

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11870 of 2019

Shiv Balaki Devi @ Shiw Kali Devi, W/o Nageena Ram Resident of Mohalla-
Ambedkar Colony, Baswariya, P.s.- Bettiah Town, Distt.- West Champaran

... .. Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary, Registration, Excise and Prohibition Department, Govt. of Bihar, Patna
2. The Collector West Champaran, Bettiah
3. The Superintendent of Police West Champaran, Bettiah
4. The Superintendent of Excise West Champaran, Bettiah
5. The Officer-in-Charge Bettiah Town Police Station, West Champaran

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Umesh Chandra Verma
For the Respondent/s : Mr.Vikash Kumar (Sc11)

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

and

HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH)

Date : 25-02-2020

Heard Mr. Umesh Chandra Verma, learned counsel for the petitioner and learned A.C. to S.C.-11, appearing on behalf of the respondents.

The present application has been filed for directing the State-respondents to release/ unseal the residential house of the petitioner bearing Holding No.207012196, Ward No.31, Ambedkar Colony, Baswariya, Bettiah Town, in favour of the petitioner, which has been seized in connection with Bettiah Town P.S. Case No.234 of 2019, registered of the offences punishable under Section 30(a), 37(a), (b), (c) and 56 of the Bihar Prohibition and Excise Act, 2016, as amended by the Amendment Act 8 of 2018 (hereinafter referred to as 'the Act').



The relief, as prayed for in paragraph No.1 of the writ application reads as follows :-

“1. That this is an application for issuance of an appropriate writ/order/direction, particularly in nature of mandamus, for removal of lock/seal illegally put by the Bettiah Town Police (respondent no.5) on the door of the residential house of the petitioner, Holding No.207012196, Ward No.31, Ambedkar Colony, Baswariya, Bettiah Town, rendering the petitioner and her family homeless since 16.03.2019 after lodging Bettiah Town P.S. Case No.234 of 2019 registered under Sections 30(a), 37(a), (b),(c) and 56 of the Bihar Prohibition and Excise Act, 2016 for alleged recovery of 05 litres of illicit country liquor from one of rooms of her house.”

The prosecution case got initiated as per the written report of Amit Kumar, Sub Inspector of Police submitted to S.H.O., Betianagar P.S. to the effect that on 16.03.2019 at 6:20 P.M. secret information was received that liquor is being sold by Lal Ram, Mohan Ram, Naresh Ram and Shambhu Ram, on the basis of which raid was laid and two persons were apprehended, namely, Naresh Ram and Mohan Ram and from the house in question total five litres of illicit liquor kept in red colour plastic gallon, 22 litres of fermented materials for preparation of liquor, 300 litres of solution meant for preparing liquor were recovered, leading to registration of Bettiah Town P.S. Case No.234 of 2019.

It is submitted by learned counsel for the petitioner that the petitioner is the registered owner of the residential house bearing Holding No.207012196. In support of the same, receipt of Bettiah Nagar Parishad has been brought on record as Annexure-2



to the writ application. It is further submitted by learned counsel for the petitioner that the petitioner has not been made accused and was not present in the house at the time of occurrence. Though there is no averment in the FIR with regard to sealing but actually the house is sealed and no confiscation proceeding has been initiated and the petitioner is facing undue hardship due to the sealing of his residential house.

Learned A.C. to S.C.-11 relying upon the counter affidavit filed on behalf of respondent No.2 and 4, i.e., Collector, West Champaran, Bettiah and Superintendent of Excise, West Champaran, Bettiah respectively and submits that till date confiscation proceeding has not been initiated and no proposal/report has been received under Section 58 of the Act. Statement to that effect has been made in para 6 of the counter affidavit which reads as under :-

“6. That it is pertinent to mention here that no confiscation proceeding is pending before the authority concerned in respect of the seized house, as no proposal has been submitted by the police officials. It is also not out of place to mention here that the writ petitioner herself has also not submitted any application before the competent authority for provisional release of the house in question.”

Considering the rival submissions of the parties, it appears that seizure has been made by Assistant Sub Inspector of Police, Amit Kumar, whereas Section 73(e) mandates that the seizure cannot be made by an officer below the rank of Sub



Inspector of Police. Hence, the very seizure appears to be de hors the provisions of the Act and moreover the FIR does not suggest that any sealing of the house was made.

Section 62 of the Act provides the procedure for sealing the premises which reads as follows :-

“62. Premises liable to be sealed – If it comes to the notice of any Excise Officer or any police officer, not belong 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 sent 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.”

Section 62 of the Act mandates that the sealing has to be done immediately after seizure of liquor/intoxicant or used of the premises or part thereof for committing offence under the Act and sealing authority has to transmit report immediately to the Collector, but in the present case, nothing has been done.

Considering the facts and circumstances of the case where it is said to be a residential house and the admitted position is that confiscation proceeding has not been initiated under the seizure of more than six 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 finalization of confiscation proceeding, the



residential house of the petitioner be provisionally un-sealed / un-sealed 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, West Champaran, Bettiah. On submission of the original title deed of the property in question, with the surety, the residential house shall be de-sealed and possession be handed over within one week thereafter. The title deed deposited by the petitioner shall be kept in safe custody of the Confiscating Authority.

The owner of the property shall undertake that during the pendency of the confiscation proceeding, he will not deal with the property in question and shall not create any third party interest whatsoever.

The application is allowed to the extent as stated hereinabove.

(Dinesh Kumar Singh, J)

sanjeev/-

AFR/NAFR	NA
CAV DATE	NA
Uploading Date	27.03.2020
Transmission Date	NA

(Anil Kumar Sinha, J)

