

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1701 of 2022

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Santosh Kumar @ Pau Yadav Son of Late Ramkishore Prasad Yadav Resident of Mohalla-Azizghat (Ward no. 29, baignabad, Khandakper, Post Office-Biharsharif, Police Station-Bihar, District-Nalanda.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Excise Department, Government of Bihar, Patna.
2. The Excise Commissioner, Bihar Excise Department at Patna.
3. The Additional Collector-Cum-Additional District Magistrate, Nalanda,
4. The Superintendent of Police, Nalanda.
5. The Station House Officer, Bihar Police Station, District-Nalanda.
6. The Investigating Officer, of Bihar P.S. Case No. 667/2021

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Kumar Pankaj, Advocate
For the Respondent/s : Mr.Vikash Kumar (S.C.11)

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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 the following relief(s):-

- (i) For issuance of a writ in the nature of certiorari, setting aside the order dated 18.12.2021 (Annexure- 4) passed by respondent no. 3 (Additional Collector –Cum- Additional District Magistrate,Nalanda) in Confiscation No. 564/2021, directing to confiscate the three storey house of the petitioner as well as the land under the premise of the petitioner. It has further been directed to put the entire house of the petitioner on auction sale.
- (ii) For issuance of an appropriate writ(s) / order(s) / direction(s) in the nature of Mandamus Commanding

and directing the respondents concerned to provisionally unseal the said house of the petitioner which has been sealed in connection with Bihar P.S. Case No. 667/2021 instituted for offences u/s 30(a)(c)(d) /32(3) /33/ 36/ 41(1)/ 44 of the Bihar Prohibition and Excise Act,2018.

- (iii) For a direction to the respondents not to put the aforesaid house of the petitioner on auction sale during the pendency of this writ application.
- (iv) For any other direction, which your Lordships may deem fit and proper in the 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.

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

With aforesaid liberty, the writ petition is disposed of.

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)

Rajiv/veena-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	