IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4506 of 2022

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Manoj Kumar Prabhakar, son of Late Krishna Prasad, Resident of Mohalla-Chailital, P.O.-Guljarbagh, P.S.-Alamganj, District-Patna, Bihar-800007, presently residing at A-301, Banke Bihari Kunj, Near Ice Cream Factory, Opposite Mithapur Gumti, G.P.O., District-Patna, Bihar-800001.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary-cum-Revisional Authority, Department of Excise and Prohibition, Govt. of Bihar, Patna.
2. The Excise Commissioner, Patna, Bihar.
3. The District Magistrate cum Collector, Patna, Bihar.
4. The Superintendent of Police, Patna, Bihar.
5. The Excise Superintendent of Police, Patna, Bihar.
6. The Excise Inspector, Patna, Bihar.
7. The Officer-in-Charge, Alamganj Police Station, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Rakesh Kumar, Advocate
For the Respondent/s	:	Mr.Kumar Manish (SC 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 : 06-05-2022

Heard learned counsel for the parties.

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

(i) For issuance of writ(s)/order(s)/direction(s) including the writ in the nature of Certiorari to quash and cancel the order dated 25.01.2022 passed by the Principal Secretary -Cum- Revisional Authority, Department of Excise and Prohibition, Govt. of Bihar, at Patna in

Confiscation Revision Case no. 279/2021 whereby and whereunder the Revisional Authority has affirmed the order dated 29.10.2021 passed by the Learned Excise Commissioner, Patna in Confiscation (Excise) Appeal Case No.- 713/2021 (Special Case no. – 659/2021), arising out of Alamganj P.S. Case No.- 49/2021, dated 24.01.2021;

(ii) For issuance of writ(s)/order(s)/direction(s) including the writ in the nature of mandamus for directing and commanding the respondents to release the seized property(godown) having an area of 2500 square feet, situated at Biscoman Golambar, near police station, Sandalpur, District –Patna, Bihar- 800007 in the favour of the petitioner who is the absolute legal owner of the said property;

(iii) During the pendency of the present writ petition, the respondents may be restrained from taking any coercive step in pursuance of the proceeding initiated in Confiscation Case No. - 2759 /2020-2021 under Bihar Prohibition Excise Act, 2018;

(iv) For any other relief / reliefs for which the petitioner is found entitled to on the facts and in the circumstances of the instant case.

Petitioner claims to be the owner of the sealed premises.

Allegation is recovery of 37.5 litres of illicit liquor from the premises of the petitioner.

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.
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> (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 petitioner to approach this Court for same and subsequent cause of action, if so arises.

With said observation and direction, this writ petition is disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

veena/rajiv-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	