

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16242 of 2023

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Saroj Kumar @ Saroj Yadav, son of Late Bal Krishna Yadav, resident of
Village- Kushthan, Ward No. 1, P.S.-Bhariganj, District- Madhepura.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary of the Bihar Prohibition and Excise Department
Government of Bihar, Patna.
3. The Commissioner, Excise Department, Govt. of Bihar, Patna.
4. The District Magistrate, Madhepura.
5. The Additional Collector-cum-Additional District Magistrate, Madhepura.
6. The Superintendent, Excise and Prohibition, Madhepura.
7. The Superintendent of Police, Madhepura.
8. That Officer-in-charge of the Bihariganj Police Station, District-Madhepura.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Alok Kumar 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 RAMESH CHAND
MALVIYA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 24-11-2023

In the instant petition, petitioner has prayed for the
following relief/s:-

*“1. That this is an application for
issuance of appropriate writ(s), order(s)
direction(s) for quashing of the order dated
12.09.2023 passed in Excise Confiscation Case No.
117/2023 (State Vs. Kundan Kumar Sharma &
others) and issued the Court of Additional*



Collector-cum-Additional District Magistrate, Madhepura whereby and whereunder a direction has been issued to the petitioner to deposit Rs.1,00,000/- (one lac) within fortnight as Penalty otherwise the land situated under Mauza-Kushthan, Thana No. 233, Khata No. 268, Khesra No. 501, Area, 14.600 decimal, Jamabandi No. 698 situated besides State Highway 91 will be confiscated and sold inviting open bid under the provision of the section 12(Kha) of the Bihar Prohibition and Excise (Amended) Rules 2022 in connection with Bihariganj P.S. Case No. 85/23 u/s 30(A) of Excise Act.

And further for a direction to the Respondents to release the said premises of the petitioner forthwith without any condition considering the facts and circumstances of the case.

And for stay of the operation of the order dated 12.09.2023 passed in Excise Confiscation Case No. 117 of 2023 passed and issued by the Additional Collector-cum-Additional District Magistrate, Madhepura vide its D.B. No. 883 dated 12.09.2023 (Annexure-P/6).”

2. *Prima facie*, the present writ petition is not maintainable in view of the fact that petitioner has statutory remedy of filing Appeal under Section 92 of the Bihar Prohibition and Excise Act, 2016. It is also to be noted that



further petitioner has remedy of filing revision under Section 93 of the Bihar Prohibition and Excise Act, 2016 read with Bihar Prohibition and Excise Rules, 2021. Without exhausting the statutory remedy, the petitioner has rushed to this Court. That apart petitioner has not assailed the impugned order dated 12.09.2023 on the score that it is in violation of any statutory Rule or the impugned order has been passed by the incompetent authority so as to entertain the present writ petition, in the light of Apex Court decision in the case of *Union of India and Another v. Kunisetty Satyanarayana* reported in (2006) 12 SCC 28 and *Secretary, Ministry of Defence and Others v. Prabhash Chandra Mirdha* reported in (2012) 11 SCC 565, so as to interfere with the impugned order.

3. Therefore, the petitioner has not made out a case so as to entertain the present petition in the absence of exhausting the statutory remedy available under the Bihar Prohibition and Excise Act, 2016 read with Bihar Prohibition and Excise Rules, 2021. Accordingly, the present writ petition stands disposed of as premature.

4. Disposal of the present petition would not be a hurdle for the petitioner to invoke the remedy of appeal before the Appellate Authority under Section 92 of the Bihar



Prohibition and Excise Act, 2016 read with Bihar Prohibition and Excise Rules, 2021. Petitioner is also permitted to make necessary Interlocutory Application before the Appellate Authority in seeking any interim relief during the pendency of the appeal, if such interim relief is sought before the Appellate Authority, the Appellate Authority is hereby directed to consider at the earliest from the date of filing of such application and so also expedite Appeal.

(P. B. Bajanthri, J)

(Ramesh Chand Malviya, J)

manish/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	28.11.2023
Transmission Date	NA

