

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.441 of 2020

Uma Shankar Singh @ Pappu Singh, Son of Anirudh Singh, Resident of
Village- Tirasi Pashchim Tola Sungtia, P.S. Gopalpur, District- Bhagalpur.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary Department of Excise and Prohibition, Government of Bihar, Old Secretariat, Patna.
2. The District Magistrate, Bhagalpur.
3. The Superintendent of Police, Bhagalpur.
4. The Superintendent of Excise, Bhagalpur.
5. The Officer-in-Charge, Gopalpur.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Rajive Ranjan Singh, Advocate
For the Respondent/s : Mr.Vikash Kumar,SC-11

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
and
HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH)

2 14-01-2020 Heard Mr. Rajive Ranjan Singh, learned counsel for
the petitioner and learned AC to SC-11.

The present writ application has been filed for
quashing the order dated 28.06.2019, as contained in Annexure-
3, passed by District Magistrate, Bhagalpur in Misc. (Excise)
Case No. 63 of 2017-18, arising out of Gopalpur P.S. Case No.
40 of 2017, whereby the house of the petitioner appertaining to



Khata No. 80, Plot No. 5353, measuring an area of 0.25 decimals situated in village – Tarari Pashchim tola, Police Station – Gopalpur, District – Bhagalpur has been confiscated and the Sub-divisional Officer, Naugachia has been directed to use the house in question for State purposes in accordance with law.

Relief prayed for in paragraph 1 of the writ application reads as follows:

“That through this Writ petition, petitioner begs following order/order direction/directions, Writ/Writs.

(i) For quashing the order dated 28.6..2019 passed by District Magistrate, Bhagalpur in Misc. Case No. 63 of 2017-18.

(ii) For direction to release the house of petitioner situated at Mouja Saidpur P.S. No. 11, Khata No. 80, Khesra No. 5353, Rakwa-0.25 Decimal in the favour of the petitioner.

(iii) For any other relief/reliefs entitled the petitioner accordance with law.”

The prosecution case got initiated on the basis of self recorded statement of Shiv Kumar Yadav, SHO, Gopalpur Police Station on 10.08.2017 at 6.05 P.M., to the effect that during patrolling, he received a secret information to the effect that liquor is being sold in the grocery shop by one Pappu



Singh. Thereafter, search was made in the shop of the petitioner but nothing was recovered but thereafter, search was made in the house of the petitioner from where, 11.565 litres of Indian Made Foreign Liquor and 21.600 litres of country made liquor were recovered, leading to registration of Gopalpur P.S. Case No. 40 of 2017 for the offences punishable under Sections 30(a) and 38 of the Bihar Prohibition and Excise Act, 2016 as amended Act 8 of 2018 (hereinafter referred to as the 'Act').

Learned counsel for the petitioners submits that the petitioner has received the notice in confiscation proceeding and he has appeared, in such proceeding but since long period, the proceeding has been pending, subsequently he did not appear in the said proceeding and ultimately, vide order dated 28.06.2019 passed in Misc. (Excise), Case No. 63 of 2017-18, the house of the petitioner has been confiscated and Sub-divisional Officer, Naugachia has been directed to utilize the confiscated house in accordance with law. Since the residential house of the petitioner has been confiscated hence, he prays for release of the house in question under the provisions of the Act.

Learned counsel for the State submits that the



impugned order suggests that the petitioner chose not to appear in confiscation proceeding and ultimately, the house in question has been confiscated, hence, the ownership of the house in question has now been vested to the State after conclusion of the proceeding and petitioner is no longer owner of the house in question.

Having heard learned counsels for the parties, it appears that the petitioner chose not to appear in the confiscation proceeding or did not file any petition for release of the house in question and ultimately by the impugned order dated 28.06.2019, the house of the petitioner has been confiscated. In view of Section 61 of the Act, once the house is confiscated, the petitioner is no longer owner of the house in question. Moreover, there is provision of appeal against the order passed by the Collector under the Act.

Since the petitioner has not availed the alternative remedy available to him, the writ application is disposed of with a liberty to the petitioner to prefer an appeal before the Excise Commissioner, Government of Bihar, Patna. If such appeal is filed within a period of four weeks before the appellate authority along with an application for condonation of delay, the appellate authority may consider the condonation of delay in



filing the appeal since the writ application is pending before this Court.

(Dinesh Kumar Singh, J)

(Anil Kumar Sinha, J)

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