

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10427 of 2021

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Mahendra Prasad Yadav, Son of Late Rameshwar Yadav, Resident of Village-
Adarshnagar, Ward No. 8, P.S. and District-Madhepura.

... .. Petitioner/s

Versus

1. The State of Bihar through the Addl. Chief Secretary, Home Department,
Government of Bihar, Patna.
2. The Addl. Chief Secretary, Home Department, Government of Bihar, Patna.
3. The Addl. Chief Secretary, Excise Department, Govt. of Bihar, Patna.
4. The Director General of Police, Government of Bihar, Patna.
5. The Excise Commissioner, Bihar, Patna.
6. The District Magistrate, Madhepura, District-Madhepura.
7. The Superintendent of Excise, Madhepura, District-Madhepura.
8. The Excise Inspector, Madhepura, District-Madhepura.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Sharda Nand Mishra, Advocate Mr.Rajiv Ranjan, Advocate Mr.Dhanjay Kumar Gupta, Advocate
For the Respondent/s	:	Mr.Kumar Manish, SC5

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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 : 31-08-2023

In the instant petition, petitioner has prayed for the
following relief(s):-

*“(i) For issuance of the writ
in the nature of certiorari for quashing
the order bearing Memo No. 663 dated
14.01.2021 issued under signature by
Addl. Chief Secretary, Bihar, Patna in
Excise Revision No. 06/2020 by which
rejected application of petitioner and
affirm the order dated 18.09.2019
passed by Excise Commissioner in*



Excise Appeal No. 07 of 2019 and the order dated 20.11.2018 and 17.12.2018 passed by Ld. Collector, Madhepura in Confiscation Case No. 24/2018.

(ii) For quashing the order dated 18.09.2019 passed by Excise Commissioner, Bihar, Patna in Appeal Case No. 07/2019 by which appeal has been dismissed and affirmed the order dated 20.11.2018 ad 17.12.2018 passed by Ld. Collector, Madhepura in Confiscation Case No. 24/2018.

(iii) For further quashing the order dated 20.11.2018 and 17.12.2018 passed by Collector, Madhepura in Excise Confiscation Case No. 24/2018 (Arising out of Excise Case No. 27/2018) by which shop/house of the petitioner confiscated and rejected the application filed by the petitioner inter alia stating that the aforesaid premises was not in his possession of the petitioner rather was in the possession of the his renter, who took under rent with the agreement dated 10.02.2017.

(iv) For further issue direction the release shop/house of the petitioner as alleged place was under possession of his renter as he is/was residing at Adarsh Nagar, Ward No. 8 District-Madhepura.

(v) For further give other legal consequential benefit to the petitioner.”

2. The petitioner is owner of the shop/house which is situated in Khata No. 720 (Old), 38 (New), Khesra No. 1294, 1295(Old), 113(New) at Purani Bazar to the extent of 1155 Sq.ft. area was alleged to have been involved in the Excise Case No. 27 of 2018 dated 10.02.2018, read with Murliganj Thana P.S. Case



No. 54 of 2017. Parallel proceedings were initiated insofar as excise offence in the criminal case. The petitioner was arrayed as one of the accused. On the other hand, the Excise Department initiated proceedings for confiscation of the aforementioned immovable property as undertaken in Excise Confiscation Case No. 24 of 2018 by the Collector of Madhepura and it was decided against the petitioner on 20.11.2018.

3. Feeling aggrieved by the orders of the Collector, petitioner preferred Excise Appeal No. 07 of 2019 before the Excise Commissioner and it was dismissed on 18.09.2019. Thereafter, the petitioner invoked the remedy of revision before the revisional authority in Excise Revision Case No. 06 of 2020 and it was decided against the petitioner on 14.01.2021. In other words petitioner suffered in all the three proceedings. Hence, the present writ petition.

4. Learned counsel for the petitioner submitted that petitioner was not involved in the alleged excise offence as alleged by the respondents. It is further submitted that all the three proceedings went against the petitioner only on the sole ground that petitioner's rental agreement is not in respect of commercial property. Other than this contention nothing has been taken note of by the respective authorities, therefore, it is a case of non-



application of mind. Further, there is no material to say that petitioner is involved in the aforementioned excise offence.

5. *Per contra*, learned counsel for the respondents resisted the aforesaid contentions and submitted that the petitioner's immovable property is involved in the offences. Even though the subject matter of premises was on rental basis. The rental agreement does not reveal that it is for commercial purpose. Therefore, there is no infirmity in the impugned orders.

6. Heard the learned counsel for the respective parties.

7. Facts are not disputed by the respective parties. Question for consideration in the present petition is whether confiscating authority and the next higher authorities like appellate and revisional authorities can rely on rental agreement to the extent that it is not for commercial purpose, and thereafter, proceeded to confiscate the subject matter of premises or not?

8. Perusal of the records it is evident that there is not an iota of evidence that the petitioner was involved in alleged offence stated (supra). Merely, in the rental agreement it is indicated for non-commercial that does not lead to the conclusion that the petitioner is involved in the subject matter of alleged offence stated (supra). Therefore, there is a total non-application of mind by the respective authorities like Collector, Appellate Authority



and Revisional Authority. Further, there is no analysis as to what extent the petitioner is directly or indirectly involved, in the absence of material evidence and the finding of the Collector in respect of confiscation proceedings and its confirmation by the next higher authorities are arbitrary.

9. Accordingly, the petitioner has made out a case. Annexure-4 dated 20.11.2018 and 17.12.2018, Annexure-6 dated 18.09.2019 and Annexure-7 dated 14.01.2021 stands set aside. Therefore, the present writ petition stands allowed. Concerned authority is hereby directed to release the subject matter of immovable property in favour of petitioner after due identification and draw proceedings.

10. At this stage, we have noticed that the petitioner was initially arrayed as party in criminal proceedings and no cognizance was taken against the petitioner in other words his name has been dropped from the criminal proceedings.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

abhishekk/-

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

