IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11193 of 2022

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Nagendra Singh @ Rupan Singh son of Tribhuvan Singh, resident of Village-Fatahpur, P.O. Fatahpur, P.S. Sheohar, District-Sheohar.

... ... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Additional Chief Secretary, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
3. The Excise Commissioner, Bihar, Patna.
4. The District Magistrate-cum-Collector, Sheohar, District-Sheohar.
5. The Superintendent of Police, Sheohar, District-Sheohar.
6. The Excise Superintendent, Sheohar, District-Sheohar.
7. The Station Head Officer, Sheohar Police-Station, District-Sheohar.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Pushpendra Kumar Singh, Advocate
For the Respondent/s	:	Mr.Kumar Manish (S.C.-5)

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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):-

(I) For issuance of an appropriate writ in the nature of **CERTIORARI** for quashing the order dated 31.08.2021 passed by the Additional Chief Secretary, Respondent no.2 in Excise Revision No.98 of 2021 and communicated to all concerned vide memo no. 861 dated 31.08.2021, whereby and where under the Respondent no.2 has been pleased to dismiss the revision application filed by the petitioner and affirm the order passed by the learned

Collector , Sheohar and the appellate order passed by the learned Excise Commissioner.

(II) For issuance of an appropriate writ in the nature of **CERTIORARI** for quashing the order dated 26.08.2020 passed by the learned Excise Commissioner, Respondent no.3 in Excise Appeal Case No.25 of 2019 and communicated under memo no.3066 dated 16.09.2020 , whereby and where under he has been pleased to dismiss the appeal filed by the petitioner and affirm the order dated 21.01.2019 passed by the Respondent no.4 in Confiscation Case No.199 of 2018 .

(III) For issuance of an appropriate writ in the nature of **CERTIORARI** for quashing the order dated 21.01.2019 passed by the Respondent no.4 in Confiscation Case No.199 of 2018 arising out of Sheohar P.S. Case No. 109 of 2018 ,whereby and where under he was pleased to confiscate the land of the petitioner bearing Khata no.281 , Khesra No.2402 , measuring an area 0.18 decimals , Mauza-Fatahpur on the ground that the said order was passed by the Respondent no.4 in gross violation of Section -58 of the Bihar Prohibition Excise Act as also the principles of NATURAL JUSTIE since it was passed by the Respondent no.4 without providing any opportunity of hearing to the petitioner as also without taking consideration of the plea of the petitioner that there is no recovery from the land in question as also it is an opened place and it is accessible to any one .

(IV) For issuance of an appropriate writ in the nature of **MANDAMUS**, commanding and directing the Respondent Authorities to release the land of the petitioner which was illegally seized in connection with Sheohar P.S. Case No. 109 of 2018 interalia on the ground that in fact there is no recovery from the land of the petitioner in question .

(V) For issuance any other appropriate writ/writs ,order/orders, direction/directions for which the writ petitioner would be found entitled under the facts and circumstances of the case.

Petitioner claims to be the owner of the confiscated land.

Recovery of 19.485 litres of illicit liquor was made from the land 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.]

[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)

veena/rajiv-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	