IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3354 of 2023

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Ram Equbal Gope, Son of Late Bachhu Bhagat, Resident of Locality-Bari Pahari, Karanpura, Gulzarbagh, Agamkuan, P.S. Agamkuan, District- Patna.

... ... Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Department of Excise and Prohibition, Government of Bihar, Patna.
2. The Excise Commissioner, Bihar, Patna.
3. The District Magistrate, Patna.
4. The Officer-in-Charge, Gaurichak P.S., District- Patna.
5. The Assistant Excise Commissioner, Patna.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Ravish Mishra, Advocate
For the Respondent/s : Mr. Vivek Prasad (GP7)
Ms. Supragya, AC to GP7

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 17-08-2023

In the instant petition, petitioner has prayed for the following reliefs:-

> (i). For issuance of appropriate writ/ writs, direction/ directions and order/ orders commanding the Respondents to immediately release the three-storey building constructed in land based in Mauza-Sohgi, Pargana-Azimabad, Survey Thana- Phulwarisharif, Present Thana Gaurichak, District Patna, having Thana No. 126, Tauzi No.-309, Khata No.-212, Survey Khesra Plot No. 2050 (part) and measuring 2.96875 decimal i.e. 19 dhur, of the petitioner, along with all the movable property present in the same,

which has been seized in most arbitrary and malafide manner pursuant to institution of Gaurichak P.S Case No. 177/2022, dated 20.03.2022, for offences alleged under sections 30(a)(b)(c)(d)/32(1)(2)(3)/33/34(b)IV/36/42(1)(2)/47/56 of the Bihar Prohibition and Excise Act 2016.

(ii). For setting aside and quashing the order dated 27.01.2023, passed by the Additional Chief Secretary, Department of Excise and Prohibition, Government of Bihar, Patna (Respondent No. 1), in Excise Revision Case No. 02/2023, whereby and whereunder the said respondent in colorable exercise of his power, in a most mechanical manner and without appreciation of true and actual facts, has dittoed and concurred to the illegal and arbitrary order dated 05.12.2022, of confiscation passed by the Excise Commissioner (Respondent No. 2) in Excise Appeal Case No. 512/2022, and in-turn has also explicitly and implicitly given his go-ahead to the order dated 12.10.2022, passed by the District Magistrate, Patna (Respondent No. 3), in Excise Confiscation Case No. 2834/2022-23, wherein the said respondent authority while exercising his power as conferred u/s 58(2) of the Bihar Prohibition and Excise Act, 2016 (from hereinafter would be referred to as the Act), has passed an initial order of confiscation.

(iii). For any other appropriate relief/reliefs to which the petitioner is found entitled to in the facts and circumstances of this case.

2. An FIR was registered vide Gaurichak P.S. Case No. 177 of 2022 on 20.03.2022 for the alleged offences under Sections 30(a)(b)(c)(d)/32(1)(2)(3)/33/34(b)IV/36/42(1)(2)/47/ 56 of the Bihar Prohibition and Excise Act, 2016.

3. The petitioner participated in the confiscation proceeding and took a contention that he was not aware of the

alleged offences as stated in the FIR. His son has been implicated falsely in this case. Further, it is contended that the subject matter of premises was given on rent, to that effect rental agreement has been pointed out. These material facts have not been analyzed and appreciated by the Confiscating Authority and why the same were not appreciable to the Confiscating Authority. Further, the appellate authority and revisional authority have not appreciated the above material information. Therefore, the petitioner has made out a prima facie case so as to interfere with the order of the Confiscating Authority dated 12.10.2022, appellate authority order dated 05.12.2022 and revisional authority's order dated 27.01.2023 to the extent of non-application of mind. Accordingly, all the three orders stand set aside, reserving liberty to the Confiscating Authority to proceed afresh after giving due notice to the petitioner. The Confiscating Authority is hereby directed to provide ample opportunity of hearing to the petitioner. A detailed speaking order shall be passed after considering each of the contentions to be raised by the petitioner.

4. The above exercise shall be completed within a period of three months from the date of receipt of this order.

5. Accordingly, the writ petition is allowed in part.

6. The petitioner is also permitted to invoke Rule 12B of the Bihar Prohibition and Excise Rules, 2021, if he so desires.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

DKS/-
Balmukund/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22.08.2023
Transmission Date	NA