

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5349 of 2022

1. Jyoti Devi, W/o Sri Mukesh Sah @ Mukesh Kumar Sah
 2. Mukesh Sah @ Mukesh Kumar Sah, S/o Late Bhuneshwar Sah,
Both resident of Mohalla - Vijay Nagar, P.S. - Banka, District - Banka.
- Petitioner/s

Versus

1. The State of Bihar.
 2. The Additional Chief Secretary, Excise Department, Government of Bihar,
Patna.
 3. The Excise Commissioner, Excise Department, Government of Bihar, Patna.
 4. The District Magistrate - Cum - Collector, Banka.
 5. The Sub- Divisional Magistrate, Banka.
 6. The Superintendent of Police, Banka.
 7. The Excise Superintendent, Banka.
 8. The Inspector of Police, Banka Police Station, Banka.
 9. The Station House Officer, Police Station - Banka, District - Banka.
- Respondent/s

Appearance :

For the Petitioner/s : Mr.Rajiv Kumar Singh, Advocate
For the Respondent/s : Mr.Kumar Manish (Sc5)

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.

Petitioners have prayed for following relief:-

- (i) Issuance of an appropriate writ including
a writ in the nature of certiorari quashing
the order dated 17.02.2022 passed by
Additional Chief Secretary Excise
Department, Govt. of Bihar, Patna in
Excise Revision No.20/2022 (Ann.-9)

quashing the order dated 13.12.2021 passed by the Excise Commissioner, Govt. of Bihar, Patna in Excise Appeal No.744/2021 (Ann-8) and also quashing the order dated 02.09.2021 passed by the

Sub-Divisional Magistrate, Banka in the confiscation (Excise) Case No.47/2021-22 (Ann-7) confiscating the petitioners and others who are the gotias of petitioners residential house property including all movable property on the basis of wrong facts which has not been considered by the learned authorities.

- (ii) Issuance of an appropriate writ including a writ in the nature of mandamus commanding and directing the respondents to unlock the petitioner residential house and others situated in Mohalla Vijay Nagar, Ward no.22, P.S.-

Banka which has been forcibly sealed by the police Inspector, Banka police station on 31.03.2021 under Bihar Prohibition and Excise Act, 2018 without any legal

basis because the said sealed residential property belongs to petitioners and others who are not involved in the said matter.

(iii) Issuance of any other appropriate writ(s), order (s), direction (s) as may be deemed fit and proper in the facts and circumstances of the case.

Petitioners claim to be the owner of the seized premises.

Allegation is recovery of 27 litre of illicit liquor from the seized house of the petitioners.

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 read 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 said view of the matter, the writ petition is disposed

of with liberty to petitioners to avail the remedy of the amended provision of 12(B) 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 the case.

Equally, liberty reserved to petitioners to approach this Court for same and subsequent cause of action, if need so arises

(Sanjay Karol, CJ)

(S. Kumar, J)

Sanjay/-

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