

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3213 of 2022

1. Jay Prakash Yadav Son of Late Mahendra Prasad Yadav, Resident of Village - Barmasiya, P.S. - Baunsi, District - Banka.
2. Manoj Kumar Yadav, Son of Late Mahendra Prasad Yadav, Resident of Village - Barmasiya, P.S. - Baunsi, District - Banka.
3. Jitendra Prasad Yadav, Son of Late Mahendra Prasad Yadav, Resident of Village - Shyam Bazar, P.S. - Baunsi, District - Banka.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Excise, Government of Bihar, Patna.
2. The Additional Chief Secretary, Bihar, Patna.
3. The Excise Commissioner, Bihar, Patna.
4. The Collector - Cum - District Magistrate, Banka.
5. The Superintendent of Police, Banka.
6. The Station House Officer, Baunsi Police Station, District - Banka.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Pramod Mishra, Advocate
For the Respondent/s : Mr.Vikash Kumar (S.C.11)

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 setting aside order dated 04.01.2022
(Annexure-6) passed by Respondent No.2,
Additional Chief Secretary, Bihar, Patna, in

Excise Revision Case No. 207/2021, affirming the order dated 13.09.2021 passed by Excise Commissioner in Excise Appeal Case No. 557/2021 (Annexure-5) filed against order dated 23.07.2021 (Annexure-4) passed by Collector-cum-District Magistrate, Banka in Confiscation Case No. 160/2021-22, arising out of Baunsi P.S. Case No.88/2021 dated 18.04.2021 lodged U/S 30(a) of Bihar Prohibition and Excise Act, 2018 by which the Respondent Collector directed to confiscate the line hotel/land of the petitioners, namely, Shiv Parwati Line Hotel situated at Banka-Bhagalpur Main Road and for selling it by public auction U/S 58(5) of said Act and proceeds be deposited with State Govt.

- ii) For setting aside the order dated 13.09.2021 passed by Excise Commissioner in Excise Appeal Case No. 557/2021 (Annexure-5) rejecting the appeal of the petitioner.
- iii) For setting aside the order dated 23.07.2021 (Annexure-4) passed by Collector-cum-District

Magistrate, Banka in Confiscation Case No. 160/2021-22, arising out of Baunsi P.S. Case No.88/2021 dated 18.04.2021 lodged U/S 30(a) of Bihar Prohibition and Excise Act, 2018, by which the Respondent Collector directed to confiscate the line hotel/land of the petitioners, namely, Shiv Parwati Line Hotel situated at Banka-Bhagalpur Main Road and for selling it by public auction U/S 58(5) of said Act and proceeds be deposited with the State Government.

- iv) For directing and commanding the Respondents to release the line hotel/land of the petitioners, namely, Shiv Parwati Line Hotel situated at Banka-Bhagalpur Main Road forthwith which has illegally been seized in connection with Baunsi P.S. Case No. 88/2021 dated 18.04.2021 lodged under Section 30(a) of Bihar Prohibition and Excise Act.
- v) And/or any other relief/reliefs which this Hon'ble Court may deem fit and proper in the facts and circumstances may also be granted.

Petitioners claim to be the owner of the sealed line hotel/land.

Allegation is recovery of 18.75 litres of illicit liquor from the line hotel/land 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.

(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 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 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	