

(2021) 01 PAT CK 0156

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 10129 Of 2020

Ritesh Kumar Singh

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 20-01-2021

Acts Referred:

Bihar Prohibition And Excise Act, 2016 — Section 58, 92, 93

Citation : (2021) 01 PAT CK 0156

Hon'ble Judges : Sanjay Karol, CJ;Prabhat Kumar Singh, J

Bench : Division Bench

Advocate : Rakesh Singh, Lalit Kishore

Final Decision : Disposed Of

Judgement

Heard learned counsel for the petitioner and learned counsel for the State.

Petitioner has prayed for the following reliefs: -

â??(I) To issue appropriate writ(s), order(s), direction (s) in the nature of mandamus to produce the order dated 13.02.2020 passed by Excise

Commissioner, Bihar, Patna in Excise Appeal No.11/2019 whereby appeal has been disposed of affirmed the order of Collector although

aforementioned order has not been committed to the petitioner till now and authority are asking the petitioner verbally to hand over the vehicle in

question to State Authority and accordingly after producing the same may be quashed and also set aside the order dated 17.11.2017 passed in

Confiscation (Excise) Case No.36/17-18 by the Collector, Banka whereby and whereunder orders of Confiscation of the vehicle registration no.JH

15K 4753 Zest Car has been passed and the said vehicle has been confiscated by the Collector in excise of powers under Section 58 of Bihar Excise

and Prohibition Act, 2016 (hereinafter referred to as 'the Act'). Although it is pertinent to mention here that the petitioner has already been

acquitted by learned trial court where prosecution miserably failed to prove the case.

(II) To issue an appropriate writ in the nature of mandamus directing the respondent authorities that the vehicle registered through vehicle registration

no.JH 15K 4753 be restrained from surrender and auction and the order dated 13.02.2020 passed by commissioner excise, Patna and order dated

17.11.2017 passed by Collector, Banka may not be enforced until the pendency of the present writ application.

(III) To direct the respondents not to obtain the vehicle from petitioner registered through vehicle registration no.JH 15K 4753 and the implementation

of the order dated 17.11.2017 (impugned order) be kept in abeyance until the pendency of this writ application.

(IV) To issue appropriate order(s), direction(s) holding that the executive has no power to exercise powers of confiscation when there is a pending

criminal case and the matter is seized by a Judicial Forum.

(V) To hold that the Collector cum District Magistrate, Banka lacked jurisdiction to entertain and proceed with confiscation case in relation to the

vehicle registered through vehicle registration no.JH 15K 4753 when there is already a criminal case Banka P.S.Case No.71/2017 pending against the

petitioner and others.

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

Learned counsel for the petitioner prays that the petition be disposed of in terms of the judgment dated 22.12.2020, passed in Civil Writ Jurisdiction

Case No.9592 of 2020 (Dharmendra Mahto versus The State of Bihar).

In the case of Dharmendra Mahto (supra) this Court has referred and discussed all the previous case laws on the subject. Some of the judgments

rendered in similar matters are as under:-

(i) Md. Shaukat Ali Vs. The State of Bihar & Ors., reported in 2020(3) PLJR 927.

(ii) Umesh Sah Versus The State of Bihar & Ors., reported in 2020(3) PLJR 931.

(iii) Bunilal Sah @ Munilal Sah Vs. The State of Bihar & Ors., reported in 2020(3) PLJR 935.

The operating part of the judgment in the case of Md. Shaukat Ali are being briefly reproduced as under:-

â??(a) Since the vehicle in question stands seized in relation to the FIR which stood registered long ago, in case confiscation proceeding has not been

initiated, it must be initiated within a period of 15 days from today and that confiscation proceeding stands initiated, we direct the appropriate authority

under the Act to forthwith ensure that such proceedings be concluded not later than 30 days.

(b) The petitioner undertakes to make himself available in the office of the concerned appropriate authority empowered under Section 58 of the Act

i.e. District Collector, in his/her office on 24.01.2020 at 10:30 A.M.

(c) We further direct the appropriate authority to positively conclude the confiscation proceeding within next thirty days on appearance of the

petitioner. If for whatever reason, such proceeding cannot be concluded, in that event it shall be open for the authority to take such measures, as are

permissible in law, for release of the vehicle in question by way of interim measure, on such terms as may be deemed appropriate, considering the

attending facts and circumstances of the case.

(d) If eventually, the appropriate authority arrives at a conclusion that the property is not liable to be confiscated, it shall be open for the petitioner to

seek damages in accordance with law and have appropriate proceedings initiated against the erring officials/officers.

Learned counsel for the petitioner states that the certified copy of the order shall be made available to the concerned District Collector on the date so

fixed.

For future guidance, where parties have not approached this Court, we issue the following direction:-

The expression â??reasonable delayâ? used in Section 58 of Chapter VI of the Act, in our considered view, necessarily has to be within a reasonable

time and with dispatch, which period, in our considered view, three months time is sufficient enough for any authority to adjudicate any issue, more so,

when we are dealing with confiscatory proceedings.â??

The aforesaid directions were reiterated in the case of Umesh Sah (supra). Once again in the case of Bunilal Sah @ Munilal Sah (supra) this Court

dealt in detail the various provisions of the Bihar Prohibition and Excise Act, 2016

(hereinafter referred to as the Excise Act or the Act of 2016).

In the recent judgment rendered by this Court in the case of Dharmendra Mahto (supra) this Court has issued further directions:-

It is seen that till date, in large number of cases, position about conclusion of the proceedings, be it under Section 58, 92 or 93 remains the same.

We further direct that all proceedings under Section 58 must positively be initiated/concluded within a period of ninety days from the date of

appearance of the parties. Further, Appeal/Revision, if any, be also decided within a period of thirty days from the date of initiation, failing which the

things (vehicle/property/ etc.) shall be deemed to have been released in terms of several orders passed by this Court, reference whereof stands

mentioned in Bunilal Sah @ Munilal Sah (supra).

Wherever confiscatory proceedings stand concluded and parties could not file the appeal/revision within the statutory period of limitation, as already

stands directed in several matters, if they were to initiate such proceedings within next thirty days, the plea of limitation would not come in their way of

adjudication of such proceedings on merit.

We find that the direction issued by this Court in the aforementioned cases are equally applicable in the facts of the present case. The

F.I.R./prosecution report was lodged/filed on 06.02.2017, the vehicle was seized and a confiscation proceeding has been initiated but the same is

pending as yet. Because of the delay in conclusion of confiscation proceeding, the vehicle is losing its road worthiness and the depreciation in the re-

sale value of the vehicle is an ultimate loss to the State.

Petitioner through learned counsel undertakes to make himself/herself available on 06.02.2021 at 10:30 A.M. before the appropriate authority which

may be in the attending facts, the Collector of the Banka District before whom Confiscation (Excise) Case No.36/17-18 is pending. If the Collector is

not himself/herself dealing with the matter on account of delegation of power or assignment of work to another officer of his/her District, he/she shall

fix a date directing the parties to appear before the said officer, which date shall be not exceeding one week. Also, he/she shall inform the said

authority of fixing of such date. On appearance of the petitioner through his/her learned Advocate, the appropriate authority shall consider passing any

order/interim order, as the case may be, in terms of the direction of this Court.

We clarify that convenience of parties, specially during the time of Pandemic Covid-19 is of prime importance and it shall be open for the authority to

hear the parties with the use of technology, i.e. Video Conferencing facility etc.

We only hope and expect that the Authorities under the Act shall take appropriate action at the earliest and in accordance with law, within the time

schedule fixed, failing which the vehicle/property/things liable for confiscation shall be deemed to have been released without any further reference to

this Court.

Liberty reserved to the petitioner to take recourse to such remedies as are otherwise available in accordance with law if the need so arises

subsequently.

Petition stands disposed of with the aforesaid observations/directions.