IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7457 of 2022

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Ramadhar Roy S/o Late Gupta Roy Resident of Village/Mohalla- South of Civil Court, Yaduvanshi Nagar, Nasariganj, Danapur, Dinapur-cum-Khagaul, District- Patna, Bihar.

... ... Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Department of Registration and Excise, Bihar, Patna.
2. The District Magistrate, Patna.
3. The Senior Deputy Collector, Patna.
4. The Sub Divisional Officer, Danapur.
5. The District Transport Officer, Patna.
6. The S.H.O., Danapur Police Station, District- Patna.
7. Rajesh Kumar S/o Arun Prasad R/o Lohiya Nagar, Slum- 190, Kankarbagh, Patna.
8. Shree Prakash, District Transport Officer, Patna.
9. Gautam Kumar, Motor Vehicle Inspector Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Shambhu Sharan, Advocate
For the Respondent/s : Mr.Vikash Kumar (SC-11)

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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 : 16-10-2023

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

> *"(i) For quashing the order contained in Memo No. 111 dated 23.03.2022 issued under the signature of Additional Chief Secretary Department of Registration and Excise in Excise Revision No. 38 of 2022 whereby and whereunder the revision application filed by the petitioner has been dismissed and the order*

contained in Memo No.- 1050 dated 04.10.21 issued under the signature of Excise Commissioner, Patna has been affirmed.

(ii) For quashing the order contained in Memo No.- 1050 dated 04.10.21 issued under the signature of Excise Commissioner, Patna whereby and whereunder the Excise Appeal Case No.- 661/2021 filed by the petitioner has been dismissed and affirmed the order dated 22.02.2021 passed by Senior Deputy Collector, Patna in vehicle Confiscation Case No.-178 of 2020 arising out of Special Case No.- 2247/2020 under Excise Prohibition Act 30 (a), 37 (b) / (c) dated 04.10.2021.

(iii) For quashing the order contained in Memo No.-2375 dated 04.10.2021, whereby and whereunder the vehicle of the petitioner has been auctioned in favour of Respondent No.- 7

(iv) For quashing the order dated 22.02.21 passed by Senior Deputy Collector in Vehicle Confiscation Case No.-461/2020-21 whereby and whereunder the vehicle of the petitioner has been confiscated and a direction has been issued to auction the vehicle of the petitioner.

(v) Petitioner further seeks for any other relief/ relief if petitioner found entitled in the facts and circumstances of the present case."

2. The petitioner's four wheeler vehicle Datsun Go is alleged to have been involved in Danapur P.S. Case No. 178 of 2020 dated 04.03.2020 for the offences under Excise Act. In this

regard, the Superintendent of Police, Patna forwarded report on 12.06.2020 to the concerned District Magistrate. The petitioner had appeared before the District Magistrate on 08.09.2020. Thereafter, petitioner could not file his reply or has a say in the matter of confiscation till 22.02.2021 resulted in deciding the confiscation proceedings on 22.02.2021. Petitioner had suffered confiscation order and he had preferred appeal before the Appellate Authority on 23.09.2021 and suffered an order on 04.10.2021. Similarly, he has suffered order in the revision on 23.03.2022, hence, the present petition.

3. Learned counsel for the petitioner submitted that confiscating authority has delayed the process which means there is a violation of statutory provision under Section 58 of Bihar Prohibition And Excise Act 2016 (for short 'Act 2016'). It is further submitted that auction proceedings was not made known to the petitioner and subject matter of motor vehicle was notified in the Newspaper called Hindustan (Hindi) on 27.08.2021 and motor vehicle was auctioned on 08.09.2021. Thereafter, on 23.09.2021 petitioner had preferred an appeal. It was pointed out that subject matter of motor vehicle cannot be auctioned unless and until appeal is decided by the Appellate Authority in the light of Rule 14 of Bihar Prohibition and Excise Rules, 2021 (for short 'Rules,

2021'). It is also submitted that at throw away price, subject matter of motor vehicle has been auctioned and petitioner intends to pay the auction price for return of subject matter of motor vehicle.

4. *Per contra,* learned counsel for the Respondents resisted the aforementioned contentions and submitted that having regard to the conduct of the petitioner to the extent that on his appearance before the confiscating authority on 08.09.2020 within a reasonable period of time he should have filed his reply or statement before the confiscating authority. On the other hand, he had taken time of more than five months in submitting his reply. In fact, on the date of filing reply itself the confiscating authority passed final order on 22.02.2021. It is also submitted that subject matter of motor vehicle to be auctioned was notified in the Newspaper on 27.08.2021 in Hindustan (Hindi), Patna and auction date was fixed on 08.09.2021. Therefore, it is sufficient to say that petitioner has been notified. It is further submitted that subject matter of motor vehicle was not insured from the year 2018. Therefore, the concerned authority have assessed the subject matter of motor vehicle @ Rs. 70,000/-. It is also submitted that Rules, 2021 was introduced w.e.f. 27.09.2021 and Rule 14 was further amended w.e.f. 05.04.2022 whereas the subject matter of motor vehicle's auction process was from 27.08.2021 to

08.09.2021, therefore, Rule 14 is not attracted. It is submitted that as on 08.09.2021, the date on which subject matter of motor vehicle was auctioned under Rules, 2021 was not existing in the eye of law. Therefore, the confiscating authority or the competent authority was not required to wait for auction of the subject matter of motor vehicle till disposal of appeal. Therefore, the petitioner has not made out a case.

5. Heard learned counsel for the respective parties.

6. Undisputed facts are that petitioner vehicle was subject matter of offences under Excise Act and FIR bearing Danapur P.S. Case No. 178 of 2020 was registered on 04.03.2020. Parallel proceedings were initiated. In the confiscation proceedings, the petitioner has failed to file his reply or say within a reasonable period from 08.09.2020. Therefore, there is a delay in finalizing the confiscation proceedings by the confiscating authority. Therefore, the petitioner cannot take shelter under Section 58 to contend that confiscating authority was required to decide the confiscation proceedings within 90 days from the date of appearance of the petitioner. The respondents have auctioned the subject matter of motor vehicle for which it is not necessary to provide personal or individual notice. On the other hand, State-respondents have notified in the Hindustan (Hindi) Newspaper,

Patna Edition, Patna while assigning the date of auction as 08.09.2021. If the petitioner was not given auction notice the same cannot be appreciated in view of the fact that auction of motor vehicle was notified in the Hindustan (Hindi) Newspaper.

7. Learned counsel for the petitioner contended that auction proceedings cannot be undertaken by the concerned authority before the appeal is decided with reference to Rule 14 of Rules, 2021. It is to be noted that Rules, 2021 was introduced w.e.f. 27.09.2021 and Rule 14 was further amended w.e.f. 05.04.2022 which is much later than the date of auction, i.e., 08.09.2021. Therefore, violation of Rule 14 of Rules, 2021 is not attracted in the present case.

8. Learned counsel for the petitioner submitted that valuation of the subject matter of motor vehicle assessed by the concerned authority is arbitrary. It is to be noted that the subject matter of motor vehicle was not insured from the year 2018. Therefore, rightly or wrongly the concerned authority proceeded to assess the value of the motor vehicle with reference to physical condition. We have also noticed that there is no reasoning for assessment of a particular amount towards the valuation of the subject matter of motor vehicle read with year of the model. In this regard, this Court cannot examine as it is purely technical matter

and this Court is not an expert body to assess the valuation of the motor vehicle. If it is on lower side and if the petitioner feels that arbitrarily the assessment has been made towards valuation of motor vehicle in that event petitioner is at liberty to invoke appropriate remedy insofar as finding given by the assessing authority in respect of subject matter of motor vehicle @ Rs. 70,000/- would be unreasonable.

9. With these observations, the present writ petition stands dismissed.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

Vikash/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	
Transmission Date	N/A