

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11566 of 2019

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Meena devi Wife of Nageshwar Prasad Resident of Mohalla-
Panchmahala, Street of Baidh jee P.O. P.S. and District-Jehanabad.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principl Secretary, Department of Registration, Prohibition and Excise, Governemnt of Bihar, Patna.
2. The Collector/District Magistrate, District Jehanabad.
3. The Excise Superintendent, District Jehanabad.
4. The Superintendent of Police, District-Jehanabad.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Paras Nath
For the Respondent/s : Mr.Vivek Prasad (GP 7)

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
and

HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH)

Date : 26-02-2020

Heard learned counsels for the parties.

The present writ application has been filed for unsealing the house situated over the land appertaining to Khata No. 32, Plot No. 844 measuring area 1.75 decimal, Mohalla – Panchmahala, District – Jehanabad which has been seized in connection with Excise Case No. 253 of 2018 arising out of Jehanabad P.S. Case No. 191 of 2018 registered for the offence punishable under Sections 30(a) of the Bihar Prohibition and Excise (Amendment) Act, 2018. The relief prayed for in paragraph 1 of the writ application reads as follows:



“(i) For issuance of an appropriate writ/writs, order/orders, direction/directions to the respondent no.2 to unlock of seal of the house which was constructed over Khata No.32 Plot No.844 measuring area 1.75 decimal which has been registered in the name of Jagdish Yadav and Bausdeo Yadav situated at Mohalla Panchmahala and with respect to that Excise Case No.253/018 registered U/S 30(a) of Bihar Prohibition & Excise Act, 2016 now aforesaid plot has been transferred through registered sell deed executed in the favour of the petitioner with effect from 29.3.2019, in favour of the petitioner during pendency of the aforesaid case, may be issued.”

The prosecution case as per the written report of Yogendra Singh, SI of Police submitted to the SHO, Jehanabad Town Police Station on 9.3.2018, a secret information was received that Binod Yadav, Ramesh Yadav and Srikant Yadav are conducting sale of liquor from their house. Thereafter, Sanha entry was made and raid was laid and from their house, 10 litres country made liquor were recovered, leading to registration of Jehanabad P.S. Case No. 191 of 2018 and sealing of the house in question.

Learned counsel for the petitioner submits that subsequent to the registration of Jehanabad P.S. Case No. 191 of 2018, the petitioner purchased the house in question vide registered



sale deed dated 29.3.2019 from Jagdish Yadav, Dharmendra Kumar and Yashoda Devi. The accused in the FIR are the three sons of one of the vendors namely Yashoda Devi. The property belongs to three co-sharers. The FIR does not suggest that any recommendation for initiation of confiscation proceeding was made by the sealing authority.

The present writ application was registered on 21.5.2019 and initially the matter was adjourned on 5.9.2019 and thereafter on 19.2.2020 on the prayer of learned GP 7. Though counter affidavit dated 19.8.2019 filed on behalf of respondent no. 4, the Superintendent of Police, Jehanabad does not suggest that any confiscation proceeding has been initiated, however, the counter affidavit dated 25.2.2020 filed on behalf of respondent no. 2, the Collector, Jehanabad and respondent no. 3 The excise Superintendent, Jehanabad reflects that the Superintendent of Police, Jehanabad vide letter no. 877 dated 21.2.2020 sent a proposal for initiation of confiscation proceeding to the Collector, Jehanabad, which has been received in the office of the Collector, Jehanabad on 22.2.2020.

Since there is recovery of liquor from the house in question, hence, it is liable for confiscation but the confiscation proceeding has still not been initiated, the petitioner has purchased



house in question, much after registration of the FIR.

Considering the rival submissions of the parties, this is not in dispute that ten litres of country made liquor was recovered from the house in question and consequently it was sealed but Section 62 of the Bihar Prohibition and Excise Act, 2016 stipulates the condition when the premises can be sealed. Section 62 of 2016 Act reads as follows:

“62- Premises liable to be sealed.-- If it comes to the notice of any excise officer or any police officer, not below the rank of a Sub Inspector, that any liquor or intoxicant has been found at a particular premises or a particular premises or a part thereof is or has been used for committing any offence under this Act, he may immediately seal the premises and send a report to the Collector for the confiscation of the same.

Provided that if the said premises are temporary structures which cannot be effectively sealed, then the Excise Officer or the police officer, with the order of the Collector, may demolish such temporary structures”

The aforesaid provision clearly suggests that if it is brought to the notice of the Excise officer or any police officer, not below the rank of a Sub Inspector, that any liquor or intoxicant has been found at a particular premises or a part thereof is or has been



used for committing any offence under this Act, he may immediately seal the premises and send a report to the Collector for the confiscation of the same. The proviso of the said provision suggests that if the said premises are temporary structures which cannot be effectively sealed, then the Excise Officer or the police officer, with the order of the Collector, may demolish such temporary structure.

In the present case, from the FIR it does not appear that the sealing authority has recommended for confiscation. From the counter affidavit of the Collector and the Excise Superintendent, it appears that proposal for initiation of confiscation proceeding was transmitted only on 21.2.2020 as gets reflected from paragraph 6 of the said counter affidavit which reads as follows:

“6.That it is submitted that the superintendent of police, Jehanabad vide his letter no-877, dated 21.02.2020 enclosing relevant papers of Jehanabad P.S. Case no-191/2018 has sent a proposal for confiscation of the house question which stands sealed in connection with this case. It is submitted that the aforesaid letter with relevant papers has been received only on 22.02.2020. The matter is examined in the light of the relevant law and necessary decision in the matter will be taken soon.”

But till date, as submitted by learned counsel for the respondents,



the confiscation proceeding has not been initiated.

In the circumstances, the very purpose of sealing the house in question gets frustrated as the FIR was registered on 9.3.2018 and the writ application was registered on 21.5.2019.

Accordingly, we direct the learned Additional District Judge II-cum-Special Judge, Excise, Jehanabad or Collector, Jehanabad to issue appropriate direction to the concerned authority to unseal the house in question in favour of the petitioner on the following conditions -

(I) The petitioner will produce the proof of ownership of the house in question;

(II) The petitioner shall give an undertaking on affidavit that he will not execute sale deed in favour of any person with regard to the house in question or alienate or encumber the same creating any kind of adverse interest against the interest of the State;

(IV) The petitioner will deposit the original documents of the house in question before the learned court below.

Before doing so, the petitioner will prefer an application before the Collector, Jehanabad for impleading him as



party in the confiscation proceeding if it has been initiated. If the confiscation proceeding has not been initiated then such application will be filed before the learned Additional District Judge II-cum-Special Judge, Excise, Jehanabad within a period of three weeks of receipt of the order.

The entire exercise will be done by the learned Court below within four weeks of receipt/production of a copy of this order.

It is made clear that we have not expressed any opinion with regard to the merits of this case or with regard to the ownership of the house in question.

Accordingly, the writ application is allowed to the extent as indicated above.

(Dinesh Kumar Singh, J)

(Anil Kumar Sinha, J)

anil/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

