IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17970 of 2023

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Nagina Choudhary son of Jaglal Chaudhary, Resident of Village-Jangharo, P.S.-Ben, District-Nalanda, Bihar-8031111.

... ... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Registration, Excise and Prohibition Department, Govt. of Bihar, Patna.
3. The District Magistrate cum Collector, Nalanda at Biharsharif.
4. The Superintendent of Excise Prohibition Nalanda at Biharsharif.
5. The Assistant Excise Commissioner, Nalanda at Biharsharif.
6. The Officer Incharge/S.H.O. Ben Police Station, District Nalanda at Biharsharif.
7. The Land Reforms Deputy Collector (LRDC) Rajgir, District Nalanda at Biharsharif.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ashutosh Singh, Advocate
Mr. Vidhan Chandra Pathak, Advocate
Mr. Dhananjay Kr. Upadhyay, Advocate

For the Respondent/s : Mr. S. Raza Ahmad, AAG 5

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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 : 30-07-2024

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

> *"i. For issuance of an appropriate direction/s, order/s, writ/s for to set aside the order dated 14.09.2023 passed by the court of excise Secretary in Excise Revision Case No. 37/2023 which has been passed in view of the order passed in CWJC No. 10944/2023 dated*

25.08.202(ANNEXURE-6) and further direct the concerned respondent authorities to open the seal of the house of the petitioner situated over Khata No. 90, Khesra No. 342, Mauza – Jangharo, Than No. 404, Area 1 ¼ decimal upon which the house constructed which has been acquisition under 58(2) of Bihar Excise and Prohibition Act, by the concerned authority in connection with Ben P.S. Case No. 217/21 dated 31.12.2021, offences alleged u/s 30(e) Bihar Excise and Prohibition Act

ii. For to set aside the confiscation order of the house of the petitioner dated 25.07.2022 passed by the Learned Land Reforms Deputy Collector (LRDC) Rajgir, Nalanda in confiscation (Excise) Case No. 32/2022 (State Versus Nagina Chaudhary) (Arising out of Ben P.S. Case No. 217/2021 dated 31.12.2021 (annexure – 2). And also set aside the order dated 18.05.2023 passed in Excise Appeal No. 33/2023 passed by the learned court of Excise Commissioner Patna, have confirmed the order passed by the learned court of Land Reforms Deputy Colector (LRDC) Rajgir, Nalanda. (Annexure – 3)

iii. For issuance of the direction to restrain the authority concern from holding an auction sale of the house of the petitioner in view of the order dated 25.07.2022 passed by the Learned Land Reforms Deputy Collector Rajgir, Nalanda in confiscation (Excise) Case No. 32/2022 (State Versus Nagina Chaudhary) (Arising out of Ben P.S. Case No. 2127/2021 dated 31.12.2021.

iv. For direction to the respondent authorities to open the seal of the house where the alleged about 20 litres of CHHOWA/Molasses was recovered.

v. For grant of any other relief/ reliefs for which the petitioner may be found entitled in course of hearing of this writ application."

2. Ben P.S. Case No. 217 of 2021 was registered for the offence under Section 30 (e) of the Bihar Prohibition and Excise Act, 2016 (hereinafter referred to as 'Excise Act, 2016'). Seizure list reveals that petitioner was in possession of about 20 liters of Molasses and it is stated to have been recovered. Arising out of the aforementioned facts and circumstances, court of Land Reforms Deputy Collector, Rajgir, Nalanda proceeded to decide a confiscation (Excise) case No. 32/2022 in which he has confiscated the subject matter of premises.

3. Feeling aggrieved and dissatisfied with the order of the court of Land Reforms Deputy Collector, Rajgir, Nalanda dated 25.07.2022, petitioner preferred an Excise Appeal No. 33 of 2023 which was decided on 18.05.2023 against the petitioner. Still aggrieved by the order of the appellate authority, petitioner invoked remedy of filing Excise Revision case No. 21 of 2023 under Section 93 of the Excise Act, 2016. Revisional Authority proceeded to reject the Revision Case No. 21 of 2023 on 07.06.2023. Feeling aggrieved by the orders of the confiscation proceedings, appeal and revision, CWJC No. 10944 of 2023 was filed and it was allowed on 25.08.2023 while remanding the matter to the revisional authority on 25.08.2023. The revisional authority has assigned Revision Case No. 37 of 2023 and it was dismissed on 14.09.2023. Hence, the present writ petition.

4. Learned counsel for the petitioner submitted that there was no seizure of Molasses for the purpose of taking out a sample quantity for forensic test. On the other hand, State-respondents' counsel submitted that Molasses was recovered. Assuming that it was recovered in order to ascertain whether ingredients of Molasses is forthcoming from the seized 20 liters of Molasses or not was required to be considered only with reference to sending sample of the seized Molasses to the Forensic Science Laboratory. On receipt of positive report from the Forensic Science Laboratory, in that event only the petitioner should have been subjected to confiscation proceedings, therefore, the officers who were competent to seize the Molasses material and send the sample to the Forensic Science Laboratory, have failed, resultantly, there is no iota of material evidence to the extent that alleged seized material of 20 liters of Molasses and it was not proved in the manner known to the law in the confiscation proceedings. Taking sample of the Molasses, Forensic Science Laboratory report and examination and cross-examination of the author of the certificate, these are all the procedures which have been sidetracked by the officers of the respondents. On these technicalities, the petitioner has made out a case so as to interfere with the impugned orders dated 25.07.2022, 18.05.2023 and 14.09.2023. Hence, they are set aside. Moreover at a given point of time learned State counsel submitted the alleged substance of Molasses were dumped in the drainage. Therefore, sample was not collected and sent for forensic lab for examination. Therefore, it is not even case for remand.

5. If the official respondents have recovered a sum of Rs. 1 lakh towards imposition of fine, the same shall be refunded to the petitioner within a period of three months. Further, if the premises has not been released in favour of the owner of the premises as on this day, the same shall be released within a period of two weeks from the date of receipt of copy of this order.

6. Accordingly, writ petition stands allowed.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

GAURAV S./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	01.08.2024
Transmission Date	NA