

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17735 of 2024

Sumitra Devi Wife of- Late Ram Chaudhary, Resident of Village English,
Ward No.- 5, P.S.- Lakhisarai, District- Lakhisarai.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Excise Department, Government of Bihar, Patna.
2. The Collector, Lakhisarai.
3. The Senior Deputy Collector, District Legal Cell, Lakhisarai.
4. The Excise Superintendent of Police, Lakhisarai.
5. The Executive Engineer, Building Division, Lakhisarai.
6. The Circle Officer, Lakhisarai.
7. The S.H.O. of Excise Police Station, Lakhisarai.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Sanjeev Kumar, Advocate.
For the Respondent/s : Mr. Sitaram Yadav, GP-16.
: Mr. Rakesh Kumar Shrivastava, AC to GP-16.

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
C.A.V. JUDGMENT
(Per: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA)

Date : 05-03-2025

Heard both the parties.

2. In the instant petition, petitioner has prayed for
the following relief(s):-

“(i) For issuance of an appropriate writ for quashing the order dated 05.07.2024 passed in Confiscation (Excise) Case No.26/2024 (Annexure-6) and Memo No.1550 dated 10.09.2024 passed by Senior Deputy Collector, District Legal Cell, Lakhisarai (Respondent No.3) contained in Annexure-7 whereby, petitioner has been directed



to deposit a fine of Rs.9,16,317/- in Excise Case No.684 C2/21 for her shop bearing Khata No.14, Khesra No.57, Area 243 sq.feet of Thana No.126.

(ii) For issuance of an appropriate writ directing the respondent to unseal the shop of petitioner being Thana No.126, Khata No.14, Khesra No.57, Area 243 sq.feet situated at Lakhisarai.

(iii) Any other relief or reliefs for which the petitioner is entitled under law as well as on facts.”

3. As per the prosecution case, there is alleged recovery of 36.300 litre of illicit foreign liquor from the shop of petitioner which was being run by one Rahul Kumar @ Ramu Kumar who was arrested with Bablu Kumar, the son of petitioner. On the basis of aforesaid fact, Excise Case No.684 C2/2023 has been registered on 01.08.2023 under Section 30(a) of the Bihar Prohibition and Excise Act, 2016 (as amended in 2018). The shop of petitioner was sealed on 01.08.2023, the area of which is 0.558 decimal and valuation of the said land has been ascertained to be Rs.4,74,300/- by Circle Officer, Lakhisarai and total valuation of sealed area was estimated as Rs.4,42,017/- by Executive Engineer, Building Division, Lakhisarai. The petitioner submitted application for release of premises (Form V) under Rule 12-B of Bihar Prohibition and Excise Rules, 2021. In confiscation proceeding being Confiscation Excise Case No.26 of 2024 vide Memo No.1550



dated 10.09.2024 has directed the petitioner to deposit a fine of Rs.9,16,317/- (100% value of sealed land and shop). Respondent no.3 has passed the final order without hearing the petitioner.

4. Learned counsel for the petitioner submitted that the sealed shop was not being run by the petitioner rather the same was rented to one Rahul Kumar @ Ramu Kumar and as such the petitioner had no knowledge about the recovery of illicit liquor from the said shop. It is further submitted that the penalty of Rs.9,16,317/- is on higher side which requires to be modified.

5. Learned counsel for the State submitted that the Collector or the authority authorized by him has discretionary power under Rule 12-B of Bihar Prohibition and Excise Rules as inserted by amendment in 2022, to decide the quantum of penalty considering the factors stated in Sub-Rule (3) of Rule 12-B of the said Rules, 2021. It is further submitted that petitioner has alternative remedy of appeal before Appellate Authority under Section 92 of the Act against the said order and is liable for the penalty in order to release the sealed property in question.

6. Rule 12-B of Bihar Prohibition and Excise



Rules, 2021 as inserted in 2022 by way of amendment, provides for release of premises on payment of penalty. This Rule reads as follows:-

"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.

(emphasis supplied)

Having gone through the material on record, it appears that petitioner is not named accused in this case and imposition of 100% of the estimated value of the seized premises in question as penalty is not justified, as such, it is reduced to a sum of Rs.2,00,000/- (Rupees Two lakhs).

7. Keeping in view of the discussion made above, the order dated 05.07.2024 (Annexure 6) passed by respondent no.3 (Senior Deputy Collector, District Legal Cell, Lakhisarai) and Memo No.1550 dated 10.09.2024 are modified to the above extent.

8. Considering the facts and circumstances of the case and to prevent the multiplicity of proceedings in the interest of justice, the concerned authority is hereby directed to de-seal the property in question on deposit of fine of Rs.2,00,000/- (Rupees Two Lakhs) within four weeks from the



date of receipt of this order.

9. Accordingly C.W.J.C No.17735 of 2024 stands disposed off.

(Sunil Dutta Mishra, J)

I agree
P. B. Bajanthri, J

(P. B. Bajanthri, J)

Ritik/-

AFR/NAFR	NAFR
CAV DATE	18.02.2025
Uploading Date	05.03.2025
Transmission Date	NA

