

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1858 of 2022

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Sona Devi Wife of Late Raj Kumar Singh, resident of Village-Dhobi Tola
Shiv Gali, Police Station-Rajgir, District-Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Registration, Excise and Prohibition Department, Bihar, Patna.
2. The Excise Commissioner, Bihar Prohibition and Excise Act, 2016.
3. The Excise Officer, Bihar Prohibition and Excise Act, 2016.
4. The District Collector, District-Nalanda, Bihar.
5. The Officer-in-Charge of Rajgir Police Station, District-Nalanda.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Sanju Singh, Advocate
For the Respondent/s : Mr.Vivek Prasad (G.P.7)

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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 an appropriate writ/writs, order/orders, direction/directions directing the respondents to release the House of the petitioner which is situated at Mohalla- Dhobi Tola Shiv Gali, Police Station-Rajgir, District- Nalanda bearing Tauzi No 12569, 485, old holding No. 581 an area of 600 sq. Ft., which has seized by the Rajgir Police Station Rajgir, Police Station Case No-99 of 2021 for offences Punishable under section 30 (a) of Bihar Prohibition & Excise Act, 2016. And also set a site the order dated 15-01-22 Passed by District Collector District Nalanda.
- II. For grant of any other relief/ reliefs which the petitioner may found to be entitled in the facts and circumstances of the present case.

Petitioner has approached this Court without exhausting the statutory remedy of appeal/revision against the impugned order, as such, petitioner is granted liberty to avail the remedy of appeal/revision against the confiscation order passed by the Confiscating Authority- cum- District Magistrate, before the Appellate Authority/revisional authority and if any such appeal/revision is filed within 4 weeks then appellate authority/revisional authority shall condone the delay in filing

the appeal/revision and shall decide the appeal/revision on its own merit preferably within 8 weeks from the date of its filing.

During pendency of appeal/revision, 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)

Rajiv/veena-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	