IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20643 of 2021

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1. Dilip Kumar Singh Son of Lakshman Singh, Resident of Village - Bastipur, P.S. Dehri (Indrapuri O.P.), District - Rohtas at Sasaram.
2. Pradip Kumar Singh, Son of Lakshman Singh, Resident of Village - Bastipur, P.S. Dehri (Indrapuri O.P.), District - Rohtas at Sasaram.

... ... Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
2. The Additional Chief Secretary-cum-Revisional Authority Registration, Excise and Prohibition Department, Government of Bihar, Vikash Bhawan, Patna.
3. The Excise Commissioner-cum-Appellate Authority, Registration, Excise and Prohibition Department, Government of Bihar, Vikash Bhawan, Patna.
4. The District Magistrate-cum-Confiscational Authority, Rohtas at Sasaram.
5. The Superintendent of Police, Rohtas, District - Rohtas.
6. The Superintendent of Excise Department, Rohtas, District - Rohtas.
7. The S.H.O., Dehri (Indrapuri O.P.), District - Rohtas.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Babu Nandan Prasad, Advocate

For the Respondent/s : Mr.Vivek Prasad (GP7)

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE S. KUMAR)

Date : 11-05-2022

Heard learned counsel for the parties.

The petitioners have prayed for the following relief/s :-

I. To issue writ/ writs, order/orders, direction/directions including a writ in the nature of certiorari for quashing

the order dated 31.08.2021 passed in Excise Confiscation Case no. 82/2021 arising out of Dehri (Indrapuri O.P.) P.S. case no. 800/2020 dated 11.10.2020 by the District Magistrate-cum-Confiscational Authority, Rohtas at Sasaram (as contained in Annexure-5) whereby and whereunder he has refused to unseal the General Store Shop appertaining Khata No. 184, Khesra No. 406/512, Thana No. 175 and Rakba-0.01 Decimal of the petitioners under Circle Officer, Dehri Town, Rohtas, which belongs in the name of the mother of the petitioners. It is further quashed the order dated 04.10.2021 passed in Excise Appeal No. 657/2021 (as contained in Annexure-6) by Respondent Excise Commissioner by which the Excise Confiscation Appeal preferred by the petitioners and the order of Excise Confiscation Appeal case of the a foresaid General Store shop of the petitioners no. 1 has been dismissed and also affirmed the order of Respondent District Magistrate (Respondent no. 4) and also to quash the Revisional order dated 01.12.2021 passed in Excise Revision No. 230/2021 by Respondent Additional Chief Secretary, Bihar, Patna (as contained in Annexure-7), which has been dismissed to the Excise Revision Petition of the petitioners and the order has communicated to the petitioners and the Respondent authority concerned to the petitioners and the Respondent Authority concerned to this writ petition.

II. To issue a writ/ writs, order/orders, direction/directions including a writ in the nature of mandamus directing the Respondents to unseal the General Store Shop appertaining Khata No. 184, Khesara No. 406/12, Thana No. 175 and Rakba-0.01 Decimal situated in dwelling of the petitioner no. 1 Bastipur, Dehri under Circle Office, Dehri Town, Rohtas in their fvour forthwith.

III. For granting any other relief or reliefs for which the petitioners may be found entitled in the facts and circumstances of the case.

Petitioners claim to be the owner of the seized premises.

Allegation is recovery of 14.880 litre of illicit liquor from the seized shop 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)

Ashwini/Sujit

AFR/NAFR	
CAV DATE	
Uploading Date	18.05.2022
Transmission Date	