

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4360 of 2022

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Yogendra Yadav, son of Late Ramchandra Gope, R/o Village-Chandasi, P.S.-
Noor Sarai, District-Nalanda, Bihar-803113.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Registration, Excise and Prohibition Department,
Govt. of Bihar, Patna.
3. The District Magistrate Cum-Collector Nalanda at Biharsharief.
4. The Superintendent of Excise Prohibition Nalanda at Biharsharief.
5. The Assistant Excise Commissioner, Nalanda at Biharsharief.
6. The Superintendent of Police, Nalanda at Biharsharief.
7. The Officer Incharge / S.H.O. Noorsarai Police Station, District Nalanda at
Biharsharief.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Ashutosh Singh, 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 : 06-05-2022

Heard learned counsel for the parties.

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

1) That this writ application is being filed on behalf of the above named petitioner for the following reliefs:

(i) For issuance of an appropriate direction/s, order/s, writ/s to the respondent authorities to Open the seal of the house ~~of~~ remaining part of the house of the Petitioner situated in village Chandasi, P.S.-Noorsarai, which has not been Acquisitioned U/Sec. 58 (5) of the Bihar Excise Prohibition Act by the concerned authority in Confiscation (Excise) Case No. 426/2021 (State Vs. Bhutali Yadav) (Arising out of Noorsarai P. S. Case No. 308/2021, dated 09.09.2021, Offence alleged U/Sec. 30(a) of the Bihar Excise Prohibition Act 2018).

(ii) For issuance of direction to restrain the authorities concerned for holding an Auction Sale of the joint house of the petitioner also in view of the order dated 28-12-2021 (annexure-2) passed by the learned Court of Additional Collector – Cum - Additional District Magistrate Nalanda in Confiscation (Excise) Case No. 426/2021 (State Vs. Bhutali Yadav) (Arising out of

Noorsarai P. S. Case No. 308/2021, dated 09.09.2021, Offence alleged U/Sec. 30(a) of the Bihar Excise Prohibition Act 2018)

(iii) For direction to the respondent authorities to open the Seal of the house Or part portion of the house from where, the alleged 7- liters of country made liquor has not been recovered.

(iv) For grant of any other relief or reliefs for which the petitioner may be found entitled in course of hearing of this writ application.

Allegation is of recovery of 7 litres of illicit liquor from straw-storage room of the petitioner. It is further submitted that confiscation case no. 426 of 2021 has been initiated for confiscation of the house of 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 at Bihar Sharif is directed to unseal the residential premises other than from where illicit liquor was recovered and which was not the subject matter of the confiscation proceeding.

It appears that final order of confiscation has been passed by the confiscating authority in confiscation Case No. 426 of 2021 (Annexure-2). As such, it shall be open for the petitioner to challenge the said order of confiscation by filing appeal before the appellate authority.

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) and 57(B) 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 in terms of Rule 12(B) and 57(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	