

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1728 of 2022

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Prakash Kumar @ Prakash Kumar Gupta Son of Bharat Prasad @ Bharat Prasad Gupta, Resident of Village - Kotwali Chowk, Police Station - Bettiah Town, District - West Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Registration, Excise and Prohibition Department, Government of Bihar, Patna.
2. The District Magistrate Cum Collector, Bettiah, West Champaran at Bettiah.
3. The Superintendent of Police, West Champaran at Bettiah.
4. The Officer - in - Charge, Bettiah Town Police Station, District - West Champaran.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Anant Kumar Mishra, Advocate
For the Respondent/s : Mr. Lalit Kishore (Ag)

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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 directing the respondent authorities to release Kirana unsealed shop of the petitioner which is situated at Kotwali Chowk, Under Bettiah Town Police Station, in the District of West Champaran at Bettiah in favour of petitioner .**

**(ii) To grant any other relief / reliefs
for which the petitioner is found
entitled in the facts and
circumstances of the case.**

It is submitted that no illicit liquor was recovered from the shop of the petitioner, rather the same was recovered from the shop of his brother Vikash Kumar.

In the facts and circumstances of the present case, the **Confiscating Authority/District Collector, Bettiah, West Champaran**, is directed to provisionally unseal the sealed shop of the petitioner **subject to that there is no recovery of illicit liquor from his shop** and possession to be handed over to the petitioner on furnishing adequate surety to the extent of value of the property, in question, as per the circle rate with the concerned District Collector, or Confiscating Authority.

Petitioner shall also file an undertaking that during pendency of confiscating proceeding, no third party right or interest will be created on the property liable for confiscation.

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	