IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13782 of 2023

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Munna Yadav, Son of Yogi Gop, Resident of Village - Mahammadpur, P.O. and P.S. - Ashthawan, District - Nalanda.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Excise Department, Bihar, Patna.
2. The District Magistrate, Nalanda.
3. The Excise Commissioner, Patna.
4. The Addl. Collector-cum-Addl. District Magistrate, District - Nalanda.
5. The Excise Superintendent, District Nalanda.
6. The Superintendent of Police Nalanda.
7. The Station House Officer, P.S. - Ashthawan, District - Nalanda.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Rana Baljit Singh, Advocate
For the Respondent/s	:	Mr.Kumar Manish, SC-5
		Mr. Kumar Pankaj, AC to SC-5

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

Date : 10-11-2023

Learned counsels for the respective parties have been heard on the last date of hearing.

2. The petitioner has filed the instant writ petition seeking the following reliefs :-

> *"For quashing of the Order dated 18.05.2023 (Annexure-3) passed in the Excise Appeal Case No.-37/2023 by the Court of Excise Commissioner, Bihar, Patna whereby and where under Order dated 28.01.2023 passed in the*

> *Confiscation (Excise) Case No. 129/2022 by the court of Addl. Collector- cum-Addl. District Magistrate Nalanda was upheld and PRAYER for unlocking and to release the house from Sealing and confiscation of a Semi constructed house of the petitioner situated in village- Muhammadpur P.S. Ashthawan, District Nalanda was rejected, which semi constructed house of the petitioner was confiscated for the allegation of recovery of 10 litre of country made wine and for that, Ashthawan P.S. Case No.230/22 was instituted for the offence u/s 30(a) Bihar Excise and Prohibition Act Amended Act, 2018, And*
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> *II. For quashing of the Order dated 28.01.2023(Annexure-2) passed in confiscation (Excise) Case No. 129/2022 passed by the Court of Addl. Collector-cum- Addl. District Magistrate, Nalanda whereby and where under prayer for release and unlock the house of petitioner was rejected, which confiscation case is initiated for the allegation of recovery of 10 litre of country made wine from the Semi Constructed house of petitioner for which Asthawan P.S. Case No. 230/2022 was lodged for the offence u/s 30(a) of the Bihar Excise and Prohibition Act Amended Act, 2018 and the house of petitioner was confiscated, which house of the petitioner situated in the village-Muhammadpur, P.S.- Asthawan, District-Nalanda.*
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> *Further PRAYER is made to release and unlock the house of petitioner, which house is situated in the village-Muhammadpur, P.S.- Asthawan, District- Nalanda, in aforesaid case and under aforesaid Proceeding."*

3. Briefly stated, the case of the petitioner is as follows:

The petitioner is the owner of a new house underconstruction situated in village-Muhammadpur, P.S.- Asthawan, District- Nalanda and on secret information that the petitioner has kept illicit liquor in his house, a raid was conducted and 10 liters of country made liquor was recovered from south west room of that house on 15.08.2022 for which Asthawan P.S. Case No.230 of 2022 has been registered for the offence punishable under Section 30 (a) of the Bihar Prohibition and Excise Act, 2018 against the petitioner. Later on, the said house of the petitioner was sealed.

4. Further case of the petitioner is that a Confiscation Case No.129 of 2022 was initiated with regard to aforesaid room of the petitioner and the Additional Collector-cum-Additional District Magistrate, Nalanda passed the order dated 28.01.2023 by which the aforesaid room situated in the house of the petitioner was ordered to be confiscated and auctioned.

5. Being aggrieved with the aforesaid order of confiscation, the petitioner preferred an appeal bearing Excise Appeal Case No.37 of 2023 before the Excise Commissioner, Bihar, Patna, but the appeal preferred by the petitioner was dismissed by upholding the order of confiscation and auction vide order dated 18.05.2023 without interfering in the order of the Collector-cum-District Magistrate. However, the petitioner

has not preferred any revision against the aforesaid orders.

6. Aggrieved by the aforesaid two orders, the petitioner has come before this Court by filing the present Writ.

7. The learned counsel appearing on behalf of the petitioner submitted that from bare perusal of the FIR, it is evident that the house from where alleged recovery was made was an under-constructed house where anybody can enter due to open access. The learned counsel further submitted that the petitioner had not kept the alleged liquor in the alleged house rather it was planted by some inimical person of the village. The learned counsel further submitted that the petitioner is named in the FIR and, as such, he will have to face rigours of trial and final decision of his innocence/guilt has to be taken by the learned trial court. Thus, the learned counsel submitted that the instant writ petition may be allowed and the relief sought by the petitioner may be granted to him.

8. Per contra, the learned counsel for the respondents submitted that there is no infirmity in the impugned orders of the respondent authorities. The petitioner is named in the FIR and recovery of illicit country made liquor was made from the premises owned by the petitioner. Section 56 of the Act makes it amply clear that whenever an offence punishable under this Act is committed, the Collector or an officer authorized by him may confiscate such items based on the report of the investigating officer and such items may include any premises or part thereof. The learned counsel further submitted that the a notice was issued to the petitioner to submit application in prescribed 'Prapatra-V' under the provisions of Rule 12B of the Bihar Prohibition and Excise Rules, 2021. Thereafter, a public notice dated 25.12.2022 was issued in this regard. Even then, the petitioner did not appear and ultimately, the case was heard on the basis of material available on record and vide order dated 28.01.2023, the part of the sealed house of the petitioner has been confiscated and the concerned authorities were directed to put the confiscated part of the house on auction. The learned counsel further submitted that the petitioner also ignored to take the benefit of Rule 12 B of the aforesaid Rules, 2021 and, as such, conduct of the petitioner does not deserve any sympathy from this Court. Thus, the learned counsel submitted that there is no merit in the instant writ petition and the same be dismissed.

9. Perused the record.

10. Before adverting to the case, certain provisions of law need to be considered.

Sections 56, 57 B and 58 of the Act provide as under :

"56. Confiscation of Seized Items.- (1) Notwithstanding anything contained in Section 57B, whenever an offence punishable under this Act, is committed, the Collector or an Officer authorized by him may confiscate such items based on the report of the investigating officer.

(2) Such items may include-

(i) any premises or part thereof;

(ii) any animal, vehicle, vessel or conveyance;

(iii) any liquor or intoxicant;

(iv) any other item having bearing with the case;

Provided, where things as mentioned in Section 57 are to be destroyed, then the Collector or an officer authorized by him need not confiscate the same before their destruction.

(3) The State Government may issue necessary direction, guidelines, regulations and instructions with respect to the mode and manner of search, seizure, destruction and confiscation.

57B. Things or premises liable to be released upon penalty.- (1) Any animal, vehicle, vessel or other conveyance used for committing any offence punishable under this Act that has been seized by any police Officer or Excise Officer may be released by the Collector upon payment of such penalty as may be notified by the State Government.

2. Any premises or part thereof used for committing any offence punishable under this Act that has been seized by any police Officer or Excise

Officer may be released by the Collector upon payment of such penalty as may be notified by the State Government.

(3) If the person concerned does not pay the penalty, then the Collector shall proceed to confiscate the said animal, vehicle, vessel or other conveyance and premises as per Section-58.

58. Confiscation by District Collector. - (1) Notwithstanding anything contained in this Act or any other law for the time being in force, where anything liable for confiscation under this Act is seized or detained under the provisions of this Act, the officer seizing and detaining such property shall, without any reasonable delay submit a report to the District Collector who has jurisdiction over the said area;

(2) On receipt of the report under sub-section (1), the District Collector if satisfied that an offence under this Act has been committed, may, whether or not prosecution is instituted for the commission of such an offence and whether or not a case is pending before any court, order confiscation of such property;

(3) The Collector shall, before passing an order under subsection (2), give a reasonable opportunity to the person concerned, of being heard;

(4) While making an order of confiscation under sub-section (2), the District Collector may also order that such of the properties which the order of confiscation relates, which in his opinion cannot be preserved or are not fit for human consumption, be destroyed. Whenever any

confiscated article has to be destroyed in conformity with these provisions, it shall be destroyed in the presence of a Executive Magistrate or officer ordering the confiscation or forfeiture, as the case may be, or in the presence of the Excise Officer not below the rank of a Sub-Inspector;

(5) While making an order of confiscation under sub-section (2), if the District Collector is of the opinion that it is expedient in the public interest to do so, he may order the said property or any part thereof to be sold by public auction or dispose of departmentally and proceeds deposited with the State Government;

(6) The District Collector shall submit a full report of all particulars of confiscation to the Commissioner of Excise within one month of such confiscation".

11. Rule 12 B, 13 B and 14 of the Bihar Prohibition and Excise Rules, 2021 which came into effect on 27.09.2021, read as under :

"12B. Release of Premises on Payment of Penalty: - (1) If any premises or part thereof has been seized or sealed by any police or excise officer under the Act, then in terms of section-57B (2) of the Act, the Collector or an officer authorized by him, upon receipt of an application in Form V from the owner of the said premises, may release or unseal the said premises or part thereof upon payment of such penalty as may be ordered by the Collector or the officer authorized by him.

Provided, where it is not possible to ascertain the owner of the premises or the owner is not coming forward, the Collector or the officer authorized by him shall, after waiting for 15 days from the date of seizure/sealing, proceed to confiscate the premises as per the provisions of the Act.

(2) The Collector or the officer authorized by him shall have due regard to the economic status of the individual, nature of his involvement in the crime, location of the premises and the quantum of intoxicant recovered while deciding the quantum of fine to be paid by the individual. However, the fine shall not be less than Rs. one Lakh in any case.

In any case, the Collector shall not wait beyond 15 days from the date of seizure/sealing and if during this period, the accused/owner does not pay up the penalty he shall proceed with the confiscation/auction.

(3) Notwithstanding above, if on a report by police officer or excise officer, the Collector or the officer authorized by him is satisfied that releasing the premises shall not be in the public interest, the Collector or the officer authorized by him shall proceed ahead with the confiscation of the said premises or part thereof and its subsequent auction/disposal.

(4) Such penalty shall be, regardless of the outcome of the trial if any, before the Special Court, non-refundable.

(5) The owner of the Premises shall, after the release of the premises, allow the inspection of

the premises as and when desired by the authorities.

13B. Procedure of confiscation of Premises: - (1) Where it is decided by the Collector that the premises is not to be released on penalty or where the owner does not pay the required penalty, the confiscation proceeding shall be initiated. The proposal for confiscation of the premises shall be sent by the police/excise officer to the Collector (or an officer authorized by him) within 30 days from the date of seizure/sealing. The officer concerned shall immediately start the confiscation proceeding.

In case of delay of beyond 30 days, in submission of the proposal for confiscation, the police/excise officer will have to explain the delay.

(2) The officer concerned, on receipt of proposal of confiscation of any premises or part thereof or any property liable for confiscation from police/excise officer, shall issue show cause notice to the owner(s) of the premises or property. Simultaneously, he shall issue notice to the Chemical Examiner and/or such revenue officers for their reports.

(3) Such notice issued by the officer shall be served as per procedure prescribed in the Code of Criminal Procedure, 1973 for service of summons.

(4) The officer shall provide reasonable opportunity of hearing to the owner(s) of the premises or property. The investigating/inquiry officer shall also be given opportunity to participate in such hearing.

(5) If the person to whom notice has validly been served fails to appear in the proceeding

on two consecutive dates fixed for hearing, the confiscating authority shall proceed to pass the order ex-parte.

(6) The officer shall, after hearing the parties, pass appropriate order of confiscation or unsealing, as the case may be, with respect to sealed/seized premises or property on the basis of his satisfaction whether an offence has been committed or not in terms of the Act.

(7) The officer shall ensure that the order for confiscation is passed within 90 days from the date of seizure/sealing of the premises.

(8) Any person aggrieved by the order passed by the Collector under the provisions of the Act may file appeal in the manner prescribed under these rules.

14. Auction or Destruction of Seized/Confiscated items: -The items seized/confiscated by the Collector or any officer authorized by him may be disposed of by him, either by auction or by destruction, in the following manner: -

(1) If the Collector or the officer authorized by him, is satisfied that any seized article, is liable to speedy and natural decay or is of trifling value or can be put to misuse or endangering public safety or occupying public space, he may, in exercise or power under Section-57 and Section-57A of the Act, order for destruction of the same at any time before passing the order of confiscation. The Collector or the officer concerned shall ensure that any seized liquor should not be allowed to remain

stored for a very long time. He shall ensure that the said liquor is destroyed within 15 days of its seizure after having obtained the report of the chemist.

(2) The confiscated animal/ vehicle/ vessel/ other conveyance premises or part thereof shall be put to public auction and sold to the highest bidder within a period of one month from the date of attainment of finality of order of the confiscating authority or such extended period as deemed fit by the Collector/authorized officer or may be put government use in the manner prescribed.

(3) Before the auction, the Collector or the officer may cause the valuation of the vehicle/conveyance/premises. He shall then invite bid through public advertisement in at least one local/vernacular newspaper. Where he does not receive any offer for a particular item in the first attempt of auction, he may invite bids again. If, after three such attempts, he does not receive any bid, he may dispose of the said vehicle/conveyance on an "as is where is" basis regardless of the valuation".

12. From bare reading of the aforesaid provisions, it seems that whenever offence punishable under this Act has been committed, any premises or part thereof used for committing any offence might be seized/confiscated and released upon penalty.

13. From the records, it appears that the petitioner is named in the FIR and recovery of illicit country made liquor

was made from the premises owned by the petitioner for which Asthawan P.S. Case No.230 of 2022 has been registeredon 16.08.2022 for the offence punishable under Section 30 (a) of the Bihar Prohibition and Excise Act, 2018 against the petitioner. Later on, the said house of the petitioner was sealed. Thereafter, on the recommendation/report of the Superintendent of Police dated 23.08.2022 for initiation of confiscation proceeding of the house in question, the proceeding was initiated. A notice was issued to the petitioner to submit application in prescribed 'Prapatra-V' under the provisions of Rule 12B of the Rules, 2021. Thereafter, a public notice dated 25.12.2022 was issued for the same. But, the petitioner did not appear and the case was heard on the basis of material available on record and vide order dated 28.01.2023, the part of the sealed house has been confiscated.

14. Section 58 (3) of the Act provides that the Collector shall before passing an order under sub-section (2), give a reasonable opportunity to the person concerned of being heard. However, in the present case, it appears that the order of confiscation was passed on the basis of material available on record without hearing the petitioner.

15. Further, Rule 13 (B) of Bihar Prohibition and

Excise Rules, 2021 provides that confiscation proceeding under Section 58 of the Act must be concluded within a period of 90 days from the date of appearance of parties. But in the instant case, it has taken more than five months. So the order dated 28.01.2023 is in contravention of Rule 13B of the aforesaid Excise Rules, 2021. Further, it appears the petitioner did not avail the benefit of Rule 12B of the aforesaid Rules, 2021.

16. Moreover, confiscation and subsequent action of a dwelling house is unduly harsh on inmates of the residential property. This fact is also to be kept in mind. This Court in its ***judgment dated 14.09.2023*** passed in ***CWJC No.17894 of 2022 (Sunita Sinha Vs. The State of Bihar and Ors.***) has directed the authorities to act with circumspection in such cases.

17. Considering the facts and circumstances of the case, we are of the considered view that the impugned orders are not sustainable due to violation of Rules prescribing the period of completion of confiscation proceeding. Moreover, the petitioner could be provided opportunity to avail the benefit of Rule 12B of the aforesaid Rules, 2021.

18. Accordingly, the order dated 28.01.2023 passed by the Additional Collector-cum-Additional District Magistrate, Nalanda (Confiscating Authority) in Confiscation Case No.129

of 2022 and the order dated 18.05.2023 passed by the Excise Commissioner, Bihar, Patna (Appellate Authority) in Excise Appeal Case No.37 of 2023 are set aside. The matter is remanded to the confiscating authority and the petitioner is directed to appear before the confiscating authority in compliance of Rule 12B of the aforesaid Rules, 2021.

19. Further, the confiscating authority is directed to reconsider the matter in accordance with law and pass a detailed speaking order in the confiscation proceeding after hearing the petitioner within a period of three months in accordance with law, if so warranted.

20. With the aforesaid observations/directions, the present writ petition stands allowed.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

V.K.Pandey/-

AFR/NAFR	AFR
CAV DATE	01.11.2023
Uploading Date	10.11.2023
Transmission Date	N.A.