

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1212 of 2017

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1. Malti Devi Wife of Late Ram Pravesh Singh resident of Village & P.S. Jamhore, District – Aurangabad Petitioner

Versus

1. The State of Bihar through the Director General of Police, Govt. of Bihar, Patna
2. The District Magistrate, Aurangabad, District - Aurangabad
3. The Superintendent of Police, Aurangabad, District - Aurangabad
4. The Excise Superintendent, Aurangabad, District - Aurangabad
5. The Circle Officer, Aurangabad Sadar, District - Aurangabad
6. The Station House Officer, P.S. - Jamhore, District - Aurangabad
..... Respondents

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Appearance :

For the Petitioner : Mr. Pramendra Kumar Singh, Adv.
For the Respondents : Mr. Vivek Prasad, GP VII

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL ORDER

2 08-08-2017 House of this petitioner was sealed in connection with Jamhore P.S. Case No. 25 of 2017, a case under Section 30(a) of the Bihar Prohibition and Excise Act, 2016, as some bottles of liquors were recovered from the said house. Subsequently, a confiscation case was started by the District Magistrate, Aurangabad, vide Confiscation Case No. 126 of 2017. In that case by the impugned order, dated 22.06.2017, vide Annexure 4, direction has been issued to demolish the said house.

Submission of the learned counsel for the petitioner is that the impugned order amounts to awarding excessive punishment, of demolishing the house, provided under the Statute. More over, the power of the executive authority to confiscate, which is a judicial function, is under challenge and subjudice before a larger Bench of this Court in L.P.A. No. **1647 of 2015 (Baleshwar Roy Vrs. The State of Bihar & Ors.)**.

In the circumstances, it is submitted that till disposal of the Letters Patent Appeal, aforesaid, the operation of the impugned order be stayed subject to the result of the Letters Patent Appeal, aforesaid and the respondents authorities may be directed to hand over the unsealed possession of the house to the petitioner.



To oppose the prayer of the petitioner, the learned counsel for the respondents submits that the premises wherein storage of liquor was noticed are subject matter of confiscation along with other subjects enumerated under Section 56 of the Bihar Prohibition and Excise Act, 2016. Since, the house is on gair mazrua aam land, therefore, the same can not be auctioned. In the circumstances, order for demolition has been passed by the learned Collector to avoid and prevent the repetition of such offence.

After hearing the parties and considering the facts and circumstances of this case, specially the fact that some other Benches have ordered unsealing of the premise, which was seized for alleged violation of the Excise Laws and considering the pendency of the issue before a larger Bench of this Court, it is ordered that the operation of the impugned order shall remain stayed till disposal of the Letters Patent Appeal, aforesaid, and shall be subject to the result of the Letters Patent Appeal, aforesaid.

Submission of the learned counsel for the petitioner is that in fact the petitioner had purchased the land, on which the said house situate, from Ramchandra Sao through registered sale deed, dated 20.11.1975, and it was not a gair mazrua aam land, which is still a disputed question of fact.

By way of interim measure, let the sealed premises be unsealed and possession be handed over to the petitioner.

With the aforesaid observations, this application stands **disposed off**.

(Birendra Kumar, J)

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