

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15399 of 2022

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Chhathu Ram Son of Shri Ramanand Ram, Resident of- Mohammadpur, P.S.
Mohammadpur, District- Gopalganj- 841423

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Prohibition
Excise and Registration Department, Bihar, Patna.
2. The District Magistrate, Gopalganj.
3. The Sub- Divisional Officer, Gopalganj.
4. The Senior Superintendent of Police, Gopalganj.
5. The Officer-in- Charge, Mohammadpur Police Station, Gopalganj.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Prachi Pallavi, Advocate
For the Respondent/s : Mr.Kumar Manish (SC 5)

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

2 21-12-2022 Petitioner has prayed for following relief (s) : -

“(i) Issuance of a writ of certiorari quashing the
impugned order dated 31.08.2022 passed by the Sub-
Divisional Officer, Gopalganj in Confiscation Case No.
411/2022 (351/2022) wherein the land on which the house of
the petitioner is constructed has been confiscated in
connection with Mohammadpur P.S. Case No. 220/21 for
alleged recovery of 4.8 litres of country made liquor from the
house of the petitioner and direction has been issued to
acquire and auction the land of the petitioner in contravention
to Section 57 B of the Bihar Prohibition and Excise Act, 2016
read with Rule 12 (5), Rule 12 B and Rule 13 of the Bihar
Prohibition & Excise (Amendment) Rules, 2022;

(ii) To direct the respondents to forthwith unseal the
house of the petitioner upon payment of the penalty as
stipulated under Rule 12 B of the Bihar Prohibition & Excise
(Amendment) Rules, 2022;

(iii) To stay the acquisition and direction to auction
the land of the petitioner till the disposal of the present writ
application;

(iv) To pass such other writ(s), order(s), direction(s)



as your Lordships may deem fit and proper in the facts and circumstances of the case.”

Petitioner has approached this Court without availing the statutory remedy of appeal against the impugned order, as such, liberty is granted to petitioner to file appeal against the impugned order before the Appellate Authority and if any such appeal is filed within 4 weeks, then appellate authority shall condone the delay in filing the appeal as the matter remain pending before this Court and shall decide the appeal on its own merit preferably within 8 weeks from the date of its filing.

During pendency of appeal, the confiscated vehicle/property shall not be auction sold, if not already auction sold.

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) and 57(B) have 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.]"

57B-Things or premises liable to be released upon penalty-

(1) Any animal, vehicle, vessel or other conveyance used for committing any offence punishable under this Act that has been seized by any police Officer or Excise Officer may be released by the Collector upon payment of such penalty as may be notified by the State Government.

(2) Any premises or part thereof used for committing any offence punishable under this Act that has been seized by any police Officer or Excise Officer may be released by the Collector upon payment of such penalty as may be notified by the State Government.

(3) If the person concerned does not pay the penalty, then the Collector shall proceed to confiscate the said animal, vehicle, vessel or other conveyance and premises as per section-58.

[Explanation 1: It shall not be a right of the accused to get his conveyance, item or premises released upon payment of the required penalty. The Collector, based upon a report by a police Officer or an Excise Officer, may, for reasons to be recorded in writing, still refuse to release the said conveyance, item or premises and proceed ahead with confiscation and auction/destruction.]

[Explanation 2: The Collector shall, from the



date of this Amendment coming into force, close the on-going confiscation proceeding if the person concerned pays the penalty as notified and release such vehicle, conveyance or premises.]
[Explanation 3: Such release shall not affect the outcome of trial, if any, before the Special Court.]”

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) and 57(B) inserted by amending Bihar Prohibition and Excise Rules, 2021.

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

(Sanjay Karol, CJ)

(Partha Sarthy, J)

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