

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9128 of 2021

=====

Deepak Kumar @ Deepu Kumar Son of Shri Sheo Shankar Prasad Resident
of Village- Obra, P.S.- Obra, District- Aurangabad.

... .. Petitioner/s

Versus

1. The State of Bihar represented through the Additional Chief Secretary, Prohibition Excise and Registration Department (Excise), Government of Bihar, Patna.
2. The Excise Commissioner, Bihar, Patna.
3. The District Magistrate, Aurangabad.
4. The Superintendent of Police, Aurangabad.
5. The Superintendent of Excise, Aurangabad.
6. The Officer in Charge, Obra Police Station, District- Aurangabad.

... .. Respondent/s

=====

(The proceedings of the Court are being conducted by Hon'ble the Chief Justice /Hon'ble Judges through Video Conferencing from their residential offices/residences. Also, the Advocates and the Staffs joined the proceedings through Video Conferencing from their residences /offices.)

Appearance :

For the Petitioner/s : Mr.Kumar Ravish, Adv
For the Respondent/s : Mr.Vivek Prasad GP-07

=====

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE S. KUMAR)

Date : 29-06-2021

Heard learned counsel for the parties.

Petitioner has prayed for following relief:-

“(i) To quash and set aside Annexure-P/10 i.e. order dated 02.02.2021 (Memo No. 98) passed in Excise Appeal Case No. 17 of 2017 under which the Excise Appeal was rejected on merits despite recording a fact of non-appearance of the learned counsel by the appellate authority;

(ii) To quash and set aside Annexure P/2 i.e. the



confiscation order dated 17.05.2017 passed by the District Magistrate/Collector, Aurangabad in Excise Confiscation Case No. 89 of 2016 ordering confiscation of the residential house of this petitioner including the entire land i.e. 17 decimals which is comprised of the shares of other coparceners of this petitioner without issuing notice to any of the coparcener;

(iii) To declare that the dwelling house of this petitioner situated at Plot No. 773, Khata No. 129 (in portion of total area of 117 decimals) at Mauza/Village: Obra, District: Aurangabad, Bihar which was sealed on 20.05.2016 and later provisionally released pursuant to orders of this Hon'ble Court 2016 including the entire 17 decimals of land do not vest in the State.”

Learned counsel for the petitioner submits that petitioner's appeal being Excise Appeal Case No. 17 of 2017 has been dismissed by Excise Commissioner, Patna vide order 02.02.2021, on merits without hearing him and further directed to confiscate the house of the petitioner.

Appellate Authority can dismiss the appeal for non prosecution but cannot decide the appeal on merit in absence of parties.

In such view of the matter, the order dated 02.02.2021 passed by Appellate Authority in Excise Appeal Case No. 17 of 2017 is set aside, and he is directed to pass a fresh order on appeal filed by petitioner (Appellant) after affording opportunity of hearing to all concerned, within 8 weeks.

During pendency of appeal, the confiscated property i.e.



house of petitioner, shall not be auction sold, if not already
auction sold.

With aforesaid liberty, the writ petition is disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

ranjan/-

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

