

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1460 of 2022

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Anuj Kumar, S/o Late Ravindra Prasad, Resident of Mohalla-Gulab Nagar,
Ward No.2, P.S.-Chitragupta Nagar, District-Khagaria.... ... Petitioner/s
Versus

1. The State of Bihar through the Principal Secretary, Excise Department, Bihar, Patna.
 2. The Excise Commissioner, Government of Bihar, Patna.
 3. The Collector-Cum-District Magistrate, Khagaria.
 4. The Superintendent of Police Khagaria.
 5. The Excise Superintendent, Khagaria.
 6. The Circle Officer, Khagaria Block, District -Khagaria
 7. The District Registrar, Khagaria.
 8. The Officer-in-Charge, Chitragupta Nagar P.S., District-Khagaria.
- Respondent/s

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Appearance :

For the Petitioner/s : Mr.Ranjeet Kumar Singh, Advocate
For the Respondent/s : Mr.Vivek Prasad (Gp7)

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE S. KUMAR)

**(The proceedings of the Court are being conducted through
Video Conferencing and the Advocates joined the proceedings
through Video Conferencing from their residence.)**

Date : 22-04-2022

Heard learned counsel for the parties.

Petitioner has prayed for following reliefs:-

- (i) For issuance of any appropriate writ or writs, rule or direction especially in the nature of certiorari, quashing the order dated 26.11.2021 passed in Confiscation Case No. 37/2018-19, passed by the learned Collector-cum-District Magistrate, Khagaria by which the land bearing Tauzi No. 4960, Jamabandi No. 493, Khata No. 236, Khesra No. 178, Rakba 10 Dhur upon which phushuma shop and house of the petitioner has been constructed directed to auction under Excise Act without providing any opportunity of hearing to the petitioner.

- (ii) For issuance of any appropriate writ of writs, rule or direction in the nature of mandamus directing the respondent to release the khatiyani land of the petitioner which has been seized under Excise Act.
- (iii) For issuance of any appropriate writ of writs, rule or direction as your Lordships may deem fit and proper to the fact and circumstances of the case as well as for which the petitioner may be found entitled there too.

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 property/ vehicle shall not be auction sold, if not already auction sold.

OR

It is submitted on behalf of 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 after making payment of penalty in terms of Rule 12(B) inserted by amending Bihar Prohibition and Excise Rules, 2021.

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

(Sanjay Karol, CJ)

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	28.04.2022
Transmission Date	NA