IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2597 of 2022

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1. Pradip Kumar Singh Son of Lakshman Singh Resident of Village - Bastipur, P.S. Dehri (Indrapuri O.P.), District- Rohtas at Sasaram.
2. Dilip Kumar Singh Son of Lakshman Singh Resident of Village - Bastipur, P.S. Dehri (Indrapuri O.P.), District- Rohtas at Sasaram.

... ... Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
2. The Additional Chief Secretary - cum- Revisional Authority, Registration, Excise and Prohibition Department, Government of Bihar, Vikash Bhawan, Patna.
3. The Excise Commissioner - cum- Appellate Authority, Registration Excise and Prohibition Department, Government of Bihar, Vikash Bhawan, Patna.
4. The District Magistrate - cum- Confiscational Authority, Rohtas at Sasaram.
5. The Superintendent of Police, Rohtas, District- Rohtas.
6. The Superintendent of Excise Department, Sasaram, District- Rohtas.
7. The S.H.O., Dehri (Indrapuri O.P.), District- Rohtas.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr.Babu Nandan Prasad, 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.

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

I. To issue writ/ writs, order/orders, direction/directions including a writ in the nature of certiorari for quashing the order dated 31.08.2021 passed in Excise Confiscation Case no. 1[illegible]0/2021 arising out of Dehri (Judrapuri O.P.) P.S. Case no. 800/2020 dated 11.10.2020 by the District Magistrate-cum-Confiscational Authority, Rohtas at Sasaram (as contained in Annexure-5) whereby and whereunder he has refused to unseal the General Store Shop appertaining Khata No. 114, Khesra No. 572, Thana No. 175 and Rakba-0.65 decimal of the petitioners under Circle Office, Dehri Town, Rohtas, which belongs in the name of the father of the petitioners. It is further quashed the order dated 23.11.2021 passed in Excise Appeal No. 693/2021 (as contained in Annexure 6)by Respondent Excise Commissioner by which the Excise Confiscation Appeal preferred by the petitioners and the order of Excise Confiscation Appeal case of the aforesaid General Store shop of the petitioner no. 1 has been dismissed and also affirmed the order of Respondent District Magistrate (Respondent no. 4) and also to quash the Revisional order dated 20.01.2022 passed in Excise Revision No. 261/2021 by the Respondent Additional Chief Secretary, Bihar, Patna (as contained in Annexure-7) which has been dismissed to the Excise Revision Petition of the petitioners and the order has communicated to the petitioners and the Respondents Authority concerned to this writ petition.

II. To issue a writ/ writs, order/orders, direction/ directions including a writ in the nature of mandamus directing the Respondents to unseal the General Store shop appertaining Khata No. 114, Khesra No. 572, Thana No. 175 and Rakba-0.65 decimal situated in front of the dwelling house of the petitioner no. 1, Rastipur, Dehri under Circle Office, Dehri Town, Rohtas in their favour forthwith.

Petitioner nos. 1 and 2 are not the owner of the shop rather they have taken the shop on rent from his father on Rs. 2500/- per months. The original owner of the shop is the father of petitioner no. 1 and 2.

Allegation is recovery of 14.880 litre of illicit liquor from the shop of petitioner no. 1 and 16.230 litre of illiict liquor from the shop of petitioner no. 2.

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.

(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 the petitioners/original house owner 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 petitioners/original house owner 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