

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17885 of 2023

-
-
1. Chandani Devi Wife of Sanjay Kumar Resident of - Village - Moriyama, P.S.- Bikram, District - Patna, Bihar.
 2. Rekha Devi, Wife of Raj Kumar Resident of - Village - Moriyama, P.S.- Bikram, District - Patna, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Excise and Prohibition, Govt. of Bihar, Patna.
2. The Excise Commissioner, Patna, Bihar.
3. The District Magistrate Cum Collector, Patna, Bihar.
4. The Superintendent of Police, Patna, Bihar.
5. The Excise Superintendent of Police, Patna, Bihar.
6. The Excise Inspector, Patna, Bihar.
7. The Officer -in- Charge, Bikram Police Station, Bikram.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Nishikant, Advocate
For the Respondent/s : Mr. Yogendra Prasad Sinha (AAG 7)

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE RAMESH CHAND
MALVIYA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 18-12-2023

In the instant petition, petitioners have prayed for the following relief(s):-

"(i) For issuance of appropriate Writ/Writs, direction/ directions or orders/order especially in the nature of Certiorari, quashing the order dated 26/05/2023 passed by the Collector in Excise Confiscation Case No.- 5469/2022-23, whereby and whereunder the premises of the Petitioners, who are lawful owner of the Property situated at Mauja Moriyama, Khata No.-508, Kheshra no. 429, Rakwa 42.5 Decmial, Thana-



Bikram, District - Patna, which was ordered to be confiscated in connection with Bikram P.S. Case No.- 549 of 2022, dated. 20/12/2022, as being the owner of the property and it was their responsibility to ensure that their premise is not being used for any unauthorized business.

(ii) For issuance of appropriate Writ/Writs, direction/ directions or orders/order especially in the nature of Mandamus directing the Respondents to release the Godown having been constructed upon the land appertaining to Mauja Moriyama, Khata No.-508, Khesra no. 429, Rakwa 42.5 Decmial, Thana- Bikram, District - Patna in favour of the Petitioners, which was confiscated by the Respondents in connection Bikram P.S. Case No.- 549 of 2022, dated. 20/12/2022, registered under section 467, 468, 420 and 120B of Indian Penal Code, 1860 and under section 30(a) (b), 32 (ii) and (iii), 36 and 41(i) and (ii), 56 and 62 of Bihar Prohibition Excise Act as amended by Bihar Prohibition and Excise Act 3 of 2022, as the Petitioner are lawful owner of the Godown and had leased out the said premises, pursuant to an agreement dated. 14/12/2022 (Annexure-P/2).

(iii) For issuance of appropriate Writ/Writs, direction/ directions or orders/order especially in the nature of Mandamus directing the Respondents that during the pendency of the present writ petition, the Respondents may be restrained from taking any coercive step in pursuance of the proceeding under Bihar Prohibition Excise Act, 2016 against the confiscated property.

(iv) For any other relief/reliefs, which the Hon'ble court may grant in general interest, that may be deemed appropriate and necessary in this case."

2. Petitioners without exhausting statutory remedy of appeal before the appellate authority under Section 92 of Bihar



Prohibition and Excise Act, 2016 and further he had remedy of filing revision (If it is effective) has reached this Court. When the petitioner has statutory remedy of appeal and revision it is not appropriate for this Court to decide the present petition in the light of Hon'ble Apex Court decision in the case of **State of Jammu and Kashmir Vs. R.K. Zalpuri and others** reported in **AIR 2016 Supreme Court 3006**. The relevant paragraph 20 reads as under:-

“20. Having stated thus, it is useful to refer to a passage from City and Industrial Development Corporation v. Dosu Aardeshir Bhiwandiwalla and Others, wherein this Court while dwelling upon jurisdiction under Article 226 of the Constitution, has expressed thus:-

“The Court while exercising its jurisdiction under Article 226 is duty-bound to consider whether:

(a) adjudication of writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved;

(b) the petition reveals all material facts;

(c) the petitioner has any alternative or effective remedy for the resolution of the dispute;

(d) person invoking the jurisdiction is guilty of unexplained delay and laches;

(e) ex facie barred by any laws of limitation;



(f) grant of relief is against public policy or barred by any valid law; and host of other factors.”

(Underline Supplied)

3. Be that as it may, the present petition is treated as appeal before the appellate authority. Petitioners are hereby directed to furnish a copy of this petition before the appellate authority. Appellate authority is hereby directed to decide the appeal within a reasonable period of time of three months from the date of receipt of the appeal (petition is treated as appeal) and communicate the decision to the petitioner. During pendency of the appeal, the concerned authorities are hereby directed not to proceed with any auction proceedings till appeal is decided.

4. With the aforesaid observations, the present writ petition stands disposed of.

(P. B. Bajanthri, J)

(Ramesh Chand Malviya, J)

Vikash/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	
Transmission Date	N/A

