

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20655 of 2021

=====

Yogendra Chaudhary Son of Late Bulkan Chaudhary resident of Village -
Harnaut, P.S. Noorsarai, District - Nalanda.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary Department of Prohibition and Excise Govt. of Bihar, Patna.
2. The Additional Chief Secretary department of Prohibition and Excise Govt. of Bihar, Patna.
3. The Excise Commissioner, Bihar, Patna.
4. The Special Superintendent Excise, Bihar, Patna.
5. The Additional Collector-cum-Additional District Magistrate Nalanda at Bihar Sharif.
6. The Superintendent of Police, Nalanda at Bihar Sharif.
7. The Superintendent of Excise, Nalanda.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr.Sanjay Prasad, Advocate
For the Respondent/s : Mr.Vivek Prasad (GP7)

=====

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).

1 That this is an application for issuance of a Writ in the nature of Certiorari or any appropriate Writ's, Order's, Direction's commanding the respondents—

I For quashing of the order dated 27-11-21 passed by the Additional Chief Secretary department of Prohibition & Excise Govt of Bihar, Patna in Excise Revision No 225/2021 which has been rejected and affirmed the order of the Excise Commissioner, Bihar, Patna dated 13-09-21 passed in Excise Appeal No 505/21.

II For quashing of the order of the Excise Commissioner, Bihar, Patna dated 13-09-21 passed in Excise Appeal No 505/21 which has been dismissed and order of The Additional Collector –cum- Additional District Magistrate Nalanda at Bihar Sharif dated 21-06-21 passed in Confiscation case No 146/21 has been affirmed.

2 III For quashing of the order dated 21-06-21 passed by the Additional Collector –cum- Additional District Magistrate Nalanda at Bihar Sharif in Confiscation case No 146/21 where by directed to confiscate the

residential joint house of the petitioner situated at Mauza- Nirpur, Thana No 33 appertaining to khata No 176, khesra No 1074 area 0.31 acre out of which 1.5 decimal house has been sealed in connection with Noorsarai P S case No 55/21 offence u/s 30(A) of Bihar Prohibition and Excise Act 2016.

IV For direction the Respondents to unseal the residential joint house till the during the pendency of said criminal case.

V for other order or direction in the interest of justice in the facts and circumstances of the case.

Allegation is of recovery of 2 litres of illicit liquor from one room of the joint house of the petitioner.

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	