

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16464 of 2021

- 1.1. Rina Devi Wife of Gajendra Singh @ Gajendra Kumar Singh (deceased petitioner) resident of Village-Kanchanpur, P.S. Sasaram (Muffasil), District-Rohtas at Sasaram.
- 1.2. Reema Kumari, heirs of the petitioner, resident of Village-Kanchanpur, P.S. Sasaram (Muffasil), District-Rohtas at Sasaram.
- 1.3. Riya Kumari, heir of the petitioner, resident of Village-Kanchanpur, P.S. Sasaram (Muffasil), District-Rohtas at Sasaram.
- 1.4. Aditya Kumar, heir of the petitioner, resident of Village-Kanchanpur, P.S. Sasaram (Muffasil), District-Rohtas at Sasaram.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Principal Secretary, Registration Excise and Prohibition Department, Govt. of Bihar, Patna.
2. The Additional Principal Secretary, Registration, Excise and Prohibition Department, Government of Bihar, Vikash Bhawan, Patna.
3. The Excise Commissioner-Cum-Appellate Authority, Registration, Excise and Prohibition Department, Government of Bihar, Vikash Bhawan, Patna.
4. The District Magistrate-Cum-Confiscating Authority, Rohtas at Sasaram.
5. The Superintendent of Police, Rohtas at Sasaram.
6. The Superintendent of Excise Department, Rohtas.
7. The S.H.O., Sasaram (Muffasil), District-Rohtas.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Babu Nandan Prasad, Advocate
For the Respondent/s : Mr. Kumar Manish (SC-5)

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 29-04-2023

The petitioner is aggrieved with the confiscation proceedings taken as Excise Confiscation Case No. 2/2016 by the



4th respondent against a vacant land in Khata No. 23, Plot No. 1666 and Rakba- 0.16 decimals situated on a four lane under the Circle Officer, Sasaram, Rohtas, belonging to the father of the petitioner. The petitioner contends that the property was illegally proceeded with on allegation of recovery of liquor from a room in a hotel and the vehicles parked in the premises, pursuant to which an FIR was registered, which is produced as Annexure-1. It is the contention of the petitioner that the father of the petitioner had entered into an agreement of lease with the person who was running the hotel for a period of nine years, which agreement dated 29.07.2009 is marked as Annexure-2. The father of the petitioner died eight years back and the lease expired in the year 2018. The petitioner has filed the application since he is the legal heir entitled to have possession and ownership of the property.

The learned counsel appearing for the petitioner argued that there is nothing recovered from the conscious possession of the petitioner and the premises was in the possession of another who was running a hotel therein. There is no offense made out under the Bihar Excise and Prohibition Act, 2016, against the vacant land nor is there an allegation against the hotel. The petitioner who is now the owner of the land has not been made an accused. The order of confiscation which was affirmed by the



Appellate and Revisional Authority according to the learned counsel are not in accordance with the provisions of the Act and the Rules. Further it is argued that there was only a small quantity of 1.440 litres recovered, in 8 bottles of IMFL, each having 180 ml. The quantum available is very small and there is no reason for confiscating the building and not at all the premises in which the building stands.

The learned Government Advocate, however, points out that the FIR indicates that there was sale of liquor in the premises and the persons who were within and outside the premises fled, when the police party came. The premises were searched and also the vehicles parked within the premises from within which IMFL was recovered. The seizure list indicates that sale of liquor was conducted within the premises. The learned State Counsel also submits that if at all the petitioner requires the property to be absolved from confiscation proceedings, he has to approach the Confiscating Authority, The District Collector under Rule 12B of the Bihar Prohibition Rules.

We have carefully perused the records and especially the FIR which is produced as Annexure-1. A translated copy was obtained from the Registry. It is seen from the FIR that on receiving secret information that there is service of wine to a few



persons sitting in the Jai Gurudev Line Hotel at Kanchanpur, Siwana, a police party had proceeded there. When the police party reached the premises, they saw a commotion at the front of the hotel caused by people under influence of alcohol. There were also some people sitting inside the hotel drinking wine. A white colored Alto car and four motorcycles were parked in the premises. On seeing the police party, the people gathered in the hotel and its premises fled, who were chased by the police party and one person apprehended. The arrested person had the smell of alcohol and revealed his name and address and also admitted to be the owner of the Alto car parked in the premises. Inside the hotel, empty bottles were seen abandoned and during search, 8 foreign liquor bottles of 180 ml and a bottle of 375 ml Royal Stag was found hidden in a jute bag in the south-eastern corner in a room of the hotel. The white Alto car parked in the premises also contained several bottles of foreign liquor. Another bottle of 375 ml Royal Stag was recovered from a table inside the hotel, in which there was 1/3 liquor remaining. There were also half empty bottles found inside the hotel from the north-eastern corner. The allegation in the FIR itself was that the accused were keeping, selling, serving and drinking illegal foreign liquor within the premises. The person who was running the hotel, Rameshwar



Singh, who is said to have obtained the lease from the father of the petitioner, was also made an accused.

The FIR in the case is dated 21.04.2016, as in seen from Annexure-1. Though the Bihar Excise and Prohibition Act, 2016 was not enacted on that date, the Bihar Excise (Amendment Act) 2016, which amended the Bihar Excise Act, 1915 was enforced on 31.03.2015. Section 47 introduced by the Amendment Act to the Excise Act of 1915 provided a penalty for unlawful import, export, transport, manufacture, possession, sale etc., in contravention of any condition of any license, permit or pass granted under the Act or without a valid license. The petitioner does not have a case that he had a valid license to carry out the sale of foreign liquor. Section 48 introduced by the Amendment Act also raises a presumption against the accused person, if he is unable to account satisfactorily, the presence of any intoxicant; or any still, utensil, implement or apparatus found in his possession. Section 53 provides for the penalty for consumption of liquor in public place with imprisonment and Section 54 for possession of intoxicant in respect of which an offence is committed. Section 68(A) empowers confiscation of intoxicants any receptacle, package, covering or animal vehicle, vessel or other conveyance used for carrying the same and any premises or part thereof that may have



been used for committing any offence under the Act. It is the above provisions which have resulted in the confiscation proceedings against the petitioner. It is true that the Bihar Excise Act, 2015 was repealed by the Bihar Prohibition and Excise Act, 2016 but however, the transition provisions provide any action taken under the repealed act, to be carried on under the corresponding provisions of the new Act; notwithstanding the repeal of that Act. Hence, the proceeding survives and the authorities under the Bihar Prohibition and Excise Act, 2016 are empowered to proceed for confiscation of the premises, as in this case.

However, we notice that the Bihar Prohibition and Excise Rules, 2016 also contain provisions for release of the confiscated premises, if the Collector is of the opinion that it would not jeopardize public interest and also on deposit of penalty imposed by the District Collector, after such satisfaction of no public interest being affected is arrived at by the Collector. It is also clear from Rule 12B(2) that the Collector when imposing the penalty has to consider various factors as delineated in the provision to arrive at the quantum of the penalty which cannot be below Rs. 1Lakh. Considering the provisions of the Act as dealt with herein above, we are of the opinion that the writ petition is



not sustainable and the same has to be dismissed. However, the petitioner would be entitled to approach the District Collector under Rule 12B of the Rules of 2016. The petitioner would be entitled to file an application before the District Collector for release of the confiscated premises under Rule 12B and in that circumstances, the District Collector after hearing the petitioner, shall pass such orders as he deems fit exercising the discretion which he is empowered and obliged to exercise as per the provisions. In this context, it is also to be observed that on release being ordered, definitely the title of the property would have to be verified before it's release to the petitioner herein. It is made clear that even if the petitioner does not own the property by himself, he could produce authorisation before the District Collector from the co-owners, which could enable such release being made.

The writ petition stands dismissed with the above observations.

(K. Vinod Chandran, CJ)

(Madhuresh Prasad, J)

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AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	03.05.2023
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