IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9492 of 2022

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Vimla Kumari Wife of Sanjay Kumar, Resident of Mohalla-Bhaisasur, P.S.-Biharsharif, District-Nalanda.

... ... Petitioner/s

Versus

1. The State of Bihar Bihar.
2. The Additional Chief Secretary cum Revisional Authority, Excise, Bihar Excise Department, New Secretariat, Baily Road, Patna.
3. The Commissioner cum Appellate Authority, Excise, Bihar Excise Department, New Secretariate, Baily Road, Patna.
4. The District Magistrate cum Collector, Nalanda at Bihar Sharif.
5. The Additional Collector cum Additional District Magistrate, Nalanda at Bihar Sharif.
6. The Superintendent Prohibitiona and Excise, Nalanda at Bihar Sharif.
7. The Superintendent of Police, Nalanda at Bihar Sharif.
8. The Inspector, Prohibition and Excise, Nalanda at Bihar Sharif.
9. The Police Inspector cum S.H.O. Bihar PS, Town and District Bihar Sharif.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr.Pramod Kumar Sinha, Advocate
For the Respondent/s : Mr.Kumar Manish (SC5-)

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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 the following relief(s):-

> “(i) For setting aside the order dated 28.04.2022 passed in Excise Revision No. 83 of 2022 by the learned Additional Chief Secretary Bihar, Patna who has been pleased to dismiss the revision petition and affirmed the order dated 10.01.2022 passed in Excise Appeal Case No. 893/2021 by the

learned Excise Commissioner cum Appellate Authority, Excise, Bihar and also affirmed the order dated 03.12.2021 passed in confiscation case no. 430/2021 by the learned Additional Collector cum Additional District Magistrate, Nalanda at Bihar Sharif respectively. (Annexure-5).

(ii) For setting aside the order dated 10.01.2022 passed in Excise Appeal Case No. 893/2021 by the learned Commissioner cum Appellate Authority, Excise, Bihar who has been pleased to dismiss the appeal and affirmed the order dated 03.12.2021 passed in confiscation case no. 430/2021 by learned Additional Collector Cum Additional District Magistrate, Nalanda at Bihar Sharif. (Annexure-4).

(iii) For setting aside the order dated 03.12.2021 passed in confiscation case no. 430/2021 whereunder and whereby learned Additional Collector Cum Additional District Magistrate, Nalanda at Bihar Sharif has been pleased to confiscate the constructed part of the house of petitioner without giving Mauza, Thana No., Khata No., Khesra No., Area, seized/sealed in connection with Excise case No. 196C3 Ex/2021 dated 06.09.2021, instituted U/s. 30(A) of Bihar Prohibition & Excise Amendment Act, 2018 and also directed to auction the part house in question at Minimum Floor Price. (Annexure-3).

(iv) For that during the pendency of the present writ petition a direction may be issued to the respondent authorities not to disturb the possession of the petitioner.

(v) For any other relief/reliefs for which the petitioner is found entitled in the eye of law and in the facts and circumstances of the present case be pleased to direct the concerned respondents to release the part house in the question of the petitioner."

Petitioner claims to be the owner of the seized house.

Allegation is of recovery of 46.08 liters of illicit liquor from the tenanted room 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.

(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.]
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> [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)

Rajiv/veena-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	