

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2644 of 2022

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Jagaranath Sahni Son of Satynarayan Sahni, Resident of Village-Mahesha
Farukhpur, P.s. Runnisaidpur, District-Sitamarhi.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Additional Chief Secretary, Registration, Excise and Prohibition
Department, Government of Bihar, Patna.
3. The Excise Commissioner, Bihar, Patna.
4. The District Magistrate-cum-Collector, Sitamarhi, District-Sitamarhi.
5. The Superintendent of Police, Sitamarhi, District-Sitamarhi.
6. The Excise Superintendent, Sitamarhi, District-Sitamarhi.
7. The Station Head Officer, Runnisaidpur, District-Sitamarhi.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Pushpendra Kumar Singh, Adv
For the Respondent/s : Mr.Kumar Manish (SC5)

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**(The proceedings of the Court are being conducted by Hon'ble the Chief
Justice /Hon'ble Judges through Video Conferencing from their
residential offices/residences. Also, the Advocates and the Staffs joined**

the proceedings through Video Conferencing from their residences /offices.)

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE S. KUMAR)

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 in the nature of **CERTIORARI** for quashing the order dated 14.11.2017 passed by the Respondent no.4 in Confiscation Case No.173 of 2016 arising out of Runnisaidpur P.S. Case No. 378 of 2016 registered for the offences under Sections 272, 273 of the Indian Penal Code and Section 47 of the Bihar Excise Amendment Act,2016 ,whereby and where under he was pleased to confiscate the land of the petitioner which was seized by the Respondent no.7 in connection with the aforesaid case on the ground that the said order was passed by the Respondent no.4 in gross violation of Section -58 of the Bihar Prohibition Excise Act as also the principles of NATURAL JUSTICE since it was passed by the Respondent no.4 without any valid notice or providing any opportunity of hearing to the petitioner .
- (II) For issuance of an appropriate writ in the nature of **MANDAMUS** , commanding and directing the Respondent Authorities to release the land of the petitioner bearing Plot no.179, Survey No, 296 measuring an area 12 decimals situated in Mauza- Mahesha Farakpur , Thana No.30, Circle- Runnisaidpur , District – Sitamarhi interalia on the ground that the land in question is an open field as also in fact there is no recovery from the conscious possession of the petitioner .

It has been submitted by learned counsel for the petitioner that final order of confiscation has been passed by the confiscating authority in Confiscation Case No. 173 of 2016 and his property i.e land bearing plot no. 179, Survey No. 296, Area-12 decimals situated in Mauza Mahesha Farakpur, Circle-Runnisaidpur, District Sitamarhi, has been confiscated.

In view of the above, the writ petition is disposed with liberty to petitioner to file a petition for recall of *ex parte* order and if the confiscating authority comes to a finding on the basis of records that there was no proper and valid service of notice upon the petitioner, he may recall the *ex parte* order and shall pass a fresh order after affording opportunity to the petitioner to file his show cause and shall pass final order after hearing all the parties.

However, if the Confiscating Officer finds that in spite of valid service of notice, petitioner did not contest the proceeding, he shall dismiss the recall petition and petitioner shall have liberty to file appeal against the order of confiscation of land passed by the Confiscating Authority before the Appellate Authority, who shall decide the appeal in

accordance with law.

During confiscation/Appellate proceeding,
confiscated property/vehicle shall not be auction sold.

Or

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) 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 cases, it shall be open for the petitioner to get his/her house released in terms of Rule 12(B) inserted by amending Bihar Prohibition and Excise Rules, 2021.

With said observation and direction, this writ petition is disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

ranjan/-

AFR/NAFR	
CAV DATE	NA
Uploading Date	
Transmission Date	NA