.2026 was passed in compliance with the direction of this Court in W.P.(C) No.25099 of 2026 and the confiscation proceedings are being conducted in accordance with law. They also contend that the Dozer is a vehicle within the meaning of Section 56(1) of the Act.

4. Heard Mr. U.K Samal, learned Senior counsel with Mr. M. Mohapatra, learned counsel for the petitioner and Mr. S.N. Patnaik, learned Addl. Government Advocate for the State.

5. Mr. Samal would argue that the impugned order has been passed without considering the nature and legal status of the land in question. The petitioner claims to be the recorded owner in possession of the Rayati land and has been regularly paying rent and cess to the Government, as evident from the ROR and rent receipts. Although the land

was included in the notification dated 15.11.1978 issued under Section 4 of the Odisha Forest Act, 1972, no final notification under Section 21 of the Act has been issued declaring it as Reserved Forest. He argues that a notification under Section 4 is only preliminary in nature and cannot, by itself, extinguish existing private rights or confer the status of Reserved Forest without completion of the statutory process. Referring to Sections 3, 4, 6, 7, 11, 12, 13, 15, 17, 19 and 21 of the Act, Mr. Samal submits that the statutory scheme provides inquiry and settlement of existing rights and acquisition of private land, wherever required. However, neither has the petitioner's land been acquired nor has compensation been paid and no final notification under Section 21 has been issued despite lapse of several decades. He further submits that the notifications dated 15.11.1978 and 18.05.2026 do not specifically identify the petitioner's Khata numbers, plot numbers, area or Mouza to establish that the land where the Dozer was operating falls within Balighai PRF. He also relies on the notification dated 31.01.1989 issued under Section 3(1) of the Odisha Consolidation of Holdings and Prevention of Fragmentation

of Land Act, 1972, and the Consolidation ROR issued in 1999 to argue that the Consolidation Authorities recognised the petitioner's rights over the land. He further contends that deprivation of the petitioner's use and enjoyment of the land without authority of law violates Article 300-A of the Constitution. He relies on the judgment of this Court passed in the case of ***Raj Kishore Deo v. State of Odisha***[1], to submit that a notification under Section 4 does not, by itself, divest a person of rights over land recorded as Rayati in the absence of a final notification under Section 21. He also places reliance on the case of ***Vidya Devi v. State of Haryana***[2], in support of the requirement of authority of law for deprivation of property.

6. Per contra, Mr. S.N. Patnaik submits that the Dozer was seized from within Balighai PRF notified under Section 4 of the Odisha Forest Act, 1972, vide notification dated 15.11.1978 and subsequently re-notified on 18.05.2026 following a DGPS survey ratified by the Forest and Revenue Authorities. He argues that the petitioner's claim of the seizure having been made on private Rayati land

[1] 2022 (II) OLR 415
[2] (2020) 2 SCC 569

is baseless. Referring to Section 5 of the Act, he submits that the restrictions thereunder operate upon issuance of a notification under Section 4 and a final notification under Section 21 is not necessary to attract the provisions relating to forest offences under Section 27(1)(a). He also submits that the seized Dozer is a vehicle within the meaning of Section 56(1) of the Act, having wheels, a blade, chassis and an engine, and its description as a 'machine' in the impugned order is only a typographical error. He points out that, upon receipt of the ownership documents and vehicle invoice, a show-cause notice dated 02.09.2026 under Section 56(2-b) was issued to M/s Samal Builders, the owner of the Dozer, along with the seizure list, but no reply was received. He also submits that the owner has not been impleaded in the present writ petition. According to him, the impugned order dated 09.09.2026 was passed in compliance with the direction of this Court in W.P.(C) No.25099 of 2026 and the confiscation proceedings are being conducted in accordance with law.

7. Having heard learned counsel for the parties at length, this Court finds that much has been argued with

regard to the nature and legal status of the land in question. While the petitioner claims that the land is his private Rayati land and the Dozer was being used for levelling the same, the opposite parties have contended that the land forms part of Balighai PRF. The petitioner further contends that, although the land was included in the notification issued under Section 4 of the Odisha Forest Act, 1972, no final notification under Section 21 of the Act has yet been issued declaring it as Reserved Forest. The opposite parties, on the other hand, contend that the restrictions under Section 5 of the Act operate upon issuance of notification under Section 4 and a final notification under Section 21 is not a prerequisite for attracting the provisions relating to forest offences. However, on consideration of the materials available on record and the statutory provisions, this Court finds that there is a more fundamental issue going to the root of the matter, namely, the jurisdiction of the authority to initiate confiscation proceedings in respect of the seized Dozer.

8. In order to appreciate the aforesaid issue, it would be appropriate to refer to Sections 56 and 61 of the

Odisha Forest Act, 1972, which provide for two distinct mechanisms for confiscation of property involved in the commission of a forest offence. The relevant provisions are reproduced below:

> *"**56. Seizure of property liable to confiscation** –*
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> *(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 ropes chains boats, vehicles or cattle used in committing any such offence may be seized by any Forest Officer or Police Officer*
> *(2) Every officer seizing any property under this Section shall place on such property a mark indicating that the same has been so seized and shall, as soon as may be, except where the offender agrees in writing to get the offence compounded under Section 72 either produce the property seized before an officer not below the rank of an Assistant Conservator of Forests authorised by the State Government in this behalf by notification (hereinafter referred to as the authorised officer) or 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 when the forest produce with respect to which such offence is believed to have been committed is the property of Government and the offender is unknown it shall be sufficient if the officer make as soon as may be a report of the circumstances to his official superior and the Divisional Forest Officer*
> *(2-a) When an authorised officer seizes any forest produce under Sub-section (1) or where any such forest produce is produced before him under Sub-section (2) and he is satisfied that a forest offence has been committed in respect thereof, he shall order confiscation of the forest produce so seized or produced together with all tools, ropes chains boats, vehicles or cattle used in committing such offence.*
> ***61. Procedure when offender not known, or cannot be found –***
> *Where a Magistrate is of opinion that a forest offence was committed but the offender is not known or cannot be found, he may on an application made in this behalf order the property in respect of which the offence*

was committed and which was seized to be confiscated and taken possession of by or under the authority of the Divisional Forest Officer or to be made over to any person whom the Magistrate considers to be entitled to the same

Provided that before making any such order the Magistrate shall cause a notice of any application made under this section to be served upon any person who, he has reason to believe is interested in the property seized, or shall publish such notice in such manner as he thinks fit

Provided further that no such order shall be made until the expiration of one month from the date of seizing such property or without hearing the person, if any claiming any right thereto, and the vehicle if any which he may produce in support of his claim"

[Emphasis added]

9. A plain reading of the aforesaid provisions shows that the Act provides two distinct statutory mechanisms for confiscation of property involved in the commission of a forest offence: one under Section 56(2-a), by the Authorised Officer and the other under Section 61, by the jurisdictional Magistrate.

10. Section 56(2-a) confers power upon the Authorised Officer to order confiscation of seized property under Section 56(1) or produced before him under Section 56(2), together with the tools, ropes, chains, boats, vehicles or cattle used in committing the offence. Thus, the exercise of jurisdiction under the provision is provided in either of two situations: first, where the Authorised Officer himself seizes the forest produce under Section 56(1); and secondly,

where the property seized by another Forest Officer is produced before him in accordance with Section 56(2). The provision does not make the identification of the offender a condition precedent for exercise of such jurisdiction. However, seizure by the Authorised Officer himself or production of the seized property before him, as contemplated under the provision, remains essential for attracting the jurisdiction conferred thereunder.

11. Section 61, on the other hand, provides a separate mechanism for confiscation by the Magistrate where he is of the opinion that a forest offence has been committed, but the offender is not known or cannot be found. Upon an application being made in that behalf, the Magistrate may order confiscation of the property in respect of which the offence was committed, subject to compliance with the safeguards prescribed therein. These include service or publication of notice upon persons interested in the property, expiry of one month from the date of seizure and affording an opportunity of hearing to any person claiming a right over the property, including production of evidence in support of such claim. It is, therefore, evident

that Section 61 provides a distinct statutory procedure for consideration of confiscation where the offender is unknown or cannot be found. However, the only fact that the offender is unknown does not, by itself, result in automatic invocation of Section 61. The opinion of the Magistrate and an application in that behalf are also necessary before the jurisdiction thereunder can be exercised.

12. The proviso to Section 56(2) also assumes significance in this regard. It provides a particular situation where the forest produce in respect of which an offence is believed to have been committed is the property of the Government and the offender is unknown. In such a situation, the Forest Officer effecting the seizure is required to report the circumstances thereof to his official superior and the Divisional Forest Officer. The proviso, therefore, dispenses with the requirement of producing the seized property before the Magistrate in the circumstances specified therein and permits reporting of the seizure to the superior authorities. However, such reporting cannot, by itself, be treated as equivalent to production of the seized forest produce before the Authorised Officer for the purpose

of Section 56(2-a). The two statutory requirements are distinct and operate in different circumstances. Consequently, mere receipt of an intimation by the Divisional Forest Officer or the Authorised Officer cannot, by itself, confer jurisdiction upon the latter to exercise the power of confiscation under Section 56(2-a).

13. It is true that the proviso to Section 56(2) does not expressly prohibit subsequent production of the seized property before the Authorised Officer. However, unless such production actually takes place, the second limb of Section 56(2-a) cannot be invoked. In other words, where the seizure is effected by an Forest Officer and the seized forest produce is not produced before the Authorised Officer, the latter cannot assume jurisdiction under Section 56(2-a) merely on the basis of an intimation or report regarding the seizure. The statutory requirement of production cannot be dispensed with or substituted by an administrative report. In such circumstances, where the offender is also unknown or cannot be found, the mechanism contemplated under Section 61 may be considered by the jurisdictional

Magistrate, subject to fulfilment of the conditions prescribed therein.

14. The aforesaid position also needs to be examined in the light of the principle laid down by the Supreme Court in the case of ***Devinder Singh v. State of Punjab***[3]. In that case, the Supreme Court held that where an action is taken without jurisdiction, even an order which is conclusive under the statute may be subjected to judicial review. The Court recognised two broad categories of jurisdictional errors, namely, an action taken wholly without jurisdiction and an error committed while exercising an otherwise existing jurisdiction. The Court also emphasised that the formation of the requisite opinion must precede the exercise of statutory power, such opinion must be founded upon materials available on record and the statutory authority must act within the four corners of the statute. The principle emerging therefrom is that the existence of statutory power alone is not sufficient; the authority must also satisfy the conditions prescribed for its exercise. Applying the aforesaid principle to the present case, the

[3] (2008) 1 SCC 728

exercise of power of confiscation by the Authorised Officer must necessarily be tested with reference to the jurisdictional requirements prescribed under Section 56(2-a) of the Act. For better appreciation, the observations made by the Supreme Court in ***Devinder Singh (supra)*** are reproduced below:

> *"**30.** We would proceed on the said assumption but it is a well-settled principle of law that where an action taken is without jurisdiction, even an order which is conclusive may be subject to judicial review. Jurisdictional errors, as is well known, are divided in two broad categories — (i) an order passed which is wholly without jurisdiction; and (ii) although the action is not ultra vires, the jurisdictional error has been committed while exercising jurisdiction. (See John v. Rees [(1969) 2 All ER 274].)*
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> *xx xx xx*
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> ***33.** When an order is passed without jurisdiction, it amounts to colourable exercise of power. Formation of opinion must precede application of mind. Such application of mind must be on the materials brought on record. The materials should be such which are required to be collected by the authorities entitled therefor. The authorities must act within the four corners of the statute. An opinion formed even on the basis of an advice by an authority which is not contemplated under the statute renders the decision bad in law. A statutory authority is bound by the procedure laid down in the statute and must act within the four corners thereof."*

15. Coming to the facts of the present case, it is evident from the report of the Forester, Balighai Section, as well as from the impugned order, that the Dozer was seized by the forest staff and, according to their version recorded in

the report, the person allegedly involved in the offence fled from the spot upon seeing the forest officials. Thus, the identity of the alleged offender was not ascertained at the time of seizure. It is also borne out from the materials placed on record that the Forester, Balighai Section, did not produce the seized Dozer or the seized forest produce, namely, the Casuarina firewood and excavated sand, before the Authorised Officer. He only intimated the seizure to the Divisional Forest Officer. Even in the said intimation, there is no specific request seeking initiation of confiscation proceedings on the ground that a forest offence had been committed. Although the photocopy of the intimation addressed to the Magistrate, enclosed with the materials, contains an endorsement that 'the matter has been intimated to DFO-cum-Authorised Officer, Puri Wildlife Division, Puri, for initiation of confiscation proceeding', such an endorsement cannot, by itself, establish actual production of the seized property before the Authorised Officer. Further, the intimation addressed to the Magistrate does not show that the seized Dozer or the forest produce was produced before him. No material has been placed

before this Court to demonstrate that the seized Dozer and forest produce were subsequently produced before the Authorised Officer.

16. There is yet another aspect which assumes significance. The opposite parties themselves have stated in their counter affidavit that the Assistant Conservator of Forests was appointed as the Authorised Officer by order dated 25.06.2026, whereas the seizure of the Dozer and the forest produce had taken place on 21.06.2026. Thus, on the date of seizure, the officer concerned had not yet been appointed as the Authorised Officer under the Act. Consequently, the first situation contemplated under Section 56(2-a), namely, seizure of the forest produce by the Authorised Officer himself, is not attracted in the present case. The jurisdiction of the Authorised Officer, therefore, could have been invoked under the second limb of the said provision only upon production of the seized forest produce before him in accordance with Section 56(2). As already discussed, no material has been placed before this Court to establish that such production had taken place.

17. In such circumstances, when the alleged offender was not known or could not be found at the time of seizure, the matter ought to have been placed before the jurisdictional Magistrate for consideration in accordance with Section 61 of the Act, subject to an application being made in that behalf and the Magistrate forming the requisite opinion as contemplated under the said provision. Alternatively, if the competent authority intended to proceed under Section 56(2-a), the seized property was required to be produced before the Authorised Officer in the manner contemplated under Section 56(2).

18. The aforesaid position also finds support from the decision of this Court in ***Narendra Beura v. State of Odisha and Others***[4]. In that case, while considering the confiscation of a JCB machine allegedly used in commission of a forest offence under Section 27(3)(c) of the Odisha Forest Act, 1972, this Court held that, in the absence of forest produce being seized by or produced before the Authorised Officer, the confiscation proceedings against the machinery were misconceived. The said principle is

[4] 2017 (I) OLR 568

applicable to the present case. Though the opposite parties claim that approximately five quintals of Casuarina firewood and one cubic metre of excavated sand were recovered along with the Dozer, the materials on record disclose only intimation of the seizure by the Forest Officials to the Divisional Forest Officer, and not actual production of the seized forest produce before the Authorised Officer as contemplated under Section 56(2) of the Act. It is also relevant that the Assistant Conservator of Forests was appointed as the Authorised Officer only on 25.06.2026, whereas the seizure was effected on 21.06.2026. In these circumstances, mere recovery of forest produce at the spot, without its subsequent production before the Authorised Officer in accordance with the Act, does not satisfy the statutory requirement for assumption of confiscation jurisdiction. For better appreciation, the observations made in ***Narendra Beura (Supra)*** are reproduced below:

> *"In the above premises, it appears to this Court that since in this case no forest produce was seized or produced before the Authorized Officer, the initiation of the confiscation proceeding on the allegation that the JCB in question was used for commission of a forest offence under Section 27 (3) (c) of the Act and, the ultimate order holding the same liable for confiscation, appears to this Court to be misconceived.*

The Authorised Officer could not have passed the order of confiscation at Annexure-2. The learned District Judge, Dhenkanal also remained oblivious of the same and passed the judgment and order at Annexure-3 confirming the order of confiscation."

19. This Court also finds that, although the identity of the alleged offender was not ascertained at the time of seizure, the petitioner had, immediately thereafter, come forward claiming his interest in the seized Dozer on the basis that he had hired the same from its owner on monthly rent. In fact, the petitioner submitted a representation on 23.06.2026, seeking release of the seized vehicle. In such circumstances, the Authorised Officer, upon receipt of the said representation, ought to have informed the petitioner about the seizure and furnished him with the relevant particulars, including a copy of the seizure list, so as to enable him to take appropriate steps.

20. Even otherwise, this Court finds that the incident occurred on 21.06.2026, whereas the petitioner repeatedly approached the authorities seeking release of the seized vehicle and disclosed the circumstances under which he had possession of the same. Despite such representations, no show-cause notice appears to have been

issued either to the petitioner, who had claimed an interest in the vehicle, or to its actual owner, M/s Samal Builders, for a considerable period. It was only after this Court, by order dated 10.08.2026 passed in W.P.(C) No.25099 of 2026, directed the Authorised Officer to consider and dispose of the petitioner's representation by passing a reasoned order, that a show-cause notice dated 02.09.2026 came to be issued to M/s Samal Builders, the actual owner of the Dozer, in connection with the proposed confiscation proceedings. The sequence of events is significant. It gives rise to a serious doubt as to whether the statutory proceedings were initiated upon an independent application of mind to the materials available on record or whether the same were set in motion belatedly, only after the petitioner approached this Court and obtained a direction for consideration of his representation. The authorities, while exercising statutory powers which may result in deprivation of a citizen's property, are expected to act with due diligence and strictly in accordance with the procedure prescribed by law. An order of confiscation entails serious civil consequences and may result in deprivation of property.

Article 300-A of the Constitution of India mandates that no person shall be deprived of his property save by authority of law. Therefore, the power of confiscation must be exercised strictly within the bounds of the statute. The authorities cannot remain inactive despite being apprised of the claim of an interested person and thereafter seek to justify the continued detention of the property merely by initiating confiscation proceedings at a belated stage.

21. In view of the foregoing discussion, this Court is of the considered view that the exercise of confiscation jurisdiction under Section 56(2-a) of the Odisha Forest Act, 1972, in the present case is not in conformity with the statutory mandate. The Authorised Officer was appointed after the date of seizure, and as already stated, there is no material to show that the seized forest produce was subsequently produced before him. Mere intimation of the seizure to the Divisional Forest Officer or subsequent issuance of a show-cause notice to the owner of the Dozer cannot, by itself, establish fulfilment of the statutory conditions necessary for assumption of confiscation jurisdiction. Thus, in the absence of fulfilment of the

jurisdictional requirements prescribed under Section 56(2-a), the Authorised Officer lacked the jurisdiction to initiate confiscation proceedings in respect of the seized property. The impugned action, being contrary to the statutory scheme, therefore warrants interference by this Court.

22. In the result, the writ petition is allowed. The order dated 09.09.2026 passed by the Authorised Officer-cum-Assistant Conservator of Forests, Puri Wildlife Division, Puri, and the confiscation proceedings initiated against the seized Dozer under Section 56(2-a) of the Odisha Forest Act, 1972, are hereby quashed. The opposite parties are directed to release the Dozer Machine bearing Chassis No.14303 and Engine No.25233213, upon due verification of its ownership, in favour of its lawful owner, namely, M/s Samal Builders, or its duly authorised representative, within a period of fifteen days from the date of receipt of a certified copy of this judgment.

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Sashikanta Mishra,
Judge

Orissa High Court, Cuttack
The 20th November, 2026/ A.K. Rana, P.A.

Signature Not Verified
Digitally Signed
Signed by: AJAYA KUMAR RANA
Designation: P.A.
Reason: Authentication
Location: HIGH COURT OF ORISSA, CUTTACK
Date: 20-Nov-2026 14:30:30