IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15491 of 2021

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Ramanti Devi, Wife of Chandrika Yadav, Resident of Village - Chhawani Ward No. 5, P.S. - Kalibagh O.P. Bettiah Town, District - West Champaran.

... ... Petitioner/s

Versus

1. The State of Bihar, through the Additional Chief Secretary, Prohibition and Excise, Government of Bihar, Patna.
2. The Commissioner, Prohibition and Excise, Government of Bihar, Patna.
3. The District Magistrate, West Champaran at Bettiah.
4. The Senior Superintendent of Police, West Champaran at Bettiah.
5. The Sub-Divisional Police Officer, West Champaran at Bettiah.
6. The Superintendent Excise, West Champaran at Bettiah.
7. The Station House Officer, Muffasil (Bhanu Chapra O.P.), West Champaran at Bettiah.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rama Kant Sharma, Sr. Advocate
		Mr.Rajesh Kumar, Advocate
For the Respondent/s	:	Mr.Kumar Manish (SC-5)

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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 :-

(i) For issuance of appropriate writ/writs order/orders, direction/directions for quashing of the order passed in Excise Revision Case no. 30/2021 contained in Memo no. 550 dated 29.06.2021 by respondent no. 1. The Additional Chief Secretary whereby and whereunder Revisional Authority affirmed the order of respondent Collector (respondent no. 3) and appellate order passed by respondent no. 2 to confiscate the godown constructed on Khata no. 148, Plot no. 456/1 without considering the fact that no material was found showing complicity of petitioner in keeping wine in her premises which was let out to third person and godown was in the charge/possession of said person and without any knowledge of petitioner, said person kept incriminating article in the said godown.

A Copy of memo no. 550 dated 29.06.2021 is annexed herewith and marked as Anneure-1 to this petition.

(ii) For issuance of appropriate writ/writs, order/orders, direction/directions for quashing the order dated 03.09.2020 passed by respondent no. 2 (The commissioner) in Excise Appeal case no. 45/2020 and communicated to the petitioner vide memo no. 3317 dated 01.10.2020 whereby and whereunder order passed by the respondent District Magistrate (respondent no. 3) by invoking the power u/s 58 r/w section 56(c) of Bihar Prohibition and Excise Act has been affirmed and godown of petitioner has been directed to be confiscated and dismissed the Appeal.

A Copy of the memo no. 3317 dated 01.10.2020 is annexed herewith and marked as Annexure-2 to this petition.

(iii) For issuance of writ/writs, order/orders, direction/directions for quashing the order dated 28.01.2020 passed by respondent no. 3 in Case No. C.R.M. 239/2019-20 whereby and whereunder godown of petitioner situated on land appertaining to Khata no. 158, Plot no. 456(1) Area- 7.64 decimals has been directed to be confiscated on account of recovery of liquor in the alleged godown and institution of Bettiah Muffasil (Bauchhapar) ignoring the fact that said godown was let out to one Vikas Kumar @ Vikas Yadav.

A Copy of order dated 28.01.2020 is annexed herewith and marked as Annexure-3 to this petition.

(iv) For issuance of writ/writs, order/orders, direction/directions commanding the respondent authorities, especially respondent no. 3 not to confiscate the godown of petitioner as same was misused by her tenant without the knowledge of petitioner and any criminal liability is a personal liability and may not be penalized for criminal act done by some other person and there is no material on record to show the complicity/connivance of petitioner is keeping the contraband article and as per section 32 of the Act, presumption as to commission of offence is rebuttable presumption subject to giving satisfactory explanation and in the case, since no material was found regarding connivance of petitioner and as such presumption of complicity of petitioner has already been rebutted and respondent may drop the confiscation proceeding instead of passing an order of confiscation.

(v) For issuance of appropriate writ/writs, order/orders, direction/directions for any other relief/reliefs for which petitioner is found entitled in the eye of law and in the facts and circumstances of the present case

Petitioner claims to be the owner of the seized premises.

Allegation is recovery of 1927.8 litre of illicit liquor from the seized house 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)

Ashwini/Sujit

AFR/NAFR	
CAV DATE	
Uploading Date	18.05.2022
Transmission Date	