IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2133 of 2022

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Deepak Kumar @ Deepu Kumar Son of Shri Sheo Shankar Prasad resident of Village Obra, P.S. Obra, District Aurangabad

... ... Petitioner/s

Versus

1. The State of Bihar represented through the Additional Chief Secretary, Prohibition Excise and Registration Department (Excise), Government of Bihar, Patna.
2. The Excise Commissioner, Bihar, Patna.
3. The District Magistrate, Aurangabad.
4. The Superintendent of Police, Aurangabad.
5. The Superintendent of Excise, Aurangabad.
6. The Officer in Charge, Obra Police Station, District Aurangabad.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Kumar Ravish, Advocate
For the Respondent/s : Mr. Lalit Kishore (Ag)
Mr. Vikash Kumar, SC 11

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ALOK KUMAR SINHA

CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE ALOK KUMAR SINHA)

Date: 24-03-2025

1. Heard the parties.

2. The present writ application has been filed seeking the following reliefs:

(i) To quash and set aside Annexure-'P/10' i.e. order dated 29.12.2021 (memo no.1376) passed in Excise Revision Case No.186/2021 (Deepu Kumar @ Deepak vs. Excise Commissioner and others) under which the Excise

Revision was dismissed observing that the Magistrate-cum-Collector, Aurangabad may proceed with auction in the confiscation proceeding as per the Bihar Prohibition & Excise Act, 2016 (for brevity 'the Excise Act').

(ii) To quash and set aside Annexure- 'P/9' i.e. order dated 24.08.2021 (memo no.836) passed in Excise Appeal Case No.453/2021 (Deepu Kumar Deepak vs. The State of Bihar and others) under which the Excise Appeal was rejected.

(iii) To quash and set aside Annexure- 'P/2' i.e. the confiscation order dated 17.05.2017 passed by the District Magistrate-cum-Collector, Aurangabad in Excise Confiscation Case No.89/2016 (State of Bihar vs. Deepu Kumar) ordering confiscation of the residential house of the petitioner including the entire land i.e. 17 decimals comprising of shares of other co-parceners of the petitioner without issuing notice to any of the co-parceners.

(iv) To declare that the dwelling house of the petitioner situated at Plot No.773, Khata

No.129 (in portion of total area of 17 decimals) at Mauza-Obra, District-Aurangabad, Bihar which was sealed on 20.05.2016 and later provisionally released pursuant to order of this Hon'ble Court, do not vest in the State.

(v) Any other relief or reliefs which the petitioner may be found entitled to in the facts and circumstances of the case.

3. The petitioner has submitted that based on fardbeyan of one Sudarshan Dom Obra P.S. Case No.65/2016 was instituted on 03.05.2016 (Annexure- 'P/1' Series to the writ application) against the petitioner and his wife, namely- Shalini Devi for offences under Sections 302/34 of the Indian Penal Code and Sections 50(a), 50(b) and 50(c) of the Bihar Excise Act, 2015 (as amended by Bihar Excise (Amendment) Act, 2016). As per the petitioner, in the F.I.R. it was insinuated by the informant, namely- Sudarshan Dom that his son Bijay Dom on 01.05.2016 had gone to the house of the petitioner's wife (a candidate from Obra Panchayat for the post of Mukhiya) for a party and on the following day of party i.e. 02.05.2016 his condition deteriorated in the afternoon and he was taken to Sadar Hospital, Aurangabad. It is also alleged that various co-

villagers were also brought to the Sadar Hospital and it is alleged by his son as well as by co-villagers that on 01.05.2016 there was a party in the house of petitioner's wife where the petitioner was also physically present and served sweets and cold drinks and it is only after consuming the food the health of the person deteriorated. Ultimately, the son of the informant died. Various other persons who participated in the party were also admitted in different Hospitals. It is also stated that some other persons who had food in the party are not well viz. Ramji Rai and Surendra Rai. Accordingly, it was alleged by the informant that on 01.05.2016 the petitioner and his wife despite prohibition served cold drink with intoxicated material and liquor which led to the death of informant's son, namely-Bijay Dom.

4. The petitioner further states that a bare perusal of the seizure list prepared on 03.05.2016 (although concocted and falsely prepared with witnesses from outside) goes to show that from the house of this petitioner only one piece of full bottle of 'Royal Stag' brand containing foreign liquor was seized by the police. All other bottles seized were empty bottles. The petitioner further submitted that as a result of the above, the dwelling house of the petitioner which is an ancestral house was

sealed by the Officer-in-Charge of Obra Police Station on 20.05.2016 in presence of authorities of the Excise Department in purported exercise of power under the Excise Act. The house details which was sealed on 20.05.2016 was shown as under: Plot No.773, Khata No.129 (area 17 decimals) at Mauza/Village-Obra, District-Aurangabad, Bihar.

BOUNDARY

North: Road

South: Anil Prasad

East: Nij Haja

West: Road

In the seizure list the house was described as well constructed with a courtyard and a compound wall consisting of two separate buildings and a total of 7 rooms. The petitioner stated that portion of the house was desealed based on the application of the relative and co-parcenors of the petitioner. However, five rooms in possession and occupation of the petitioner remained in sealed condition since 20.05.2016, which pursuant to judicial order passed by this Hon'ble Court was desealed in the year 2017.

5. The petitioner further states that in the connected police case he was arrested on 04.05.2016 and was granted

Regular bail by this Hon'ble Court on 08.12.2016 in Cr. Misc. No.47015 of 2016.

6. It is further stated by the petitioner that later he came to know that under the Excise Act a confiscation proceeding had been initiated and he was show caused in the said proceeding. The petitioner filed his Show cause reply and contested the confiscation proceeding. The other co-parcenors who were staying in the premises on their portions were not Show caused nor noticed although at their instance immediately after the sealing of the premises, the premises was desealed which was occupied by them.

7. The petitioner further states that the District Magistrate/ Collector, Aurangabad in Excise Confiscation Case No.89/2016 (State of Bihar vs. Deepu Kumar) ultimately passed final orders on 17.05.2017 (Annexure- 'P/2' to the writ application) and confiscated the dwelling house of the petitioner under Section 56 of the Excise Act. As against the same the petitioner had filed an Appeal vide Appeal Case No.17 of 2017 before the Appellate Authority-cum-Excise Commissioner, Bihar, Patna under Section 92(2) of the Excise Act, however, the same was rejected on 08.06.2017 (Annexure-'P/3' to the writ application) by a non-reasoned and non-speaking order.

Thereafter, the petitioner approached this Hon'ble Court vide CWJC No.8468 of 2017 and this Hon'ble Court on 21.06.2017 (Annexure- 'P/4' to the writ application) was pleased to remand back the matter for deciding the appeal afresh by a speaking order and it was also directed that till the Appeal is not decided by the Appellate Authority, further steps for auctioning of the property shall be kept in abeyance. The petitioner further states that since the house/premises was not de-sealed by the Appellate Authority the petitioner had to file CWJC No.13159 of 2017 seeking for provisional release of the house. This Hon'ble Court vide order dated 12.09.2017 (Annexure- 'P/5' to the writ application) passed in CWJC No.13159 of 2017 directed for de-sealing of premises and its handing over to the petitioner on certain conditions. Thereafter, the house was de-sealed and possession was handed over to the petitioner and since then the petitioner is in exclusive and peaceful possession thereof and he has abided by the conditions incorporated by this Hon'ble Court. Ultimately, under order dated 18.01.2020 (Annexure- 'P/6' to the writ application) this Hon'ble Court was pleased to finally dispose of the writ application CWJC No.13159 of 2017 directing the petitioner to appear before the Appellate Authority and the Appellate Authority was directed to decide the Appeal within a period of two months thereafter.

8. The petitioner further states that in compliance of order dated 18.01.2020 passed in CWJC No.13159 of 2017, the petitioner appeared before the Appellate Authority through his Counsel but by recording a fact that the learned Counsel had not appeared on 01.09.2020 and 02.02.2021, the Appeal of the petitioner (Excise Appeal Case No.17 of 2017) was rejected vide order dated 02.02.2021 (Annexure- 'P/7' to the writ application). As against the same, the petitioner filed CWJC No. 9128 of 2021 which was allowed on 29.06.2021 (Annexure- 'P/8' to the writ application), thereby setting aside the order dated 02.02.2021 passed in Excise Appeal Case No.17 of 2017 and a direction was issued upon the Appellate Authority to pass afresh order in accordance with law. Thereafter, the Excise Appeal No.453 of 2021 was instituted in the Court of Excise Commissioner, Bihar, Patna who rejected the Appeal on 24.08.2021 (Annexure- 'P/9' to the writ application) by a non-reasoned and non-speaking order. As against this rejection of Appeal order dated 24.08.2021, the petitioner filed Excise Revision Case No. 186 of 2021 before the Revisional Authority but even the same was erroneously rejected on 29.12.2021 under memo no.1376 (Annexure- 'P/10' to the writ application)

by holding and observing as follows:

> *"Having heard the Revisionist and having perused the documents available on record I find that the F.I.R. registered by the police authorities was correct and no illegality in the order passed by the learned District Magistrate-cum-Collector, Aurangabad that was further affirmed by the learned Excise Commissioner for confiscation of the premises. Hence, the same are hereby affirmed. Since the Revision petition now disposed of, learned District Magistrate-cum-Collector, Aurangabad may proceed with Auction in the confiscation proceeding as per the Act.*
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> *The Revision petition is dismissed."*

9. The petitioner has submitted that his house has been illegally confiscated based on fraudulently prepared seizure list by the Officer-in-Charge of Obra Police Station and in a false case instituted by the police at the behest of politically motivated persons.

10. Per contra, the learned Counsel appearing for the respondents submitted that the order passed by the Confiscating Authority, Appellate Authority and the Revisional Authority are correct and based on materials available on record and hence no interference is needed. Prayer was made to reject the contentions raised by the petitioner as not tenable in light of the

impugned orders passed by the Respondent authorities.

11. Having gone through the materials available on record, it is evident that only one full bottle of foreign liquor was seized from the premises in question, which is a very meager quantity and therefore, the confiscation of the entire dwelling house and auction proceedings thereof are disproportionate and arbitrary. Confiscation and auction proceedings which has been ordered to be done does not commensurate with the gravity of the alleged offence committed which entails recovery of a meager quantity of foreign liquor (only one bottle).

12. In light of the aforementioned discussion and considering the facts and circumstances of the case, we are of the opinion that confiscation of the dwelling house in question and its auction proceedings for meager quantity of one bottle of foreign liquor recovered therein is not reasonable. Therefore, the order dated 29.12.2021 (memo no.1376 passed in Excise Revision Case No.186 of 2021) (Annexure- 'P/10' to the writ application) by the Revisional Authority, the order dated 24.08.2021 (memo no.836) passed in Excise Appeal Case No.453/2021 (Annexure- 'P/9' to the writ application) by the Excise Commissioner, Bihar, Patna and the order dated

17.05.2017 passed in Excise Confiscation Case No.89 of 2016 (Annexure- 'P/2' to the writ application) by the District Magistrate-cum-Collector, Aurangabad, are hereby quashed and the petitioner is directed to pay a sum of Rs. 25,000/- (Rupees Twenty Five Thousand Only) as fine within four weeks from the receipt of this order, failing which, the District Magistrate-cum-Confiscating Authority, Aurangabad shall continue with the auction proceeding.

13. With the above observation/direction the present writ petition stands disposed of.

(P. B. Bajanthri, J)

(Alok Kumar Sinha, J)

Prakash Narayan

AFR/NAFR	NAFR
CAV DATE	18.03.2025
Uploading Date	24.03.2025
Transmission Date	NA