

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2906 of 2022

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Munna Prasad @ Sarhu Jee @ Satya Prakash Jaishwal, son of Ramji Prasad Chaursiya, resident of Village-Bich Bazar Harnaut, P.S.-Harnaut, District-Nalanda.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Department of Excise, Bihar, Patna.
2. The Excise Commissioner Patna, Bihar.
3. The Collector cum District Magistrate, Nalanda.
4. The Additional Collector cum Additional District Magistrate, Nalanda at Biharshrif.
5. The Superintendent of Police, Nalanda.
6. The S.H.O. cum Officer in Charge, Harnaut Police Station, District-Nalanda.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Anil Chandra, Advocate
For the Respondent/s	:	Mr. Vivek Prasad (Gp7)

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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 following reliefs:-

- (i) To issue an appropriate writ, writs, order or orders for quashing the order dated 20.09.2021 passed in Excise Appeal Case No. 539 / 2021 by which the Respondent No. 2 has dismissed the appeal and confirm the order dated 04.08.2021 passed in Confiscation (Excise) Case No. 78 / 2021 by Respondent No. 4.

- (ii) To also quash the order dated 04.08.2021 passed in Confiscation (Excise) Case No. 78 / 2021 (arising out of Harnaut P. S. Case No. 7 / 21 by which the Respondent No. 4 has confiscated one room of petitioner's house.
- (iii) To issue a writ in the nature of mandamus commanding the respondents to release of one room of petitioner's house situated at Thana No. 213, Khata No. 251, Plot No. 2423, Mauza- Sabnahua, in the district of Nalanda.
- (iv) To stay the impugned order during the pendency of present writ petition.
- (v) To give any other appropriate relief / reliefs as your lordships may deem fit and proper for the end of justice,

Petitioner has approached this Court without availing the statutory remedy of revision against the impugned appellate order, as such, liberty is granted to petitioner to file revision against the appellate order before the Revisional Authority and if any such Revision is filed within 4 weeks, then Revisional Authority shall decide the revision petition preferably within 8 weeks from the date of its filing on its own merit.

During pendency of revision petition, 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)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	28.04.2022
Transmission Date	NA