

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Jurisdiction Case No.1101 of 2019

In
Civil Writ Jurisdiction Case No.14960 of 2018

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Umeshwar Upadhyay @ Umashankar Upadhyay, S/o Late Jayanath Upadhyay, R/o Village Anand Nagar, P.O. Bettiah District- West Champaran.
... .. Petitioner/s

Versus

1. The State of Bihar through its excise Commissioner, Excise Department Government of Bihar New Secretariat, Patna.
2. District Magistrate-cum-Collector, Patna.
3. Sri Superintendent of Police, Patna.
4. Station House Officer, Police Station Patliputra, District, Patna.
5. Mukesh Kumar Ojha, S/o Lakhman Ojha, Permanent R/o Village-Dharampur, P.S.- Baniyapur, District Chapra. At present residing at House No. 59 D, Road No. 06, Last Patel Nagar, Patna, Bihar.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Kumar Kamal Nayan, Adv.
For the Opposite Party/s : Mr.Anil Kumar Sinha (GA1)

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

5 18-09-2019 Heard learned counsel for the petitioner as well as the State.

Petitioner in the present case is seeking modification of the order dated 01.08.2018 passed in CWJC No.14960 of 2018 by which this Court had while directing provisional release of the property in question directed the District Magistrate that on the petitioner submitting the original title deed of the property with two local sureties to the satisfaction of the District Magistrate and undertaking to abide by the



conditions mentioned in our order dated 01.08.2018 the property of the petitioner shall be unsealed and possession will be handed over to him.

Learned counsel for the petitioner submits that the original title deed of the flat has been lost though no FIR in that respect has been lodged till date. It is submitted that for the present petitioner may be allowed to get release of the flat provisionally on submission of the certified copy of the sale deed of the flat and that he would satisfy all other conditions mentioned in the order dated 01.08.2018.

Learned counsel for the State submits that if at all this Court is willing to modify the conditions with respect to deposit of the original title deed of the property, he would request this Court to protect the interest of the State suitably during pendency of the confiscation proceeding.

Having heard learned counsel for the parties, we find that the petitioner has filed a supplementary affidavit in which he has made a statement that the flat in question has neither been sold nor mortgaged and has produced before this Court a certified copy of the sale deed.

In the given facts and circumstances of the case, we are of the view that the interest of the petitioner as well as the



State may be taken care of by balancing their interest in terms of a direction to the District Magistrate to accept the certified copy of the sale deed of the flat for the present and allow unsealing and handing over of the property in question during pendency of the confiscation proceeding, at the same time in order to protect the interest of the State we would direct the Registrar, Sadar Patna to take note of the property in question and not to allow any kind of creation of encumbrance or transfer thereof unless a no objection from the District Magistrate, Patna is produced before the Registrar. Learned counsel for the State is representing the Registrar and shall inform him with certified copy of this order immediately. Neither the petitioner nor any body else claiming through him shall either create any encumbrance over the property or cause any transfer of the same without prior permission of the District Magistrate.

Rest of the conditions mentioned in our order dated 01.08.2018 shall remain intact.

The application stands disposed off.

(Amreshwar Pratap Sahi, CJ)

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(Rajeev Ranjan Prasad, J)

