IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15561 of 2021

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Dinanath Mahto, Son of Bhagwan Das Mahto, Resident of Bahari Begumpur, Paar Pokhara, Sampatchak, Patna - 800009.

... ... Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Excise Department, Bihar, Patna.
2. The Additional Chief Secretary, Excise Department, Bihar, Patna.
3. The Deputy Director, Home Department, Government of Bihar, Patna.
4. The Excise Commissioner, Patna, Bihar.
5. The Collector - Cum - District Magistrate, Patna.
6. The Superintendent of Police, Patna.
7. The Excise Superintendent, Patna.
8. S.H.O., Bypass Police Station, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Nikhil Kumar Agrawal, 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.

Petitioner has prayed for the following relief(s):-

> "i) To issue an appropriate writ/order/direction in the nature of Mandamus directing the Respondents to produce the letter No. 845 dated 26.02.2021 issued by the Respondent No. 3 thereby allotting the land/godown of the petitioner to the S.H.O., Bypass Police Station for the purpose of opening of the Bypass Police Station;
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> ii) To issue an appropriate writ/order/direction in the

nature of Certiorari quashing the Letter No. 845 dated 26.02.2021 issued by the Respondent thereby allotting the land/godown of the petitioner to the S.H.O., Bypass Police Station for the purpose of opening of the Bypass Police Station;

iii) To issue an appropriate writ/order/direction in the nature of Mandamus restraining the Respondents from operating the police station at the premises of the Petitioner and/or utilizing the confiscated premises for any other purpose until the confiscation proceeding becomes final in terms of Section 61 of the Bihar Prohibition and Excise Act, 2016;

iv) To issue an appropriate writ/order/direction in the nature of Mandamus directing the Respondent no. 2 to dispose off the Revision (Excise) Case No. 132 of 2021 expeditiously;

v) To any other relief or reliefs for which the petitioner is found entitled to in the facts and circumstances of the case."

Allegation is recovery of 54137.160 litre of illicit foreign liquor and 7041.600 litre of illicit country made liquor (Total-61178.760 litres) from the Godown located at Mahadeo Asthan, PS-Bypass, Patna, and 7 vehicles inside the campus used for loading and unloading illicit liquor were seized and 9 persons were apprehended giving rise to Bypass P.S. Case No. 38 of 2021 dated 01.02.2021 under Section 272, 273 of IPC and 30(a)/32/36/41(i)(ii) of Bihar Prohibition and Excise Act.

On recommendation made by the Sr. Superintendent of Police, Patna, vide letter dated 03.02.2021 confiscation case number 2348/2020-21 was initiated and by order dated 08.02.2021 sealed Godown was ordered to be confiscated(Annexure-5).

An Appeal preferred being Excise Appeal No. 346 of 2021 was dismissed by the Excise Commissioner from Appellate Authority vide order dated 06.07.2021 (Annexure-7) and revision preferred being Excise Revision No. 132 of 2020-21 before the Additional Chief Secretary cum Revisional Authority was dismissed on 14.09.2021 (Annexure-9).

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) as well as 57B have 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.
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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.

(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 the said view of the matter, the writ petition is disposed of with liberty to the petitioner to avail the remedy of the amended provisions in terms of Rule 12(B) and Rule 57B of the Bihar Prohibition & Excise (Amendment) Rules, 2022.

It is made clear that this Court has not expressed any opinion with respect to the merits of the case.

Equally, liberty reserved to the petitioner to approach this Court for the same and subsequent cause of action, if the need so arises.

(Sanjay Karol, CJ)

(S. Kumar, J)

Sujit/Ashwini

AFR/NAFR	
CAV DATE	
Uploading Date	17.05.2022
Transmission Date	