**IN THE HIGH COURT OF JUDICATURE AT PATNA**
**Civil Writ Jurisdiction Case No.14870 of 2022**

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Umesh Goswami Son of Shiv Shankar Goswami, residence of village - Chainpur, Police - Station - Hathua, District - Gopalganj.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principle Secretary, Department of Excise Government of Bihar Patna.
2. The Commissioner Excise, Government of Bihar Patna.
3. The District Magistrate, Gopalganj.
4. The Superintendent of Police Gopalganj.
5. The Sub divisional Magistrate, Gopalganj.
6. The Station Head Officer Police - Station - Gopalpur, District - Gopalganj.

... ... Respondent/s

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**Appearance :**

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| For the Petitioner/s | : | Mr. Shambhu Prasad Yadav, Advocate |
| For the Respondent/s | : | Mr. Akash Chaturvedi, AC to 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 : 16-01-2024**

Heard learned counsels for the respective parties.

**2.** In the instant writ petition, petitioner has prayed for the following relief/reliefs:

> *"(i) For issuance of an appropriate writ in the nature of MANDAMUS, commanding and directing to the Respondents Authorities for release of a Bolero Pickup Van Registration No. B R 29 R – 7361 in favour of the petitioner which is seized by Respondent no. 6 in connection with*

*Gopalpur Police – Station case no. 04/2020 for offence under section 30 (a), Bihar Excise & Prohibition Act, 2016. The petitioner is bonafied registered owner of Bolero Pickup Van, which was siezed date 08-01-2020 subsequent by the Respondent no. 6.*

*It is further pray that set-aside auction order in Auction (Excise) case no. - 294 / 2020, 91 / 2020 Passed by Respondent No. 4 orders dated 26-12-2020 and 27-06-2022 as well as Excise Appeal case No. 200/2022 Passed by Respondent No. 2 order dated 12-04-2022.*

*It is further pray that set-aside auction order and release a Bolero Pickup Van Registration No. BR 29 R – 7361 in favour of the petitioner, which has been Auctioned by Respondent No. 4. It is further pray that Bolero Pickup Van Registration No. BR 29 R – 7361 was theft on 03-01-2020 and the petitioner was lodged First Information Report bearing Hathua P.S. case No. 02 / 2020 same day under sections 379 / 34 I.P.C. and the present occurrence on 08-01-2020.*

*(ii) That the respondents authorities have most illegally auction sold the petitioner vehicle to third person so they may be directed to pay damages/compensation of Rs. 18,73064/- (Eighteen Lakhs Seventy Three Thousand Sixty Four) rupees along with price of motor vehicle in question and also to compensonate the petitioner in the tune of Rs. 2,00000/- Two Lakhs for the harassment and mental agony and loss of*

*business also to pay amount Rs. 100000/- one lakh by way of litigation cost, interalia."*

**3.** The petitioner is the owner of the Motor Vehicle/Bolero Pick-Up Van bearing registration No. BR 29 R – 7361. For theft of the aforementioned vehicle, petitioner registered an FIR on 03.01.2020. Thereafter, the very same vehicle was involved in the excise offence on 08.01.2020. To that effect, an FIR was registered. Consequently, confiscation proceedings has attained finality on 26.12.2020. Thereafter, petitioner preferred appeal before the appellate authority and the appellate authority remanded the matter to the confiscating authority for fresh consideration on 12.04.2022. In the meanwhile, the concerned authority proceeded to auction the subject matter of motor vehicle while issuing a paper notification on 16.06.2021 and it was auctioned on 01.07.2021 and realized the amount of Rs. 1,38,000/- (Rupees One Lakh Thirty Eight Thousand). In respect of auction proceedings the petitioner has not been issued a notice. That apart, in the paper publication against the vehicle number of the petitioner, petitioner's name has not been shown. These proceedings are only eye wash in respect of compliance of the confiscating order. In all fairness, the concerned authority should have taken necessary steps in providing notice to the owner of the vehicle. That apart, there was no hurry in auctioning the subject matter of motor vehicle when the matter was remanded by the appellate authority to the confiscating authority. In fact, auction proceedings were required to be undertaken only as and when appeal was decided.

**4.** Learned counsel for the respondents submitted that subject matter of motor vehicle which had certain permit, that had already lapsed so also insurance. The aforementioned statement has no relevancy to the case in hand. To cover up the mistakes committed by the official respondent, they cannot contend that subject matter of motor vehicle had no permit or no insurance. It is to be noted that permit has lapsed on 16.12.2019 and insurance has lapsed in the year 2020 whereas the subject matter of incidents are of 03.01.2020 and 08.01.2020. In other words, the subject matter of motor vehicle was under the custody of the respondents from 08.01.2020, the date on which FIR was registered for the alleged offence under the Excise Act.

**5.** Having regard to these facts and circumstances, the respondents have not apprised this Court either directly or indirectly whether petitioner is involved in the offence under the Excise Act and with reference to the FIR registered on 08.01.2020 so as to fasten the liability on the petitioner. That apart, the confiscating authority has not apprised in respect of theft of the vehicle on 03.01.2020 and that there is no involvement of the petitioner. In the absence of any material evidence to the extent that petitioner is involved directly or indirectly, the subject matter of vehicle cannot be confiscated. That apart, the subject matter of vehicle was under the custody with the official respondent from 08.01.2020 which was auctioned and third party right has been created. Such auction proceedings have completed on 01.07.2021. Therefore, question of releasing of the subject matter of the vehicle in favour of the petitioner is impracticable. In the result, he has to be compensated in paying monetary compensation. In this regard, on the previous occasion we have directed the District Magistrate, *Gopalganj* to file his personal affidavit for assessment of subject matter of motor vehicle and its valuation. He has obtained valuation for identical vehicle from Bajaj Allianz General Insurance Company Limited. They have quoted 2,30,000/- (Rupees Two Lakhs Thirty Thousand) *vide* Annexure R/3 to the counter affidavit filed on behalf of respondent No. 3. Taking note of these facts and circumstances, the respondents are hereby directed to pay a sum of Rs. 2,30,000/- (Rupees Two Lakhs Thirty Thousand) in favour of the petitioner which has been valued by the Bajaj Allianz General Insurance Company Limited for identical vehicle with reference to the year 2020 - 2021. Such amount shall be paid within a period of two months from the date of receipt of copy of this order, failing which such amount carries 6 % interest from 08.01.2020.

**6.** The petitioner has been harassed unnecessarily subjecting him to confiscation proceedings, appeal proceedings and thereafter his vehicle was auctioned before appellate authority decides the appeal. Further, the concerned authority has failed to take note of the fact that appellate authority has remanded the matter to the confiscating authority on 12.04.2022. In other words, as on 01.07.2021, the date on which subject matter of motor vehicle was auctioned, the confiscation proceedings has not yet attained finality. Taking note of these serious errors committed by the official respondents, the petitioner is entitled to compensation of Rs. 50,000/- (Rupees Fifty Thousand) apart from 2,30,000/- (Rupees Two Lakhs Thirty Thousand). The same shall be paid within a period of two months from the date of receipt of copy of this order.

**7.** The Auction (Excise) case no. - 294 / 2020, 91 / 2020, orders dated 26.12.2020 and 27.06.2020 respectively passed by respondent No. 4 and Excise Appeal case No. 200 / 2022 passed by respondent No. 2, order dated 12.04.2022 are set aside.

**8.** CWJC No. 14870 of 2022 stands allowed.

**(P. B. Bajanthri, J)**

**(Ramesh Chand Malviya, J)**

GAURAV S./-

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| **AFR/NAFR** | NAFR |
| **CAV DATE** | NA |
| **Uploading Date** | 22.01.2024 |
| **Transmission Date** | NA |