

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17910 of 2023

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Rakesh Kumar Sinha S/o Sri Ram Binod Singh, R/o - Flat No.- 403, Rajendra Complex, Nirala Nagar, Digha Ghat, Dinapur - Cum - Khagaul, P.S - Digha, District - Patna.

... .. Petitioner/s

Versus

1. The State of Bihar Through the Secretary, Department of Registration, Excise and Prohibition, Government of Bihar, Patna.
2. The Secretary, Department of The Secretary, Department of Registration, Registration, Excise and Prohibition, Government of Bihar, Patna.
3. The Excise Commissioner, Bihar Prohibition and Excise Department, Bihar, Patna.
4. The District Collector cum District Magistrate, Saran at Chapra.
5. The DCLR, Saran at Chapra.
6. The Superintendent of Police, Saran at Chapra
7. The S.H.O., Madhaura Police Station, District - Saran.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Abhimanyu Deo, Advocate
For the Respondent/s : Mr. Anwar Karim, AC to G.P.-10

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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 : 07-02-2024

In the instant petition, petitioner has prayed

for the following reliefs:

“a. For issuance of appropriate Writ/Writs, direction/directions or orders/order especially in the nature of Certiorari, for quashing the order dated 14.09.2023 passed by Secretary, Prohibition, Excise and Registration Department, Government of Bihar (Res. No.-2) in Excise Revision No.-39 of 2023 in connection



with Excise Appeal Case No.113/2023 (arising out of Excise Confiscation Case No.134 of 2023), to the extent, whereby and where under while allowing the premises in question owned by petitioner's father to be released (as the same was confiscated in connection with Excise Case bearing Madhaura P.S. Case No.805 / 2022 dated 18.12.22) in his favour, has directed to make payment of Rs. 27,98,200/-, which is very exorbitant and unreasonable.

b. The petitioner further prays for issuance of appropriate Writ/Writs, direction/directions or orders/order especially in the nature of Certiorari, quashing the order dated 14.08.2023 passed in Excise Commissioner (Res. No.-3), in Excise Appeal Case No.113/2023, whereby and where under appeal preferred by the petitioner was rejected and order of confiscation dated 17.07.2023 passed by the DCLR in Excise Confiscation Case No. 134/2023 was confirmed.

c. The Petitioner further prays for for issuance of appropriate Writ/Writs, direction/directions or orders/order especially in the nature of Certiorari, quashing the order dated 17.07.2023 passed by the DCLR in Excise Confiscation Case No.134/2023 whereby and where under the premises in question owned by petitioner's father was ordered to be confiscated in connection with Madhaura P.S. Case No.805 / 2022 dated 18.12.22 as being owner of the property and it was his responsibility to



ensure that his premises is not being used for any unauthorized business and has directed to make payment of Rs. 27,98,200/- for release of the same.

d. The petitioner further prays for issuance of appropriate Writ/Writs, direction/directions or orders/order especially in the nature of Mandamus directing the respondents to release the house having been constructed upon the land appertaining to Khata No.163, Survey No.2137, Mauja – Dhenuki, Thana No.-144, having total Area of Land 1 Kattha 5 Dhur, and house is being constructed upon 14 Dhur, under the Madhaura Police Station, Saran in favour of the Petitioner, which was confiscated by Respondents in connection Madhaura P.S. Case No.805 / 2022 dated 18.12.22 registered under section 30 (a) of Bihar Prohibition & Excise (Amendment) Act, 2018 as the petitioner's father is a lawful owner of the house as well as the land in question and had leased out the said premises, pursuant to an agreement dated 15.11.2022.

e. Further prayed for consequential writ in the nature of a writ of mandamus or any other appropriate writ order or direction commanding the Respondent Authorities to not to take any coercive steps against the Plot / Land in question during the pendency of this writ application.

f. Pass any appropriate order / orders for which Your Lordships would deem fit



and proper.”

2. Petitioner's immovable property bearing Khata No.163, Survey No.2137, Mauja – Dhenuki, Thana No.- 144 having total area of land 1 Kattha 5 Dhur and house is constructed upon 14 dhur under the Madhaura Police Station, Saran is stated to have been confiscated in Madhaura P.S. Case No.805 of 2022 on 18.12.2022 for the alleged offence under the Excise Act, mainly Section 30(a) of the Bihar Prohibition and Excise (amended Act, 2018).

3. The petitioner, who is owner of the aforementioned immovable property had lent the property to Purushottam Kumar in the light of the agreement dated 15.11.2022. Therefore, subject matter of premises was under the control of Purushottam Kumar as on 18.12.2022 the date of alleged offences. In this backdrop, the officials of the respondent proceeded to undertake confiscation proceedings and it was confiscated on 17.07.2023, in which the subject matter of premises was confiscated.

4. Feeling aggrieved and dissatisfied with the decision of the confiscating authority, the petitioner had invoke the remedy of both appeal and revision in which he has suffered orders. Thus the petitioner has presented this petition.

5. Perusal of the confiscating authorities



decision it is evident that it is not a speaking order. Firstly, the petitioner was not provided a show cause notice for his appearance. Even assuming that such a notice issued and the petitioner failed to appear to that extent there is no statement recorded in the confiscating order. Further, in respect of lease agreement or rental agreement dated 15.11.2022 has not been apprised, so as to fastening the liability on the petitioner-owner of the subject matter of premises or not? Further, the appellate authority as well as revisionary authority have also not apprised about non-adherence of principle of natural justice. Therefore, the petitioner has made out a *prima facie* case. So as to interfere with the impugned orders.

6. Accordingly, the order dated 14.09.2023 passed by Secretary, Prohibition, Excise and Registration Department, Government of Bihar (Res. No.-2) in Excise Revision No.-39 of 2023 in connection with Excise Appeal Case No.113/2023 (arising out of Excise Confiscation Case No.134 of 2023), the order dated 14.08.2023 passed in Excise Commissioner (Res. No.-3), in Excise Appeal Case No.113/2023 and the order dated 17.07.2023 passed by the DCLR in Excise Confiscation Case No.134/2023 are set aside. Matter is remanded to confiscating authority to pass a fresh



order after due opportunity of hearing to the petitioner.

7. The petitioner is hereby directed to appear before the confiscating authority on 21.02.2024 at 03:00 P.M.

8. The petitioner is permitted to file written submission along with documents, if any, including agreement copy. Thereafter, the confiscating authority is hereby directed to pass a detailed speaking order and communicate such decision to the petitioner at the earliest. The above exercise shall be completed on or before 01.03.2024.

9. Accordingly, the writ petition stands allowed.

(P. B. Bajanthri, J)

(Ramesh Chand Malviya, J)

S.Katyayan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	12.02.2024
Transmission Date	NA

