

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8210 of 2019

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Gaytri Devi @ Ramwati Devi, W/o Late Nageshwar Yadav, Resident of
Village- Araria, P.S.-Parbatta, District-Khagaria.

... .. Petitioner/s

Versus

1. The State of Bihar through its Principal Secretary, Bihar Excise Department at Patna.
2. The Excise Commissioner, Excise Department at Patna.
3. The Collector of District, Khagaria at Khagaria.
4. The Superintendent of Police at Khagaria.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Binod Kumar, Adv.
For the Respondent/s : Mr. Vivek Prasad, GP-7

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 28-06-2019

Heard learned counsel for the petitioner and learned counsel appearing on behalf of the State.

This application has been filed for a mandamus directing the State-respondents to release/unseal the house of the petitioner sealed in connection with Excise Confiscation Case No.372 of 2018-19 arising from Maraiya P.S. Case No.209 of 2018 for the offences punishable under section 30(a) of the Bihar Prohibition and Excise Act, 2016. The seizure list shows recovery of 186.48 litres of Indian Made Foreign Liquor.

Apart from a prayer for release/unseal of house in question, the petitioner has also prayed for quashing of the order dated 14.12.2018 passed by the District Magistrate cum Collector, Khagaria (Respondent no.3) in Excise Confiscation Case No.372 of 2018-19 by which a direction to confiscate the house in question has



been passed.

Learned counsel for the petitioner submits that for the present, he would not be pressing the relief for quashing of the order dated 14.12.2018 passed by the District Magistrate cum Collector, Khagaria (Respondent No.3) in connection with Excise Confiscation Case No. 372 of 2018-19. He, however, submits that liberty may be granted to the petitioner to challenge the confiscation order in an appropriate jurisdiction by filing an appeal before the Commissioner within a period of 30 days from today.

In the circumstances discussed, we allow liberty to the petitioner to challenge the order of confiscation before the Appellate Authority within a period of 30 days from today. In case, such an appeal is preferred within the aforesaid period, with an application for condonation of delay, the Appellate Authority shall consider the same keeping in mind that the petitioner was prosecuting his remedy before this Court and the appeal shall be heard on its own merit and disposed of expeditiously.

Learned counsel for the petitioner, at this stage, submits that because the appellate authority has no power to pass an interim order of unseal of the house, he would press this application for provisionally unsealing the house in question pending disposal of appeal.

Learned counsel for the State is present and submits that in the given facts and circumstances of this case if at all the Court is willing to consider provisional unsealing of the house then the interest of the State is required to be protected.

Considering the facts and circumstances of the case where it is said to be the residential house under seizure for about nine months and the petitioner is ready to furnishing adequate security to safeguard the interest of the State, following the consistent views of the Division Bench of this Court, we direct that pending filing and disposal of the appeal, the house of the petitioner in question be



provisionally unsealed and possession be handed over to the petitioner on the petitioner's depositing the original title deed of the property in question as security with one surety to the extent of value of the property as per the circle rate with the District Magistrate cum Collector, Khagaria. On submission of the original title deed of the property in question with the surety, the house shall be de-sealed and possession be handed over within one week thereof. The title deed deposited by the petitioner shall be kept in safe custody of the Confiscating Authority.

The owner of the property shall also submit an undertaking that he will not deal with the property in question and shall not create any third party interest whatsoever in the meanwhile.

In case, the petitioner fails to take recourse to the appellate remedy within the period granted hereunder, this order shall stand recalled and the confiscating authority shall be at liberty to proceed in accordance with law.

The application is allowed with the observation and directions set out hereinabove.

(Jyoti Saran, J)

(Partha Sarthy, J)

skpathak/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	02.07.2019
Transmission Date	NA

