

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.12541 of 2019**

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Vishwanath Sah, Son of Baran Sah, Resident of Village- Govind Fandah,  
Ward No.04, Police Station- Sitamarhi, District- Sitamarhi.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
2. The Principal Secretary, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
3. The Collector-cum-District Magistrate, Sitamarhi.
4. The Superintendent of Excise, Sitamarhi.

... .. Respondent/s

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**Appearance :**

For the Petitioner/s : Mr.Pushpendra Kumar Singh  
For the Respondent/s : Mr.Kumar Manish, SC 5

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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 : 20-02-2020**

Heard learned counsel for the petitioner and the respondents.

The present writ application has been filed for a direction to the Collector, Sitamarhi, to release the house/room of the petitioner, situated in village Govind Fundah, Ward No. 4. District Sitamarhi, which has been seized in connection with Sitamarhi Police Station (Punaura O.P.) Case No. 378 of 2017, registered for the offences under Sections 272 and 273 of the



Indian Penal Code and Section 30 (a) of the Bihar Prohibition and Excise Act, 2016 (hereinafter referred to as 'the Act')

The relief, as prayed for in paragraph 1 of the writ application, reads as follows:

“To issue an appropriate writ(s)/order(s)/ direction(s) in the nature of writ Mandamus, directing the respondent Collector to release the house of the petitioner which has been seized by the police officials under Sitamarhi Police Station, bearing Sitamarhi P.S. Case No. 378 of 2017 dated 25.05.2017 instituted for the offences under sections 272,273 of the Indian Penal Code and Section 30 (A) of the Bihar Excise Amendment Act.”

The prosecution case got initiated on the basis of written report of Deepak Kumar Singh, Assistant Sub-Inspector of Police, submitted to the Station House Officer, Sitamarhi Police Station, is to the effect that on 25.05.2017, at 1 PM, an information was received on the mobile phone of Station House Officer, Punaura O.P., that one Rakesh Sah had stored illegal liquor in his house and consequently, raid was conducted and 05 bottles of 750 ml Indian Made Foreign Liquor was recovered and seizure was accordingly made and Sitamarhi Police Station (Punaura O.P.) Case No. 378 of 2017 was registered for the offences under Sections 272 and 273 of the Indian Penal Code and Section 30 (a) of the Bihar



Prohibition and Excise Act, 2016 (hereinafter referred to as 'the Act').

It is submitted by learned counsel for the petitioner that though the house was not sealed, but from the counter affidavit filed on behalf of respondent nos. 3 and 4, the Collector -cum- District Magistrate, Sitamarhi and the Superintendent of Excise, suggests that the room/house from where the liquor were seized, was confiscated by the Collector, Sitamarhi, vide order, dated 24.12.2018, passed in Confiscation Case No. 529 of 2017. Though, the order of the Collector, Sitamarhi, suggests that the proposal for confiscation of the room/house of the petitioner was transmitted by the Superintendent of Police, Sitamarhi, vide Memo No. 1736, dated 26.08.2017, it suggests that the room in question is treated to be of Rakesh Sah, son of the petitioner, whereas the same is recorded, in the revenue record, in the name of the petitioner. More over, the seizure has been made by the Assistant Sub-Inspector of Police; whereas Section 73 (e) of the Act mandates for seizure by an officer not below the rank of Sub-Inspector of Police.

Learned counsel for the State submits that the final order in confiscation proceeding has been passed and the room/house in question has already been confiscated and against the final order of



confiscation, there is provision of appeal under Section 92 of the Act.

Section 62 of the Act provides that 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 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. In the present case, the sealing has neither been done by the competent authority nor the report/proposal for confiscation was transmitted by the seizing or detaining authority, as mandated under Section 58 (1) of the Act.

It is well settled that the discretionary jurisdiction under Article 226 of the Constitution of India, being a self-imposed restriction can only be exercised when the writ petition has been filed for the enforcement of any of the Fundamental rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. The Apex Court in the case of **Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Ors.**, reported in **(1998) 8 Supreme Court Cases 1** has held as follows:



“15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bare in at least three contingencies, namely, where the Writ Petition has been filed for the enforcement of any of the Fundamental rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.”

Considering the fact that the final order has been passed in the confiscation proceeding and the Act provides an alternative efficacious remedy of appeal in Chapter IX under Section 92(2) of the Act against the order passed by the Collector before the Excise Commissioner within ninety days of the order complained of, this Court is not inclined to interfere in the matter.



Accordingly, this writ application is disposed of with a liberty to the petitioner to prefer appeal within a period of four weeks of receipt or production of the order, along with an application for condonation of delay. If such appeal is filed by the petitioner, the appellate authority is expected to consider application for condonation of delay in view of the fact that the writ application of the petitioner was pending before this Court and dispose of the appeal within a period of ten weeks from the date of its filing.

**(Dinesh Kumar Singh, J.)**

**( Anil Kumar Sinha, J.)**

Prabhakar Anand/-

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