

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.5362 of 2022**

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Shambhu Yadav Son of Late Tarni Yadav, Resident of Village- Sattar, Ward  
No- 03, Police Station- Bihra, District- Saharsa. ... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Excise,  
Government of Bihar, Patna.
2. The Commissioner, Department of Excise, Government of Bihar, Patna.
3. The District Magistrate cum Collector, Saharsa, Bihar.
4. The Excise Superintendent, Saharsa.
5. The Excise Inspector, Saharsa.

... .. Respondent/s

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**Appearance :**

For the Petitioner/s : Mr.Satish Kumar Singh, Advocate

For the Respondent/s : Mr.Vikash Kumar (Sc11)

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**CORAM: HONOURABLE THE CHIEF JUSTICE**

**and**

**HONOURABLE MR. JUSTICE S. KUMAR**

**ORAL JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE S. KUMAR)**

**Date : 10-05-2022**

Heard learned counsel for the parties.

Petitioner has prayed for following relief:-

1. That, this writ application is being filed on behalf of the above named petitioner for issuance of appropriate writ/writs, order/orders, direction/directions to quash the order dated 28.01.2022 passed in Excise Appeal Case No. 30/2022, by the Respondent Commissioner Excise, Bihar Patna and also for setting aside the order dated 07.01.2021, passed in Confiscation Case No. 422/2020-21, by the Respondent District Magistrate Cum Collector, Saharsa, whereby and where under the cattle shed, a joint ancestral property, allegedly belongs to the petitioner has been confiscated, and further prayed for release of the said cattle shed.

Petitioner has approached this Court without availing

the statutory remedy of revision against the impugned appellate order, as such, liberty is granted to petitioner to file revision against the appellate order before the Revisional Authority and if any such Revision is filed within 4 weeks, then Revisional Authority shall decide the revision petition preferably within 8 weeks from the date of its filing on its own merit.

During pendency of revision petition, confiscated property / vehicle shall not be auction sold, if not already auction sold.

OR

It is submitted on behalf of 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 after making payment of penalty in terms of Rule 12(B) inserted by amending Bihar Prohibition and Excise Rules, 2021.

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

**(Sanjay Karol, CJ)**

Sanjay/-

**( S. Kumar, J)**

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| AFR/NAFR          | NAFR       |
| CAV DATE          | NA         |
| Uploading Date    | 14.05.2022 |
| Transmission Date | NA         |