

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14896 of 2022

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Satya Narayan Bin S/o Late Shivabachan Bin, Resident of Village - Amarpur,
P.S. - Dhansoi, District - Buxar.

... .. Petitioner/s

Versus

1. The State of Bihar through its Secretary, Bihar Excise Department at Patna.
2. The Excise Commissioner, Bihar Excise Department at Patna.
3. The Collector, District of Buxar at Buxar.
4. The Sub Divisional Magistrate Sadar Buxar at Buxar.
5. The Superintendent of Police, Buxar at Buxar.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Arun Kumar Gupta, Advocate
For the Respondent/s : Mr. Vivek Prasad (GP-7)

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE MADHURESH PRASAD)

Date : 05-07-2023

1. The writ petitioner seeks quashing of order dated 31.05.2022 passed in confiscation case no. 74 of 2022 directing for confiscation of the petitioner's house and lands appurtenant thereto. There is alleged recovery of 5.76 liters of illicit liquor from the house.

2. It is the petitioner's case that alleged recovery is from a house jointly owned by the petitioner and his brother. The allegations are palpably false and the order of confiscation is unsustainable. Section 62 of the Bihar Prohibition and Excise Act, 2016 (hereinafter referred to as "Act") as it existed on the date of seizure mandates immediate



sealing of the premises from which any liquor or intoxicant is recovered, or such premises which have been used for committing any offence under the Act.

3. In the instant case, it is the petitioner's contention that admittedly the house, in question, has never been sealed. Had any liquor been recovered from the premises, the authorities would surely have sealed it. The authorities cannot be permitted to arbitrarily take a decision one fine day to start confiscation proceeding against any property/premises. The Act provides a check on such arbitrariness by specifying a procedure under Section 62 of the Act which mandates sealing of the premises immediately upon recovery of liquor. Thereafter the seizing authority is required to send a report to the Collector for confiscation of the same. The petitioner's premises in question was never sealed. The order of confiscation is *de hors* the statutory procedure prescribed under Section 62 of the Act, and thus unsustainable.

4. The learned State counsel, on the other hand, submits that authorities have acted in accordance with law. The petitioner has remedy of appeal and revision against the impugned order of the sub-divisional officer, which he has not availed. From the seizure list forming part of the FIR, it is



pointed out there is recovery of 32 units of *Super Speed Whisky*, containing 180 ml in each unit. Recovery of 5.76 litres of illicit liquor from the FIR named accused person's house is obvious from the seizure memo itself.

5. Non sealing of the petitioner's house, as per the learned State counsel, cannot be made the basis of invalidating the action taken by the authority upon recovery of illicit liquor.

6. We consider it apt to reproduce Sections 56(c) and 62 of the Act, as on the date of alleged recovery (12-09-2021) of illicit liquor from the petitioner's premises, that is, prior to amendment by Bihar Act 03 of 2022 on 01.04.2022, which read as under:-

"56(c) any premises or part thereof that may have been used for storing or manufacturing any liquor or intoxicant or for committing any other offence under this Act;

shall be liable to be confiscated in a manner prescribed under the provisions of the Act,"

62. Premises liable to be sealed- *If it comes to the notice of any excise officer or any police officer, not below the rank of a Sub Inspector, that any liquor or*



*intoxicant has been found at a particular premises or a particular premises or a part thereof is or has been used for committing any offence under this Act, he may **immediately** (emphasis ours) seal the premises and send a report to the Collector for the confiscation of the same.*

Provided that if the said premises are temporary structures which cannot be effectively sealed, then the excise officer or the police officer, with the order of the Collector, may demolish such temporary structures."

7. Section 62 clearly provides for immediate sealing of the premises from where any liquor or intoxicant is found or which has been used for committing any offence punishable under the Act. In the same breath it requires the sealing officer to send a report to the Collector for confiscation of the same.

8. We are of the opinion that the prescription “*immediately*” in Section 62 of the Act is with a purpose. The recovery of illicit liquor from any premises as per Bihar Prohibition and Excise Act, 2016 makes the premises liable for confiscation. Since such stringent consequences follow as a result of alleged seizure of illicit liquor, to obviate the scope of any false and arbitrary implication based on extraneous considerations, the Act as it stood on the date of seizure



provided for immediate sealing of the premises and not at any time thereafter at the vagary and sweet will of the authorities. Otherwise, on recovery of any intoxicant or liquor it would be open to any seizing authority under the Act to later on attribute the recovery to any premises and arbitrarily seal the same, and visit any person with the extreme consequence of confiscation in a most casual and arbitrary manner; which cannot be countenanced in law. In the instant case, it is not in dispute that the petitioner's house was never sealed for recovery of any liquor or intoxicant.

9. The impugned order of Sub Divisional Magistrate, on the contrary, shockingly has proceeded on the erroneous and factually *non est* assumption that the lands/house used in the offence was sealed. Relevant extract of the impugned order reads thus:

"वर्णित मामले में प्रयुक्त जप्त भूमि /घर (emphasis ours) मौजा -अमरपुर, थाना नं०-00, खाता नं०-242, खेसरा सं०-704, रकबा -0.11 डी० से अवैध शराब जप्त की गई है , जो प्रमाणित करता है की प्रश्नगत मकान का उपयोग शराब के रख-रखाव में किया गया है, जो अधिनियम के तहत वर्णित एवं दण्डनीय अपराध है / इस प्रकार उक्त मकान बिहार मद्यनिषेध एवं उत्पाद अधिनियम, 2016 की धारा 56(घ) के



तहत अधिहरण योग्य है।"

10. The FIR also is bereft of any details from which part of the house, in which room, open space, *varanda* or balcony, the alleged recovery has been made.

11. The FIR simply states that 32 units of *Super Speed Whisky* of 180 ml each, totally 5.76 litres was found in a plastic bag. However, FIR does not disclose where the plastic bag was lying and from which part of the house, or land it has been recovered. The seizure is also not followed by sealing of the premises from which alleged recovery has been made. For failure on the part of the Seizing Authority to specify the part of the premises from which the alleged seizure has been made, all the co-sharers in the property cannot be made to suffer the consequence of confiscation, irrespective of the fact whether any illicit liquor or intoxicant has been recovered from their shares in the property.

12. Another lapse fatal to the case of the respondents, in the instant case is absence of any forensic report to certify the alleged seizure to be an intoxicant or liquor. It is mentioned in the F.I.R. that five samples of the recovered substance were sealed for testing, at the place of recovery itself. However, the impugned order of confiscation is not with reference to any



laboratory report. There is no laboratory report certifying the recovered substance to be an intoxicant or liquor. Thus, there is no material, or factual basis for the confiscating Authority to record a finding/satisfaction that an offence has been committed under the Act, which is a *sine qua non* for confiscation as per section 58 of the Act.

13. It is, thus, clear that in the instant case, the seizing officer has committed several statutory violations. The premises or part thereof, used for storing the recovered substance has not been specified leading to violation of Section 56(c). Another serious statutory violation is that there is no laboratory report certifying the recovered substance to be intoxicant or liquor. There is, thus, no basis to conclude that the recovered substance was an intoxicant or liquor, much less to conclude the commission of any offence under the Act. The seizing authority has also not sealed let alone 'immediately sealed' the premises from which the alleged recovery was made.

14. Thus, there was no basis for the police officer, who had allegedly recovered and seized the substance, to send a report to the Collector for confiscation. Any report to this effect was required to be preceded by recovery of liquor or intoxicant from the specified premises, which has been used for



commission of an offence under the Act. The premises was required to be sealed and report sent immediately to the Collector for confiscation, which also has not been done. Also there is no lab report certifying the recovered substance to be an intoxicant or liquor.

15. The above noted statutory pre requisites for the Confiscating Authority to assume jurisdiction to proceed to confiscate the premises were not fulfilled. In such a situation, the Confiscating Authority had no jurisdiction to proceed to pass an order of confiscation. It is only when the above pre requisites as per Section 56(c), 58 and 62 of the Act are fulfilled that an order of confiscation may be passed under the Act. The order of confiscation, therefore, is without jurisdiction.

16. The order of confiscation is also in violation of a time honoured legal principle that when statute requires doing of a particular thing in a particular manner then it can be done in that manner alone and all other modes of performance are necessarily forbidden. This principle has been followed by the Apex court in several decisions, and restated in para 40 of decision of the Apex Court in the case of ***Chief Information Commissioner & Anr vs. State of Manipur*** reported in ***(2011) 15 SCC 1***.



17. For the above noted reasons, this Court would find that the impugned confiscation order dated 31.05.2022 is unsustainable in the eyes of law and is hereby quashed.

18. The authorities are restrained from interfering with the petitioner's property on the basis of allegations arising out of Dhansoi P.S. Case No. 139 of 2021 and the impugned confiscation order dated 31.05.2022.

19. Writ petition is allowed.

20. The authorities shall release the house and lands appurtenant thereto, in accordance with law, within four weeks from the date of receipt/production of a copy of this order.

(Madhuresh Prasad, J)

I agree
(Chakradhari Sharan Singh, J):

(Chakradhari Sharan Singh, J)

SUMIT/-

AFR/NAFR	AFR
CAV DATE	23.03.2023
Uploading Date	21.07.2023.
Transmission Date	NA

