

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3247 of 2024

=====

Uday Prakash Son of Late Deoki Nandan Prasad, Resident of Village- Tulsi Ahar, Ward No. 1, Police Station- Hisua, District- Nalanda.

... .. Petitioner/s

Versus

1. The State of Bihar Through the Additional Chief Secretary, Department of Excise, Government of Bihar, Patna.
2. The Excise Commissioner, Bihar, Patna.
3. The Additional Collector, Nawadah.
4. The Superintendent of Police, Nawadah.
5. The S.H.O.-cum-Officer-in-charge, Hisua Police Station, District- Nawadah.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr.Arun Kumar, Advocate

For the Respondent/s : Mr.Saroj Kumar Sharma, AC to AAG - 3

=====

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY)

Date : 23-04-2024

This writ petition has been filed by the petitioner against the order dated 11.05.2023 passed by Additional Collector, Nawadah (respondent no. 3) in Confiscation Case No. 82 of 2022 and also against the order dated 21.08.2023 passed by Excise Commissioner (respondent no. 2) in Excise Appeal Case No. 117 of 2023.

2. By filing the present writ petition, the petitioner has prayed for the following relief(s):-

(i) For issuance of a writ in the nature of certiorari setting aside the impugned



appellate order bearing Memo No. 116 dated 21.08.2023 passed in excise Appeal Case No. 117 of 2023 by Excise Commissioner (Respondent No. 2) whereby and where under without taking into consideration the aspects that whether Parti land over which 4 litres of country made wine containing 1/2 litre 8 black Polythene was lying without knowledge of petitioner land owner is liable to be confiscated or not in view of section 56 of Bihar Excise Act 2016 rather in view of amended provision under section 57(B) of Bihar Excise Amendment Act 2022 imposed penalty of Rs. 2 Lacs and directed to release the lands in question of petitioner which is exorbitant and not proper in the eye of law.

(ii) For issuance of a writ in the nature of certiorari setting aside the order bearing Memo No. 13 dated 11.05.2023 passed in Confiscation Case No. 82 of 2022 by learned Additional Collector, Nawadah as contained in Annexure-3 whereby and where under without considering the preliminary issue regarding the seized 4 litre country made wine kept on Parti land of petitioner situated one Kilometre away from the residential house of petitioner and Parti land is liable to be confiscated under section 56 of Bihar Prohibition & Excise Act, 2016 and overlooking all the aspects passed order of confiscation of Parti land pertaining to Khata No. 580, Khesra No. 545 Area 0.2 ^{3/4} decimal and further directed to assess the valuation of land from Registry Office and take steps for auction sale of the lands in question.

(iii) For a direction upon the Respondent concerned to set free the lands in question in



the facts and circumstance of the case without paying penalty as petitioner has not committed any offence and lands in question is Parti land no structure is existing over the lands in question rather petitioner's father had purchased the Parti land for constructing dwelling house but till date no construction is made over the lands in question and even Parti lands in question has neither been sealed a seized as per seizure list incorporated with connected First Information Report bearing Hisua Police Station Case No. 110 of 2022 under 30(a) of Bihar excise Act.

(iv) Any other order/orders for granting any other relief/reliefs for which the petitioner is found entitled to in the facts and circumstances of the case.

3. The petitioner has further remedy of filing Revision under Section 93 of Act, 2016, he has not exhausted such remedy for the reasons that Appellate and Revisional authority post was manned by one officer. Therefore, Revision would be ineffective or impracticable to exhaust.

4. Briefly stated the facts of the case is that 4 litres of country made liquor was recovered from Parti land of the petitioner and on the basis of alleged recovery, land in question (bearing Khata No. 580, Khesra (Plot) No. 545, Area $3\frac{3}{4}$ decimal) is liable to be confiscated under Section 56 of Bihar Prohibition and Excise Act, 2016.

5. Learned counsel for the petitioner submitted



that the alleged recovery was made from the land in question which is a parti land situated far away from the residential house of the petitioner and the said land was existing in the name of his deceased's mother. He further submitted that said land is not liable to be confiscated without deciding the preliminary issue of maintainability of confiscation proceeding against the petitioner under Section 56 of Bihar Prohibition and Excise Act, 2016 rather passed the order of confiscation dated 11.05.2023 confiscating the land bearing Khata No. 580, Khesra (Plot) No. 545, Area 3¾ decimal of petitioner and it was directed to get the value of land assessed from concerned Registry Office and to take steps for auction sale of the land in question and to deposit the amount in Government exchequer. Learned counsel further submitted that the petitioner assailed the order of confiscation of parti land of petitioner vide Excise Appeal Case No. 117 of 2023 before the Excise Commissioner, Bihar, Patna raising all the issues as to whether the land in question pursuant to allegation made in First Information Report of seizure list is liable to be confiscated in view of Section 56 of the Excise Act has not been decided and in view of Section 57(3) of Bihar Excise (Amended) Act, 2022, fine of Rs. 2 Lakhs was imposed and direction was given to release the land in question after



accepting the proposal in Form V by the land owner, failing which after 15 days authority concerned may take step for auction sale of the land in question. Learned counsel further submitted that Respondent No. 3-Confiscating Authority has misconstrued the statutory provision of Section 47 and 48(2) of Bihar Excise Act, 2015 related to presumption as to the commission of offence in certain cases which is also not applicable against the petitioner as petitioner had no knowledge about keeping small quantity of 4 litres of country made wine in vacant (parti) land of petitioner situated far away from the dwelling house of the petitioner and the Appellate authority passed the order which is contrary to law as penalty of Rs. 2 lakhs was imposed on the basis of self assessment for releasing the land in question which is totally excessive. He further submitted that there is a meagre amount of recovery of 4 litres of country made liquor and imposition of fine is disproportionate to the offence committed and it is against the mandate of equity and justice. Learned counsel for the petitioner further submitted that the impugned order passed by respondents are bereft of merit and they have acted against the mandate of law as they have not followed the relevant statutory provision in the imposition of fine.



6. Counter affidavit on behalf of respondent no. 4 has been filed. In para 12, it has been narrated that order was passed by confiscating officer for confiscating the land of the petitioner with a direction to get the valuation of land assessed from the Registry Office and to take steps for auction of the land and to deposit the same with the public exchequer. In para 13 of the counter affidavit, it has been submitted that the Excise Commissioner(respondent no. 2) passed a reasoned and speaking order by granting opportunity to petitioner to deposit penalty of Rs. 2 lakhs. It has further been submitted in the counter affidavit that in due course of time, for the disposal of illicit liquor, a proposal was sent, as also the land was verified from the Circle Officer, Hisua Circle, Nawada and it was found to be registered in the name of petitioner's mother namely *Ashalata Devi*. Learned counsel for the State on the basis of aforementioned facts submitted that order passed by the concerned official respondents is justified and legal and hence, no interference is needed.

7. Having gone through the material available on record, it is crystal clear that there is a meagre amount of recovery of 4 litres of country made liquor and imposition of fine is disproportionate to the offence committed and conscious



of this court does not allow to impose harsh penalty for meagre amount of recovery of 4 litres of country made liquor. Such disproportionate fine should not be allowed to impose. Imposition of fine also does not commensurate with the offence committed regarding recovery of 4 litres of country made liquor. There is no material information in the impugned order regarding the valuation of land in question.

8. Keeping in view the discussions made above, order dated 11.05.2023 passed by Additional Collector, Nawadah (respondent no. 3) in Confiscation Case No. 82 of 2022 and the order dated 21.08.2023 passed by Excise Commissioner (respondent no. 2) in Excise Appeal Case No. 117 of 2023 are hereby quashed.

9. In the above circumstances, we are of the opinion that for the confiscation of land, considering the minimal quantity of country made liquor recovered, fine of Rs. 2,00,000/- would be too harsh and it is reduced to a sum of Rs. 20,000/-, on deposit of Rs. 20,000/- the land in question be released. Certified copy of this judgment shall be produced within two weeks before the Additional Collector, Nawadah, and within two weeks from then if the modified fine as provided herein is deposited, the land in question shall be released. If the



fine is not remitted, the Additional Collector, Nawadah, shall
continue with the confiscation proceedings.

10. With the above observation/direction, the
present petition stands disposed of.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

alok/-shahzad

AFR/NAFR	AFR
CAV DATE	08.04.2024.
Uploading Date	23.04.2024.
Transmission Date	N.A.

