

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17865 of 2021

1. Ravi Chaudhary son of Late Kameshwar Chaudhary
2. Bablu Kumar son of Mahendra Chaudhary
Both Resident of Village- Kisanbag, Meharpar, P.S.- Lehari, District-
Nalanda

... .. Petitioner/s

Versus

1. The State of 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 Secretariat, Baily Road, Patna.
4. The District Magistrate cum Collector, Nalanda at Bihar Sharif.
5. The District Transport Officer, Nalanda at Bihar Sharif.
6. The Superintendent of Police, Nalanda at Bihar Sharif.
7. The Motor Vehicle Inspector, Nalanda at Bihar Sharif.
8. The Police Inspector cum S.H.O. Laheri PS, Town and District- Nalanda at
Bihar Sharif.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Pramod Kumar Sinha, Advocate
For the Respondent/s : Mr.Kumar Manish (Sc5)

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE S. KUMAR)

Date : 10-05-2022

Heard learned counsel for the parties.

Petitioners have prayed for following relief:-

- (i) For setting aside the order dated 31-08-2021 passed in
Excise Revision No.108/2021 by the learned Additional
Chief Secretary Bihar, Patna who has been pleased to
reject the revision petition and affirmed the order dated
05-07-2021 passed in Excise Appeal Case No.359/2021
by the learned Excise Commissioner cum Appellate

Authority, Excise, Bihar Patna and also affirmed the order dated 06-04-2021 passed in confiscation case no.91/2021 by the learned District Magistrate cum Collector, Nalanda at Bihar Sharif respectively.

(ii) For setting aside the order dated 05-07-2021 passed in Excise Appeal Case No.359/2021 by the learned Commissioner cum Appellate Authority, Excise, Bihar Patna who has been pleased to dismiss the appeal and affirmed the order dated 06-04-2021 passed in confiscation case no.91/2021 by the learned District Magistrate cum Collector, Nalanda at Bihar Sharif.

(iii) For setting aside the order dated 06-04-2021 passed in *confiscation case no.91/2021 where under and where* by the learned District Magistrate cum Collector, Nalanda at Bihar Sharif has been pleased to order to confiscate the constructed joint house situated in Mauza Sipah Thana No.94, Khata No.156, Khesra No.953, Area 01 Decimal which has been seized/ sealed in connection with Laheri P.S. Case No.95/2020 instituted U/S 30(A) of Bihar Prohibition & Excise Amendment Act, 2016 and also directed to auction the aforesaid house at Minimum Floor Price.

(iv) For that during pendency of the present writ petition a direction may be issued to the respondent authorities not to disturb the possession of the petitioners and their entire joint family on the sole joint house situated in mauza sipah thana no. 94, khata no. 156, khesra No: 953 measuring area 01 decimal.

(v) .For any other relief / reliefs for which petitioners are 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 house of petitioners.

Petitioners claim to be the owner of the seized premises.

Allegation is recovery of 140.58 litre of illicit liquor from the joint seized house of the petitioners.

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 petitioners 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 petitioners to approach this
Court for same and subsequent cause of action, if need so arises.

(Sanjay Karol, CJ)

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	14.05.2022
Transmission Date	NA