

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11316 of 2024

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Dashrath Singh Son of Late Ramjagi Singh Resident of Mohalla-Kargahar,
P.S.-Kargahar, District-Sasaram at Rohtas.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Forest, Government of Bihar, Patna.
2. The Principal Secretary, Excise Department, Govt. of Bihar, Patna.
3. The Commissioner, Excise Department, Govt. of Bihar, Patna.
4. The District Magistrate, District-Sasaram at Rohtas.
5. The Superintendent of Police, Sasaram at Rohtas.
6. The Officer in charge of Karghar Police Station, Sasaram at Rohtas.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shyam Bihari Singh, Advocate
For the Respondent/s : Mr. Subhash Prasad Singh, GA 3

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY

CAV JUDGMENT

(Per: HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY)

Date : 08-10-2024

1. This writ petition has been filed by the petitioner to set aside the order dated 15.01.2024 passed in Excise Revision Case No. 02/2024 by which the 2nd respondent rejected the Excise Revision of the petitioner without assigning any valid reason and also to set aside the order dated 12.06.2023 passed by the 3rd respondent in Excise Appeal Case No. 27 of 2023 by which the 3rd respondent rejected the Excise Appeal filed by the petitioner and confirmed the order dated 16.08.2022 passed by the 4th respondent and also to set aside the



order dated 16.08.2022 passed by of the 4th respondent in Excise Confiscation Case No. 20/2022 arising out of Karghar P.S. Case No. 20 of 2018 by which the house of the petitioner which is under construction was confiscated by the 4th respondent under Section 58(ii) of Bihar Prohibition and Excise Act, 2018 and, therefore, prays to stay the operation of judgment/orders dated 15.01.2024, 12.06.2023 and 16.08.2022 as deem fit and proper in the circumstances of the case.

2. The brief facts of the case are that on 21.01.2018 at 07.30 PM based on a secret information that Mahendra Kumar Singh, Balram Kumar and Bhindi Kumar were indulged in business of illicit wine, the search party reach the place of occurrence and saw one person closing the door of the shop and trying to flee away. With the help of Chaukidar and local persons, the informant identified person fleeing away as that of Balram Kumar. It is further alleged that when search was conducted in the said shop, total 55.080 litres of foreign wine was recovered for which a seizure list was prepared. Basing on the Fardbeyan of the informant, the case was registered against Mahendra Kumar Singh, Balram Kumar and Bhindi Kumar on the file of Karghar Police Station vide Case No. 20 of 2018 (Annexure-P/1) dated 21.01.2018 for the offence



punishable under Section 30(a) of the Bihar Prohibition and Excise Act, 2018. Later a chargesheet was filed by the police against above named accused.

3. During the pendency of the case, the Circle Officer, Karghar submitted his report to the Deputy Collector, Rohtas vide letter No. 1159 dated 22.09.2022, stating the valuation of the land in question bearing Khata No. 318, Khesra No. 819, area 9 decimals, situated at village Karghar and stated that the shop stand on 1 decimal of land belonging to the petitioner, namely, Dastrath Singh and also stated rate of as per decimal land in that area is Rs. 1,80,000/-. The valuation report is at Annexure-P/2.

4. It is the specific contention of the Learned counsel of the petitioner that while passing order in Confiscation Case No. 20 of 2022, the respondents have wrongly passed the order of valuation of the land. The land in question is not valued of Rs. 20,00,000/- and while accepting the report of the District Sub Registrar, the 4th respondent has failed to consider the report of the Circle Officer, issued vide letter No. 1159 dated 22.09.2022 and instead of it wrongly accepted the report of the Joint Registrar, Registration, Rohtas at Sasaram and passed an order directing the petitioner to pay Rs.



20,00,000/-.

5. It is further contended by the Learned counsel for the petitioner that the petitioner preferred an appeal before the 3rd respondent vide Appeal No. 27 of 2023 challenging the order of the 4th respondent but without considering the points raised by the petitioner, the 3rd respondent mechanically confirmed the order passed by the 4th respondent. It is further contended by the Learned counsel for the petitioner that although the 3rd respondent discussed the provision of Section 12B of the Bihar Prohibition and Excise (Amendment) Rules 2022, but failed to consider the market value of land upon which the seized shop is valued Rs. 1,80,000/- only and without giving finding about the quantum of amount to be deposited by the petitioner, dismissed the Appeal. It is also contended by the Learned counsel for the petitioner that the shop stand only on 1 decimal of land of the petitioner and rest 8 decimal of the land belongs to the other co-sharer of the petitioner and respondent nos. 3 and 4 failed to consider the said aspect.

6. Being aggrieved by the order of the appellate authority, the petitioner preferred a Revision Case No. 2 of 2024 before the 2nd respondent. It is the contention of the



Learned counsel for the petitioner that the 2nd respondent confirmed the orders of the appellate authority without assigning any valid reasons, while rejecting the revision. It is specific contention of the Learned counsel for the petitioner that the 4th respondent has not fixed amount on the basis of the report of the Circle Officer.

7. Respondent Nos. 2, 3 and 4 have filed detailed counter affidavits denying all the material allegation made in the writ petition and contended that as per the case of the prosecution Mahendra Kumar Singh, Balram Kumar and Bhindi Kumar are indulged in the business of illicit wine and to verify the secret information, the police team raided the place and saw one person closing the door of the shop and trying to flee away from the spot and with the help of Chaukidar and local persons, the informant identified person fleeing as that of Balram Kumar and during the course of search, they recovered total 55.080 litres of Indian Made Foreign Liquor and a seizure list was prepared. It is further contended in the counter that the District Collector-cum-District Magistrate, Rohtas by order dated 22.11.2022 vide Excise Case No. 20 of 2022 ordered for release of the premises/plot in question upon payment of penalty equivalent to Rs. 20,00,000/- vide order dated



13.12.2022. It was stated that since the owner of the premises is unable to deposit the levied penalty, the confiscation order dated 23.11.2021 was challenged, but the release of premises upon the levied penalty was confirmed by the Court of Excise Commissioner, Bihar, Patna vide Excise Appeal No. 27 of 2023 dated 12.06.2023. It is further contended that huge volume of alcohol was recovered from the premises which clearly comprehends that directly or indirectly, the petitioner was involved in the illicit storage and trade of alcohol. This felonious act of the petitioner stands up as the hindrance and hiccup against the prohibition policy in the State of Bihar. Further, it is also contended that against the orders of the appellate authority, the petitioner filed a revision case bearing Excise Revision Case No. 02/2024 but did not add any substantive and additional facts in the revision petition and the same was dismissed by the revisional authority and, therefore, it is humbly prayed by the respondents to dismiss the writ petition as it is devoid of merit.

8. It is contended by Learned counsel for the respondents that Section 32 of the Bihar Prohibition and Excise Act, 2016, which deals with, “**Presumption as to commission of offence in certain cases**”. Section 32(3) of the Act states



that “Where any equipment, machinery, animal, vessel, cart, vehicle, conveyance or any premises are used in the commission of an offence under this Act, and are liable to confiscation and/or liable to be sealed, the owner or occupier thereof would need to account satisfactorily, and in the absence of a satisfactory explanation the presumption that accused person committed the offence shall arise, unless proved otherwise.”

9. We have heard the rival contention of the petitioner as well as the respondents and given a thoughtful consideration.

10. On perusal of the record, it is evident that the Karghar P.S. Case No. 20 of 2018 dated 21.01.2018 was registered against one Mahendra Kumar Singh, Balram Kumar and Bhindi Kumar. Further, as per the *Fardbeyan*, search was conducted and it was identified during the search that the person who tried to flee away from the shop is one Balram Kumar and police personnel seized 55.080 litre of Foreign wine as per the seizure list. There were no allegations against the petitioner Dashrath Singh at any point of time or his involvement at the place of search or crime. As per the *Fardbeyan*, Balram Kumar locked the main door of the shop and tried to flee away towards south and one Mahendra Kumar



Singh, who is an associate of Balram Kumar works in Rampreet Memorial Hospital. The *Fardbeyan* also disclose that the Police personnel inspected the hospital building from outside and found that the back door of the hospital opened from inside. On perusal of the *Fardbeyan*, it can be noticed that the shop is the part of the hospital and these Foreign liquor was stored/hidden behind the medicines.

11. On perusal of Annexure-2, which is the report of Circle Officer, Karghar to the Deputy Collector Law, Rohtas at Sasaram, it is evident that the concerned land is registered along with vacant land and building stands in the name of Ram Ekbal Singh, Shivpoon Singh, Komal Singh, S/o Mahadev Singh and Sarup Singh, Lochan Singh, S/o Fakira Singh, Sita Ram Singh, Radha Singh, Dashrath Singh, Dudhnath Singh, S/o Ramjag Singh on Jamabandi No. 304/2 of Register -II. It is mentioned in detail that in the said plot No. 819, area – 0.09 decimal that is one part of the land is under the possession of Radha, Dashrath, Dudhnath Singh and two parts are under the possession of Sitaram Singh. The place of search is permanent house situated on the said land. As per the record, Dashrath Singh has 0.01 decimal share in the land in question. The residential rate of the said land as fixed by the District Registry



Office, Rohtas at Sasaram is Rs. 1,80,000/- per decimal. Annexure-3 is the order passed by the Collector-cum-District Magistrate, Rohtas. On perusal of the said Annexure, it is evident that an application was filed by Dashrath Singh for release of the house/place from where illegal liquor was recovered in Karghar P.S. Case No. 20/2018 dated 21.01.2018. Admittedly, during the police raid at the said house in question, the government official have confiscated the IMFL (liquor) and the house was sealed. It is specifically mentioned in the said order that as per the Bihar Prohibition and Excise (Amendment) Act, 2022, there is a provision to release the confiscated house/items by imposing a fine.

12. Section 57B of the Acts envisages for release of premises/goods on payment of penalty, Rule 12B of the Act states that : -

(1) If any premises or part thereof has been seized or sealed by any Police or Excise Officer under the Act, then in terms of section-57B (2) of the Act, the Collector or an officer authorized by him, upon receipt of an application in Form V from the owner of the said premises, may release or unseal the said premises or part thereof upon payment of such penalty as may be ordered by the Collector or the officer authorized by him. Provided, where it is not possible to ascertain the owner of the premises or the



owner is not coming forward, the Collector or the officer authorized by him shall, after waiting for 15 days from the date of seizure/sealing, proceed to confiscate the premises as per the provisions of the Act. (2) The Collector or the officer authorized by him shall have due regard to the economic status of the individual, nature of his involvement in the crime, location of the premises and the quantum of intoxicant recovered while deciding the quantum of fine to be paid by the individual. However, the fine shall not be less than Rs. one Lakh in any case.”

13. Admittedly, the order has been passed basing on the provisions of the Bihar Prohibition and Excise (Amendment) Act, 2022. The Collector-cum-District Magistrate, Rohtas directed Dashrath Singh (petitioner) to deposit the penalty of Rs. Twenty lakhs as per the provision under Section 57B(2) of the Act. However, the Collector-cum-District Magistrate, Rohtas failed to appreciate the fact that Dashrath Singh – petitioner was not the accused in Karghar P.S. Case No. 20 of 2018 and he is only the owner of the house. As per the *Fardbeyan* the said house was used for maintaining a hospital. There were no allegation against the petitioner Dashrath Singh in any manner whatsoever by the Excise officials. The petitioner is the co-owner and only holds 0.01 decimal of land for which the petitioner preferred an application for release of



the seized house from the place where the alleged recovery was made by the Karghar police in Case No. 20 of 2018 dated 21.01.2018. The Collector-cum-District Magistrate, Rohtas, the appellate authority and the revisional authority failed to appreciate the fact that the petitioner is nowhere connected with the illicit business of liquor and for which his house was seized. The petitioner is only the third party and as his shop was seized which is the part of the hospital, the petitioner has preferred the application to unseal the shop. Therefore, we are of the considered view that the authority, i.e., the Collector-cum-District Magistrate, Rohtas, The Commissioner, Excise Department, Government of Bihar and the Secretary, Excise Department, Govt. of Bihar has failed to consider the fact that the petitioner is only a third party to the Case No. 20 of 2018 on the file of Karghar Police Station and the petitioner cannot be held liable to pay huge penalty levied against him for unsealing the property of the petitioner. The valuation report of the Circle Officer also clearly disclose that not only the petitioner but there are other co-sharer, who are not at all involved in the commission of offence. The valuation report of the Circle Officer disclose that the valuation of the land was only Rs. 1,80,000/-, but the District Magistrate has passed a



confiscation order directing the petitioner to pay an amount of Rs. 20,00,000/-, which is not only arbitrary but illegal and bad in the eye of law.

14. In the above circumstances, we are of the opinion that the petitioner is third party to the Case No. 20 of 2018 on the file of Karghar Police Station, he cannot be held liable to pay huge penalty. Further the valuation report submitted by the Circle Officer concerned has not been considered by the Collector-cum-District Magistrate, Rohtas.

15. Keeping in view the discussions made above, order dated 16.08.2022 passed by the Collector-cum-District Magistrate, Rohtas at Sasaram (respondent No. 4) in Excise Confiscation Case No. 20 of 2022, which was confiscated by Excise Commissioner, Bihar, Patna (respondent no. 3) vide order dated 12.06.2023 passed in Excise Appeal Case No. 27 of 2023 and order dated 15.01.2024 passed by the Excise Secretary, Bihar, Patna, (respondent No. 2) passed in Excise Revision Case No. 02 of 2024 are, hereby, quashed.

16. The matter is remitted back to the Collector-cum-District Magistrate, Rohtas at Sasaram to consider the valuation report of the Circle Officer, Karghar, and to pass appropriate orders afresh. Further, the petitioner shall appear before the



Collector-cum-District Magistrate, Rohtas at Sasaram on or before the 30 November, 2024 along with the copy of the order with a fresh application for release of the property and in turns the Collector-cum-District Magistrate, Rohtas at Sasaram shall dispose off the application within two months of the filing of the application.

15. Accordingly, the writ petition stands disposed of with the aforesaid observation/direction.

(P. B. Bajanthri, J)

(G. Anupama Chakravarthy, J)

Spd/-

AFR/NAFR	NAFR
CAV DATE	04.09.2024
Uploading Date	08.10.2024
Transmission Date	NA

