IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3015 of 2022

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1. Randhir Kumar Singh Son of Nandelal Singh @ Nandlal Singh resident of Village - Mahadevpur P.S. Rajgir, District - Nalanda.
2. Malti Devi Wife of Nandelal Singh @ Nandlal Singh, resident of Village - Mahadevpur P.S. Rajgir, District - Nalanda.

... ... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Excise Department, Govt. of Bihar, Patna.
3. The Additional Chief Secretary, Excise, Department, Govt. of Bihar, Patna.
4. The Excise Commissioner, Excise Department Govt. of Bihar, Patna.
5. The District Magistrate-cum-Collector, Nalanda.
6. The Additional Collector-cum-Additional District Magistrate, Nalanda.
7. The Superintendent of Police, Nalanda.
8. The Officer-in-Charge, P.S. Rajgir, District - Nalanda.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr.Pankaj Kumar, Advocate
For the Respondent/s : Mr.Kumar Manish (S.C. 5)

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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.

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

(i) For issuance of an appropriate writ in the nature of certiorari for quashing the order dated 18.12.2021 passed in excise revision No. 252/2021 by respondent Additional Chief Secretary Whereby and where under respondent Chief Secretary has been pleased to dismiss the revision application filed by the petitioner, filed against the order dated 24.9. 2021 passed in Excise Appeal No.

591/2021 passed by respondent Commissioner.

(ii) For setting aside the order dated 24.9. 2021 passed in Excise Appeal No. 591/2021 by respondent Commissioner whereby and where under respondent Commissioner has been pleased to dismiss the appeal filed by the petitioner, filed against the order dated 14.8. 2021 passed in Confiscation case No. 191/2021 passed by the respondent Additional Collector.

(iii) Further for setting aside the order dated 14.8. 2021 passed in Confiscation Case o. 191/2021 by the respondent Additional Collector whereby and where under respondent Additional Collector has been pleased to Confiscate the house/ shop of the petitioner which was sealed in Rajgir P.S. Case No. 24/2021 attributing Offences Under Section 30(A) of Bihar Prohibition and Excise Act, 2016.

(iv) Further for direction to the respondent Authority to desealed the house/ shop of the petitioner which has been sealed in Rajgir P.S. Case No. 24/2021 attributing offences Under Section 30(A) of Bihar Prohibition and Excise Act 2016 .

(v) Further for issuance of any other writ/ writs , direction/ directions, order/ orders for which petitioner shall be found entitled under the facts and circumstances as stated herein below for equitable Justice.

Petitioners claim to be the owner of the sealed house/shop.

Allegation is recovery of 10 litres of illicit liquor from the house/shop of the petitioners.

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) as well as 57B have 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 view of amendment in the Excise Act, and same being applicable in pending case, it shall be open for the petitioners to get their house unsealed after making payment of penalty in terms of Rule 12(B) inserted by amending Bihar Prohibition and Excise Rules, 2021 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 case.

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

(Sanjay Karol, CJ)

(S. Kumar, J)

Rajiv/veena-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	