

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13369 of 2022

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Abhishek Kumar Singh Son of Vinay Singh, R/o Village- Bhaisakhal, P.S.-
Ziradei, District- Siwan.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Prohibition, Excise and Registration Department, Govt. of Bihar, Patna.
2. The Excise Commissioner, Bihar Patna.
3. The Collector-cum-District Magistrate, Siwan.
4. The DCLR, Siwan Sadar, District- Siwan.
5. The Superintendent of Police, Siwan.
6. The Superintendent of Excise, Siwan.
7. Officer in Charge, Ziradei Police Station, District- Siwan.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Ranjeet Kumar Pandey, Advocate
For the Respondent/s : Mr.Vivek Prasad (GP 7)

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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 by Hon'ble the Chief Justice /Hon'ble Judges through Video Conferencing from their residential offices/residences. Also, the Advocates and the Staffs joined the proceedings through Video Conferencing from their residences

/offices.)

Date : 09-09-2022

Heard learned counsel for the parties.

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

- (i) For issuance of writ/writs, order/orders or direction/directions in the nature of certiorari for setting aside order dated 14.06.2022 passed in Excise Act Case no. 531/2019-20 arising out of Ziradei P.S Case no. 67/2019, by learned DCLR, Siwan Sadar, whereby and where under order for confiscation has been passed under section 58 of Bihar Prohibition and Excise Act 2016 with respect to house in which several persons of family are residing.

Certified copy of order dated 14.06.2022 passed in Excise Act Case No. 531/2019-20 is being annexed herewith and marked as Annexure-1 to this writ petition.

- (ii) For issuance of writ/writs, order/orders or direction/directions in the nature of mandamus directing the respondent authorities not to disturb and disposes the petitioner and his family members from the house in question as several members of the family are residing in the house and alleged recovery of liquor has been made from a room

situated on second floor, made of karkat and brick and having no door.

- (iii) For any other relief/reliefs for which the petitioner may be found entitle in the eye of law and in the facts and circumstances of the case may also be granted in favour of the petitioner.

Allegation is recovery of 8.250 liters of illicit liquor from a room made of asbestos and brick having no door on the roof of the house of the petitioner.

A petition for unsealing of sealed room was filed by the petitioner in the Court of learned DCLR, Siwan Sadar in Excise Case No. 531/2019-20 arising out of Ziradei P.S. Case No. 67/2019 which was rejected by the order dated 14.06.2022, directing for confiscating the entire house of the petitioner.

It is submitted by learned counsel for the petitioner that the house in question is ancestral property in which several family members of the petitioner have been residing.

It is further submitted that Superintendent of Police, Siwan vide letter dated 27.01.2020 sent a requisition to the Collector for initiating confiscation proceeding against the room situated on the roof from where alleged recovery of liquor has

been made. Thereafter, confiscation proceeding was initiated by learned DCLR, Siwan Sadar and notice was issued to the petitioner and C.O. Ziradei was directed to ensure service of notice vide letter dated 28.12.2021.

In the letter, it has been mentioned by learned DCLR, Siwan Sadar that notice relating to owner of the vehicle be sent for service, which clearly shows non-application of mind by the learned DCLR, as in the present case, no vehicle has been seized.

In compliance of the notice, the petitioner appeared and filed his reply/show cause on 15.02.2022 denying the allegation and requested to exempt the house from confiscation proceeding. However, the learned D.C.L.R., Siwan passed the order on 14.06.2022, directing for confiscation of entire house.

However, from the requisition dated 21.01.2020 of officer in Charge, Ziradei Police Station and letter dated 27.01.2020 of Superintendent of Police, Siwan, it is evident that requisition was sent for confiscation of only one room from where alleged recovery was made, but the entire house of the petitioner was directed to be confiscated, which again shows that learned D.C.L.R., Siwan Sadar passed the order in a haste and arbitrary manner without ascertaining the fact that the

seized article is intoxicant or not, as report of forensic lab showing that the seized article is intoxicant was not available before the DCLR, Siwan Sadar, and as such, entire proceeding is not sustainable in the eye of law and needs to be set aside.

The relevant provisions to be followed in confiscation proceeding as contemplated under **Bihar Prohibition and Excise, Act 2016**, reads as under:-

"Section- 54 Failure of occupier to disclose information of unlicensed manufacture or cultivation or consumption of liquor or intoxicant

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(1) Whenever any liquor or intoxicant or other excisable item is manufactured, sold, stored, bottled, possessed, consumed or any excisable plant is cultivated in contravention of this Act, occupier of that land or building or his agents, shall give information to the nearest excise official, police official or the Collector as soon as the fact comes to their knowledge.

(2) Whenever occupier(s) of that land or building or his agents fail to disclose information as per subsection (1), such person or persons shall be liable to be punished for imprisonment up to two years."

56- Confiscation of Seized Items:-

(1) Notwithstanding anything contained in section- 57B, whenever an offence punishable under this Act, is committed, the Collector or an officer authorized by

him may confiscate such items based on the report of the investigating officer.

(2) Such items may include –

- (i) any premises or part thereof;
- (ii) any animal, vehicle, vessel or conveyance;
- (iii) any liquor or intoxicant;
- (iv) any other item having bearing with the case;

Provided, where things as mentioned in section-57 are to be destroyed, then the Collector or an officer authorized by him need not confiscate the same before their destruction.

(3) The State Government may issue necessary direction, guidelines, regulations and instructions with respect to the mode and manner of search, seizure, destruction and confiscation.

“Section 62 of the Act reads as follows:-

Premises liable to be sealed- If it comes to the notice of any excise officer or any police officer, not below the rank of Assistant Sub- Inspector, that any liquor or intoxicant has been found at a particular premises or a part thereof or that particular premises or a part thereof has been used for committing any offence under this Act, he may immediately seal the said premises or a part thereof and send a report to the Collector for the confiscation of the same. Provided that if the said premises are temporary structures which cannot be effectively sealed, then the excise officer or the police officer, with the order of the Collector, may demolish such temporary structures.”

Rule 12 of Bihar Prohibition & Excise Rules-2021
reads as follows:-

"12. Sealing of Premises: -(1) If any offence is or has been committed in any premises (whole or part thereof) under the Act, any officer within the meaning of Section-73 of the Act may immediately seal the premises (whole or part thereof).

“Immediately” here means that sealing should be done in the course of the raid itself. In any case, sealing shall be done within 24 hours of the institution of First Information Report.

(2) Sealing shall be reported to the Collector within 24 hours of the sealing.

(3) If the premises used, is a temporary structure which cannot be effectively sealed, the police/excise officer shall, as soon as possible after obtaining the order of the Collector, demolish the temporary structure.

(4) Where any intoxicant is or has been manufactured, bottled, distributed, collected, stored, sold, purchased, imported, exported or transported in any premises or part thereof, such premises shall be fully sealed.

(5) As far as possible, only that portion or private residential premises which has been used for committing offence shall be sealed and not the whole premises or entire residence.

(6) Where any residential premises or part thereof is being used to provide facility to consume intoxicant(s) to other persons, such premises shall be compulsorily sealed.”

*Explanation:-*If a premises is consisting of multi-unit with different ownership only the specific unit where

the offence has been committed shall be liable for sealing.”

Rule 13B. Procedure of confiscation of premises:-

(1) Where it is decided by the Collector that the premises is not to be released on penalty or where the owner does not pay the required penalty or where the owner does not pay the required penalty, the confiscation proceeding shall be initiated. The proposal for confiscation of the premises shall be sent by the police/excise officer to the Collector (or an officer authorized by him) within 30 days from the date of seizure/sealing. The officer concerned shall immediately start the confiscation proceeding.

In case of delay of beyond 30 days, in submission of the proposal for confiscation, the police/excise officer will have to explain the delay.

(2) The officer concerned, on receipt of proposal of confiscation of any premises or part thereof or any property liable for confiscation from police/excise officer, shall issue show cause notice to the owner(s) of the premises or property. Simultaneously, he shall issue notice to the Chemical Examiner and/or such revenue officers for their reports.

(3) Such notice issued by the officer shall be served as per procedure prescribed in the Code of Criminal Procedure, 1973, for service of summons.

(4) The officer shall provide reasonable opportunity of hearing to the owner(s) of the premises or property. The investigating/inquiry officer shall also be given opportunity to participate in such hearing.

(5) If the person to whom notice has validly been served fails to appear in the proceeding on two consecutive dates fixed for hearing, the confiscating authority shall proceed to pass the order ex-parte.

(6) The officer shall, after hearing the parties, pass appropriate order of confiscation or unsealing, as the case may be, with respect to sealed/seized premises or property on the basis of his satisfaction whether an offence has been committed or not in terms of the Act.

(7) The officer shall ensure that the order for confiscation is passed within 90 days from the date of seizure/sealing of the premises.

(8) Any person aggrieved by the order passed by the Collector under the provisions of the Act may file appeal in the manner prescribed under these rules.”

Confiscation of property amounts to deprivation of property which can only be done after following the due procedure as prescribed by law. A valid seizure is a *sine qua non* for passing an order of confiscation of property. Confiscating Authority, has to come to a conclusive finding on the basis of material available on record that an offence has been committed under the Excise Act before further proceeding in the matter.

It is incumbent upon the department to prove recovery and valid seizure of intoxicant from the premises and thereafter the burden shifts upon the owner to give satisfactory

explanation with respect to recovered intoxicant.

In the present case, none of the procedure as prescribed under the Act and Rules have been followed by the Confiscating Authority and in a very perfunctory manner, order of confiscation has been passed.

In view of above, the order dated 14.06.2022 passed by DCLR, Siwan Sadar, is quashed and set aside and matter is remanded back to the District Magistrate/Confiscating Authority, Siwan to hear it afresh and pass a judicious order in accordance with law considering the show cause/defence of petitioner as well as materials available on record.

Although, by the Bihar Prohibition & Excise (Amendment Act) 2022, Section 56 of the Act was substituted on 1st April, 2022, in which State Government was to issue necessary notification/guidelines with respect to mode and manner to be followed in confiscation proceeding but still no such notification/guidelines have been issued by the State Government, as such, State Government is directed to issue necessary notification/guidelines within 30 days with respect to mode and manner in which confiscation proceeding is to be conducted by the Confiscating Authority under the Excise Act and Rules framed thereunder.

With said observations and directions, this writ petition is disposed of.

Let a copy of this order be communicated to the learned Chief Secretary, Government of Bihar, Patna, learned Additional Chief Secretary, Department of Prohibition & Excise, Government of Bihar, Patna and learned Excise Commissioner, Department of Prohibition & Excise, Government of Bihar, Patna.

(Sanjay Karol, CJ)

(S. Kumar, J)

veena/rajiv-

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