

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12807 of 2023

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Moni Kumari, Wife of Prasoon Kumar, R/O Mohalla-Miyanchak Shanichara Asthan, Ward No.20, Police Station Town P.S. (Ratanpur O.P.), District-Begusarai, Bihar, At present-Mukt Dhara Apartment, 4th Floor, Flat No.401, Holding No.44/1, Shahid Sunil Sen Sarani, Damdam, Kolkata (W.B.).

... .. Petitioner/s

Versus

1. The State of Bihar Through the Secretary, Department of Prohibition and Excise, Government of Bihar, Patna.
2. The Secretary, Department of Prohibition and Excise, Government of Bihar, Patna.
3. The Excise Commissioner, Department of Prohibition and Excise, Government of Bihar, Patna.
4. The District Magistrate, Begusarai.
5. The Superintendent of Prohibition and Excise, Begusarai.
6. The Inspector of Prohibition and Excise, Sadar Sub- Division, Begusarai.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Ranvijay Narain Singh, 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 ARUN KUMAR JHA)

Date : 31-10-2023

Heard learned counsel for the petitioner and learned counsel for the respondents.

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



“(i) For issuance of appropriate writ preferably in the nature of ‘Certiorari’ for setting aside the order dated 12.06.2023 passed by Excise Commissioner, Bihar, Patna in Excise Appeal Case No.72 of 2023 whereby and where under the said appeal preferred against order dated 6.2.2023 passed by the District Magistrate, Begusarai in Confiscation Case No.9 of 2022 has been rejected thereby affirming the said order dated 6.2.2023.

(ii). To issue an appropriate writ preferably in the nature of ‘Certiorari’ for setting aside the order dated 6.2.2023 passed by the District Magistrate, Begusarai in Confiscation Case No.9 of 2022 arising out of Excise P.S. Case No.18 of 2022 whereby and where under the room situated at North-West Corner of the house of the petitioner has been confiscated.

(iii) To hold and declare that the room, as aforementioned, of the petitioner shall be deemed to have been released after expiry of 90 days from the date of appearance of the petitioner in Confiscation Case No.9 of 2022 as such the respondent authorities may be restrained from taking any coercive action against the said property of the petitioner.

(iv) To grant any other relief (s) for which the petitioner may be found entitled to in the facts and circumstances of the case”.

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



The petitioner has been residing in Kolkata since the year 2007 along with her husband, who is employed in the Income Tax Department, Government of India. Further, the petitioner is the owner of a house situated on an area of 1 Katha bearing Khata No. 46, Plot No.109, Tauzi No.2246, Thana No.344, District-Begusarai. As the petitioner had to shift to Kolkata, she handed over the key of her house to her father-in-law to induct a suitable person as tenant in her house. The father-in-law of the petitioner inducted Rahul Kumar as tenant in the house of the petitioner at a monthly rent of Rs.1200/- w.e.f. 27.09.2021 and since 27.09.2021, the said Rahul Kumar had been paying rent through money transfer in the bank account of her elder brother-in-law, namely, Prashant Kumar.

4. Further case of the petitioner is that on 02.02.2022, the Excise Sub-Inspector conducted a raid in the aforesaid house of the petitioner in which total 61.500 liters of India made Foreign Liquor was recovered from a room in which the said Rahul Kumar was inducted as a tenant and, accordingly, the said room was sealed and Begusarai Excise P.S. Case No.18 of 2022 dated 02.02.2022 was registered under Section 30 (a) of the Bihar Prohibition & Excise Act, 2016 (hereinafter referred to as 'the Act') against the owner and tenant of the house.



5. Further case of the petitioner is that a Confiscation Case No.09 of 2022 was initiated by the Collector, Begusarai with regard to aforesaid room of the petitioner. The petitioner upon receipt of notice in the confiscation case appeared and filed her show cause on 11.04.2022 explaining each and every aspect of the matter with a request to drop the proceeding of confiscation. The Collector, Begusarai without considering the show cause of the petitioner passed the order dated 06.02.2023 by which the aforesaid room situated in the house of the petitioner was ordered to be confiscated.

6. Being aggrieved with the aforesaid order of confiscation, the petitioner preferred an appeal bearing Excise Appeal Case No.72 of 2023 before the Excise Commissioner, Bihar, Patna, but the appeal preferred by the petitioner was rejected vide order dated 12.06.2023 without interfering in the order of the Collector-cum-District Magistrate. However, the petitioner has not preferred any revision against the order of the appellate authority before the revisional authority as the appellate authority and the revisional authority, both are the same person/officer/authority.

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



8. The learned counsel appearing on behalf of the petitioner submitted that from bare perusal of the FIR, it is evident that the petitioner had let out her house on rent to different persons. The room from where recovery of alleged liquor was made was let out on rent to one Rahul Kumar. The police after investigation found that the aforesaid Rahul Kumar committed the alleged aforementioned crime and the petitioner is residing in Kolkata with her husband. Accordingly, the police submitted Final Report No.121 of 2022 dated 18.09.2022 exonerating the petitioner from the charges. The learned counsel further submitted that since the petitioner has been exonerated by the police on account of furnishing satisfactory explanation, as such, the presumption of guilt as prescribed under Section 32 of the Act would not operate against the petitioner.

9. The learned counsel for the petitioner further submitted that the petitioner appeared in the confiscation proceeding before the Collector, Begusarai on 11.04.2022, but the confiscation case has been decided on 06.02.2023, i.e., after about 10 months, which is in violation of provisions of law and as laid down by this Court in the case of ***Bunni Lal Sah Vs. The State of Bihar & Ors.*** reported in ***2021 (2) BLJ 390*** wherein it has been held that all proceedings under Section 58



of the Act must positively be initiated/concluded within a period of 90 days from the date of appearance of parties, failing which things (vehicle/property etc.) shall be deemed to have been released.

10. The learned counsel for the petitioner further submitted that there is not even an iota of evidence which could suggest that the petitioner was facilitating the culprits or providing access for storage of incriminating articles. Either directly or indirectly, the petitioner has not contravened Section 30 of the Act and, for this reason, part of her house is not liable to be sealed. The action of the authorities is arbitrary, unreasonable and shows complete non-application of mind. 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.

11. *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 India made foreign 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. Since the recovery of illicit liquor has been made from the premises in question, it is immaterial whether the said premises was on rent and the offence becomes place specific. Thus, the learned counsel submitted that there is no merit in the instant writ petition and the same be dismissed.

12. Perused the records.

13. From perusal of records, it appears that the present writ petition has been filed on 05.09.2023 after serving a copy of the same upon the State well in advance on 23.08.2023. Thereafter, this Court vide order dated 22.09.2023 directed the State counsel to file counter affidavit in the matter before the next date of hearing. Despite the aforesaid direction, till date, no counter affidavit has been filed by the State. Now, this Court is required to decide the matter on the material available on the record without waiting further for the counter affidavit.

14. *Prima facie*, it appears from perusal of the FIR that though the premises owned by the petitioner may be involved in storage of illicit liquor, apparently involvement of the petitioner is not so forthcoming from the facts and circumstances of the case. Moreover, the police after



investigation found that the said Rahul Kumar, tenant committed the alleged crime and the petitioner resides in Kolkata with her husband. Accordingly, the police submitted Final Report No.121 of 2022 dated 18.09.2022 exonerating the petitioner from the charges. Moreover, the tenant, namely, Rahul Kumar has been arraigned as an accused and he will have to face rigours of trial and final decision of his innocence/guilt has to be taken by the learned trial court.

15. Further, there is no material on record to suggest that the petitioner was facilitating and helping her tenant, namely, Rahul Kumar for storage of incriminating articles. Either directly or indirectly, the petitioner has not contravened Section 30 of the Act and, for this reason, a room of the house is not liable to be sealed.

16. Recently, this Court vide judgment dated **14.09.2023** passed in ***CWJC No.17894 of 2022 (Sunita Sinha vs. The State of Bihar and Ors.)*** has deprecated the tendency of the authorities to confiscate the premises found involved in trade of illicit liquor in an arbitrary manner and putting unreasonable terms and conditions for its release and we further pointed out the lacunae in the relevant provisions of law regarding seizure, sealing and confiscation of premises.



Apparently, the case of the petitioner is covered under one of the illustrations given by us.

17. Coming back to the facts of the present case, undisputedly the part of premises in question was let out on rent. The authorities failed to take into consideration this fact and in a mechanical manner passed the impugned orders. The petitioner could not be made to suffer for being the landlord/owner of the premises in question if recovery of some liquor has been made.

18. Further, Rule 12 (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 10 months. Conduct of proceeding in such manner is also in teeth of the decision of this Court in ***Bunni Lal Sah (supra)***.

19. Having regard to the facts and circumstances of the case, we are of the considered view that both the authorities namely, the confiscating authority and the appellate authority committed error and failed to discharge the duty cast upon them while passing the impugned orders in the absence of any direct or indirect evidence against the petitioner.

20. Accordingly, the order dated 06.02.2023 passed by



the Collector-cum-District Magistrate, Begusarai (Confiscating Authority) in Confiscation Case No.09 of 2022, arising out of Excise P.S. Case No.18 of 202,2 and the order dated 12.06.2023 passed by the Excise Commissioner, Bihar, Patna (Appellate Authority) in Excise Appeal Case No.72 of 2023 are set aside. The respondent authorities are hereby directed to release the part of the house in question in favour of the petitioner henceforth.

21. 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	N/A
Uploading Date	06.11.2023
Transmission Date	N/A

