

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7609 of 2022

1. Sidheshwar Mochi Son of Late Biltu Mochi Resident of Village Chhoti Nawada, P.O.- Kataona, P.S.- Khusrupur, District- Patna.
2. Smt. Kamla Devi Wife of Shri Sidheshwar Mochi Resident of Village Chhoti Nawada, P.O.- Kataona, P.S.- Khusrupur, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar Through the Secretary, Department of Home, Government of Bihar, Patna.
2. The Principal Secretary Excise Department, Government of Bihar, Patna.
3. The Additional Chief Secretary Excise Department, Government of Bihar, Patna.
4. The Commissioner Excise Department, Government of Bihar, Patna.
5. The Assistant Commissioner Excise Department, Government of Bihar, Patna.
6. The District Magistrate Patna.
7. The Senior Superintendent of Police Patna.
8. The Officer-In-Charge, Fatuha P.S. Patna.
9. The Circle Officer Fatuha Block, Fatuha, Patna.

... .. Respondent/s

(The proceedings of the Court are being conducted by Hon'ble the Chief Justice /Hon'ble Judges through Video Conferencing from their residential offices/residences. Also, the Advocates and the Staffs joined the proceedings through Video Conferencing from their residences /offices.)

Appearance :

For the Petitioner/s : Mr.Rajesh Ranjan, Adv
For the Respondent/s : Mr.Kumar Manish (Sc 5)

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

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 12-09-2022

Heard learned counsel for the parties.

Petitioners have prayed for the following relief(s):-



1. That this is an application for issuance of an appropriate writ or writs in the nature of certiorari and the mandamus or any others as may be appropriate to quash and set aside the order impugned dated 17.02.2022, passed by the Learned Revisional Court of Additional Chief Secretary, Prohibition, Excise and Registration Department, Government of Bihar, Patna (the respondent no. 3) in connection with the Excise Revision No. 19 of 2022, Sidheshwar Mochi and Another Vs. Excise Commissioner and Others vide Annexure-10, and also the orders impugned dated 12.01.2021 as passed by the Learned Appellate Court of the Commissioner, Excise Department, Bihar, Patna (Respondent No. 4) in connection with the Excise Appeal (Confiscation) Case No. 31/2020, Sidheshwar in the Excise Appeal (Confiscation) Case No. 32/2020, Kamla Devi Vs. The Collector, Patna and Others vide Annexure-8 and 8/A and also the order impugned dated 02.11.2017 passed by the court of Learned Collector, Patna (Respondent No. 6) in connection with the Confiscation Case No. 385/2017-18, Sidheshwar Mochi and Kamla Devi Vs. The Collector, Patna & Others, vide Annexure-4, whereby and whereunder the Revisional Court of the Respondent No. 3 has been pleased to affirmed the impugned orders as passed by the Learned court of the Collector, Patna in the Confiscation Case No. 385/2017-18 on 02.11.2017 and also further affirmed the impugned orders dated 12.01.2021 as passed by the Learned Appellate Court of the Commissioner, Excise Department,



Bihar, Patna in connection with the Excise (Confiscation) Appeal Nos. 31/2020 and 32/2020 and by affirming the aforesaid impugned orders, the Excise Revision No. 19/2022 has been disposed by the Respondent No. 3 i.e. the Revisional Court of the Learned Additional Chief Secretary, Prohibition, Excise and Registration Department, Government of Bihar, Patna and therefore, the Learned Collector-Cum-District Magistrate, Patna has been ordered to may proceed with Auction in the Confiscation proceeding as per the Act in connection with the Confiscation Case No. 385 of 2017-18 of the petitioners, where under the court of the Learned Collector, Patna by the impugned order dated 02.11.2017, vide Annexure-4 has been pleased to pass order of confiscation of the petitioner's Godown and the Land also where the said godown is situated. On the basis of the request Letter No. 3109 Ap.Sha., dated 08.08.2017



of the respondent no. 7 i.e. the Senior Superintendent of Police, Patna in connection with the Fatuha P.S. Case No. 141/2017;

And your Lordships may further be pleased to command the respondents and order them to release the said confiscated land and the godown in the favour of the petitioner no. 2 ^{who} is the full owner of the said land bearing Khata No. 75, Khesra No. 420, Area descriptions is as four and half katha (04.050 Katha) situated at Village Govindpur Dariya, Thana No. 22 P.S. Fatuha, District Patna, since the said land in question is the Stridhan i.e. an absolute property of the petitioner no. 2 because she is the full owner of the said land as per the definition ^{of} the [^] under Section 14 of the Hindu Succession Act, 1956 and to be pleased to take notice of the fact that the said godown situated in the said land had been given on the rent to a tenant named Sajay Singh on 20.12.2015



through the Rent Agreement Deed vide Annexure-2, for legally ^{permissible} work as to do Coal Business for three years up to 14.11.2018 and the alleged F.I.R. had been lodged in between the said three years rent agreement period i.e. on 01.05.2017 vide Fatuha P.S. Case No. 141/2017, therefore, it is apparent that the petitioners were not at all the immediate custodians of the said godown of the alleged date and time of the alleged occurrence nor they were in active physical possession over to the said godown nor they were in knowledge of any illegal storage of alleged wine nor in an immediate controls over to the said godown but the respondent Revision Court too like the Respondent Appellate Court as well as the Learned Confiscation Case Court of Collector-Cum-District Magistrate, Patna, ignoring all the above mentioned raised questions of fact and law, and also without applying of their respective



judicial minds, failed to grant reliefs as prayed for therein on behalf of the petitioners:

And your Lordships may also be pleased to grant any other relief or reliefs for which the petitioners are found to be entitled in the eyes of law.

Briefly stated, the facts of the case is that on an specific information received by the police, a raid was conducted in the godown of petitioner situated at Dariyapur, Patna, and from the godown 2745 of illicit foreign liquor was recovered giving rise to Fatuha PS Case No. 141 of 2017 dated 01.05.2017, and the illicit liquor were seized and godown was sealed.

On recommendation made by Sr. Superintendent of Police, confiscation proceeding being Confiscation Case No. 385 of 2017-18 was initiated to confiscate the sealed premises, for which notices were issued to the petitioner/owner and petitioner/owner appeared and filed his show cause inter alia stating therein that the godown premises from where illicit liquor has been recovered was given on rent to Sanjay Singh and for which an agreement was entered on 15.11.2015 for three years, and said Sanjay Singh came in possession of the rented godown.



The District Magistrate, by his order dated 02.11.2017 passed in Confiscation Case No. 385 of 2017-18 passed an order for confiscation of the godown against which petitioner preferred an appeal before the Excise Commissioner, being Excise Appeal Case No. 31 of 2020 and 32 of 2020, which were dismissed by order dated 12.01.2021 passed by Appellate Authority against which petitioners moved before the Revisional Authority in Excise Revision No. 19 of 2022, which was also dismissed by order dated 17.02.2022 passed by the Additional Chief Secretary, Govt of Bihar, Patna (Revisional Authority) against which present writ petition has been preferred by the petitioners.

It is submitted on behalf of petitioners that petitioner no. 2 is the owner of the land bearing Khata no. 75 Khesra No.420 measuring 4.5 Katha situated at village Gobindpur Dariya, Thana No. 22, PS Fatuha District Patna, and her stridhan and she is absolute owner of the confiscated property.

Godown had been given on rent to Sanjay Singh on 20.12.2015 through rent agreement deed for three years upto 14.11.2018 for Coal business and therefore petitioners were not the immediate custodians of the godown nor they were in physical possession over it nor it was within their knowledge



and information that illicit liquor has been stored in the godown.

Recovery of 2745.00 liters foreign liquor from the godown of the petitioner is not disputed. The defence is that godown was given on rent to Sanjay Kumar Singh and as such he cannot be held responsible for being indulged in trade of illicit liquor. The chemical analyst in its report dated 05.06.2017 has confirmed that the seized article is illicit liquor. Petitioner was arrested on the spot.

The learned Additional Chief Secretary-cum Revisional Authority after discussing evidence placed on record as well as considering the defence of petitioner has upheld the orders passed by the confiscating authority as well as appellate authority and dismissed the revision petition filed by petitioner.

Once the land/godown owner has admitted the recovery of 2475 liters of foreign illicit liquor from the godown which was let out to a tenant for 3 years on the lease, the property becomes liable for confiscation Under Section 56 of the Excise Act, unless the owner of the premises proves that it was used without his knowledge or connivance.

Section 54 of the Excise Act reads as follows:-

“54. Failure of occupier to disclose information of unlicensed manufacture or cultivation or consumption of liquor or intoxicant.(1) Whenever any liquor or intoxicant or other excisable item is manufactured, sold,



stored, bottled, possessed, consumed or any excisable plant is cultivated in contravention of this Act, occupier of that land or building or his agents, shall give information to the nearest excise official, police official or the Collector as soon as the fact comes to their knowledge.

(2) Whenever occupier(s) of that land or building or his agents fail to disclose information as per sub Section(1), such person or persons shall be liable to be punished for imprisonment up to two years.”

From reading of Section 54, it is apparent that when the premises is not in physical possession of the land owner, and physical possession is that of tenant, premises can be confiscated unless land owner establishes that he had neither any knowledge nor was in connivance for using his premises for storage of illicit liquor and for which, land owner is required to produce evidence to the satisfaction of confiscating authority, however, no such evidence was led by the petitioners, rather petitioner no.1 was arrested on the spot by the police and he confessed his involvement in the trade of illicit liquor, as indicated by the learned revisional authority in his order, which reads as follows:-

5. a. The brief facts of the matter is that the raiding party of Fathua Police Station on the basis of Secret information raided Godown towards west of Sidheswar Mochi situated in Dariyapur 305 carton, each containing 12 bottles each bottle containing 750 ml Royal stag brand was recovered. Seeing the police a person started fleeing but was caught by the police. He disclosed his name as



Sidheshwar Mochi and stated that he is the owner of the premises in question. He confessed that he had given the premises to one Sanjay Singh on rent for coal business who gradually started liquor business in the premises in question. He confessed that he along with Sanjay Kumar, Ajit Kumar, Mahand Yadav and others formed one syndicate who has different roles in the liquor business since last one month. The revisionist was arrested and a case for the offence under clause (a) of Section 30 Bihar Prohibition and Excise Act, 2016 was instituted as Fathua PS Case No.141 of 2017 registered dated 01.05.2017.

Having heard learned counsel for the parties, this Court does not find any error or infirmity in the order passed by the learned authorities under the Excise Act requiring any interference by this Court in its discretionary writ jurisdiction, accordingly, the writ petition is dismissed.

(Sanjay Karol, CJ)

(S. Kumar, J)

ranjan/-

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

