

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20609 of 2021

Arbind Kumar S/o Late Basudeo Sah Resident of Kali Asthan (Maheshpur),
P.S.- Babarganj under (Mojahidpur), District- Bhagalpur.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Department of Excise and Prohibition, Government of Bihar, Patna.
2. The District Magistrate-cum-Collector, Bhagalpur.
3. The Superintendent of Police, Bhagalpur.
4. The Sub Divisional Officer (Sadar), District- Bhagalpur.
5. The Officer-in-charge as Investigating Officer of Babarganj under Mojahidpur Police Station, District- Bhagalpur.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Radha Raman Verma, advocate
For the Respondent/s : Mr.Kumar Manish (S.C. 5)

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 : 01-04-2022

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 of the (final) order dated 09.08.2021 passed by the collector cum-District Magistrate, Bhagalpur in Misc. (Excise) Case No. 26 of 2019-20 whereby and where under the petitioner's residential house in question has been confiscated by the Collector, Bhagalpur situated at Mouza/Ward No. 27/Aliganj, Khata No. 580, Khesra (Plot) No. 1795 प, च an Area of 00.75

Hectare i.e. = 8138 square feet. The said residential house in question are joint property confiscated in relation to a case registered Mojahidpur (Babarganj) P.S. Case No. 03/2019 for the offence punishable under section 30(a) of the Bihar Prohibition and Excise Act, 2016 as amended by Amendment Act 8 of 2018 on charge of four bottles illicit liquor (Royal Stag English Wines) quantities 875 ml. each bottle was recovered from the first floor of his joint residential house in question.

The Collector, Bhagalpur ordered to the S.D.O. (the Sub Divisional Magistrate (Sadar), Bhagalpur in the public interest petitioner's residential house in question to be sold and proceeds be deposited the sale money in the Government treasury. Hence the petitioner had prayed for quashing of the final orders dated 09.08.2021 passed in Misc. (Excise) Case No. 26/2019-20.

- II. For issuance of an appropriate writ/order/direction for directing the Respondents authorities to release the residential house of the petitioner situated at Mauza/Ward

No.-27 Aliganj Khata No. 580, Plot No. 1795 ग, घ an area of 00.75 Hectare = 813 sq.fets. in the Jagdishpur Anchal, Bhagalpur has been confiscated and seized in connection with Mojahidpur (Babarganj) P.S. Case No. 03/2019 registered under section 30(a) of the Bihar Prohibition and Excise Act, 2016. The police recovered 4 bottles (Royal Stage) English Wine 375 ml. each bottle (illicit liquor) from the house of petitioner and seizure list was prepared in presence of two witnesses. They are own brothers of the petitioner itself

- III. For grant of any other relief or reliefs for which the petitioner is found entitled to under law as well as facts and circumstances in the interest of Justice.

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 4 weeks then appellate authority shall condone the delay in filing the appeal and shall decide the appeal on its own merit preferably within 8

weeks from the date of its filing.

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

OR

It is submitted on behalf of 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) 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.

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

With aforesaid observation and direction, the writ petition stands disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

veena/rajiv-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	