IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16626 of 2021

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Nitish Kumar Yadav Son of Subhash Chandra Yadav Resident of Village- Rewara Paraspur, P.S.- Bhadohi, District- (Uttar Pradesh).

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Excise, Govt. of Bihar, Patna.
2. The District Collector cum District Magistrate, Kaimur at Bhabua.
3. The Superintendent, Excise, Kaimur at Bhabua.
4. The Superintendent of Police, Kaimur at Bhabua.
5. The S.H.O. Durgawati Police Station, District- Kaimur at Bhabua.
6. The Sub-Inspector(Informant), Durgawati Police Station, District- Kaimur at Bhabua.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Parwej Khan, Advocate
For the Respondent/s	:	Mr.Vikash Kumar (Sc11)

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

Date : 03-12-2021

Heard learned counsel for the parties.

Petitioner has prayed for following relief:-

> "For issuance of any appropriate writ(s)/order(s)/directions(s) to set aside the order dated 29.07.2021 by the District Collector -cum- District Magistrate, Kaimur at Bhabua (Res. No.2), passed in vehicle confiscation case No.178 of 2021, by which Superintendent, Excise, Kaimur at Bhabua (Res. No.3) directed to deposit the auction amount in treasury Kaimur, through the Chalan within 2 months after auction sale of the vehicle/ car (Maruti Ertiga VDI) bearing registration No.UP66K-7145 which was seized under Sections 30(a)/37(i)(ii) of the Bihar Excise and Prohibition (Amendment) Act, 2018 in connection with

> Durgawati P.S. Case No. 133 of 2021, and further necessary direction to the authority concerned to release the vehicle forthwith, and / or to allow other suitable relief(s) in facts and circumstances of the case."

Petitioner has approached this Court without exhausting the statutory remedy of appeal against the impugned order, as such, petitioner is granted liberty to avail the remedy of appeal against the confiscation order passed by the Confiscating Authority- cum- District Magistrate, before the Appellate Authority and if any such appeal is filed within 4 weeks then appellate authority shall condone the delay in filing the appeal and shall decide the appeal on its own merit preferably within 8 weeks from the date of its filing.

District Magistrate / Confiscating Officer has also directed to auction the vehicle within two months, however, no auction of confiscated vehicle can be done unless the order of D.M./ Confiscating authority attains finality, as such, during pendency of appeal, the vehicle cannot be auctioned sold.

Excise Commissioner is advised to bring to the notice of all concerned authorities about Section 61 of the Bihar Prohibition and Excise Act, 2016 as well as Rule 14 of Bihar Prohibition and Excise Rule, 2021 which mandates auction of confiscated vehicle to be made only after order passed by confiscating authority attains finality. Section 61 of the Bihar Prohibition and Excise Act, 2016 as well as Rule 14 of Bihar Prohibition and Excise Rule, 2021 are reproduced as under:-

> " **61**. **Confiscated articles to vest with the Collector**.—When an order for confiscation of any property has been passed under section 58 and such order has become final in respect of the whole or any portion of such property, such property or portion thereof, as the case may be, shall vest with the State Government free from any encumbrance.
>
> **14. Disposal of seized/confiscated things.-** The things seized/confiscated by the Collector may be disposed of by the order of Collector in the following manner:-
>
> (1) If the Collector, is satisfied that any seized article, is liable to speedy and natural decay or is of trifling value or can be put to misuse, he may, in exercise of power under Section 57 of the Act, order for destruction of the same at any time before passing the order of confiscation.
>
> (2) The confiscated Animal/vehicle/vessel/other conveyance/ premises or part thereof shall be put to public auction and sold to the highest bidder within a period of one month from the date of attainment of finality of order of the confiscating authority or such extended period as deemed fit by the Collector or may be put for government use in the manner

prescribed.

Explanation: the word "finality” connotes the date of order of Excise Commissioner passed under Section 92 of the Act.

The writ petition is disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.12.2021
Transmission Date	NA