

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3274 of 2022

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Shilpi Keshri, Wife of Achal Nath, resident of 2H/85 Bhoothnath Road, Near TV Tower more, Kankarbagh, Sampatchak, P.S. - Agamkuan, District - Patna, Bihar - 800026.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Director General of Police, Patna, Bihar.
3. The District Magistrate, Patna.
4. The Senior Superintendent of Police, Patna.
5. The Superintendent of Police, Central Patna.
6. The Superintendent of Police, Traffic, Gandhi Maidan, Patna.
7. The Inspector -cum- SHO, Traffic Police, Gandhi Maidan, Patna.
8. The Inspector -cum-SHO, Gandhi Maidan, Police Station, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Ms. Shilpi Keshri (In person)

For the Respondent/s : Mr. Prabhat Kr. Verma, AAG-3
Mr. Sanjay Kumar Ghosarvey, AC to AAG-3

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 13-07-2022

Following questions of Law arise for consideration:-

(i) Whether systematic and safe custody of seized vehicles is the duty of the State in pursuance of individual rights and public welfare?

(ii) Whether undue delay in processing as per law, the vehicles seized under various statutes, amounts to a violation of Article 300-A of the Constitution of India?

2. The petitioner, a learned advocate before this Court, highlighted an issue of importance, that is to say, vehicles seized by the police under various statutes, but primarily under the Bihar Prohibition and Excise Act, 2016 (referred to as the Act), parked on both the sides of Gate No.08 of Gandhi Maidan, Patna, is a place of great public significance and importance. It is averred that such vehicles are rendered useless due to dilapidated condition and non-use.

3. The petitioner sought intervention of this Court to remove these seized vehicles from the vicinity of Gandhi Maidan, also having other important institutions nearby, causing tremendous traffic related issues.

4. Vide order dated 25.02.2022, this Court directed the Director General of Police, Bihar to take action and remove all obstructions around the Circular Road of Gandhi Maidan, including the seized vehicles.

5. Vide order dated 06.04.2022, the Court recorded the statement of Shri P. K. Verma, learned Additional Advocate General-III that all vehicles seized/confiscated stand removed from the public path/circular road of Gandhi Maidan, Patna. The petitioner personally verified such statement to be correct.

6. Further vide an affidavit filed on 27.04.2022, the Court

was informed that across 34 police stations located within the Municipal limits of Patna, 2897 motor vehicles stood seized but not released, in connection with contravention of various penal statutes.

7. Pursuant to the directions of this Court, the learned District Judge, Patna convened a meeting to look into release/disposal of seized property, as the case may be, in accordance with law.

8. Vide order dated 05.05.2022, this Court expressed anguish over the non-decision on release and/or disposal of seized property, noting that status quo is unhelpful across the Board and action required to be taken on expeditious basis. Apart from this anguish, this Court also expressed hope that such obstructions in the enjoyment of public property would not arise again on the part of the State and that, soon enough, a specific space be identified and earmarked to make available the facility of parking. This Court further highlighted the need to expedite the adjudicatory process for speedy release/disposal of case property.

9. Vide order dated 28.06.2022, this Court directed an affidavit to be filed stating the identification of location for setting up a vehicle yard (2+18 acres) where all the seized

vehicle would be parked.

10. An affidavit was filed by the Senior Superintendent of Police, Patna on 05.07.2022 which stated in para 6 thereof that land pertaining to Thana No.139 (18 acres) and land pertaining to Thana No.141 (2 acres) stood identified for use as vehicle yard. The said Officer subsequently made a request to the District Magistrate, Patna seeking transfer of land from the Home Department, Government of Bihar. Further request was for construction of approach road and boundary wall along with the perimeter of such land.

11. In view of the above and the order dated 28.06.2022, these proceedings are now ripe to be closed.

12. However, considering that the crowding of seized vehicles near an important land mark such as the Gandhi Maidan, is an age old problem and that positive steps only came to be taken upon the interference of this Court by virtue of a public spirited person, and advocate Ms. Shilpi Keshri, we would be remiss to not remind the State and its constituents of their duty to protect the property seized by them under the process of law until proper and final disposal of the release thereof.

13. Various Legislations empower authorities to take, for

the purposes of law and larger public interest, property from its rightful owner. However, equally, a duty is cast on the State to always ensure that such denial of property is in accordance with procedures established by law.

Indian Constitution

14. The Constitution of India, first and foremost, prior to any other law, circumscribes the conditions under which deprivation of property may take place by protecting the right to property under Article 300A as a constitutional right.

“300A. Persons not to be deprived of property save by authority of law.—No person shall be deprived of his property save by authority of law.”

15. Hon’ble the Supreme Court in **D.B. Basnett v. LAO, (2020) 4 SCC 572** speaking through Sanjay Kishan Kaul J., noted:-

“14. We may note that even though rights in land are no more a fundamental right, still it remains a constitutional right under Article 300-A of the Constitution of India, and the provisions of any Act seeking to divest any person from the rights in property have to be strictly followed [*N. Padmamma v. S. Ramakrishna Reddy*, (2008) 15 SCC 517] .

16. We find a detailed discussion about the law as it evolved and the rationale for the said purpose in *Vidya Devi* [*Vidya Devi v. State of H.P.*, (2020) 2 SCC 569 : (2020) 1 SCC (Civ) 799] of which the relevant paragraphs read as under : (SCC pp. 572-74, para 12)

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12.2. The right to property ceased to be a fundamental right by the Constitution (Forty-fourth Amendment) Act, 1978, however, it continued to be a human right (*Tukaram Kana Joshi v. Maharashtra Industrial Development Corpn.* [*Tukaram*

Kana Joshi v. Maharashtra Industrial Development Corpn., (2013) 1 SCC 353 : (2013) 1 SCC (Civ) 491]) in a welfare State, and a constitutional right under Article 300-A of the Constitution. Article 300-A provides that no person shall be deprived of his property save by authority of law. The State cannot dispossess a citizen of his property except in accordance with the procedure established by law. The obligation to pay compensation, though not expressly included in Article 300-A, can be inferred in that Article [K.T. Plantation (P) Ltd. v. State of Karnataka [K.T. Plantation (P) Ltd. v. State of Karnataka, (2011) 9 SCC 1 : (2011) 4 SCC (Civ) 414]]. ...

...12.4. In *N. Padmamma v. S. Ramakrishna Reddy* [*N. Padmamma v. S. Ramakrishna Reddy*, (2008) 15 SCC 517] , this Court held that : (SCC p. 526, para 21)

‘21. If the right of property is a human right as also a constitutional right, the same cannot be taken away except in accordance with law. Article 300-A of the Constitution protects such right. The provisions of the Act seeking to divest such right, keeping in view of the provisions of Article 300-A of the Constitution of India, must be strictly construed.’

12.5. In *Delhi Airtech Services (P) Ltd. v. State of U.P.* [*Delhi Airtech Services (P) Ltd. v. State of U.P.*, (2011) 9 SCC 354 : (2011) 4 SCC (Civ) 673] , this Court recognised the right to property as a basic human right in the following words : (SCC p. 379, para 30)

‘30. It is accepted in every jurisprudence and by different political thinkers that some amount of property right is an indispensable safeguard against tyranny and economic oppression of the Government. Jefferson was of the view that liberty cannot long subsist without the support of property. “Property must be secured, else liberty cannot subsist” was the opinion of John Adams. Indeed the view that property itself is the seedbed which must be conserved if other constitutional values are to flourish, is the consensus among political thinkers and jurists.’

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12.10. This Court in *State of Haryana v. Mukesh Kumar* [*State of Haryana v. Mukesh Kumar*, (2011) 10 SCC 404 : (2012) 3 SCC (Civ) 769] held that the right to property is now considered to be not only a constitutional or statutory right, but also a human right. Human rights have been considered in the realm of individual rights such as right to shelter, livelihood, health, employment, etc. Human rights have gained a multi-faceted dimension.”

(emphasis in original)

16. Similar view stands taken by Hon’ble the Supreme Court in **B.K. Ravichandra and Others v. Union of India and**

Others 2020 SCC OnLine SC 950.

17. Recently, in **Abdul Vahab vs. State of M.P (Criminal Appeal No. 340 of 2022)**, Hon'ble the Apex Court, speaking through Hrishikesh Roy J., held in para 17 as under:-

“By reason of an order of confiscation, a person is deprived of the enjoyment of his property. Article 300A of the Constitution provides that no person shall be deprived of his property save by authority of law. Therefore, to deprive any person of their property, it is necessary for the State, inter-alia, to establish that the property was illegally obtained or is part of the proceeds of crime or the deprivation is warranted for public purpose or public interest.”

18. Deprivation of constitutional right to a property would entail in its sweep the right for quick and expeditious disposal of the property so as to ensure that it is not rendered useless. This fundamental principle is accounted for by the legislature while enacting several statutes. In this direction, illustratively, the provision of Section 57 of the Act is evidently clear. A duty is cast upon the confiscatory authority, the executive, to ensure that the seized property is disposed of at the earliest, and prior to the passing the order of confiscation, not rendering the property liable to speedy and natural decay, or of trifling value or which can be put to misuse. Here only the Court take notes of the observations made to similar effect in **CWJC No.20598 of 2019 titled as Md. Shaukat Ali Vs. The State of Bihar & Ors.** vide order dated 09.01.2020 where this Court had set up an actual timeline for

disposing of such property in accordance with law. It is this single legislation which has resulted into confiscation of both moveable and immovable property beyond comprehension of the legislature. This enactment has resulted into seizure of all sorts of vehicles and there is no mechanism under the Act for its parking at a safe and secured place. Undisputedly, parking of vehicles in the open has not only resulted into natural decay but also theft and, in fact, its misuse by the functionaries of the State.

19. Relevant extract of Bihar Prohibition and Excise and Prohibition Act, 2016 is reproduced hereinunder:-

“57. Power of Collector, etc., to order sale or destruction of articles before confiscation.— If the article in question is liable to speedy and natural decay, or if the Excise Commissioner, Collector, Court or the officer authorized by the State Government in this behalf is of opinion that the sale would be in public interest or the sale would be for the benefit of the owner, the Excise Commissioner, Collector, Court or the officer may, at any time, before passing the Order of confiscation, direct such articles to be sold and proceeds be deposited with the Government:

Provided that, where anything is liable to speedy and natural decay, or is of trifling value or which can be put to misuse, the Collector or the officer concerned, may, order such thing to be destroyed, if in its or his opinion such order is expedient in the circumstances of the case.”

(Emphasis supplied)

20. Even under the Customs Act, 1962 (Chapter XIII), there are similar provisions for the seizure and confiscation of the vehicles used for transporting the banned goods. Bihar has an international border- with Nepal. There are several cases instituted by the authorities under the said provision, purportedly on the ground of goods brought in from Nepal

without sanction of law. Seizure of vehicles used in such operations has further aggravated the situation, more so within the municipal limit of Bihar as also other municipal areas where certain products though banned for export are being transported for human consumption. Betel nut is one such item.

21. For an exercise of power under Section 110 of the Customs Act, the expression used is 'reason to believe', i.e. for the seizure of certain goods, there must be a subjective satisfaction as to the nature of these goods falling within the confines of this Act. However, when seeking extension of time with respect to the custody of these goods so seized, the requirement is more than subjective satisfaction. [See **Assistant Collector of Customs v. Charan Das Malhotra, (1971) 1 SCC 697**] It was noted that for an extension of time to retain custody of seized goods sufficient cause must be shown. In other words, there must be cogent material to support the extension of time beyond a period of six months as stipulated, after which the goods so seized must be returned to the rightful owner. The intention of the legislature therefore, is clear that either due confiscation as per the procedure laid down must take place and the said goods must be dealt with as per law or else, the ownership of such good cannot be denied to the owner.

22. Other legislations also grant the power of seizure/ confiscation.

23. In each of such provisions, a process has been laid down by the legislature to safeguard against denial of the right to property.

Motor Vehicles Act, 1988

“207. Power to detain vehicles used without certificate of registration permit, etc.—(1) Any police officer or other person authorised in this behalf by the State Government may, if he has reason to believe that a motor vehicle has been or is being used in contravention of the provisions of section 3 or section 4 or section 39 or without the permit required by sub-section (1) of section 66 or in contravention of any condition of such permit relating to the route on which or the area in which or the purpose for which the vehicle may be used, seize and detain the vehicle, in the prescribed manner and for this purpose take or cause to be taken any steps he may consider proper for the temporary safe custody of the vehicle:

Provided that where any such officer or person has reason to believe that a motor vehicle has been or is being used in contravention of section 3 or section 4 or without the permit required by sub-section (1) of section 66 he may, instead of seizing the vehicle, seize the certificate of registration of the vehicle and shall issue an acknowledgment in respect thereof.

(2) Where a motor vehicle has been seized and detained under sub-section (1), the owner or person in charge of the motor vehicle may apply to the transport authority or any officer authorised in this behalf by the State Government together with the relevant documents for the release of the vehicle and such authority or officer may, after verification of such documents, by order release the vehicle subject to such conditions as the authority or officer may deem fit to impose.

24. In the landmark judgment of **The Transport Commissioner, Hyderabad Andhra Pradesh and Anr v. S. Sardar Ali (1983) 4 SCC 245**, O Chinappa Reddy J., deals with the Constitutionality of Section 129-A of the Motor Vehicles Act, 1939 (presently, Section 207 of the 1988 Act,) and its interaction

with various provisions of the Code of Criminal Procedure, also quoted above. Para 5 the judgment reads as below-

“5. But, what happens to the vehicle seized under the provisions of Section 129-A? To begin with, we notice that a precondition to the seizure and detention of the vehicle is that the police officer or authorised person must have reason to believe that one or the other of the offences specified, punishable as we have seen under Section 123¹, has been or is being committed. Whenever property involved in the commission of an offence is seized, the seizure is generally expected to serve a manifold purpose such as to prevent repetition of the offence, to use the thing seized as material evidence in the prosecution, to preserve the property so as to enable the court to pass appropriate orders for its disposal by way of destruction, confiscation, or delivery to any person claiming to be entitled to possession thereof or otherwise. There is no reason to assume that the seizure under Section 129-A is any different and is not to serve any of these purposes or any purpose at all. We then notice that the police officer or the authorised person may “seize and detain the vehicle, and for this purpose take or cause to be taken any steps he may consider proper for the temporary safe custody of the vehicle”. Clearly, therefore, the detention by the authorised officer or person is to be temporary. For how long then? Obviously until appropriate orders regarding its disposal are made. Quite obviously the vehicle may be released if the owner of the vehicle satisfies the authorised officer or person that no offence such as that mentioned in Section 129-A had been or was being committed. This is subject to the second proviso to Section 129-A which bars the release of a vehicle seized for a contravention of the provisions of Section 22 unless the owner of the vehicle produces a valid certificate of registration under the Act in respect of the vehicle. Conversely, in the context, it implies that a vehicle seized for a contravention of Section 22² is to be released if the certificate of registration is produced. Again, since the detention is for ‘temporary safe custody’ until appropriate orders are made, the police officer or authorised person seizing the vehicle may arrange for the ‘temporary safe custody’ of the vehicle with the owner of the vehicle by releasing the vehicle to him

1 Sections 192 and 193 of the 1988 Act

2 Section 39 of the 1988 Act

subject to suitable security and an undertaking to produce the vehicle when called upon to do so. We have indicated that the next step in the process of dealing with the offender is to consider whether the offence may not be compounded. If the offence is compounded, the vehicle has naturally to be returned to the owner. If it is not compounded, a complaint has to be laid before the court empowered to take cognizance of the case and the case proceeded with. As soon as the complaint is laid, the court acquires jurisdiction to pass appropriate orders regarding 'the custody' and 'the disposal' of the vehicle. We have already noticed how Section 4(2) of the Code of the Criminal Procedure stipulates that offences under laws other than the Penal Code also are to be investigated, inquired into, tried and otherwise dealt with in accordance with the provisions of the Code of Criminal Procedure. The provisions of Chapter XXXIV of the Code relating to 'Disposal of Property' are also therefore attracted in dealing with offences under the Motor Vehicles Act. Section 452 of the Code enables the court, at the conclusion of an inquiry or trial to "make such order as it thinks fit for the disposal, by destruction, confiscation or delivery to any person claiming to be entitled to possession thereof or otherwise, of any property or document produced before it or in its custody, or regarding which any offence appears to have been committed, or which has been used for the commission of any offence". The court thus has the power at the conclusion of the case to make appropriate orders regarding the disposal of the motor vehicle regarding which an offence appears to have been committed. So far as the custody of the vehicle pending the conclusion of the case is concerned, the court may either treat the arrangement made by the officer or person acting under Section 129-A as sufficient or may itself make further or other orders. Section 451 of the Code of Criminal Procedure empowers the court, when any property is produced before it during any inquiry or trial, to make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial. We think that a motor vehicle regarding whose temporary custody arrangements have been made under Section 129-A of the Motor Vehicles Act by the police officer or the authorised person seizing the vehicle must be considered to have been produced before the criminal court as soon as a complaint is filed before the court alleging the commission of an offence under Section 123 regarding the vehicle. In any case, the court has ample power under Chapter VII of the Code, Section 91 in particular, to compel the production of the vehicle before the court. Thus if the provisions of the Motor Vehicles Act are read in conjunction with the provisions of the Code of Criminal

Procedure — and there is no getting away from the provisions of both the laws — it is seen that there is no lacuna whatsoever in regard to the proper custody and disposal of the motor vehicles seized under Section 129-A of the Motor Vehicles Act. The custody of the vehicle in the hands of the police officer or the authorised person is but temporary and he is therefore, obliged to act and take all further steps in the matter with all expedition. If he releases the vehicle on being satisfied that no offence has been committed or if he releases the vehicle on the offence being compounded, no further question arises. If, instead, he lays a complaint before the court, the court acquires instant jurisdiction over the vehicle to pass suitable orders. In the remote event of the police officer or the authorised person not taking any further action after seizing and detaining the vehicle, the owner of the vehicle is not without remedy. Article 226 is always available but one does not have to presume that the police officer or the authorised person may not act according to law.”

(Emphasis Supplied)

25. Hon’ble the Supreme Court in **Tofan Singh v. State of Tamilnadu**, via R. F. Nariman. J., in paragraph 55, 130 & 131 of the judgment, taking note of the provisions of Sections 52A, 53, 55, 66 etc. observed that for a penal statute, keeping in mind the stringent provisions, greater care is to be taken with respect to the safeguards provided in the statute, ensuring that they are scrupulously followed.

Conclusion and Directions

26. As is evident from the provisions of various statutes, Acts, the respective legislative authority has provided for clear methodology to be followed in cases of seizure of property. As noted earlier, the lack of will to follow procedure laid down, is clear. The right to property is a constitutional right under Article

300A of the Constitution which is available to all. Lethargy on the part of the State or sheer inability to deal with the volume of vehicles seized arguably may constitute a violation of this right.

27. The State is a protector of rights. It is the machinery of the State which aids a weaker party in the realization of their rights, should they be violated. The State itself cannot partake in such denial.

28. It is not doubted that for the purposes of achieving the logical conclusion for a legislative provision, as in the case of the Bihar, the state has the power to seize vehicles and initiate proceedings against those who act in contravention of such act. However, when such vehicle is under the possession of the State, it is its responsibility to ensure that no undue harm comes to such a vehicle, for, if and when it is returned to the owner, after the due processes of law, he/ she shan't have suffered any loss in the condition of the vehicle, other than what is the natural progression and depreciation in such vehicle.

29. It is clear from the various holdings of the Courts that deprivation of property, cannot be sans the procedures established by law, and, the procedures so established make clear the obligation of the state, to act with expedition. Denial of property without reason or merely on the ground of delay in

realizing the processes of law will most certainly constitute an offense to the constitutional right to property.

30. In light of the above, the following directions are appropriate to be issued:-

(i) Director General of Police to ensure that no vehicle is parked on the circular round of Gandhi Maidan, Patna.

(ii) All concerned authorities, i.e. the District Magistrate, Commissioner and Senior Superintendent of Police, to take expeditious steps, in accordance with law, to dispose of the vehicles or restore their possession to the owners thereof.

(iii) Adjudicatory Authorities to evolve mechanism to have speedier decision making process with respect to seized vehicles, so as to ensure that, in case they are returned to the owner, the same should be done within reasonable time also keeping in mind that the usability of such vehicles not be comprised as a result of delay.

(iv) With respect to unclaimed vehicles, the relevant authorities may consider auctioning them according to law and depositing the proceeds to the relevant authority.

(v) The Home Department, Government of Bihar also the all other Departments concerned to act on, expeditiously, the request made by the Superintendent of Police with respect to

construction of boundary wall on the land pertaining to Thana No.139 (18 acres) and land pertaining to Thana No.141 (2 acres) which stands identified for parking of the vehicles as indicated and averred in affidavit dated 05.07.2022.

(vi) The Director General of Police, Bihar to ensure that all important steps are taken for the security of the impounding lot as identified and averred vide affidavit dated 05.07.2022.

(vii) The land which stands identified as the parking spot for seized vehicles, should also be suitably designed and equipped to ensure no damage comes to the vehicles. The State authorities to take all steps in this regard.

(viii) Liberty reserved to the petitioner or any other public spirited person to file a fresh petition, should the need so arise for enforcement of the provisions of the Act.

31. Petition stands disposed of with the aforesaid observations and directions.

32. Interlocutory Application, if any, shall stand disposed of.

33. We place on record our appreciation for all the efficient assistance rendered by Ms. Shilpi Keshri for highlighting an issue of vital importance.

34. Sri P. K. Verma, learned Additional Advocate General-III undertakes to communicate the order both to the

Chief Secretary, Government of Bihar and the Director General
of Police, Government of Bihar.

(Sanjay Karol, CJ)

(S. Kumar, J)

veena/Sunil-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	22.08.2022
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