

GAHC010071902023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/2155/2023

SMTI. MAMATA DAS
W/O LATE DEV KUMAR RATNA, R/O J.P. ROAD, WARD NO. 5, BILASIPARA,
P.S.-BILASIPARA, DIST-DHUBRI, ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE SECRETARY TO THE HOME AND POLITICAL
DEPARTMENT, GOVERNMENT OF ASSAM, ASSAM SECRETARIAT, DISPUR,
GUWAHATI-781003

2:DIRECTOR GENERAL OF POLICE
ASSAM
POLICE HEAD QUARTER
ULUBARI
GUWAHATI
PIN-781007

3:SUPERINTENDENT OF POLICE
DHUBRI DISTRICT
DHUBRI
ASSAM

4:OFFICER-IN-CHARGE
BILASIPARA POLICE STATION
BILASIPARA
DIST-DHUBRI
ASSAM

Advocate for the Petitioner : MR. M SAIKIA

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

18.10.2023

Heard Mr. M. Saikia, learned counsel for the petitioner. Also heard Mr. H. Sarma, learned Addl. Senior Govt. Advocate, Assam appearing for the respondents.

The writ petitioner herein has approached this Court being aggrieved due to the “sealing” of her immovable property by the Investigating Officer in connection with Bilasipara P.S. Case No.337/2013. It appears that the immovable property (office building) in question was seized by the I.O. in connection with investigation conducted in Bilasipara P.S. Case No.337/2013, in presence of Executive Magistrate but even after completion of investigation, the building has not been released. The petitioner is the owner of the building and she has nothing to do with the alleged offence. Notwithstanding the same, the petitioner has been deprived of enjoying her property. Hence, this writ petition.

Mr. Saikia, learned counsel for the petitioner by referring to the decision of the Hon'ble Supreme Court rendered in the case of **Nevada Properties Private Limited Through its Directors vs. State of Maharashtra and another** reported in **(2019) 20 SCC 119**, submits that immovable property cannot be seized by the I.O. in connection with investigation in a Police case.

Notwithstanding the same, by order dated 09.12.2022 the learned Sub-Divisional Judicial Magistrate (M), Bilasipara had rejected the prayer of the petitioner for releasing her property on the ground that the "sealed office" cannot be opened without the consent of the Executive Magistrate.

Mr. H. Sarma, learned Addl. Senior Govt. Advocate, Assam has submitted, in his usual fairness, that after the decision of the Supreme Court in the case of **Nevada Properties Private Limited** (supra) it is clear that "immovable property" cannot be seized under Section 102 of the Cr.P.C.

In the case of **Nevada Properties Private Limited** (supra) the Hon'ble Supreme Court has categorically held that the expression "any property" used in sub-section (1) of Section 102 of the Code of Criminal Procedure, 1973 would not include "immovable property" and consequently, a Police Officer investigating a criminal case cannot take custody of and seize any immovable property which may be found under circumstances which create suspicion of the commission of any offence. If that be so, seizure of the office building of the writ petitioner appears to be illegal on the face of the record.

Be that as it may, since the investigation has already been completed and the respondents do not have any objection if the seal of the office premises is removed, the order dated 09.12.2022 passed by the learned SDJM(M), Bilasipara is hereby set-aside. This writ petition is therefore, disposed of with a direction upon the learned SDJM(M), Bilasipara to pass a fresh order in the matter in the light of the observation made herein above. The aforesaid exercise be carried out as expeditiously as possible but not later than two weeks from the date of filing of a fresh petition by the writ petitioner, by enclosing a copy of this order.

Writ Petition stands disposed of.

JUDGE

Comparing Assistant