

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18398 of 2021

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Dhiraj Paswan, son of Vindeshwar Paswan, resident of Village- Pilkhi, P.S.-
Rajgir, District- Nalanda.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Prohibition and Excise Govt of Bihar, Patna
2. The Excise Commissioner, Bihar, Patna
3. The Collector, Nalanda at Bihar Sharif
4. The Superintendent of Police, Nalanda at Bihar Sharif
5. Police Sub Inspector, Rajgir Police Station, Nalanda.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Sanjay Prasad, 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 : 12-05-2022

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

“ For issuance of a Writ in the nature of Mandamus or any appropriate Writ's Order's, Direction's commanding the respondents for direction to unseal house-cum-room of the petitioner and hand over possession of the same to the petitioner which is situated at Khata No. 69, plot no. 1004, mauza Pilkhi, Thana Rajgir, District- Nalanda which room has been seized by the police in connection with Rajgir P.S.Case No. 238/21 dated 18-7-21 under section 30(a) of Bihar Prohibition and Excise Act 2016 and other order or direction in the interest of justice in the facts and circumstances of the case.”



It is submitted by learned counsel for the petitioner that during the pendency of this writ petition, an order of confiscation of seized room has been passed vide order dated 20.12.2021 by the Additional Collector, Nalanda.

Petitioner has approached this Court without exhausting the statutory remedy of appeal against the impugned order, as such, petitioner is granted liberty to avail the remedy of appeal against the confiscation order passed by the Confiscating Authority- cum- District Magistrate, before the Appellate Authority, and if any such appeal is filed within a period of 04 weeks then appellate authority shall condone the delay in filing the appeal and shall decide the appeal on its own merit, preferably within a period of 08 weeks from the date of its filing, in accordance with law.

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

OR

It is submitted on behalf of counsel for the State that during the 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 the aforesaid observation and direction, the



writ petition stands disposed of.

Interlocutory application, if any, shall also stand
disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

Sujit/Ashwini

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.05.2022
Transmission Date	NA

