

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15885 of 2023

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1. Jay Prakash Yadav, aged about 53 years, male, Son of Late Mahendra Prasad Yadav, resident of Village-Barmasiya, P.S.-Baunsi, District-Banka.
 2. Manoj Kumar Yadav, aged about 40 years, male, Son of Late Mahendra Prasad Yadav, resident of Village-Barmasiya, P.S.-Baunsi, District-Banka.
 3. Jitendra Prasad Yadav, aged about 55 years, male, Son of Late Mahendra Prasad Yadav, resident of Village-Shyam Bazar, P.S.-Baunsi, District-Banka.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Excise, Government of Bihar, Patna.
2. The Additional Chief Secretary, Department of Excise, Government of Bihar, Patna.
3. The Excise Commissioner, Bihar, Patna.
4. The Collector-cum-District Magistrate, Banka.
5. The Superintendent of Police, Banka.
6. The Station House Officer, Baunsi Police Station, District-Banka.

... .. Respondent/s

For the Appellant/s	:	Mr. Pramod Mishra, Advocate
For the Respondent/s	:	Mr. Vivek Prasad, G.P.7
		Ms. Supragya, AC to G.P.7
		Ms. Roona, AC to G.P.7
		Mr. Sanjay Kumar, AC to G.P.7
		Ms. Manisha Singh, AC to G.P.7

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE RAMESH CHAND
MALVIYA

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA)

Date : 11-01-2024

Heard learned counsel for the parties.

2. Petitioners have prayed for the following relief(s):-

- i. For setting aside the order dated 07.08.2023
passed by Excise Commissioner in Excise



Appeal Case No. 97/2023, whereby and where-under the Excise Commissioner, Bihar, Patna has rejected the appeal filed by the petitioner against the order dated 02.06.2023 passed by the Collector, Banka, communicated to the petitioners vide Memo No.952 dated 06.06.2023, whereby and where-under he was pleased to reject application filed by the petitioners for releasing/unsealing the line hotel/land of the petitioners, namely, Shiv Parwati Line Hotel situated at Banka-Bhagalpur Main Road forthwith after accepting the penalty amount, in pursuant to order dated 22.04.2022 passed in C.W.J.C. No.3213/2022.

- ii. “For setting aside order dated 02.06.2023 passed by the Collector, Banka, communicated to the petitioners vide Memo No.952 dated 06.06.2023, whereby and where-under application filed by the petitioners for releasing/unsealing the line hotel/land of the petitioners, namely, Shiv Parwati Line Hotel situated at Banka-Bhagalpur Main Road forthwith, in pursuant to order dated



22.04.2022 passed in C.W.J.C. No.3213/2022 after accepting the penalty in terms of Rule 12(B) inserted by amending Bihar Prohibition and Excise Rule, 2021 and 57B of the Bihar Prohibition & Excise (Amendment) Rules, 2022, has illegally been rejected; which has illegally been seized in connection with Baunsi P.S. Case No. 88/2021 dated 18.04.2021 lodged under Section 30(a) of Bihar Prohibition and Excise Act.

- iii. For directing and commanding the Respondents to release the line hotel/land of the petitioners, namely, Shiv Parwati Line Hotel situated at Banka-Bhagalpur Main Road forthwith which has illegally been seized in connection with Baunsi P.S. Case No. 88/2021 dated 18.04.2021 lodged under Section 30(a) of Bihar Prohibition and Excise Act.
- iv. And/or any other relief/reliefs which this Hon'ble Court may deem fit and proper in the facts and circumstances may also be granted”.

3. Petitioners claim to be the owner of the sealed line



hotel/land. Allegation is that of recovery of 18.75 litres of illicit liquor from the field behind the appellants Line-Hotel, which does not belong to the petitioner.

4. Petitioners claim to be the owner of the sealed line hotel/land. Allegation is that of recovery of 18.75 litres of illicit liquor from the field behind the appellants Line-Hotel, which does not belong to the petitioner.

5. The petitioners earlier moved before this Court in **C.W.J.C. No. 3213 of 2022** and a judgment was passed in favour of the petitioner stating that-

“In view of amendment in the Excise Act, and same being applicable in pending case, it shall be open for the petitioner to get his/her house unsealed after making payment of penalty in terms of Rule 12(B) inserted by amending Bihar Prohibition and Excise Rules, 2021 and 57B of the Bihar Prohibition & Excise (Amendment) Rules, 2022. It is made clear that this Court has not expressed any opinion with respect to merit of case”

6. The petitioners thereafter filed an application on 06.05.2022 before Respondent District Magistrate-cum-Collector, Banka for release of the property after payment of penalty amount, the same was rejected, thereafter the petitioner again filed an appeal before the Court of excise commissioner



registration excise and prohibition department, Government of Bihar, Patna but was again rejected on 07.08.2023.

7. Learned counsels for the respondent and petitioner have agreed on the penalty amount of Rs. 5,00,000/- (Rupees five lakhs only). Petitioners are hereby directed to remit the agreed penalty amount of Rs. 5,00,000/- (Rupees five lakhs only) within a period of 8 weeks from today.

8. On receipt of penalty amount the respondent authority is hereby directed to unseal the property of the petitioner within a week.

9. Accordingly, CWJC No. 15885 of 2023 stands disposed of.

(Ramesh Chand Malviya, J)

(P. B. Bajanthri, J)

Brajesh Kumar/-

AFR/NAFR	
CAV DATE	05.01.2024
Uploading Date	11.01.2024
Transmission Date	

