# IN THE HIGH COURT OF JUDICATURE AT PATNA
**Civil Writ Jurisdiction Case No.7456 of 2022**

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Ghanshyam Singh S/o Late Ramayan Singh, resident of Village- Delhuan, P.S.- Dinara, District- Rohtas.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary (Additional Chief Secretary), Department of Registration, Excise and Prohibition, Government of Bihar, Patna.
2. The Excise Commissioner, Bihar, Patna.
3. The Collector-cum- District Magistrate, Rohtas.

... ... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr.Mithilesh Kumar Singh, Advocate

For the Respondent/s : Mr.Vivek Prasad (Gp7)

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**CORAM: HONOURABLE THE CHIEF JUSTICE**
**and**
**HONOURABLE MR. JUSTICE S. KUMAR**

**ORAL JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE S. KUMAR)**

**(The proceedings of the Court are being conducted through Video Conferencing and the Advocates joined the proceedings through Video Conferencing from their residence.)**

**Date : 22-07-2022**

Heard learned counsel for the parties.

Petitioner has prayed for following relief:-

(I) To issue appropriate writ (s), order (s), direction (s) in the nature of mandamus setting aside the order dated 09.08.2021 passed by the learned Collector cum District Magistrate, Rohtas in Confiscation Case No. 112/2l arising out of Dinara P.S. Case No. 26/2021 registered u/s 30 (a) of Bihar Prohibition and Excise Act whereby and whereunder he has ordered to confiscate a part of dwelling house of the petitioner as well as for setting aside the order dated 26.10.2021 passed by the learned Excise Commissioner, Patna in Excise Appeal No. 678/2021 and the order dated 04.03.2022 passed by the Addl. Chief Secretary, Bihar, Patna in Excise Revision No. 48/2022 whereby they have affirmed the order dated 09.08.2O21 passed by the Collector-cum-District Magistrate, Rohtas in above said case. This application is also filed to direct to the respondents concerned not to proceed for auction during pendency of present writ application.

(II) For issuance of appropriate writ (s), order (s), direction (s) to the respondents concerned to unseal the sealed part (a room) of the dwelling house of the petitioner which is in the name of Late father of petitioner and which is the joint property of the petitioner and his brothers and no partition has taken place between them.

(III) For any other relief (s) as your lordships may deem fit and proper.

Petitioner claims to be the owner of the seized shop.

Allegation is recovery of 11.34 litre foreign liquor and 12 litre country made liquor from the shop 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) 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.
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> (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.
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> (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 petitioner 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 petitioner to approach this Court for same and subsequent cause of action, if need so arises.

**(Sanjay Karol, CJ)**

**( S. Kumar, J)**

Sanjay/-

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| **AFR/NAFR** | NAFR |
| **CAV DATE** | NA |
| **Uploading Date** | 28.07.2022 |
| **Transmission Date** | NA |