

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6202 of 2022

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Kailshwa Devi @ Kailash Devi W/o Ravindra Chauahri, R/o Village-Sarmera, P.S.- Sarmera, District- Nalanda.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Registration, Excise and Prohibition Department, Govt. of Bihar, Patna.
2. The Collector-cum- District Magistrate, Nalanda.
3. The Superintendent of Police, Nalanda.
4. The Superintendent of Excise, Nalanda.
5. The S.H.O. Sarmera Police Station, District- Nalanda.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Rajeev 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 THE CHIEF JUSTICE)

Date : 11-05-2022

Heard learned counsel for the parties.

The petitioner has prayed for the following relief/s :-

That this is an application on behalf of above named petitioner for issuance of appropriate writ(s)/ order(s)/ Direction for directing the Respondents to open the seal of house of petitioner, appertaining to Khata No. 429, Khesara No. 2335 tota area 1.562 decimal situated at Mauza Sarmera, P.S.- Sarmera, District- Nalanda which has been sealed by the police in connection with Sarmerai police case No. 06/ 2022 registered for the offences



punishable under section 30(a) of Bihar Prohibition
Excise Amendment Act, 2018.

To direct the respondents to unseal the house of
the petitioner during the pendency of the confiscation
proceeding a reasonable surety till the disposal of the
said confiscation proceeding.

Any other relief/s to which the petitioner
is entitled in the facts and circumstances of the case.

Allegation is of recovery of 10 litres of illicit liquor
from one of the rooms of the 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 the said view of the matter, the District
Collector/Confiscating authority, Nalanda is directed to unseal



the residential premises other than from where illicit liquor was recovered and is further directed to conclude the confiscation proceeding within 90 days from the date of filing of show cause by the petitioner, if not already filed or within 90 days if the show cause has been filed from the date of receipt/production of a copy of order passed by this Court, failing which, the sealed room of the petitioner shall be unsealed till conclusion of confiscating proceeding and possession to be handed over to the petitioner, on furnishing adequate sureties and undertaking to the satisfaction of District Collector / Confiscating Authority, Nalanda.

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) 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 in terms of Rule 12(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)

Ashwini/Sujit

AFR/NAFR	
CAV DATE	
Uploading Date	18.05.2022
Transmission Date	

