# IN THE HIGH COURT OF JUDICATURE AT PATNA
**Civil Writ Jurisdiction Case No.2585 of 2022**

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Sunil Rajbanshi Son of Late Mangal Rajbanshi Resident of Village - Sidepar, P.S. - Rajgir, District- Nalanda.

... ... Petitioner/s

Versus

1. The State of Bihar Bihar.
2. The Additional Chief Secretary, Department of Prohibition and Excise, Bihar, Patna.
3. The Commissioner Excise, Bihar Patna.
4. The District Magistrate Cum- Collector, Nalanda at Bihar Sharif.
5. The Superintendent of Police, Nalanda at Bihar Sharif.
6. The superintendent of Police, Excise, Nalanda at Bihar Sharif.
7. The S.H.O. Rajgir, P.S. - Rajgir District- Nalanda.

... ... Respondent/s

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**Appearance :**

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| For the Petitioner/s | : | Mr.Anil Kumar No.1, 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. To quash order dated 28.12.2021 passed in Excise Revision Case No. 216/2021 by Additional Chief Secretary, Department of Prohibition and Excise, Bihar, Patna by which the revision filed by the petitioner against the order of commissioner Excise, Bihar Patna dated 10.09.2021 passed in Excise Appeal Case No. 537/2021 has been rejected and affirm the order dated 10.09.2021 passed by the Commissioner Excise, Bihar Patna as well as order dated 31.01.2020 passed by the confiscation (Excise) Case No. 202/2019 by District Magistrate Cum-Collector Nalanda.

II. To. quash order dated 10.09.2021 passed by of commissioner Excise, Bihar Patna in Excise

III. To quash order dated 31.01.2020 passed in confiscation (Excise) Case No. 202/2019 by District Magistrate Cum-Collector Nalanda by which a direction has been issued to confiscate the ancestral house of petitioner sealed in Rajgir P.S. Case No. 267/2019 and to evaluate the same by Executive Engineer, Building Construction and after auction proceeding deposit the auction amount in treasury and a copy of Chalan deposit in this court.

Petitioner claims to be the owner of the seized premises.

Allegation is recovery of 15 litre of illicit liquor from the seized house of the petitioner.

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.
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> (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.
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> (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.
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> (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 petitioner to avail the remedy of the amended provision of 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 the case.

Equally, liberty reserved to petitioner to approach this Court for same and subsequent cause of action, if so arises.

**(Sanjay Karol, CJ)**

**( S. Kumar, J)**

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