

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5778 of 2022

1. Mukesh Kumar, Son of Sri Brijnandan Singh Resident of Village- Sohan Kuan, P.O.- Bihar Sarif, P.S.- Laheri, District- Nalanda.
2. Shubhan Kumar, Son of Mukesh Kumar Resident of Village- Sohan Kuan, P.O.- Bihar Sarif, P.S.- Laheri, District- Nalanda.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Registration, Excise and Prohibition Department, Government of Bihar.
2. The District Magistrate-cum-Collector, Nalanda.
3. The Assistant Excise Commissioner, Nalanda.
4. The Superintendent of Excise, Nalanda.
5. The Superintendent of Police, Nalanda.
6. The Officer-in-Charge, Laheri, Nalanda.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Uday Prasad 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:-

1. that this application is being filed for issuance of appropriate order or orders and direction to respondent no 2 to release the kitchen of the petitioners which has been confiscated for auction in connection with Lahri , P .S Case no 397 / 2021 under prohibition Excise Act -2016 and quash confiscation no 477/2021 as

without jurisdiction which is pending before the Additional Collector, Nalanda.

2. That this application has been filed against the Excise Revision no. 15/2022 Mukesh Kumar V/s Excise Commission of others Patna, Bihar as the petitioner is aggrieved by the order passed in the revision files this writ.

Petitioners claim to be the owner of the seized premises.

Allegation is recovery of 6 litre of illicit liquor from the kitchen 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)

Sanjay/-

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

(S. Kumar, J)