

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.636 of 2022

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Gulab Choudhary Son of Muneshwar Choudhary R/o- Village- Kajara, P.S.-
Wena, Distt.- Nalanda

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Excise Department, Patna.
2. Additional District Magistrate cum Additional Collector, Nalanda.
3. Superintendent of Police (Bihar Sharif) Distt. Nalanda
4. Assistant Sub- Inspector of Police, Police Station Wena, Distt.- Nalanda
5. Superintendent of Excise, Nalanda
6. Executive Engineer, Bhawan, Sub Division Bihar Sharif.
7. District Sub- Registrar, Nalanda

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Prabhat Kumar, Adv
For the Respondent/s : Mr. Vivek Prasad (GP7)

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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 : 22-04-2022

Heard learned counsel for the parties.

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

“That this writ application is preferred against the impugned order dated 24.03.2021 passed in confiscation (Excise) Case No. 142 of 2021 by Additional Collector cum Additional District Magistrate, Nalanda, whereby and where under he passed the impugned order confiscating the house, constructed on Khata No. 103, Khesar No. 1628, Mauza Karjara, Thana No. 396 on the basis of Wena Police Station Case No. 26/2021 dated 04.02.2021 under section 30(a) of Bihar Prohibition and

Excise Act, 2016, exercising the power conferred upon District Magistrate cum District Collector under section 58(2) Bihar Prohibition and Excise Act, 2016.”

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.

During pendency of appeal, the confiscated vehicle/property shall not be auction sold, if not already auction sold.

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.

(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.

(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.

(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.

[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 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