IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 12523 of 2025

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1. Sumit Yadav @ Sumit Kumar @ DCM, Gender-Male, Son of Late Arun Yadav, Resident of Village- Budhiya Dhankatta, P.S- Sarsi, Dist.- Purnia.
2. Suman Devi, Gender-Female, Wife of Late Arun Yadav, Resident of Village- Budhiya Dhankatta, P.S- Sarsi, Dist.- Purnia.

... ... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Excise Department, Government of Bihar, Patna.
2. The Excise Commissioner, Government of Bihar, Patna.
3. The District Collector, District- Purnia, Bihar.
4. The Excise Officer, Bihar Prohibition and Excise Act, Purnia.
5. The Superintendent of Police, District- Purnia.
6. The Officer In-charge, P.S.- Sarsi, District- Purnia.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Vikram Singh, Advocate

For the Respondent/s : Standing Counsel 21

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

and

HONOURABLE MR. JUSTICE ARUN KUMAR JHA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH)

Date: 20-04-2026

The present writ petition has been filed for quashing the order dated 13.01.2023, passed by the learned Collector, Purnea in Excise Case No. 519 of 2022, the order dated 14.08.2023 passed by the Excise Commissioner, Purena in Excise Appeal No. 110 of 2023 and the Revisional Order dated 16.10.2023, passed by the Excise Secretary, Bihar, Patna in Excise Revision Case No.41 of

2023. The petitioners have further prayed for release of the house-cum-premises (vacant land) of the petitioner No.2 on payment of reasonable penalty.

2. The brief facts of the case are that the police personnel of Sarsi Police Station and the Sub-Inspector of Police received information that some persons were engaging in selling of illicit liquor to the customers at village *Budhiya Dhankatta* and the petitioner No.1 is also engaged in such illicit trade. Thereafter, a raid was conducted by the police personnel at the house of the petitioners and 18.750 liters of illicit liquor was recovered from the fodder house, while 25.500 liters of illicit liquor was recovered from the maize field, situated adjacent to the fodder house. The said seizure of illicit liquor led to filing of Sarsi P.S. Case No.62 of 2022 dt. 18.03.2022 under Sections 272/273/34 of the Indian Penal Code & Section 30(a) of the Bihar Prohibition and Excise Act, 2016 (as amended up to date) (hereinafter referred to as the 'Act, 2016').

3. The learned counsel for the petitioners has submitted that as far as the petitioner No.2 is concerned, she is the owner of the fodder house/adjacent land from where illicit liquor has been recovered, however neither any allegation has been imputed to her in the F.I.R. nor any accusation has been made against her in the counter affidavit. It is submitted that the petitioner No.2 is neither having any connection nor any relation with the illicit liquor recovered from the fodder house/adjacent land, situated at Mauza-*Budhiya Dhankatta*, P.S. No. 60, appertaining to Khata No. 865, Khesra No. 2261, *ad-measuring* 15 decimals, hence it is submitted that the land in question be released in favor of the petitioner No.2 who is the owner of the house/land in question and as far as the petitioner No.1 is concerned, he is son of the petitioner No.2, who is the culprit.

4. *Per contra*, the learned counsel for the respondent-State has submitted that a raid was conducted upon receipt of confidential information at the premises in question, whereupon 44.250 liters of illicit liquor was recovered from the fodder house and the adjacent maize field and in fact the police had confidential information to the effect that the petitioner No.1 and one another co-accused *Shankar* (son of the *Chaukidar* of the village) were selling illicit liquor to customers on the occasion of *Holi*. It is also submitted that from the premises in question 44.250 liters of illicit liquor has been recovered, hence confiscation proceedings have rightly been initiated, leading to passing of the impugned order dated 13.01.2023, by the learned Collector, Purnea whereby and whereunder, the premises in question has been confiscated.

5. The petitioner No.1 had then filed an appeal bearing Excise Appeal Case No. 110 of 2023, however the same has been dismissed by an order dated 14.08.2023, passed by the Excise Commissioner, Bihar, Patna. Thereafter, the petitioner No.1 had filed a revision petition bearing Excise Revision Case No.41 of 2023, however the same has also stood dismissed by an order dated 16.10.2023, passed by the Secretary, Prohibition and Excise, Department of Prohibition, Excise and Registration, Bihar, Patna, hence it is submitted by the Ld. Counsel for the respondents that since 44.250 liters of illicit liquor has been recovered from the premises in question, the same has rightly been confiscated.

6. We have heard the Ld. Counsel for the parties and perused the materials on record from which it is apparent that the present case arises out of Sarsi P.S. Case No.62 of 2022 dated 18.03.2022 which has been registered under Sections 272/273/34 of the Indian Penal Code and Section 30(a) of the Act, 2016 against the petitioner No.1 on account of recovery of 44.250 liters of illicit liquor from the premises in question. At this juncture, we would like to advert to the provisions contained in the amended Act, 2016, Sections 30, 56, 57B and 58 being relevant are being reproduced herein below:-

"30. Penalty for unlawful manufacture, import, export, transport, possession, sale, purchase, distribution, etc. of any intoxicant or liquor. -

Whoever, in contravention of any provision of this Act or of any rule, regulation, order made, notification issued thereunder, or without a valid license, permit or pass issued under this Act, or in breach of any condition of any license, permit or pass renewed or authorization granted thereunder –

(a) Manufactures, possesses, buys, sells, distributes, collects, stores, bottles, imports, exports, transports, removes or cultivates any intoxicant, liquor, hemp; or

(b) Constructs or establishes or works in any manufactory, distillery, brewery or warehouse; or

(c) Manufactures, uses, keeps or has in his possession any material, utensil, implement or apparatus, or uses any premises, whatsoever, for the purpose of manufacturing any intoxicant or liquor; or

(d) Manufactures any material or film either with or without the State Government logo or logo of any State or wrapper or any other thing in which liquor or intoxicant can be packed or any apparatus or implement or machine, for the purpose of packing any liquor or intoxicant; or

(e) Removes any liquor or intoxicant from any distillery, brewery, warehouse, other place of storage licensed, established, authorized or continued under this Act; or

(f) Manufactures, possesses, sells, distributes, bottles, imports, exports, transports or removes, any preparation made with or without the use of any intoxicant or liquor, which can serve as an alcohol or a substitute for alcohol and is used or likely to be used or consumed for the purposes of getting intoxicated; shall be punishable with imprisonment for the term which may extend to life and with fine which may extend to ten lakh rupees.

Provided that the punishment:

(a) For the first offence shall not be less than five years imprisonment and fine of not less than one lakh rupees, and

(b) For the second and subsequent offences shall not be less than ten years rigorous imprisonment and fine of not less than five lakh rupees".

56. Confiscation of Seized Items.- *(1) Notwithstanding anything contained in Section 57B, whenever an offence punishable under this Act, is committed, the Collector or an Officer authorized by him may confiscate such items based on the report of the investigating officer.*

(2) Such items may include-

(i) any premises or part thereof;

(ii) any animal, vehicle, vessel or conveyance;

(iii) any liquor or intoxicant;

(iv) any other item having bearing with the case;

Provided, where things as mentioned in Section 57 are to be destroyed, then the Collector or an officer authorized by him need not confiscate the same before their destruction.

(3) The State Government may issue necessary direction, guidelines, regulations and instructions with respect to the mode and manner of search, seizure, destruction and confiscation.

57B. Things or premises liable to be released upon penalty.- *(1) Any animal, vehicle, vessel or other conveyance used for committing any offence punishable under this Act that has been seized by any police Officer or Excise Officer may be released by the Collector upon payment of such penalty as may be notified by the State Government.*

2. Any premises or part thereof used for committing any offence punishable under this Act that has been seized by any police Officer or Excise Officer may be released by the Collector upon *payment of such penalty as may be notified by the State Government.*

(3) If the person concerned does not pay the penalty, then the Collector shall proceed to confiscate the said animal, vehicle, vessel or other conveyance and premises as per Section-58.

58. Confiscation by District Collector. - *(1) Notwithstanding anything contained in this Act or any other law for the time being in force, where anything liable for confiscation under this Act is seized or detained under the provisions of this Act, the officer seizing and detaining such property shall, without any reasonable delay submit a report to the District Collector who has jurisdiction over the said area;*

(2) On receipt of the report under subsection (1), the District Collector if satisfied that an offence under this Act has been committed, may, whether or not prosecution is instituted for the commission of such an offence and whether or not a case is pending before any court, order confiscation of such property;

(3) The Collector shall, before passing an order under subsection (2), give a reasonable opportunity to the person concerned, of being heard;

(4) While making an order of confiscation under sub-section (2), the District Collector may also order that such of the properties which the order of confiscation relates, which in his opinion cannot be preserved or are not fit for human consumption, be destroyed. Whenever any confiscated article has to be destroyed in conformity with these provisions, it shall be destroyed in the presence of an Executive Magistrate or officer ordering the confiscation or forfeiture, as the case may be, or in the presence of the Excise Officer not below the rank of a Sub Inspector;

(5) While making an order of confiscation under sub-section (2), if the District Collector is of the opinion that it is expedient in the public interest to do so, he may order the said property or any part

thereof to be sold by public auction or dispose of departmentally and proceeds deposited with the State Government;

(6) The District Collector shall submit a full report of all particulars of confiscation to the Commissioner of Excise within one month of such confiscation".

7. We would also like to refer to Rule 12 B and 13 B of the Bihar Prohibition and Excise (Amendment) Rules, 2022.

"12B. Release of Premises on Payment of Penalty- *(1) If any premises or part thereof has been seized or sealed by any police or excise officer under the Act, then in terms of section-57B (2) of the Act, the Collector or an officer authorized by him, upon receipt of an application in Form V from the owner of the said premises, may release or unseal the said premises or part thereof upon payment of such penalty as may be ordered by the Collector or the officer authorized by him.*

Provided, where it is not possible to ascertain the owner of the premises or the owner is not coming forward, the Collector or the officer authorized by him shall, after waiting for 15 days from the date of seizure/sealing, proceed to confiscate the premises as per the provisions of the Act.

(2) The Collector or the officer authorized by him shall have due regard to the economic status of the individual, nature of his involvement in the crime, location of the premises and the quantum of intoxicant recovered while deciding the quantum of fine to be paid by the individual. However, the fine shall not be less than Rs. one Lakh in any case.

In any case, the Collector shall not wait beyond 15 days from the date of seizure/sealing and if during this period, the accused/owner does not pay up the penalty he shall proceed with the confiscation/auction.

(3) Notwithstanding above, if on a report by police officer or excise officer, the Collector or the officer authorized by him is

satisfied that releasing the premises shall not be in the public interest, the Collector or the officer authorized by him shall proceed ahead with the confiscation of the said premises or part thereof and its subsequent auction/disposal.

(4) Such penalty shall be, regardless of the outcome of the trial if any, before the Special Court, non-refundable.

(5) The owner of the Premises shall, after the release of the premises, allow the inspection of the premises as and when desired by the authorities.

13B. Procedure of confiscation of Premises.- *(1) Where it is decided by the Collector that the premises is not to be released on penalty or where the owner does not pay the required penalty, the confiscation proceeding shall be initiated. The proposal for confiscation of the premises shall be sent by the police/excise officer to the Collector (or an officer authorized by him) within 30 days from the date of seizure/sealing. The officer concerned shall immediately start the confiscation proceeding.*

In case of delay of beyond 30 days, in submission of the proposal for confiscation, the police/excise officer will have to explain the delay.

(2) The officer concerned, on receipt of proposal of confiscation of any premises or part thereof any property liable for confiscation from police/excise officer, shall issue show cause notice to the owner(s) of the premises or property. Simultaneously, he shall issue notice to the Chemical Examiner and/or such revenue officers for their reports.

(3) Such notice issued by the officer shall be served as per procedure prescribed in the Code of Criminal Procedure, 1973 for service of summons.

(4) The officer shall provide reasonable opportunity of hearing to the owner(s) of the premises or property. The investigating/inquiry officer shall also be given opportunity to participate in such hearing.

(5) If the person to whom notice has validly been served fails to appear in the proceeding on two consecutive dates fixed for hearing, the confiscating authority shall proceed to pass the order ex-parte.

(6) The officer shall, after hearing the parties, pass appropriate order of confiscation or unsealing, as the case may be, with respect to sealed/seized premises or property on the basis of his satisfaction whether an offence has been committed or not in terms of the Act.

(7) The officer shall ensure that the order for confiscation is passed within 90 days from the date of seizure/sealing of the premises.

(8) Any person aggrieved by the order passed by the Collector under the provisions of the Act may file appeal in the manner prescribed under these rules."

8. A bare perusal of the aforesaid statutory provisions would show that a premises or part thereof used for committing an offence under the Act, 2016 can be seized/confiscated but the same can be released upon payment of penalty, however while deciding the quantum of fine to be paid by the individual, due regard has to be given to the economic status of the individual, nature of his involvement in the crime, location of the premises and the quantum of intoxicant recovered. Moreover, before passing an order of confiscation or unsealing, as the case may be, with respect to sealed/seized premises or property, the concerned officer has to be satisfied as to whether an offence has been committed or not in terms of the Act, 2016. Thus, it is apparent from the statutory provisions contained in the Act, 2016 and the Rules framed thereunder that direct involvement or connivance of the owner of the premises in question in illegal use of such premises for stacking illicit liquor is an essential prerequisite for seizure and confiscation of the premises in question or imposing any penalty for release of the same.

9. Now coming to the present case, we find that neither the petitioner No. 2 has been made an accused in the aforesaid criminal case nor any allegation have been levelled against her to the effect that she was having any complicity in the trade of illicit liquor being carried out by her son. We also find that no material has been produced in the counter affidavit to show that either the petitioner No.2 was involved or having any connivance in the alleged occurrence. Moreover, there is no proof on record to show that the petitioner No.2 was having any connection with the trade of illicit liquor or she was instrumental in the alleged occurrence or she was having any direct/indirect involvement or connivance in illegal use of the aforesaid premises for stacking the illicit liquor. Therefore, we find that the action of the State authorities in sealing the premises in question and confiscation the same is arbitrary and hit by Article 14 of the Constitution of India. It is also violative of the constitutional right of the petitioner to hold property as provided for under Article 300 A of the Constitution of India which prohibits any deprivation of the property save by authority of law. Thus, we are of the considered view that the Act, 2016 in no way authorizes the officials to seize the premises in question in the facts and circumstances of the present case, hence the seizure and confiscation of the premises in question is without any authority of law. Accordingly, we set aside the order dated 13.01.2023, passed by the learned Collector, Purnea in Excise Case No. 519 of 2022, the order dated 14.08.2023 passed by the Excise Commissioner, Purina in Excise Appeal No. 110 of 2023 and the Revisional Order dated 16.10.2023, passed by the Excise Secretary, Bihar, Patna in Excise Revision Case No.41 of 2023.

10. We further find that the petitioner No.1 is the son of the petitioner No.2 who is alleged to be carrying out illicit trade of liquor and for the said purpose he was using the premises of the petitioner No.2 for stacking illicit liquor, hence we are of the view that it would be in the interest of justice that the petitioners are directed to deposit a sum of Rs. 20,000/- (Rupees Twenty Thousand) with the Collector, Purnea within a period of four weeks from today, whereupon the Collector, Purnea shall ensure that the premises/land in question is de-sealed and released in favor of the petitioner No.2 within a period of two weeks, thereafter upon him being satisfied about the ownership of the petitioner No.2 with regard to the premises in question.

11. Accordingly, the present writ petition stands allowed.

(Mohit Kumar Shah, J)

(Arun Kumar Jha, J)

GAURAV S./-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	29.04.2026
Transmission Date	