

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.960 of 2022

=====

Sunil Singh alias Sunil Kumar Singh, Son of Ramchandra Singh, Resident of Village-Surajpur, Jhakhara, Ramgulam Singh Tola, P.S.-Piprakothi, District-East Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Department of Prohibition Excise Registration, Government of Bihar, Patna.
2. The Secretary, Department of Prohibition Excise and Registration, Government of Bihar, Patna.
3. The District Magistrate cum Collector, East Champaran at Motihari.
4. The Superintendent of Police, East Champaran at Motihari.
5. The S.H.O. Piprakothi P.S., East Champaran.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr.Karandeep Kumar, Adv
For the Respondent/s : Mr.Kumar Manish (SC 5)

=====

(The proceedings of the Court are being conducted by Hon'ble the Chief Justice /Hon'ble Judges through Video Conferencing from their residential offices/residences. Also, the Advocates and the Staffs joined the proceedings through Video Conferencing from their residences /offices.)

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE S. KUMAR)

Date : 22-04-2022

Heard learned counsel for the parties.

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

- 1.** (i) That the instant application is being filed on behalf of above named petitioner for issuance of writ(s), order(s) or direction(s) for directing

the respondent authority to unseal/ unlock/ release the house situated over the raiyati land of petitioner appertaining to Khata No. 219, Khesara No. 1831, Mauja- Surajpur, Jhakhara, Ramgulam Singh Tola which has been sealed/ locked/ seized in connection with Piprakothi P.S. Case No. 107 of 2018 registered for the offences punishable u/s 272, 273 & 120(B) of the Indian Penal code and 30(a) of the Bihar Prohibition & Excise (Amendment) Act, 2018.

- (ii)** For directing the respondent authority to stop/ quart the proceeding of confiscation case no. 823 of 2021 which has been proceeded for confiscate the aforesaid house in question belonging to this petitioner.

(iii) For any other relief(s) for which petitioner is found to be entitled in view of the facts and circumstances of the case.

Allegation is of recovery of 900 litre of illicit liquor from Dalan/Bhuskhal of the petitioner. It is further submitted that confiscation case no.823 of 2021 has been initiated for confiscation of the house of petitioner.

In said view of the matter, the District Collector/Confiscating authority, East Champaran, Motihari is directed to conclude the confiscation proceeding within 90 days from the date of filing of show cause by the petitioner, if not already filed or within 90 days if the show cause has been filed from the date of receipt/production of a copy of order passed by this Court, failing which, the premises of the petitioner shall be unsealed till conclusion of confiscating proceeding and possession to be handed over to the petitioner, on furnishing adequate sureties and undertaking to the satisfaction of District Collector / Confiscating Authority, East Champaran at Motihari.

Or

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 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	
CAV DATE	NA
Uploading Date	
Transmission Date	NA