

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6299 of 2022

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Sunita Devi, Wife of Late Ajay Kumar, Resident of New Area, Patel Gali, P.S.
Dehri Sonepur, District - Rohtas (Sasaram).

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Excise, New Secretariat, Patna, Bihar.
3. The Commissioner, Excise, New Secretariat, Patna, Bihar.
4. The Collector Cum District Magistrate, Rohtas, Sasaram.
5. The Superintendent of Police, Rohtas.
6. Officer in Charge, Dehri P.S. Rohtas.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Arun Kumar Sinha, 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 : 11-05-2022

Heard learned counsel for the parties.

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

That this is an application for issuance of an
appropriate Writ order/orders direction for setting
aside the order dt. ^{2.3.2022} ~~24.2.2022~~ passed in Excise



Revision No. 264 of 2021 by Respondent No. 2 Principal Secretary, Patna whereby he has been pleased to uphold the order dt. 29.10.2021 passed in Excise Appeal No. 715 of 2021 by Respondent No. 3 Commissioner Excise, Patna and further be pleased to set-aside the order dt. 31.08.2021 passed by Respondent No. 4 Collector in Confiscation Case No. 121/2018 by which house and land of the petitioner measuring area 2 Katha 8 dhur 10 dhurki has been confiscated and Anchal Adhikari and Officer in charge Dehrionsone was directed to take possession of the Confiscation property and and further be pleased to direct the respondent authority to release the house and land of the petitioner and for any other relief/reliefs as this Hon'ble Court may deem fit and proper under the circumstances of the case.

Petitioner claims to be the owner of the sealed premises.

Allegation is of recovery of 64.125 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.

(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 the said view of the matter, the writ petition is disposed of with liberty to the petitioner to avail the remedy of the amended provisions in terms of Rule 12(B) and Rule 57B of the Bihar Prohibition & Excise (Amendment) Rules, 2022.

It is made clear that this Court has not expressed any opinion with respect to the merits of the case.

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

Interlocutory application, if any, shall also stand disposed of.

Petition stands disposed of with the aforesaid observations/directions.

(Sanjay Karol, CJ)

(S. Kumar, J)

Ashwini/Sujit

AFR/NAFR	
CAV DATE	
Uploading Date	18.05.2022
Transmission Date	

