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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(CRL) 2158/2018**

**BRAJESH KUMAR SHUKLA @ BIJESHWAR
SHUKLA**

..... Petitioner

Through: Mr H.K. Chaturvedi, Ms Anjali
Chaturvedi, Mr Sagar Chaturvedi and
Mr Shravan Chandrashekhar,
Advocates.

versus

STATE & ORS

..... Respondents

Through: Mr Jamal Akhtar, Advocate for Mr
Rahul Mehra, Standing Counsel with
SI Anand Prakash, PS EOW.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% 24.10.2019

1. The petitioner has filed the present petition, *inter alia*, praying as under:-

(A) Issue appropriate writ(s), order(s) and / or directions for quashing/ setting aside the order dt. 09.03.2011 issued by respondent no. 3, order dt.14.06.2012 passed by inspector from office of respondent no.2, order dt. 23.08.2012 & 23.08.2013 passed by the respondent no.5 & all other orders by which the immovable properties of petitioner and his close relatives were illegally seized under the provision of section-102 Cr.P.C.; and also for release of such immovable properties;

(B) Quash & Set-aside the illegal Non Bailable Warrants dt.02.05.2018 issued by the Chief Metropolitan Magistrate (north-west), Rohini courts without application of mind to the facts of the case, as petitioner has always been attending the investigation/ interrogation since inception

till now and further ready to appear before the 3rd investigation officer as and when he will require;

(C) Direct the respondent no.1 to close the criminal investigation proceedings against the petitioner which are pending in the name of investigation since 2010 without any cogent material against the petitioner to connect with the FIR no. 122 of 2010, even after filing of chargesheet dt.03.07.2018 in which petitioner is not named as accused; (In view of the decision of Hon'ble Supreme Court of India in AIR 1994 SC 1229, Santosh De Vs. Archana Guha &Ors.)”

2. In the instant petition, the petitioner has impugned the orders dated 09.03.2011, 14.06.2012, 23.08.2012 and 23.08.2013 passed by the respondents, whereby the immovable properties of the petitioner and his close relatives have been seized under Section 102 of the Cr.P.C.

3. The aforesaid action has been taken by the respondents in relation to FIR No. 122/2010 under Sections 406/420/120-B of the IPC, registered at P.S. Economic Offences Wing (EOW). The said FIR was lodged by some investors who had invested their money with M/s Maxworth Projects. The said entity is a proprietorship firm of one Late Sh Amit Rathore. It is alleged in the said FIR that the said builder had launched a scheme for construction and allotment of villas in Bhopal, Madhya Pradesh in the month of September, 2007. The complainants had applied for the same and all of them were allotted villas in Bhopal through an allotment letter and a lease agreement dated 12.03.2007. It is alleged that the villas in question were not registered in the name of the complainants, despite payments being made to the builder. The complainants allege that the builder had committed a fraud on the complainants in the guise of allotting the said villas to the

complainants.

4. It is stated that the petitioner was approached by Mr Amit Rathore in the month of March, 2007 for purchase of land owned by the petitioner (Khasra no. 156/6, 156/7 and 156/9, land admeasuring ten acres). The land was purchased by Mr. Amit Rathore at the rate of Rs. 15,00,000/- per acre and earnest money in the amount of Rs. 18,00,000/- was paid by Mr Amit Rathore. Subsequently, the aforesaid transaction was cancelled and the petitioner returned the aforesaid money in instalments. It is stated that there was no written agreement between the petitioner and Mr Amit Rathore.

5. The learned counsel appearing for the petitioner states that it is settled law that provisions of Section 102 of the Cr.P.C. are not available for freezing or attaching immovable property. He has also referred to the recent decision of the Supreme Court in ***Naveda Properties Pvt. Ltd. Through its Directors v. State of Maharashtra & Anr.: Criminal Appeal No. 1481/2019, decided on 24.09.2019.*** The Supreme Court had examined the law on the subject and Justice Sanjiv Khanna, speaking for the majority, had authoritatively held as under:-

“21. In view of the aforesaid discussion, the Reference is answered by holding that the power of a police officer under Section 102 of the Code to seize any property, which may be found under circumstances that create suspicion of the commission of any offence, would not include the power to attach, seize and seal an immovable property.”

6. Justice Deepak Gupta entered a concurring opinion and he had also unequivocally held as under:

“2. Since brother Khanna in his judgment has given elaborate reasons to hold that in the context of Section 102 the words ‘any property’ would mean only movable property, I am not repeating the same for the sake of brevity.”

7. In view of the above, the impugned orders passed under Section 102 of the CrPC cannot be sustained. Thus, the petition is allowed and the impugned orders are set aside.

VIBHU BAKHRU, J

OCTOBER 24, 2019
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