

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.249 of 2022

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Rajendra Yadav @ Rajendra Bhagat S/o Balgovind Yadav @ Late Balgovind Bhagat, Resident of Village-Mahualla, P.S. Rajgir, District-Nalanda.

... .. Petitioner/s

Versus

1. The Principal Secretary, Home, Department, Government of Bihar Patna.
2. The Principal Secretary, Excise Department Government of Bihar Patna.
3. The Excise Commissioner, Excise Department Government of Bihar. Vikash Bhawan, Bailey Road, Patna.
4. The Collector-Cum-District Magistrate, Nalanda.
5. The Superintendent of (Excise and Prohibition) Police Nalanda.
6. The S.H.O., Rajgir Police Station, District-Nalanda.
7. The Circle Officer, Rajgir, District-Nalanda.
8. Sunil Kumar @ Baba Son of Panna Sao, Dharmshala Road, P.S.-Rajgir, District-Nalanda.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Shambhu Sharan Singh, Adv
For the Respondent/s : Mr.Vikash Kumar (SC11)

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE S. KUMAR)

Date : 01-04-2022

Heard learned counsel for the parties.

Petitioner has prayed for the following relief(s):-

“(i) For quashing the part order dated 01.12.2021 passed in Excise Revision case No. 232/2021 passed by the Additional Chief Secretary, Bihar, Patna and communicated to all concern vide memo No. Excise Revision case No. 232/2021 /244 Patna dated 01.12.2021 whereby Two fold orders has been passed i.e. (i) since the Revision petition

now stands disposed of, the learned Collector may proceed with action in the confiscation proceeding as per the Act.

and (ii) simultaneously the Collector, Nalanda is hereby directed to seek an explanation the concern police officer fixing from responsibility that why the premises in question was not sealed by the police authority in question is still being used by the Revisionist in this matter.

The petitioner has only aggrieved with first fold of order and prayed for quashing the same (first) part order of order dated 01.12.21.

(ii) For quashing the order dated 31.1.2020 passed by the Learned Collector Nalanda in confiscation case No. 201 of 2019 and order dated 06.09.2021 passed by the Learned Excise Commissioner in Excise Appeal case No. 426/2006 whereby the property (one room) of petitioner was subjected in an Excise Act. case i.e. one Room given on the permeable for opening of shop rent to the Co-accused Sunil Kumar @ Baba son of Panna Sah.”

Allegation is of recovery of 819 litre of illicit liquor from the room let out to co-accused Sunil Kumar @ Baba. Petitioner claims to be the owner of the house.

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) 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)

ranjan/-

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