

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4891 of 2024

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Wakil Sahni, Son of Baso Sahni, Resident of Village- Simri Bakhtiyarpur, Mal Godam Road, Ward No. 12, Police Station- Bakhtiyarpur, District- Saharsa at present residing at Railway Colony, Ward No. 14, Police Station- Banmankhi, District- Purnea.

... .. Petitioner.

Versus

1. The State of Bihar through Excise Commissioner, Department of Excise, Bihar, Patna.
2. The District Magistrate, Bhagalpur.
3. The Senior Deputy Collector, District Revenue Section, Bhagalpur.
4. The Superintendent of Police, Bhagalpur.
5. The Superintendent of Excise, Bhagalpur.
6. The Station House Officer, Jagdishpur Police Station, District- Bhagalpur.

... .. Respondents.

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Appearance :

For the Petitioner	:	Mr. Uday Chand Prasad, Advocate. Ms. Pooja Prasad, Advocate.
For the State	:	Mr. Ajay Behari Sinha, GA-8.
For the S.B.I.	:	Mr. Rakesh Kumar Singh, Advocate.

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE S. B. PD. SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 05-12-2024

In the instant writ petition, the petitioner has prayed
for the following relief(s):

“(i) For issuance of writ in the nature of certiorari for quashing of order dated 26.08.2022 passed by Respondent no.3 in Misc (Excise) Case No.17 of 2021-22 whereby petitioner’s vehicle Scorpio bearing No.BR-11PB-9995 has been



confiscated and by the said order he has directed to Superintendent of excise, Bhagalpur to sell the vehicle through open auction.

- (ii) For issuance of writ in the nature of Mandamus direction to Respondents to release the petitioner's vehicle Scorpio bearing BR-11PB-9995 in favour of petitioner.
- (iii) For issuance of appropriate writ, order, direction save and except in accordance with law."

2. Learned counsel for the respondents-State raised a preliminary objection to the extent that the present writ petition has been filed after one year from the date of cause of action accrued to the petitioner insofar as confiscation read with the auction proceedings dated 26.08.2022 and 06.10.2022 respectively.

3. For filing writ petition, there is no time limit stipulated. In the absence of stipulation of time limit for filing writ petition, one has to draw inference that whether is there any latches on part of petitioner or not. Question of latches would arise as and when if writ petition is filed beyond three years with reference to the principle insofar as filing of suit. For filing of suit, limitation would be three years. Therefore, both



delay and laches is not forthcoming in the present case.

4. It is further submitted that the petitioner has not exhausted statutory remedy of appeal before the Appellate Authority against the confiscation order dated 26.08.2022.

5. We could have referred the matter to the Appellate Authority. However, there is a violation of statutory provisions insofar as conducting confiscation proceedings. Section 58 of the Bihar Prohibition and Excise Act, 2016 relates to confiscation by District Collector and it reads as under:

“58. Confiscation by District Collector.-(1)

Notwithstanding anything contained in this Act or any other law for the time being in force, where anything liable for confiscation under this Act is seized or detained under the provisions of this Act, the officer seizing and detaining such property shall, without any reasonable delay submit a report to the District Collector who has jurisdiction over the said area;

(2) On receipt of the report under sub-section (1), the District Collector if satisfied that an offence under this Act has been committed, may, whether or not prosecution is instituted for the commission of such an offence and whether or not a case is pending before any court, order confiscation of such property;

(3) The Collector shall, before passing an order under sub-section (2), give a reasonable opportunity to the person concerned, of being heard;

(4) While making an order of confiscation under sub-section (2), the District Collector may also order that such of the properties which the order of confiscation relates, which in his opinion cannot be preserved or are not fit for



human consumption, be destroyed. Whenever any confiscated article has to be destroyed in conformity with these provisions, it shall be destroyed in the presence of a Executive Magistrate or officer ordering the confiscation or forfeiture, as the case may be, or in the presence of the Excise Officer not below the rank of a Sub-Inspector;

(5) While making an order of confiscation under sub-section (2), if the District Collector is of the opinion that it is expedient in the public interest to do so, he may order the said property or any part thereof to be sold by public auction or dispose of departmentally and proceeds deposited with the State Government;

(6) The District Collector shall submit a full report of all particulars of confiscation to the Commissioner of Excise within one month of such confiscation.”

Underline Supplied

6. Reading of Section 58 of the Bihar Prohibition and Excise Act, 2016, it is evident that police officials or excise officials from the date of registration of F.I.R., they have to forward the papers to the confiscating authority without any undue delay and if there is any delay in forwarding the papers, reasons must be assigned.

7. In the present case, F.I.R. was registered on 18.01.2022. On the other hand, excise officials were stated to have forwarded the papers on 05.03.2022. There is no explanation insofar as forwarding the papers to the confiscating authority with any specific reasons for delay and it is not



disputed by the learned counsel for the State in the light of relevant records. On this ground alone, the petitioner has made out a case.

8. Pursuant to confiscation order dated 26.08.2022, respondents have undertaken the auction proceedings on 06.10.2022 and they have realized an amount of Rs.6,30,000/- (Rupees Six Lacs Thirty Thousand) after auctioning the subject matter of vehicle bearing No.BR-11PB-9995.

9. In the light of these facts and circumstances, there is a non-compliance of Section 58 of the Bihar Prohibition and Excise Act, 2016 in not assigning the reasons for belated forwarding the papers to the confiscating authority by the excise officials, results in vitiation of further proceedings of confiscation and auction proceedings.

10. Having regard to the fact that the third party right has been created in the auction proceedings, therefore, the petitioner is not entitled to return of the vehicle. On the other hand, he is entitled to realize the auction amount of a sum of Rs.6,30,000/-(Rupees Six Lacs and Thirty Thousand).

11. The concerned authority is hereby directed to pay a sum of Rs.6,30,000/-(Rupees Six Lacs and Thirty Thousand) to the petitioner in the form of Pay Order/Demand Draft within a



period of four weeks from the date of receipt of this order.

12. In the light of these facts and circumstances, the impugned order dated 26.08.2022 passed by the Respondent No.3-The Senior Deputy Collector, District Revenue Section, Bhagalpur, in Misc. (Excise) Case No.17 of 2021-22 stands set aside and the instant writ petition stands allowed.

(P. B. Bajanthri, J)

(S. B. Pd. Singh, J)

P.S./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	11.12.2024.
Transmission Date	NA

