

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21385 of 2021

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Sarjun Chaudhary Son of Late Vanke Chaudhary Village- Kosuk, P.S.- Deep Nagar, Biharsharif, District- Nalanda, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, the Department of Prohibition, Excise and Registration, Govt. of Bihar, Patna.
2. The District Magistrate, Nalanda, District- Nalanda at Biharsharif.
3. The Superintendent of Police, Nalanda, District- Nalanda at Biharsharif.
4. The Excise Superintendent, Nalanda, District- Nalanda at Biharsharif.
5. The Station House Officer, P.S.- Deep Nagar, District- Nalanda at Biharsharif.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Niraj Kumar, 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

It is submitted by learned counsel for the petitioner that due to typographical error, in 7th line of paragraph no.1 of the writ petition, Lehari P.S. Case No.435/21 has been typed in place of Deep P.S. Case No.435/21 and, as such, he seeks correction to the aforesaid extent.

In view of above, let the same be corrected and read accordingly.

Learned counsel for the petitioner is permitted to make necessary correction in the main file.

Heard learned counsel for the parties.

Petitioner has prayed for following relief:-

“For issuance of appropriate writ directing the respondent authorities to unseal the petitioner’s dwelling house situated in about ½ Khattha, which is a part of plot No.37, Khata No.170, under Mauza-Kosuk, Police Station- Deep Nagar, Thana No.96, Biharsharif, District, Nalanda. The whole house was sealed by the police in connection with Deep P.S. Case No. 435/21 registered under Section 30(a) and 30(d) of the Bihar Prohibition and Excise Act, 2016 for alleged recovery of 5 litter country made liquor from a room of the said house.”

Allegation is recovery of 5 litre of illicit liquor from one room of the house of the petitioner.

In the facts and circumstances of the present case, the Confiscating Authority/District Collector, Nalanda at Biharsharif is directed to provisionally unseal the sealed house during pendency of confiscation proceeding, same being joint dwelling house of family members on furnishing adequate surety to the extent of value of the property, in question, as per the circle rate with the concerned District Collector/Confiscating Authority.

Petitioner shall also file an undertaking that during pendency of confiscating proceeding, no third party right or

interest will be created on the property liable for confiscation.

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/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.04.2022
Transmission Date	NA