

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17100 of 2024

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Pappu Paswan Son of Late Vishwanath Paswan Resident of Village-
Muradapur, Dullah, Muradpur, P.S. Ahiyapur, District-Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Department of Prohibition and Excise, Government of Bihar, Patna.
2. The Commissioner, Department of Prohibition and Excise, Government of Bihar, Patna.
3. The District Magistrate-Cum-Collector, Muzaffarpur.
4. The Sub-Divisional Officer, Muzaffarpur East, District- Muzaffarpur.
5. The Circle Officer, Meenapur, District-Muzaffarpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sanjeev Kumar Mishra, Advocate Mr. Alok Kumar Agrawal, Advocate Ms. M. Jaiswal, Advocate
For the Respondent/s	:	Mr. Madhukar Mishra, AC to SC-16

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

Date : 10-12-2024

The petitioner has filed the instant writ petition

seeking the following reliefs:-

*“(i) For quashing the order
dated 08.09.2022 passed in
Confiscation Case No. 15 of 2022 by the
Sub-Divisional Magistrate, Muzaffarpur*

East as the same is initiated against the dead person and therefore become void ab-initio, illegal, arbitrary and in complete violation of Principle of Natural Justice;

(ii) For issuance of appropriate order/direction to release the confiscated Plot situated at Village Mustafaganj, over Khata No. 40, Plot No. 704, Area 9 Decimal, District-Muzaffarpur and/or for issuance of such any other relief/(s)/order/(s)/direction/(s) for which the petitioner may be found entitled to in the facts and circumstances of the present case.”

2. Briefly stated the facts of the case is that the premises/land in question situated at Village Mustafaganj, over Khata No. 40, Plot No. 704, Area 9 decimal, District- Muzaffarpur was standing in the name of the mother of the petitioner namely Phul Kumari Devi who acquired the said property from her mother by a registered deed of Gift bearing Deed No. 17992 dated 18.05.1987 and the name of the mother of the

petitioner Phul Kumari Devi was also mutated vide order dated 25.11.1987, passed in Mutation Case No. 375 of 1987-88 by the Circle Officer – Meenapur, District Muzaffarpur. The mother of the petitioner was married to Bishwanath Paswan resident of Village Muradpur Dullah, Muradpur, P.S. Ahiyapur, District Muzaffarpur and, therefore, she was the ordinary resident of Village Muradpur Dullah and not the village Mustafaganj where the said land/premises was situated, which was gifted by her mother. Thereafter, petitioner's mother Phul Kumari Devi died on 13.08.2000 leaving behind her husband Bishwanath Paswan who is mentally retarded and two sons namely Pappu Paswan (petitioner) and Arvind Kumar. The Mukhiya of Gram Panchayat Raj Sahbajpur also issued death certificate (*Annexure-P/2*) dated 13.10.2024 of Late Phul Kumari Devi, mother of the petitioner. The petitioner had no knowledge about the plot in question and he came to know about the said plot when a confiscation proceeding bearing Confiscation

Case No. 15 of 2022 was initiated in connection with Meenapur P.S. Case No. 457 of 2021 against the mother of the petitioner namely Late Phul Kumari Devi, who had already died, that 5 litres of country made liquor was recovered from a small hut situated over the plot in question at Village–Mustafaganj of District Muzaffarpur from two accused persons namely Wakil Sahni and Surendra Paswan and for which Meenapur P.S. Case No. 457 of 2021 was registered against them.

3. It is submitted by learned counsel for the petitioner that in the said confiscation proceeding, notices dated 25.05.2022, 06.06.2022 and 02.08.2022 were issued in the name of his mother which were never served since she had already died. The notices could not be served upon the petitioner also. Hence, an *ex-parte* proceeding was initiated and an *ex-parte* order was passed on 08.09.2022 by the Sub-Divisional Magistrate, Muzaffarpur East, District-Muzaffarpur.

4. Learned counsel further submits that mother

of the petitioner died leaving behind his husband who is mentally sick and two minor children. Hence, the petitioner or his younger brother had no knowledge about the plot in question. The petitioner further submits that petitioner is resident of Village-Muradpur Dullah, District-Muzaffarpur which is a distant village from Village-Mustafaganj and only after getting knowledge of the plot in question, the petitioner inquired the same and found that Surendra Paswan of Village-Mustafaganj has encroached over the land in question and constructed a temporary hut. The petitioner does not know about accused Vakil Sahni and Surendra Paswan from whose possession the alleged 5 litres of country made liquor was recovered from the hut in question which was illegally constructed over the plot of the petitioner.

5. The petitioner further submits that the entire confiscation proceeding is bad in law as has been initiated against a dead person and also contrary to Section 58 r/w Rule 13B of Bihar Prohibition and Excise

Act, 2016 as neither any show cause notice was served nor any opportunity of hearing was provided before confiscating the land in question.

6. The petitioner, therefore submits that the entire confiscation proceeding including the order dated 08.09.2022 related to the land in question is *void ab-initio*, illegal, arbitrary and in complete violation of the Principle of Natural Justice and, therefore liable to the set aside.

7. From perusal of records, *prima facie* it appears that though the premises owned by the mother of the petitioner may be involved in storage of illicit liquor, apparently involvement of the petitioner is not forthcoming from the facts and circumstances of the case.

8. Further, there is no material on record to suggest that the petitioner was facilitating and helping the accused persons, for storage of incriminating articles. Either directly or indirectly, the petitioner has

not contravened Section 30 of the Act and, for this reason, the plot in question is not liable to be sealed.

9. Recently, this Court vide judgment dated **14.09.2023** passed in **CWJC No. 17894 of 2022 (Sunita Sinha vs. The State of Bihar and Ors.)** has deprecated the tendency of the authorities to confiscate the premises found involved in trade of illicit liquor in an arbitrary manner and putting unreasonable terms and condition for its release and we further pointed out the lacunae in the relevant provisions of law regarding seizure, sealing and confiscation of premises. Apparently, the case of the petitioner is covered under one of the illustrations given by us.

10. Coming back to the facts of the present case, undisputedly the plot was not covered with any boundary wall and it was an open plot which was encroached and a hut over the said plot was made from where 5 litres of illicit liquor was seized. Hence, the authorities had failed to take into consideration this fact

and in a mechanical manner passed the impugned orders. The petitioner could not be made to suffer for being the landlord/owner of the premises in question if recovery of some liquor has been made.

11. Having regard to the facts and circumstances of the case, we are of the considered view that the confiscating authority committed error and failed to discharge the duty cast upon it while passing the impugned order in the absence of any direct or indirect evidence against the petitioner.

12. This Court finds that considering the facts and circumstances of the case discussed above, a penalty of Rs. 25,000/-(Twenty Five Thousands) is appropriate.

13. We are conscious of the fact that alleged recovery is of meager quantity and the aforesaid order has been passed while invoking extra ordinary jurisdiction under Article 226 of the Constitution of India for the reasons that unnecessarily petitioner shall not be

subjected to various proceedings like Rule of 12B of the Bihar Prohibition and Excise Rules, 2021 read Sections 58, 92 and 93 of the Bihar Prohibition and Excise Act, 2016, for a trivial issue relating to seizure of 5 liters of illicit liquor and the aforesaid decision is warranted to prevent multiplicity of proceeding under Excise Act and Rules, in the interest of justice.

14. Considering recovery of small quantity of 5 litres of liquor, the petitioner is directed to deposit a penalty of Rs. 25,000/-(Twenty Five Thousands) and the concerned authority is hereby directed to collect fine of Rs. 25,000/-(Twenty Five Thousands) from the petitioner.

15. Accordingly, the order dated 08.09.2022 passed by the Sub-Divisional Magistrate, Muzaffarpur in Confiscation Case No. 15 of 2022, arising out of Meenapur P.S. Case No. 457 of 2021 is hereby set aside. The respondent authorities are hereby directed to release the plot/property in question in favour of the

petitioner-owner of the property within a period of one week from the date of receipt of a copy of this order.

16. With the aforesaid observation/directions, the present writ petition stands allowed.

(S. B. Pd. Singh, J)

(P. B. Bajanthri, J)

Shageer/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	11/12/2024
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