

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11044 of 2022

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Bigul Chaudhary @ Baleshwar Chaudhary S/o radhe Chaudhary, R/o Village-
Vishunpur, Ahiyachak Ke tola, P.S.- Bind, District- Nalanda.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Registration, Excise and Prohibition Department, Govt. of Bihar, Patna.
2. The Collector-cum-District Magistrate, Nalanda.
3. The Addl. Collector-cum-Addl. District Magistrate, Nalanda.
4. The Superintendent of Police, Nalanda.
5. The Superintendent of Excise, Nalanda.
6. The S.H.O. Bind Police Station, District- Nalanda.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Rajeev Kumar, Advocate
For the Respondent/s : Mr.Vikash Kumar (S.C.11)

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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 : 05-08-2022

Heard learned counsel for the parties.

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

That this is an application on behalf of above named
petitioner for issuance of appropriate writ(s)/ order(s)/
Direction for directing the Respondents to open the seal
of house/ room of petitioner, appertaining to Khata No.
45, Khesara No. 182 total area 2 decimal situated at

mauza Bishunpur, P.S.- Bind, district- Nalanda which has been sealed by the police in connection with Bind P.S .case No. 187/ 2021 registered for the offences punishable under section 30(a), 30(d) of Bihar Prohibition Excise Amendment Act, 2018.

Further to quash the order dated 19-02-2022 passed by Addl. Collector-cum- Addl. District Magistrate, Nalanda in Confiscation (Excise) Case No. 08/ 2022 by which he has confiscated the house/ room of the petitioner under section 58 (2) of Bihar Prohibition and Excise Amendment Act, 2018 and public auctioned u/s 58 (5) of the Bihar Prohibition and Excise Amendment Act, 2018.

Any other relief/s to which the petitioner is entitled in the facts and circumstances of the case.

Petitioner has approached this Court without exhausting the statutory remedy of appeal/revision against the impugned order, as such, petitioner is granted liberty to avail the remedy of appeal/revision against the confiscation order passed by the Confiscating Authority- cum- District Magistrate, before the Appellate Authority/revisional authority and, if any, such appeal/revision is filed within 4 weeks then appellate

authority/revisional authority shall condone the delay in filing the appeal/revision and shall decide the appeal/revision on its own merit preferably within 8 weeks from the date of its filing.

During pendency of appeal, the confiscated vehicle/property shall not be auction sold, if not already auction sold.

OR

It is submitted on behalf of 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) has 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.

(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.]"

In view of amendment in the Excise Act, and same being applicable in pending case, it shall be open for the petitioner to get his/her house unsealed after making payment of penalty in terms of Rule 12(B) inserted by amending Bihar Prohibition and Excise Rules, 2021.

With aforesaid observation and direction, the writ petition stands disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

veena/rajiv-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	