

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15536 of 2017

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Brij Kishore Thakur son of Late Ram Prasad Thakur, resident of Village-
Singaha, P.S.- Meerganj, District- Gopalganj.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Excise Commissioner, Excise Department, Government of Bihar, Patna.
3. The Collector, Gopalganj.
4. The Superintendent of Police, Gopalganj.
5. The D.C.L.R., Hathua, District- Gopalganj.
6. The Excise Superintendent, Gopalganj.
7. The Circle Officer, Hathua, District- Gopalganj.
8. The Officer-in- Charge, Hathua Police Station, District- Gopalganj.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Ranjeet Kumar Pandey, Advocate
For the Respondent/s : Mr.Vikash Kumar -Sc11

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 20-06-2023

The petitioner is aggrieved by Annexure-1 passed by the District Collector wherein though the power to confiscate was not exercised, the premises of the petitioner was sealed. The learned counsel for the petitioner submits that when the Authority had found itself devoid of the power to confiscate the premises from which allegedly foreign liquor was recovered; the sealing of the premises cannot be continued. The learned Government Advocate,



however, resisted the challenge made on the ground that the power to confiscate is very evident from Section 58 of the Bihar Prohibition and Excise Act, 2016 (hereinafter referred to as “Act of 2016”) and the District Collector had erred insofar as not exercising the powers conferred thereunder. The learned Advocate General, who assisted this Court also pointed out that this Court in L.P.A. No. 1647 of 2015, based on a Full Bench decision had declared the right to confiscation which is squarely applicable under the Act of 2016. The learned Advocate General prays for a remand to the District Collector.

The facts as available from the records indicate a raid having been conducted and an FIR registered as Case No. 191 of 2016 of Hathua Police Station. Country liquor was seized from the premises in which a saloon was carried on by one Manoj Thakur as well as from a motorcycle parked in front of the saloon. The petitioner herein had taken the premises on rent, from one Hathua Gopal Temple and was paying rent to Hatua Raj. The petitioner had given the shop to his nephew Manoj Thakur who was running a saloon therein. An FIR was filed against the petitioner and his nephew for illegal sale of liquor within the premises. The District Collector after noticing the facts categorically found that there was illegal sale of liquor carried out by Manoj Thakur within the



premises. However, finding that premises itself is under land ceiling proceedings, confiscation was held to be not justified. Despite this finding, the shop was sealed and status quo directed.

In the present writ petition filed on 14.11.2017, the petitioner was directed to furnish two sureties to the satisfaction of the District Magistrate, Gopalganj and the saloon was released to the possession of the petitioner with a restriction on the petitioner, from making any alienation.

The power to confiscate is very evident from the Act of 2016. But the Collector was of the opinion that due to pendency of ceiling proceedings against the premises, confiscation was not justified. It is also discernible from the order that the proceedings were initiated on the proposal of the Superintendent of Police, Gopalganj, who was also a party before the District Collector. Hence, if the State or the Police were aggrieved with the findings of the District Collector, there could have been an appeal filed under Chapter 9 of the Act of 2016. An appeal is maintainable under Section 92 of the Act of 2016 and there is also conferred a revisional power on the State Government under Section 93, which also can be initiated *suo moto*. Neither was an appeal filed nor was the *suo moto* power under Section 93 exercised by the State Government, despite the order of the Collector having been



brought to the notice of the State Government as early in 2017, when the above writ petition was filed.

It is very pertinent that the above writ petition is filed by the person having possession of the premises against which confiscation proceedings were initiated. The confiscation proceedings were found to be not justified but the District Collector directed the sealing of the premises. The challenge made by the petitioner is only against the sealing of the premises and there is no challenge by the State, insofar as the order of the Collector; specifically regarding the finding of the confiscation proceedings to be not justified. In fact, even if the ceiling proceedings were pending, the Collector could have confiscated the premises thus, making the ceiling proceedings redundant. True as of now, there is a mitigation offered by the Bihar Prohibition and Excise Rules, 2021 under Rule 12B. Hence, even if such benefit was availed by the owner or person in possession of the premises, the ceiling proceedings could have been revived and proceeded with.

We are unable to direct any remand, as sought for by this Court, for fresh consideration especially since there is no challenge to that part of the order and the State which had ample recourse, did not avail the same. In the above circumstances, we set aside



Annexure-A1 order to the extent, it directed continued sealing of the premises, till the ceiling proceedings are concluded. We make it clear, we have not said anything about the land ceiling proceedings and the interference is caused only to the order under the Excise Act, 2016.

The writ petition is allowed leaving the parties to suffer their respective costs.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

sharun/-

AFR/NAFR	NAFR
CAV DATE	N/A
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