

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1575 of 2022

1. Rekha Devi Wife of Chandra Kishor Resident of Village - Pandpa, P.S.
Nardiganj, District- Nawada.
2. Chandra Kishor Son of Suresh Prasad Resident of Village - Pandpa, P.S.
Nardiganj, District- Nawada.

... .. Petitioner/s

Versus

1. The State of Bihar Through the Principal Secretary, Excise Department,
Government of Bihar, Patna.
2. The Collector - cum- District Magistrate, Nawada.
3. The Superintendent of Police, Nawada.
4. The Excise Superintendent, Nawada.
5. Officer - in - charge, (S.H.O.) Nardiganj Police Station, District- Nawada.

... .. Respondent/s

Appearance :

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

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 10-05-2022

Heard learned counsel for the parties.

Petitioners have prayed for the following relief(s):-

That the present writ application is being filed on behalf of the above named petitioners before this Hon'ble High Court for issuance of an appropriate writ(s)/ order(s)/ direction(s) commanding the Respondents for following reliefs.

(i) For issuance of an appropriate writ in the nature of mandamus seeking direction to the respondent authorities to unlock the house of the petitioners bearing Khata no. 229, Khesra No.1004 , area 0.03 ¼ Decimal, Jamabandi no.49/10 and ~~other~~ ^{other} land bearing Khata No.229, Khesra No.-1004 area 3 ¼ Decimal. The said house has been sealed (locked) in connection with G.O. case No.567/21, P.R.No.51 dated ~~08~~ ⁰⁷.10.2021 u/s 30(a)56(C) 62 Bihar Prohibition and Excise Act,2016.

(ii) For issuance of an appropriate writ/ in nature of Mandamus seeking direction to respondents to stop proceeding against the house of petitioners.

Allegation is recovery of 33.750 litre of illicit liquor from the ground floor of the sealed house. It is submitted that although illicit liquor was recovered from the ground floor but

whole house has been sealed.

Counter affidavit has been filed on behalf of State that Superintendent of Excise, Nawada, recommended vide letter dated 17.12.2021 for initiation of confiscation proceeding on the basis of which confiscation proceeding was initiated and notices were issued to petitioner fixing date of hearing on 22.01.2022 in spite of valid service of notice, petitioner did not appear before the Confiscating Authority.

The writ petition is disposed of with a direction to the Confiscating Officer to conclude the confiscation proceeding within 90 days from the date of filing of show cause by the petitioner and if the show cause has already been filed then within 90 days from the date of receipt/production of a copy of order passed by this Court.

The Confiscating Authority is further directed to unseal that portion of the house from where there has been no recovery of illicit liquor.

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) as well as 57B have 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 get his/her house unsealed in terms of the amended provision 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 case.

Liberty reserved to the petitioners to take recourse to such remedies as are otherwise available in accordance with law if the need so arises subsequently.

(Sanjay Karol, CJ)

(S. Kumar, J)

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