

Form No. J(2)

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Jay Sengupta

CRR 1628 of 2016

Arup Roy & Ors.
Vs.
State of W.B.

For the Petitioners : Mr. P. K. Chatterjee

For the State : Mr. Imran Ali
: Ms. Manasi Roy

Heard on: 24th December, 2020

Judgment on : 24th December, 2020

The Court:

This is an application challenging an order dated 26.2.2016 passed by the learned Chief Metropolitan Magistrate, Calcutta in G.R. No. 846 of 2014, thereby rejecting the petitioners' prayer for releasing of the immovable property that was hired out to the accused.

Two reports filed on behalf of the State are taken on record. It appears from the reports that despite efforts, no notice could be served on Wajid Hussain, the Director of opposite party no.2 Company.

It also appears from the affidavit of service filed earlier by the petitioners that the opposite party no.2 could not be served at the address provided in the license agreement in question.

Learned counsel appearing on behalf of the petitioners submits as follows. The petitioners are the trustees of the property in question. They had granted a leave and license of the property to the opposite party No. 2. The term of the licence already expired as would be evident from the copy of the agreement for leave and license annexed to the petition as "Annexure P-1". In the meantime, the Director of opposite party no.2 Company namely, Wajid Hussain, got involved in criminal cases. The property in question was sealed by the police during investigation in respect of the instant case. The petitioners made a prayer for release of the immovable property before the learned Magistrate, but the same was turned down. Even the de facto complainant did not object to the prayer for release. Relying on the decision of the Hon'ble Apex Court in Nevada Properties Pvt. Ltd. Through its Directors -vs- State of Maharashtra & another, 2019 SCC Online SC 1247, it is

submitted that the police has no power to seize an immovable property in connection with the investigation into an offence.

Learned counsel appearing on behalf of the State, in his usual fairness, submits that in view of the decision of the Hon'ble Apex Court in the case of Nevada Properties Pvt. Ltd (supra), it cannot be disputed that the immovable property seized by the police during investigation has to be released.

I have heard the submissions of the learned counsels appearing on behalf of the petitioner and the State and have perused the revision petition.

As was held in the case of Nevada Properties Pvt. Ltd. (supra), the phrase 'any property' in Section 102 of the Code will only cover moveable property and not immovable property.

Furthermore, it appears that the term of the leave and license has already expired. As such, the owners of the property or the lessor would be entitled to take possession of the property in question once the property is released.

In view of the above and in the interest of justice, I set aside the impugned order so far as the refusal to release the property is concerned and remand back the matter to the Court of the learned Chief Metropolitan Magistrate, Calcutta for fresh consideration as expeditiously as possible, keeping in

mind the ratio laid down by the Hon'ble Apex Court in case of Nevada Properties Pvt. Ltd. (supra).

With these observations, the revisional application is disposed of.

Urgent photostat certified copies of this order may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(Jay Sengupta,J.)