IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1118 of 2022

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1. Lailoon Chaudhari Son of Nageshwar Chaudahry @ Nago Chaudhari, Resident of Vilalge-Mallichak (Govardhan Sahai), Police Sttion-Rahui, District-Nalanda.
2. Masudan Choudhary Son of Jamun Choudhary Resident of Village-Mallichak (Govardhan Sahai), Police Station-Rahui, District-Nalanda.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Department of Excise, Govt. of Bihar, Patna
2. The Additional Chief Secreary, Bihar, Patna.
3. The Excise Commissioner, Bihar, Patna.
4. The Collector, Nalanda.
5. The Aditional Collector, Nalanda.
6. The Superintendent of Police, Nalanda.
7. The Excise Superintendent, Nalanda.
8. The Sub-Inspector. Excise Department, Nalanda.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Anil Kumar Singh, 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 : 22-04-2022

Heard learned counsel for the parties.

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

I. For issuance a writ in the nature of certiorari for quashing of the order dated 15.12.2021 passed by the Learned Additional Chief Secretary, Bihar, Patna (Respondent No.2) passed in Excise Revision No.245 of 2021 by which the learned Additional Chief Secretary has been pleased to dismissed the said revision application with regard to release a dwelling house of the petitioners bearing Thana No.8, Khata No.226, Mauza Indwara, Kheshra No.1399, Area 0.016 decimals and Thana No.8 Khata No.226 Mauza Indwara,Khesra No.1399, Plot No.1392 area 1.562 decimals.

II. For also setting aside order dated 20.9.2021 passed by the Excise Commissioner, Bihar, Patna Excise Appeal No.479 of 2021 by which he has dismissed the appeal and affirming the order dated 12.4.2021 passed by the passed by the Additional Collector-cum-District Magistrate, Nalanda in

Excise (House Confiscation) Case No.90/2021 arising out of Rahui Police Station Case No.468 of 2020 Under Section 30(a) of the Bihar Prohibition and Excise Act, 2018 whereby he has directed that the confirmation of the order of Collector, Nalanda passed in this case.

Petitioner nos. 1 and 2 are the owner of the sealed premises.

Allegation is recovery of 5 litre of illicit liquor from the house of petitioner no. 1 and 10 litre of illiict liquor from the house of petitioner no. 2.

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.]"

57B-Things or premises liable to be released upon penalty-

(1) Any animal, vehicle, vessel or other conveyance used for committing any offence punishable under this Act that has been seized by any police Officer or Excise Officer may be released by the Collector upon payment of such penalty as may be notified by the State Government.

(2) Any premises or part thereof used for committing any offence punishable under this Act that has been seized by any police Officer or Excise Officer may be released by the Collector upon payment of such penalty as may be notified by the State Government.

(3) If the person concerned does not pay the penalty, then the Collector shall proceed to confiscate the said animal, vehicle, vessel or other conveyance and premises as per section-58.

[Explanation 1: It shall not be a right of the accused to get his conveyance, item or premises released upon payment of the required penalty. The Collector, based upon a report by a police Officer or an Excise Officer, may, for reasons to be recorded in writing, still refuse to release the said conveyance, item or premises and proceed ahead with confiscation and

auction/destruction.]

[Explanation 2: The Collector shall, from the date of this Amendment coming into force, close the on-going confiscation proceeding if the person concerned pays the penalty as notified and release such vehicle, conveyance or premises.]

[Explanation 3: Such release shall not affect the outcome of trial, if any, before the Special Court.]"

In said view of the matter, the writ petition is disposed of with liberty to the petitioner nos. 1 and 2 to avail the remedy of the amended provision of 12(B) and 57B of the Bihar Prohibition & Excise (Amendment) Rules, 2022. It is made clear that this Court has not expressed any opinion with respect to merit of the case.

Equally, liberty reserved to the petitioner nos. 1 and 2 to approach this Court for same and subsequent cause of action, if so arises.

(Sanjay Karol, CJ)

(S. Kumar, J)

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