

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 4296 of 2022

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Usha Devi W/o Sri Dharmendra Ram Resident of Village-Telmar, P.S.-
Telmar, District-Nalanda.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Prohibition, Excise and Registration Department,
Government of Bihar, Patna.
3. The District Magistrate, Nalanda.
4. The S.H.O., Harnaut (Telmar) Police Station, Nalanda.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Subodh Kumar Barnwal, Advocate
For the Respondent/s : Mr.Kumar Manish (SC5)

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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 : 06-05-2022

Heard learned counsel for the parties.

Petitioner has prayed for the following relief(s):-

- “(i) For issuance of appropriate writ/writs,
order/orders, Direction/Directions for
immediately de-sealing the residential premises
of the petitioner, situated at village Telmar in
the district of Nalanda, which has been sealed
in connection with Harnaut (Telmar) P.S. case
No. 03/2022 dated 02/01/2022 in gross
contravention of the provisions of section 56(c)
of the Bihar Prohibition and Excise Act, 2016
and subsequent rule 12(A)(v) of the Bihar,
Prohibition and Excise Rules, 2021 in a highly
biased, arbitrary and illegal manner.
- (ii) For issuance of appropriate order / orders,
Direction/Directions commanding the

respondents concerned, especially the Respondent(s) no(s). - 1 and 2 to investigate as to why the statutory provisions were not complied with during the raid at the residential premises of the petitioner leading to its sealing and the residents therein were not provided with any notice either prior to the sealing of their entire residential premises or any receipt subsequent to it so as to enable the petitioner and other residents of the residential premises to take legal recourse against the illegal acts of the respondents and further to punish the erring officials for their arbitrary and illegal acts / omissions.

(iii) FOR issuance of appropriate order / orders, Direction/Directions commanding the respondents concerned, especially the Respondent(s) no(s) - 1 to award compensation for debarring the petitioner and her family from their hearth and home during the chilly winter, without complying with the statutory provisions thereby adversely affecting their right to life, right to live with dignity, right to sleep and other fundamental rights enshrined under Article 21 of the Constitution of India.

(iv) FOR any other relief / reliefs for which the Petitioner is entitled to on the facts and circumstances of this peculiar case.”

Allegation is of recovery of 5 litres of illicit liquor from one of the rooms of the petitioner, however, whole residential house has been sealed in contravention of Rule 12(A) of Bihar Excise Rules, 2021 which reads as follows:

12. Sealing of Premises – (A)

(i) If any offence is or has been committed in any premises (whole or part thereof) under this Act. any officer within the meaning of section 73 of the Act may immediately seal the premises (whole or part thereof).

Immediately here means that sealing should be done in the course of the raid itself. In any case, sealing shall be done

within 24 hours of the institution of First Information Report.

(ii) ...

(iii) ...

(iv) ...

(v) As far as possible, only that portion of private residential premises which has been used for committing offence shall be sealed and not the whole premises or entire residence-

Further, Rule 12(B)(i) of the aforesaid rule provides that:

In said view of the matter, the District Collector/Confiscating authority, Nalanda is directed to unseal the residential premises other than from where illicit liquor was recovered and is further directed to conclude the confiscation proceeding within 90 days from the date of filing of show cause by the petitioner, if not already filed or within 90 days if the show cause has been filed from the date of receipt/production of a copy of order passed by this Court, failing which, the sealed room of the petitioner shall be unsealed till conclusion of confiscating proceeding and possession to be handed over to the petitioner, on furnishing adequate sureties and undertaking to the satisfaction of District Collector / Confiscating Authority, Nalanda.

Or

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.

(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 in terms of Rule 12(B) inserted by amending Bihar Prohibition and Excise Rules, 2021.

Liberty reserved to petitioner to approach this Court for same and subsequent cause of action, if need so arises.

With aforesaid observation and direction, the writ petition stands disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

veena/rajiv-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	