

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9207 of 2017

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Rakesh Kumar Alias Rakesh Kumar Singh Alias Raku S/o Late Jagannath Singh resident of Bharti Bhawan, Near Chandralok College, Naya Tola, P.S. Kazi Mohammadpur, District Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Registration, Excise and Prohibition, Government of Bihar, Patna.
2. The Collector-cum-District Magistrate, Muzaffarpur.
3. The Superintendent of Excise, Muzaffarpur.
4. The Sub Inspector, Excise Nagar Anchal, Muzaffarpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Satyabir Bharti, Advocate
Ms. Sushmita Sharma, Advocate
Mr. Abhishek Anand, Advocate
Ms. Kanu Priya, Advocate
For the Respondent/s : Mr. Bipin Kumar, AC to SC-3

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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 : 07-11-2023

In the instant petition, petitioner has prayed for the following reliefs:-

"(i) Issuance of writ of certiorari quashing the order, dated 07.02.2017/16.05.2017 the passed by Collector-cum-District Magistrate, Muzaffarpur in Confiscation Case No.26 of 201617 by which in purported exercise of powers conferred under Section 58 of the Bihar Prohibition and Excise Act, 2016, the entire premises, namely, Hotel Chandralok Continental,



Muzaffarpur situated over Khata No.140, Khesra No.45(Ka), (Kha), (Ga), 46(Ka), (Kha), (Ga) having an area of 0.3090 hectres has been confiscated; the Sub-Divisional Officer, East Muzaffarpur has been directed to declare the aforesaid property as Government property and to ensure handing over of the physical possession of the property to the Circle Officer, Musahari, Muzaffarpur;

(ii) Directing the respondents to forthwith release the aforesaid premises situated over Khata No.140, Khesra No.45(Ka), (Kha), (Ga), 46(Ka), (Kha), (Ga) having an area of 0.3090 hectres in the district of Muzaffarpur in favour of the petitioner;

(iii) To stay the impugned order, dated 07.02.2017/16.05.2017 passed by the Collector-cum-District Magistrate, Muzaffarpur in Confiscation Case No.26 of 2016-17 and direct to release the aforesaid premises situated over Khata No.140, Khesra No.45(Ka), (Kha), (Ga), 46(Ka), (Kha), (Ga) having an area of 0.3090 hectres, during the pendency of this writ application;

(iv) To pass such other order(s), direction(s) as your Lordships may deem fit and proper in the facts and circumstances of the case."



2. Petitioner-Rakesh Kumar @ Rakesh Kumar Singh @ Raku stated to be the owner of Hotel Chandralok Continental, Muzaffarpur situated over Khata No. 140, Khesra No. 45(Ka), (Kha), (Ga), 46(Ka), (Kha), (Ga) having an area of 0.3090 hectares was given in lease in favour of Md. Rizwanul Haque. During the lease period lease holder, Md. Rizwanul Haque or his employees stated to be in possession of illegal liquor to the extent of 2.25 litres of foreign liquor and it was seized on 17.08.2016 and case was registered for the offences under the Excise Act. The petitioner who was an owner and lessor has been arrayed as co-accused.

3. Feeling aggrieved by the Excise Case No. 239 of 2016 registered for the offences under Sections 47(a), 53(c) and 54 & 57 of Bihar Excise Act, 2015 as amended by the Bihar Prohibition and Excise Act, 2016 and it was pending consideration on the file of Chief Judicial Magistrate, Muzaffarpur. Petitioner filed petition under Section 482 of Cr.P.C insofar as quashing the entire proceedings arising out of Excise Case No. 239 of 2016 in Criminal Writ Petition Case No. 939 of 2016 bearing Thana Number- Government Official Complaint, District – Muzaffarpur.

4. On 15.09.2023, this Court allowed the Criminal Writ Petition Case No. 939 of 2016.



5. In the meanwhile, official respondents initiated proceedings under Section 58 of the Bihar Prohibition and Excise Act, 2016 (for short 'Act, 2016') insofar as the order of the confiscation proceedings dated 07.02.2017/16.05.2017 in Confiscation Case No. 26 of 2016-17 is concerned. The subject matter of premises cited supra has been confiscated declaring that the aforesaid premises is a Government property. Thus, petitioner has assailed the order of confiscation proceedings.

6. Learned counsel for the petitioner submitted that petitioner has not exhausted the remedy of appeal against the confiscation proceedings on the score that subject matter of premises was leased out to Md. Rizwanul Haque during the intervening period from 01.06.2016 to 30.04.2017 and the alleged allegations relating to seizure of the premises for the offences under Excise Act was on 17.08.2016. Therefore, it would go to the root of the matter to the extent that petitioner involvement is not forthcoming in the aforementioned offences. Therefore, the impugned action of confiscation proceedings is liable to be set aside since there is no role played by the petitioner insofar as alleged offences under Excise Act.

7. *Per contra*, learned counsel for the respondents resisted the aforesaid contention and submitted that for the excise



offences respondents have two remedies one under the Criminal Procedure Code read with the offences under the Bihar Excise Act to furnish the accused for the offences. Similarly, confiscation proceedings is under Section 58, further appeal and revision under Section 92 and 93 of amended Act, 2016. Therefore, quashing of registration of criminal case has no bearing on the confiscation proceedings. It is submitted that lease executed by the petitioner is not registered document, therefore, the same cannot be taken note of, hence, no interference is warranted. That apart, petitioner has not exhausted the remedy of appeal and revision under Section 92 and 92 of the Act, 2016.

8. Heard learned counsel for the respective parties.

9. It is undisputed that petitioner is owner of the subject matter of premises and it is also not disputed that subject matter of premises was leased out to Md. Rizwanul Haque during the intervening period from 01.06.2016 to 30.04.2017. As on alleged incident relating to offences under the Excise Act, i.e., on 17.08.2016 lease period was existing and petitioner was only a lessor. No material has been placed on record to establish that petitioner-lessor involved in the alleged offences under the Excise Act except to the extent that he is owner of the subject matter of premises. Merely, owner of the premises and subject matter of



premises was under lease, the owner cannot be held responsible unless and until certain corroborative evidence is placed on record to the extent that he or she the owner is also involved in the alleged offences under the Excise Act. In the present case, official respondents have proceeded to initiate and complete the confiscation proceedings only on the score that petitioner was an owner and the lease deed executed on 01.06.2016 is unregistered document. The aforementioned contentions cannot be appreciated for the reasons that lease deed dated 01.06.2016 is not disputed only the nature of document is disputed that too in respect of non-registered. It is not the contention of the respondents that for the purpose of the present case the petitioner has created lease deed and to overcome the cases in the criminal proceedings and confiscation proceedings and there is no other corroborative material evidence to show that the subject matter of premises was not leased out to Md. Rizwanul Haque.

10. No doubt, decision in the criminal proceedings is different from the confiscation proceedings and at the same time no material evidence has been produced in order to corroborate that petitioner involvement in the alleged offences so as to implicate him in the confiscation proceedings.



11. Petitioner has not exhausted remedy of Appeal and Revision under Section 92 and 93 of Act, 2016 is not tenable for the reasons that Appellate and Revisional authorities were identified only in the year 2021 in Bihar Prohibition and Excise Rules, 2021 whereas present petition filed in the year 2017.

12. In view of these facts and circumstances, the petitioner has made out a case. Hence, the impugned action of the confiscation proceedings dated 07.02.2017/16.05.2017 passed by the Collector-cum-District Magistrate, Muzaffarpur in Confiscation Case No. 26 of 2016-17 stands set aside.

13. Accordingly, the present writ petition stands allowed.

(P. B. Bajanthri, J)

(Ramesh Chand Malviya, J)

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AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	
Transmission Date	N/A

