

**IN THE HIGH COURT OF JUDICATURE AT PATNA
(FROM RESIDENTIAL OFFICE VIA VIDEO APPLICATION)**

Criminal Writ Jurisdiction Case No.1170 of 2019

Arising Out of PS. Case No.-499 Year-2016 Thana- FORBESGANJ District- Araria

VIJAY KUMAR GUPTA Son of Ramlochan Prasad Gupta Resident of
Village - 204, Nalanda Nagar Colony, Gauri Shankar Apartment, Kurji,
Phulwari, Sadaquat Ashram, P.S. Petitioner

Versus

1. The State of Bihar, through the Principal Secretary, Home Dept. Govt. of Bihar, Patna Bihar
2. The Circle Officer, Forbesganj, Araria. Bihar
3. The Police Station In-Charge, Forbesganj. Bihar

... .. Respondents

Appearance :

For the Petitioner/s : Ms.Mayuri, Advocate

For the Respondent/s : Mr. Ajay Kumar AC to GP 4

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER**

4 14-09-2020 In this case, the petitioner has challenged the order dated 05.03.2018 passed by learned Chief Judicial Magistrate, Araria in Forbesganj P.S. Case no. 499 of 2016 whereby he has refused to release the residential house of the petitioner.

The statements made in the writ application disclose that on 21.04.2015 the petitioner entered into an agreement with one Vishwamitra Microfinance non-Profitable Company incorporated under Section 25 of the Companies Act, 1956. He is said to have leased out the premises located at Araria, Bihar for office purposes. Copy of the agreement has been brought on record as Annexure '2'.

It is stated that on 22.09.2016 the Circle Officer of Forbesganj wrote to the In-Charge of Forbesganj Police Station that there had been certain complaints against the company, police was



asked to register the FIR against the Branch Manager, the computer operator, clerk and Director of the said company who were running the company allegedly against the norms of the Reserve Bank of India.

The Circle Officer while issuing such direction also directed police officials to seal the premises of the company. Accordingly, one FIR was registered vide Annexure '4' and the entire building of the petitioner was sealed. Petitioner filed an application in the court of learned C.J.M., Araria wherein he requested for the release of the building in his favour after calling for a report from the Forbesganj Police Station. On 12.06.2017 the In-charge of the police station wrote to the C.J.M., Araria that the office of the company was operating from the third floor of the building 'Savitri Complex' of the petitioner and that the building had been sealed as the investigation was going on. It was explicitly written in the said letter (Annexure '6') that the petitioner was not involved in the alleged act of the company. During this period the marriage of the daughter of the petitioner was also fixed, therefore, he filed an application dated 14.07.2017 (Annexure '7') in the Court of learned C.J.M. Araria and prayed for a direction to release the building in favour of the petitioner, however, the said application of the petitioner has been rejected.

Learned counsel for the petitioner submits that the petitioner is a retired government servant and had let his building on



hire as he was posted at Gopalganj during the relevant period. The tenancy agreement was due to expire in 2018 and the said residential house was to be used by the petitioner post retirement for his residential purpose but because of the high-handedness of the police authorities the entire building was sealed and the same is lying in the sealed condition for over four years by now.

It is submitted that the police has no authority in terms of Section 102 Cr.P.C. to seal the residential house of the petitioner in this connection learned counsel for the petitioner has relied upon the judgment of the Hon'ble Supreme Court in the case of **Nevada Properties Private Limited versus State of Maharashtra and Ors.** decided on 24.09.2019 reported in **AIR 2019 SUPREME COURT 4554.**

It appears that this matter was firstly taken up on 14.08.2019 when a learned Coordinate Bench of this Court granted ten days' time to the learned counsel for the State to seek instruction and file a counter affidavit. No counter affidavit was filed. Again on 05.11.2019 as a matter of last indulgence on the request of learned counsel for the State the matter was ordered to be placed on 19.11.2019 with a clear stipulation in the order that "in case no counter affidavit is filed by the next appointed date, the application shall be decided on merits after taking into consideration materials available on the record".

Today, when the matter has been taken up for



consideration once again no counter affidavit is found on the record and learned counsel for the State is still praying for adjournment.

This Court is unable to accept the prayer as it is evident from the previous orders that the State has miserably failed to comply with the order of this Court. This is coupled with the fact that in this case a residential house of the petitioner is lying under sealed condition for last four years and the petitioner who is a retired government servant is pursuing his remedy before this Court for last more than one year by now.

On perusal of the records this Court has noticed that when the learned C.J.M. Araria called for a report from the Officer-in-Charge of the Police Station, a categorical report has been submitted vide Annexure '6' to the writ application that the office of the finance company was situated on the third floor of the building and so far as this petitioner is concerned, he has no concern with the said company. The learned C.J.M. Araria has rejected the application of the petitioner for release without appreciating the correct legal position as settled by the Hon'ble Apex Court with respect to the powers of the investigating officer under Section 102 Cr.P.C.

In **Nevada Properties Limited's** case Hon'ble Mr. Justice Sanjiv Khanna while writing the judgment for himself and the Hon'ble Chief Justice of India, in paragraph '21' 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.”

While agreeing with the findings of Hon’ble Mr. Justice Khanna, Hon’ble Mr. Justice Deepak Gupta as his Lordship then was gave a few additional reasons and in paragraph 32 and 34 his Lordship was pleased to record as under:-

“32. If the argument of the Appellant and the State of Maharashtra is accepted then there was no need for the legislature to have introduced Chapter VIIA. It would also be pertinent to mention that the power of attachment and forfeiture is given to courts and not to police officer. As pointed out in the judgment of my learned brother, if a police officer is given the power to seize immovable property it may lead to an absolutely chaotic situation. To give an example, if there is a physical fight between the landlord and the tenant over the rented premises and if the version of the Appellant is to be accepted, the police official would be entitled to seize the tenanted property. This would make a mockery of rent laws. To give another example, if a person forges a will and thereby claims property on the basis of the forged will, can the police officer be given the power to seize the entire property, both movable and immovable, that may be mentioned in the will? The answer has to be in the negative. Otherwise it would lead to an absurd situation which could never have been envisaged by the Legislature. The power of seizure in Section 102 has to be limited to movable property.”

“34. In view of the above, I would answer the reference by holding that the phrase 'any property' in Section 102 will only cover moveable property and not immovable property.”

This Court has, therefore, no iota of doubt that the sealing of the residential building in the name of the investigation of the case by the investigating officer is beyond his authority and the impugned action of the investigating officer has been causing unwarranted



hardship to the petitioner. The action being wholly illegal, arbitrary and bad in law, the impugned order passed by learned C.J.M. Araria is hereby set aside.

The Superintendent of Police Araria is directed to unseal the premises in question within one week from the date of receipt/production of this order. The investigating officer may take away the records or any other materials of the company, if any lying in the hired portion of the building which may be relevant for him from investigation point of view in accordance with law. The petitioner has been deprived of his residential house because of an illegal action on the part of the investigating officer. The Circle Officer had no authority of law to direct the Investigating Officer to seize the property. He has been fighting in court since the year 2017 for which this Court directs the State to pay a cost of Rs. 25000/- (Twenty Five Thousand/-) to the petitioner as litigation cost within four weeks from today. The State will, however, be free to recover the cost from the erring official(s) in accordance with law. The petitioner, if so advised, may seek his remedy towards compensation in accordance with law before the appropriate forum.

This writ application is allowed.

(Rajeev Ranjan Prasad, J)

SUSHMA2/Avin

U		T	
---	--	---	--

Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.

