

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15133 of 2023

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Dinanath Mahto Son of Bhagwan Das Mahto, Resident of Bahari Begumpur, Paar Pokhara, P.o-Sampatchak, P.S-Bypass Patna-800009.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Excise Department, Bihar, Patna.
2. The Additional Chief Secretary, Excise Department, Bihar, Patna.
3. The Deputy Director, Home Department, Government of Bihar, Patna.
4. The Excise Commissioner, Patna, Bihar.
5. The Collector-Cum-District Magistrate, Patna.
6. The Superintendent of Police, Patna.
7. The Excise Superintendent, Patna.
8. The S.H.O. Bypass Police Station, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Nikhil Kumar Agrawal Ms. Aditi Hawaria, Adv. Mr. Yash Sahay, Adv
For the Respondent/s	:	Mr.Vivek Prasad (Gp 7) Mrs. Manisha Singh Mr. Sanjay Thakur Mr. Supragya AC to GP 7

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ALOK KUMAR
PANDEY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 17-02-2024



In the instant petition, petitioner has prayed for the following relief:-

"(i) To issue an appropriate writ/order/ direction in the nature of certiorari setting aside the Order dated 22.02.2023 passed by the Collector-cum-District Magistrate, Patna in confiscation Case no. 2348/2020-2021 whereby and whereunder the application made by the petitioner for release of his godown under Rule 12(B) and Rule 57B of the Bihar Prohibition and Exicse Rules, 2021 was dismissed, in a mechanical manner.

(ii) To issue an appropriate writ/order/direction in the nature of Certiorari setting aside the order dated 14.09.2021 passed by the Additional Chief Secretary-cum-Revisional Authority in Excise Revision No. 132 of 2021, whereby and whereunder the Revision application filed by the petitioner for release of the godown has been rejected.

(iii) To issue an appropriate writ/order/direction in the nature of Certiorari quashing the Letter No. 845 dated 26.02.2021 issued by the respondents thereby allotting the land/godown of the petitioner to the S.H.O., Bypass Police Station for the purpose of opening of the Bypass police station.

(iv) To issue an appropriate writ/order/direction in the nature of Mandamus directing



the respondents to release the godown of the petitioner in favour of the petitioner which is being currently used as a police station in pursuance of Letter No. 845 dated 26.02.2021 issued by the respondents.

(v) To any other relief or reliefs for which the petitioner is found entitled to in facts an circumstance of the case.

2. Petitioner is owner of Khata no. 667, Plot no. 3842, Thana No. 19, Ranipur, Patna Sadar, Mauza to the extent of 43 decimals. It was subject matter of alleged offences under the Excise Act. The godown was raided by the Excise/Police officials and found liquor of 61,178.760 litres. Simultaneously, petitioner's son was residing in a particular home was also raided and recovered 750 ml bottle of liquor arising out of the aforementioned alleged offence. FIR was registered on 01.02.2021 in P.S. Case No. 38/2021 for the offences under Section 272 and 273 of I.P.C read with Sections 30(a)/32/36/41 of Bihar Prohibition and Excise Act, 2016 (for short 'Act, 2016'). Sealing of the aforementioned premises was communicated to the Collector-Cum-District Magistrate, Patna on 03.02.2021. Collector-Cum-District Magistrate, Patna issued a show cause notice to the petitioner on 04.02.2021. Petitioner appeared before the Collector after due hearing of the petitioner, learned Collector-Cum-District



Magistrate, Patna proceeded to pass order of confiscation of the subject matter of premises. Before the Collector-Cum-District Magistrate, Patna, the petitioner had submitted that subject matter of land was rented out to one *Sri Ramendra Sharma* son of *Ram Keshav Sharma* on 26.10.2019 which was for a period of one year, thereafter, it was freshly rented out with effect from 15.01.2021.

3. The subject matter of premises was handed over to the Home Department for the purpose of establishing police station and it was established on 26.02.2021. Petitioner had submitted Appeal before the appellate authority under Section 92 of Act, 2016 on 26.02.2021. It was rejected on 06.07.2021, feeling aggrieved by the order of the Appellate authority, the petitioner preferred revision before the Revisional Authority and it was numbered as Case No. 132 of 2021. During the pendency of the present petition, revision was decided against the petitioner and it was dismissed on 14.09.2021 and the same was brought on record. The petitioner has also exhausted the remedy of new provision Rule 12 (B) of Bihar Prohibition and Excise (Amendment) Rules, 2021 read with amended Rules 2022 and 2023 in which also he suffered an order 22.02.2023. Hence, the present petition.

4. Learned counsel for the petitioner submitted that petitioner being the owner of the subject matter of premises, he



had rented out to *Ramendra Sharma* who was utilizing the subject matter of premises as on the date of raid on 01.02.2021. The petitioner's son *Avinash Kumar* is not directly involved in the subject matter of premises godown. On the other hand, he is involved in recovery of 750 ml bottle of liquor from his residence and that has been linked with the present matter so as to implicate the petitioner. It is submitted that there is a violation of Section 30 of Bihar Prohibition and Excise Act, 2016, Article 19 (i) (g) read with Article 300 A of the Constitution of India.

5. It is submitted that the present case is covered by a Co-ordinate Bench decision in the case of **Sunita Sinha vs. The State of Bihar and others**, C.W.J.C. No. 17894 of 2022 decided on 14.09.2023 and it was affirmed by the Hon'ble Supreme Court on 06.11.2023 in Special Leave to Appeal (C) No(s). 24557 of 2023.

6. On the point of unregistered lease deed, co-ordinate Bench considered in respect of unregistered lease deed in the case of **Rakesh Kumar vs. The State of Bihar** and Others, C.W.J.C No. 9207 of 2017 decided on 07.11.2023.

7. Learned counsel for the petitioner in support of violation of Article 300 A of the constitution, he relied on decision of Hon. Supreme Court in the case of **Sukh Dutt Ratra V. State**



Of Himachal Pradesh reported in AIR ONLINE 2022 SC 469 ::

2022 (7) SCC 508, para Nos. 14, 15, 23, 24 and 25 held as under:

“14. It is the cardinal principle of the rule of law, that nobody can be deprived of liberty or property without due process, or authorization of law. The recognition of this dates back to the 1700s to the decision of the King’s Bench in Entick v. Carrington¹⁷ and by this Court in Wazir Chand v. The State of Himachal Pradesh¹⁸. Further, in several judgments, this Court has repeatedly held that rather than enjoying a wider bandwidth of lenience, the State often has a higher responsibility in demonstrating that it has acted within the confines of legality, and therefore, not tarnished the basic principle of the rule of law.

15. When it comes to the subject of private property, this Court has upheld the high threshold of legality that must be met, to dispossess an individual of their property, and even more so when done by the State. In Bishandas v. State of Punjab¹⁹ this Court rejected the contention that the petitioners in the case were trespassers and could be removed by an executive order, and instead concluded that the executive action taken by the State and its officers, was destructive of the basic principle of the rule of law. This court, in another case-State of Uttar Pradesh and Ors. v. Dharmander Prasad Singh and Ors. ²⁰ held:



“A lessor, with the best of title, has no right to resume possession extra-judicially by use of force, from a lessee, even after the expiry or earlier termination of the lease by forfeiture or otherwise. The use of the expression ‘re-entry’ in the lease-deed does not authorise extra-judicial methods to resume possession. Under law, the possession of a lessee, even after the expiry or its earlier termination is juridical possession and forcible dispossession is prohibited; a lessee cannot be dispossessed otherwise than in due course of law. In the present case, the fact that the lessor is the State does not place it in any higher or better position. On the contrary, it is under an additional inhibition stemming from the requirement that all actions of Government and Governmental authorities should have a ‘legal pedigree’”.

23. *This court, in Vidya Devi (supra) facing an almost identical set of facts and circumstances- rejected the contention of "oral" consent to be baseless and outlined the responsibility of the State:*

"12.9. In a democratic polity governed by the rule of law, the State could not have deprived a citizen of their property without the sanction of law. Reliance is placed on the judgment of this Court in Tukaram Kana Joshi V. MIDC [Tukaram Kana Joshi V. MIDC,



(2013) 1 SCC 353: (2013) 1 SCC (Civ) 491 : (AIR 2013 SC 565)] wherein it was held that the State must comply with the procedure for acquisition, requisition, or any other permissible statutory mode. The State being a welfare State governed by the rule of law cannot arrogate to itself a status beyond what is provided by the Constitution.

12.10. This Court in State of Haryana v. Mukesh Kumar [State of Haryana v. Mukesh Kumar (2011) 10 SCC 404: (2012) 3 SCC (Civ) 769 : (AIR 2012 SC 559)] held that the right to property is now considered to be not only a constitutional or statutory right, but also a human right. Human rights have been considered in the realm of individual rights such as right to shelter, livelihood, health, employment, etc. Human rights have gained a multi-faceted dimension.”

24. And with regards to the contention of delay and laches, this Court went on to hold:

The contention advanced by the State of delay and laches of the appellant in moving the Court is also liable to be rejected. Delay and laches cannot be raised in a case of a continuing cause of action, or if the circumstances shock the judicial conscience of the Court. Condonation of delay is a matter of judicial discretion, which must be exercised judiciously and



reasonably in the facts and circumstances of a case. It will depend upon the breach of fundamental rights, and the remedy claimed, and when and how the delay arose. There is not period of limitation prescribed for the courts to exercise their constitutional jurisdiction to do substantial justice.

12.3 In a case where the demand for justice is so compelling, a constitutional court would exercise its jurisdiction with a view to promote justice, and not defeat it. [P.S. Sadasivaswamy v. State of T.N. (1975) 1 SCC 152: 1975 SCC (L and S) 22: (AIR 1974 SC 2271).

25. Concluding that the forcible dispossession of a person of their private property without following due process of law, was violative²² of both their human right, and constitutional right under Article 300-A, this court allowed the appeal. We find that the approach taken by this court in Vidya Devi (supra) is squarely applicable to the nearly identical facts before us in the present case.

8. *Per contra*, learned counsel for the Respondents

-State resisted the aforementioned contentions and submitted that as on the date of alleged offences under the Excise Act on 01.02.2021, lease deed among the petitioner and *Ramendra Sharma* was not existing. To that effect, she is relying on para 19



of the counter affidavit in which *Ramendra Sharma* stated to have made a statement in bail petition in the Cr. Misc. 49718 of 2022 to the extent that there was no lease or rental agreement. Therefore, one has to draw inference that the petitioner was owner of the subject matter of premises as on 01.02.2021.

9. No other contention have been made on behalf of the State.

10. Heard learned counsel for the respective parties.

11. Subject matter of premises was involved for the alleged offences under the Excise act read with I.P.C. An F.I.R. was registered on 01.02.2021. Confiscation proceedings was conducted in which the petitioner had suffered an order thereafter petitioner suffered orders both in the appeal and revision further he has invoked remedy under Rule 12 (B) of Bihar Prohibition and Excise (Amendment) Rules, 2021 read with amended Rules, 2022 and 2023 in which also he has suffered an order. Hence the present petition.

12. Perusal of the lease agreement at Annexure P/4, it is evident that subject matter of premises was rented out to *Ramendra Sharma*. No doubt *Ramendra Sharma* might have made a statement in the Cr. Misc. No. 49718 of 2022 to the extent that subject matter of premises was not leased out to him. However, it



is contrary to Annexure-P/4, lease agreement dated 15.01.2021 which was in vogue as on 01.02.2021. The official respondents have not examined genuineness of the lease agreement dated 15.01.2021, so as to whether it has been created for the purpose of the present case or not? In any of the proceedings conducted by the Confiscating Authority, Appellate authority and Revisional Authority, we have certain doubts in respect of second agreement dated 15.01.2021 with reference to the statement made by *Ramendra Sharma* in his Cr. Misc. 49718 of 2022. Therefore, the matter is required to be examined in respect of lease deed dated 15.01.2021 to the extent whether petitioner had really entered into lease agreement with the *Ramendra Sharma* as on 01.02.2021 or not? The same is required to be examined by the concerned officials.

13. Learned counsel for the petitioner submitted that there is a violation of Section 30 and Article 19 (i) (g) read with Article 300 A of Constitution of India. He has also pointed out co-ordinate Bench decisions. The co-ordinate Bench decision would assist the petitioner only in the event of genuineness of Annexure P/4 dated 15.01.2021. That has not been examined.

14. Violation of Article 300 A of constitution of India, learned counsel for the petitioner cited ***SUKH DUTT RATRA case***



(*supra*). Reading of para 23, it is evident that present decision is not assisting the petitioner in the light of the fact that there is statute for confiscation of premises for the offences under the Excise Act, 2016. In view of these facts and circumstances, the impugned orders are set aside and matter is remanded to confiscation authority to revisit insofar as confiscation proceeding is concerned and give a verdict in respect of genuineness of lease agreement dated 15.01.2021 was existing as on 01.02.2021 or not? In the light of the statement made by *Ramendra Sharma* to the extent that it was not rented out to him or leased out as on 01.02.2021 with reference to statement made by him in the Cr. Misc. 49718 of 2022. Such confiscation proceedings afresh would be undertaken within period of three months from the date of receipt of this order.

15. Accordingly, petition allowed in part, leaving open all the contentions to be urged by the petitioner before the confiscation authority and other authorities, if it is warranted.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

vashudha/-

AFR/NAFR	NAFR
CAV DATE	N/A
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