IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10944 of 2023

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Nagina Choudhary Son of Jaglal Chaudhary Resident of Village-Jangharo, P.S.-Ben, Distirct-Nalanda, Bihar-803111.

... ... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Registration, Excise and Prohibition Department, Govt. of Bihar, Patna.
3. The District Magistrate Cum Collector Nalanda at Biharsharif.
4. The Superintendent of Excise Prohibition Nalanda at Biharsharif.
5. The Assistant Excise Commissioner Nalanda at Biharsharif.
6. The officer Incharge/ S.H.O. Ben Police Station, District Nalanda at Biharsharif.
7. The Land Reforms Deputy Collector District Nalanda at Biharsharif.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Vidhan Chandra Pathak, Advocate
For the Respondent/s : Mr. Kumar Manish (SC- 5)

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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 : 25-08-2023

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

> *"i. For issuance of an appropriate direction/s, order/s, writ/s to the respondent authorities to open the seal of the house of the petitioner situated over Khata No. 90, Khesra No. 342, Mauza Jangharo, Thana No. 404, Area 1 ¼ decimal upon which the house constructed which has been acquisition under 58 (2) of Bihar Excise and Prohibition Act by the*

concerned authority in connection with Ben P.S. Case No. 217/21 dated 31.12.2021, offences alleged u/s 30 (e) Bihar Excise and Prohibition Act.

ii. For to set aside the confiscation order of the house of the petitioner dated passed by the 25.07.2022 Learned Land Reforms Deputy Collector Rajgir, Nalanda in confiscation (Excise) Case NO. 32/2022 (State Versus Nagina Chaudhary) (Arising out of Ben P.S. Case No. 217/2021 dated 31.12.2021). And also set aside the order dated 18.05.2023 passed in Excise Appeal No. 33/2023 passed by Excise the learned court Commissioner Patna. of And also to set aside the order dated 07.06.2023 passed in Excise Revision case No. 21/2023 passed by the Additional Chief Secretary Bihar, Patna, both have confirmed the order passed by the learned court of Land Reforms deputy Collector Nalanda. (Annexure-2 series)

iii. For issuance of the direction to restrain the authority concern for holding an auction sale of the house of the petitioner in view of the order dated 25.07.2022 passed by the Learned Land Reforms Deputy Collector Rajgir, Nalanda in confiscation (Excise) Case NO. 32/2022 (State Versus Nagina Chaudhary) (Arising out of Ben P.S. Case No. 217/2021 dated 31.12.2021.

iv. For direction to the respondent authorities to open the seal of the house were *the alleged about 20 litres of Chhowa was recovered.*

V. For grant of any other relief/ reliefs for which the petitioner may be found entitled in course of hearing of this writ application.”

02. The petitioner’s premises having *Khata* No. 90, *Khesra* No. 342, *Mauza Jangharo*, *Thana* No. 404, Area 1 ¼ decimal was involved in the offences alleged under Section 30 (e) of the Bihar Excise and Prohibition Act, 2016 (for short ‘the Act, 2016’). In this regard, Ben P.S. Case No. 217/2021 was registered on 31.12.2021.

03. Arising out of the above facts and circumstances, the official respondents proceeded to initiate a parallel proceeding. Confiscation proceeding was conducted under Section 56 of the Act, 2016. The petitioner suffered an order in the confiscation proceedings on 25.07.2022. Feeling aggrieved and dissatisfied with the aforementioned order, he invoked remedy of appeal and revision and in both the proceedings he has suffered orders dated 18.05.2023 and 07.06.2023, respectively. In other words, the confiscation of petitioner’s premises cited supra has been affirmed and it has attained finality. Hence, the present writ petition.

04. Learned counsel for the petitioner submitted that

seizure of premises and its auctioning would be too harsh having regard to the offences committed by him insofar as storage of 20 litres of molasses in the aforementioned premises. Therefore, he has sought for cancellation of auction sale of the premises cited supra and release the same in his favour.

05. Learned counsel for the respondents resisted the aforesaid contention and submitted that statutory provision provides for seizure of premises, which is involved in the alleged offences under Section 30(e) of the Act, 2016. Therefore, no interference is called for.

06. Heard the learned counsel for the respective parties.

07. Core issue involved in the present *lis* is whether the respondent could confiscate the residential property in connection with the offences under Section 30(e) of Act, 2016 insofar as storage of 20 litres of molasses is concerned and whether it is illegal or not?

08. Undisputed facts are that petitioner and his premises cited supra are involved in the offences under Section 30(e) of Act, 2016 insofar as storage of 20 litres of molasses and related activities. In this regard, the confiscation proceedings was initiated against the petitioner and such order was passed on

25.07.2022 and it was subject matter of litigation before the Appellate and Revisional Authority and the petitioner thereby suffered order on 18.05.2023 and 07.06.2023. In other words, there is a proposal for auctioning the subject matter of premises.

09. In the meanwhile, the State Government has issued Rules called 'Bihar Prohibition and Excise Rules, 2021' (for short 'the Rules, 2021). Rule 12(B) of the Rules, 2021, is relating to confiscation of premises and consequential action. The aforementioned Rule has not been taken note of by the confiscating authority for the reasons that as on the date of confiscation proceedings, the aforementioned Rules were not in vogue. However, having regard to the language employed in Rules, 2021, it is evident that for pending cases also Rule 12(B) of the Rules, 2021 could be invoked by the competent authority. Therefore, we are of the view that Appellate Authority and Revisional Authority while deciding the appeal on 18.05.2023 and 07.06.2023, respecitvely have not taken note of Rule 12(B) of Rules, 2021. Therefore, it is a case of remand to the Revisional Authority to take note of Rule 12(B) of the Rules, 2021. If he is not a competent authority to take action under Rule 12 (B) of the Rules, 2021, in such an event, he is permitted to transmit the papers to the competent authority to take

decision with reference to Rule 12(B) of Rules, 2021.

10. The concerned authority is hereby directed to take note of quantum of penalty for seizure of only 20 litres of molasses and other activities would be too harsh in the light of Article 300-A of the Constitution of India. Further, the State Government has not issued any guidelines or yardstick insofar as imposition of penalty in respect of offence under Section 30(e) of Act, 2016 is concerned. In other words, imposing random penalty like seizure of motor vehicle, confiscation of immovable property or properties and such action are not commensurate with the offences committed by the respective persons. These things are required to be examined by the concerned authority while exercising power under Rule 12(B) of Rules, 2021. In this regard, the petitioner is hereby directed to complete the formalities like submission of application in prescribed application form within a period of two weeks from today. Further, the concerned authority is hereby directed to pass a speaking order by taking note of Rule 12(B) of the Rules, 2021 read with the constitutional provision of Article 300-A of the Constitution of India and proceed to pass an order within a period of two months from the date of receipt of the petitioner's application and other formalities.

11. In the meanwhile, the concerned officials are hereby directed to stall the auction proceeding of the subject matter of premises cited supra, subject to passing of order under Rule 12(B) of the Rules, 2021. Accordingly, the petitioner has made out a *prima-facie* case so as to interfere with the order of the Revisional Authority dated 07.06.2023 and it is set aside and the matter is remanded to the Revisional Authority.

12. The State Government must evolve and incorporate appropriate law in so far as determining penalty in terms of money in respect of seizure of motor vehicle or immovable properties like immovable premises or structure or buildings for the offences under Act, 2017/2018 is concerned for the reasons that State of Bihar consists about 37 Districts and in each of the District, the concerned Collector would evolve his/her own mode of confiscating procedure and auctioning seized property/properties including motor vehicle etc as per his discretion. There will be no uniformity in application of provision of the Act, 2016. This would frustrate the object of the Act, which is to enable speedy and effective adjudication with regard to confiscation of the illicit liquor and other related articles and the means used for committing the offence.

Moreover, Rule 12(B) of the Rules, 2021 for an additional procedure for confiscation, a procedure which is less cumbersome and more expeditious than the procedure of prosecution and at the same time, assuring necessary safeguards to the affected persons.

13. Accordingly, the writ petition stands allowed.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

Ashish/-
Himanshu/-

AFR/NAFR	NA
CAV DATE	NA
Uploading Date	01.09.2023
Transmission Date	NA