

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7094 of 2020

Binodanand Jha, Son of Late Shiv Nandan Jha, Resident of C-89, Road No.9,
Gandhi Vihar Police Colony, P.S.- Anisabad, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary Excise and Prohibition Department, Govt. of Bihar,
Patna.
3. The District Magistrate Patna.
4. The Senior Superintendent of Police Patna.
5. The Superintendent of Police Patna (West).
6. The Inspector of Police Danapur Circle, Danapur.
7. The Station House Officer Rupaspur Police Station, Patna.
8. Circle Officer Danapur, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Prashant Sinha, Adv.
For the Respondent/s : Mr.Lalit Kishore (AG)

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE S. KUMAR)

Date : 24-07-2020

The proceedings of the Court are being conducted
through Video Conferencing and the Advocates joined the
proceedings through Video Conferencing from their residence.

Heard learned counsel for petitioner and learned



counsel for the respondents.

Petitioner has prayed for following reliefs:-

“(i) For issuance of writ in the nature of certiorari for quashing of the confiscation proceeding bearing no. 3737/2019-20 initiated by the Collector, Patna vide memo no. 679 dated 20.03.2020 as without any evidence that the 250 ml. of liquid recovered from the premises was foreign liquor, the confiscation proceeding has been initiated.

(ii) For holding that it is arbitrary and illegal on the part of the Collector, Patna to initiate confiscation proceeding when the Police is also not sure that the liquid recovered is the liquor and the Inspector of Police, Danapur vide his letter no. 103 dated 28.02.2020 requested the Special Judge, Excise to await for the forensic report. The Collector has proceeded with the confiscation proceeding without any report of the F.S.L.

(iii) For holding that it is arbitrary and illegal on the part of the Collector, Patna to initiate the confiscation proceeding against a dead person that too on a wrong name and he is not allowing the petitioner, who is the only heir of the



movable and immovable property of his late father, to file his show cause in the confiscation proceeding.

(iv) For staying the confiscation proceeding bearing no. 3737/2019-20 during the pendency of this writ application.

(v) For necessary direction upon the respondent authorities to unseal the flat no. 101, 102 & 103 in Vidyapati Apartment, Vijay Nagar, Lane no. 1, Rukunpura, Patna belonging to the petitioner as the same has been unauthorisedly sealed by the Circle Officer, Danapur without any authority and in violation of section 62 of the Bihar Prohibition and Excise Act, 2016.

(vi) For holding that the premises of the petitioner was under a lease agreement with Vidyapati cottage and the petitioner being the lessor had no knowledge, despite due diligence, as to what is happening inside the room of the Guest House. Hence, the premises of the petitioner may not be subjected to confiscation proceeding.”

It is submitted on behalf of the petitioner that sealed property i.e. Flat No. 101, 102 & 103 in Vidyapati Apartment



was acquired by his father namely, Shivnanadan Jha, who died on 09.03.2009 and after his death property devolved upon his legal heirs i.e. widow, two daughters and a son (petitioner) and other legal heirs relinquished their claim over the property (Flats) in question and petitioner came in exclusive possession of Flats and Holding number stands recorded in his name and he is paying the holding tax to the Patna Municipal Corporation since 2009-10 till date.

Son of the petitioner Rajesh Ranjan took the property on lease to run a guest house in the name and style of Vidyapati Cottage. Petitioner came to know that an FIR has been lodged giving rise to Rupaspur P. S. Case No. 159 dated 20.03.2019 under sections 3, 4 & 5 of the Immoral Traffic (Prevention) Act, 1956 and Section 30 (a), 37 (i) (ii) of the Bihar Prohibition and Excise Act, 2016. It is alleged in the FIR that one couple was found in compromising position and premises was being used for immoral purposes and one bottle of liquor containing 250 ml. of foreign liquor was recovered from Room No. 109 and Rajesh Ranjan @ Rajesh Jha was found in a drunken condition. Blood and urine sample collected of accused as well as illicit liquor recovered were sent for examination to F.S.L. Flat No. 101, 102 and 103 in Vidyapati Apartment was sealed.



It is further submitted that Superintendent of Police, Patna vide his letter dated 14.03.2020 submitted a proposal for confiscation of the vehicle although no vehicle was seized in present case. One notice dated 20.03.2020 was issued from the Office of Collector, Patna in Confiscation Case No. 3737/2019-20 in the name of Sivanand Jha son of late Radhey Jha, although name of the father of petitioner is Shiv Nandan Jha, who died in the year 2009 as such confiscation proceeding was initiated against a dead person in incorrect name. Surprisingly, proposal for confiscation has been recommended against vehicle although no vehicle is involved in this case.

Late father of petitioner Shivnandan Jha had purchased the land by a registered sale deed dated 12.04.2002 and after purchase, the land was mutated and *Jamabandi* was created in his name which is still running in his name. His father entered into an agreement with builder in which 35% of share of the Apartment was allotted to him and accordingly 3 flats i.e flats nos. 101, 102 & 103 along with three parking space was allotted to him.

It appears from the prosecution report as contained in Annexure-12 that the Circle Officer Danapur informed the investigating officer that land upon which Apartment is



constructed belongs to Shivanand Jha, son of Late Radhey Jha and *Jamabandi* No. 465 is running in his name and rent is paid up to 2007-08 and the nature of land is *raiyati* and the flat nos. 101, 102 & 103 belongs to Shivanand Jha and as such it appears that confiscation proceeding was initiated against Shivanand Jha.

Even notice which has been enclosed as Annexure-13 states that in view of recommendation dated 20.03.2019 send by Sr. S.P., proposal is to confiscate the vehicle and not the premises. The notice further states to show-cause as to why the premises should not be confiscated for transportation of illicit liquor which reflects the casual and careless manner in which proceedings are being conducted.

However, even though notice was addressed in a wrong name to a dead person petitioner being the owner of the premises which has been sealed appeared before the District Collector-cum-Confiscating Officer and prayed that the proceeding should continue against him and also tried to submit his show-cause but same was not accepted and he send his show-cause through post as contained in Annexure- 14 of this petition.

After hearing the counsel for the petitioner and



counsel for the State the writ petition is disposed of with a direction that petitioner shall appear before the District Collector-cum-Confiscating Authority or competent authority on 24.08.2020 in confiscation Case No. 3737 of 2019-20 and shall produce ownership/title documents with respect to property under confiscation and Collector-cum-Confiscating Authority on being satisfied that petitioner is the owner/title of the property under confiscation shall delete the name of Shivanand Jha [according to the petitioner wrongly recorded in place of Shiv Nandan Jha (father of petitioner)] from the confiscating proceeding and substitute the name of petitioner in his place and thereafter petitioner to file his show cause within 15 days from the date of substitution of his name in confiscation proceeding and the District Collector-cum-Confiscating Authority or the competent authority shall conclude the confiscation proceeding within 90 days from the date of filing of show cause by the petitioner, failing which, the premises of the petitioner shall be unsealed till conclusion of confiscating proceeding and possession to be handed over to the petitioner, on the petitioner depositing the original title deed of property, in question, as security with one surety to the extent of value of property as per the circle rate with the District Collector, or



competent authority, Patna. Petitioner shall also file an undertaking that during pendency of confiscating proceeding, no third party right or interest will be created on the property liable for confiscation.

It is submitted on behalf of petitioner that no FSL report is on record. It goes without saying that in absence of F.S.L. report no order of confiscation can be passed.

(Sanjay Karol, CJ)

(S. Kumar, J)

Rajiv/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.08.2020
Transmission Date	NA

