

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6549 of 2022

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Arjun Kumar @ Arjun Yadav S/o Late Badhar Yadav Resident of Village -
Ward no. 5, Ratanpura, P.S. and District - Madhepura.

... .. Petitioner/s

Versus

1. The State of Bihar through the Commissioner (Excise), Government of Bihar, Patna.
2. The Commissioner (Excise), Government of Bihar, Patna.
3. The Collector, Madhepura.
4. The Additional Collector cum Additional District Magistrate, Madhepura.
5. The Superintendent, Prohibition and Excise, Madhepura.

... .. Respondent/s

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Appearance :

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

Date : 11-05-2022

Heard learned counsel for the parties.

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



- a. For setting aside the order dated 13.01.2022 passed by Respondent no. 4 in Excise Confiscation case no. 102/2020, directing the respondent no.5 to confiscate the sealed 7th room of Fauzi Lodge situated east-south to north in Kaushlya Gram, Ward No.2, Madhepura of the petitioner with other direction(s) which is per-se illegal and based on non-est ground and the petitioner further prays for grant of any other relief(s) as well interim relief for which he be found entitled by this Hon'ble Court.
- b. For directing the respondents to unseal the room in question and to hand over the same to the petitioner forthwith.
- c. For grant of any other relief/s to which the petitioner be found entitled in the facts and circumstances of this case.

It has been submitted by learned counsel for the petitioner that final order of confiscation has been passed by the confiscating authority in Confiscation Case No. 102 of 2020 and his property has been ordered to be confiscated.

In view of the above, the writ petition is disposed with liberty to the petitioner to file a petition for recall of *ex*



parte order and if the confiscating authority comes to a finding on the basis of records that there was no proper and valid service of notice upon the petitioner, he may recall the *ex parte* order and shall pass a fresh order after affording opportunity to the petitioner to file his show cause and shall pass final order after hearing all the parties.

However, if the Confiscating Officer finds that in spite of valid service of notice, petitioner did not contest the proceeding, he shall dismiss the recall petition and petitioner shall have liberty to file appeal against the order of confiscation of land passed by the Confiscating Authority before the Appellate Authority, who shall decide the appeal in accordance with law.

During confiscation/Appellate proceeding, confiscated property/vehicle shall not be auction sold.

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 cases, 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.



With said observation and direction, this writ petition
is disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

Ashwini/Sujit

AFR/NAFR	
CAV DATE	
Uploading Date	18.05.2022
Transmission Date	

