

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.21247 of 2021**

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1. Sanjeev Kumar Choudhary
2. Niraj Kumar Choudhary, both Sons of Late Ramesh Prasad Choudhary,  
Resident of Village-Bharko, P.O.-Bhaarki, P.S. Amarpur, District-Banka.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary Department of Prohibition, Excise and Registration, Government of Bihar, Patna.
2. The Additional Chief Secretary Department of Prohibition, Excise and Registration, Government of Bihar, Patna.
3. The Commissioner, Excise, Government of Bihar, Patna.
4. The District Magistrate, Banka.
5. The Superintendent of Police, Banka.
6. The Circle Officer, Amarpur, District-Banka.
7. The Station House Officer, Amarpur, District-Banka.

... .. Respondent/s

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**Appearance :**

For the Petitioner/s : Mr.Brij Nandad Prasad, Advocate  
For the Respondent/s : Mr.Kumar Manish ( Sc5 )

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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 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.

Petitioners have prayed for following reliefs:-

- i. To issue an appropriate writ preferably in the nature of Certiorari for setting aside the order bearing memo no. 1097, dated 22.10.2021 passed by the Commissioner, Excise, Bihar, Patna in excise Appeal Case No. 662/2021

whereby and where under the order dated 16.07.2021 passed in Confiscation (Prohibition) Case No. 153/2021-22 by the District Magistrate, Banka has been affirmed.

- ii. To issue an appropriate writ preferably in the nature of Certiorari for setting aside the order dated 16.07.2021 passed by the District Magistrate, Banka in confiscation (Prohibition) Case No. 153/2021-22 (Arising out of Amarpur P.S. Case No. 142 of 2021, dated 22.03.2021) whereby and where under the land along with house constructed over the land appertaining to Thana no. 336, khata no. 20, Khesra no. 1194, Area-51 decimals situated in Mauza-Bharko, District-Banka has been ordered to be confiscated under Section 58(2) of the Bihar Prohibition and Excise Act, 2016 (hereinafter referred to as 'the Act; for brevity).
- iii. To hold and declare that the house which has been sealed by the Police Officials appertains to Thana no. 336, Khata no. 1556/26/90, khesra no. 5509,/1188/1189, area-03 decimals standing in the joint name of Urmila Devi and Asha Choudhary.

iv. To grant any other relief (s). for which the petitioners may be found entitled to in the peculiar facts and circumstances of the Case

Petitioners have approached this Court without availing the statutory remedy of revision against the impugned appellate order, as such, liberty is granted to petitioners to file revision against the appellate order before the Revisional Authority and if any such Revision is filed within 4 weeks, then Revisional Authority shall decide the revision petition preferably within 8 weeks from the date of its filing on its own merit.

During pendency of revision petition, 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.

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

**(Sanjay Karol, CJ)**

**( S. Kumar, J)**

Sanjay/-

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| <b>AFR/NAFR</b>          | NAFR       |
| <b>CAV DATE</b>          | NA         |
| <b>Uploading Date</b>    | 15.04.2022 |
| <b>Transmission Date</b> | NA         |