IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.583 of 2022

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Mahendra Pratap Son of Late Laxman Prasad, Resident of Mohalla-Shivpuri, P.S.-Lehari, District-Nalanda.

... ... Petitioner/s

Versus

1. The State of Bihar Bihar.
2. The Additional Chief Secretary cum Revisional Authority, Excise, Bihar Excise Department, New Secretariat, Baily Road, Patna.
3. The Commissioner cum Appellate Authority, Excise, Bihar Excise Department, New Secretariat, Baily Road, Patna.
4. The District Magistrate cum Collector, Nalanda at Bihar Sharif.
5. The Additional Collector cum Additional District Magistrate, Nalanda at Biharsharif.
6. The District Transport Officer, Nalanda at Bihar Sharif.
7. The Superintendent of Police, Nalanda at Bihar Sharif.
8. The Motor Vehicle Inspector, Nalanda at Bihar Sharif.
9. The Police Inspector cum S.H.O. Laheri PS, Town and District-Nalanda at Bihar Sharif.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Pramod Kumar Sinha, Adv
For the Respondent/s	:	Mr.Kumar Manish (SC5)

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(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.)

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

Date : 01-04-2022

Heard learned counsel for the parties.

Petitioner has prayed for the following relief(s):-

> "(i) For setting aside the order dated 15-12-2021passed in Excise Revision No.246 of 2021 by the learned Additional Chief Secretary Bihar, Patna who has been pleased to dismiss the revision petition and affirmed

the order dated 25-10-2021 passed in Excise Appeal Case No.696/2021 by the learned Commissioner cum Appellate Authority, Excise, Bihar and also affirmed the order dated 13-09-2021 passed in confiscation Case No. 160 of 2021 by the learned District Magistrate cum Collector, Nalanda at Bihar Sharif respectively. (Annexure-6).

(ii) For setting aside the order dated 25-10-2021 passed in Excise Appeal Case No.696/2021 by the learned Commissioner cum Appellate Authority, Excise, Bihar who has been pleased to dismiss the appeal and affirmed the order dated 13-09-2021 passed in confiscation case no.160/2021 where under and where by learned Additional Collector Cum Additional District Magistrate, Nalanda at Bihar Sharif. (Annexure-5).

(iii) For setting aside the order dated 13-09-2021 pased in contiscation case no.160 /2021 where under and where by learned Additional Collector Cum Additional District Magistrate, Nalanda at Bihar Sharif has been pleased to confiscate the constructed part of the house of petitioner situated in Mauza -Chakhajain, Thana No.126, Khata No.40, Khesra No.260, Area 2.50 Decimals, sized/ sealed in connection with Laheri P.S. case No.518/2020 instituted U/s 30(A) of Bihar prohibition & excise Amendment Act, 2016 and also directed to auction the part house in questio at Minimum Floor Price (Annexure-4).

(iv) For that during pendency of the present writ petition a direction may be issued to the respondent authorities not to disturb the possession of the petitioner and his entire joint family members on the sole joint house situated in Mauza -Chakhajain, Thana No.126, Khata No.40, Khesra No.260, Area 2.50 Decimals."

Allegation is of recovery of 13.5 litre of illicit liquor from one room of the joint house which is registered in the name of his mother Parmeshwari Devi.

It is submitted by learned counsel for the State that during pendency of writ petition, there has been amendment in the Bihar Prohibition and Excise Rules, 2021 and a new Rule

12(B) has been inserted which reads as under:-

> "**12B. Release of Premises on Payment of Penalty: -** (1) If any premises or part thereof has been seized or sealed by any police or excise officer under the Act, then in terms of section-57B (2) of the Act, the Collector or an officer authorized by him, upon receipt of an application in Form V from the owner of the said premises, may release or unseal the said premises or part thereof upon payment of such penalty as may be ordered by the Collector or the officer authorized by him. Provided, where it is not possible to ascertain the owner of the premises or the owner is not coming forward, the Collector or the officer authorized by him shall, after waiting for 15 days from the date of seizure/sealing, proceed to confiscate the premises as per the provisions of the Act.
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> (2) The Collector or the officer authorized by him shall have due regard to the economic status of the individual, nature of his involvement in the crime, location of the premises and the quantum of intoxicant recovered while deciding the quantum of fine to be paid by the individual. However, the fine shall not be less than Rs. one Lakh in any case. In any case, the Collector shall not wait beyond 15 days from the date of seizure/sealing and if during this period, the accused/owner does not pay up the penalty he shall proceed with the confiscation/auction.
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> (3) Notwithstanding above, if on a report by police officer or excise officer, the Collector or the officer authorized by him is satisfied that releasing the premises shall not be in the public interest, the Collector or the officer authorized by him shall proceed ahead with the confiscation of the said premises or part thereof and its subsequent auction/disposal.
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> (4) Such penalty shall be, regardless of the outcome of the trial if any, before the Special Court, non-refundable.
>
> (5) The owner of the Premises shall, after the release of the premises, allow the inspection of the premises as and when desired by the authorities.
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> [Explanation: In all pending/ongoing cases of confiscation/ auction of premises, the Collector or the officer authorized by him may give an opportunity to the existing owner to pay the aforesaid penalty and get the premises released. Upon satisfaction of ownership and upon payment of such penalty, the ongoing confiscation/auction proceeding may be dropped and the premises released.]"

In view of amendment in the Excise Act, and same being applicable in pending case, it shall be open for the petitioner to get his/her house unsealed after making payment of penalty in terms of Rule 12(B) inserted by amending Bihar Prohibition and Excise Rules, 2021.

Liberty reserved to petitioner to approach this Court for same and subsequent cause of action, if need so arises.

With aforesaid observation and direction, the writ petition stands disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

ranjan/-

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