

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.2578 of 2018

Arising Out of PS. Case No.-408 Year-2014 Thana- GANDHIMAIDAN District- Patna

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1. Mrs Sushma Sinha, wife of Mr. N.K. Sinha, aged around 64 years, resident of Flat No. 302, Kumarshanti Enclave, Parmanand Path, Nageshwar Colony, P.O. GPO, P.S. Kotwali, District Patna.
 2. M/s Chandra Sales Private Limited through its Director Mr. Sachin Chandra, having office at 310, N.P Centre, New Dak Bunglow Road, P.O. GPO, P.S.- Kotwali, District- Patna-800001.

... .. Petitioners

Versus

1. The State of Bihar through its Principal Secretary Home Department, Patna.
2. The Senior Superintendent of Police, Police Headquarters, Gandhi Maidan, Patna.
3. The Sub- Divisional Officer, Muradpur, Gandhi Maidan, Patna.
4. Shri Gopal Singh, Sub Inspector and Investigating Officer, Gandhi Maidan Thana, Patna.

... .. Respondents

Appearance :

For the Petitioners	:	Mr. Manu Tripurari, Advocate Mr. Prashant Bhardwaj, Advocate Mr. Sujit Kumar, Advocate Mr. Vinod Kumar, Advocate Mr. Mahima Sharma, Advocate
For the Respondents	:	Mr. Md. Nasrul Huda Khan, S.C.-1

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL JUDGMENT
Date : 07-04-2023

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

2. This application has been filed by the petitioners
for a direction to the respondents to de-seal the premises and



hand over the property including its physical and legal possession to the petitioners in compliance of the order dated 19.09.2017 passed in Gandhi Maidan Police Station Case No.408 of 2014. The petitioners have also prayed for reimbursement of the financial loss suffered due to the delay and laches on the part of the respondent authorities as well as for taking appropriate action against the respondents officers for the delay in compliance of the order dated 19.09.2017 passed in Gandhi Maidan P. S. Case No.408 of 2014.

3. The petitioner no.1 is the owner of a property in the nature of office space bearing flat no.307, 3rd Floor, “Shashi Complex” at Exhibition Road, Patna. Similarly, petitioner no.2 is the owner of a property in the nature of office space bearing flat nos. 308 and 309, 3rd Floor, “Shashi Complex” at Exhibition Road, Patna. They had leased their aforesaid office space to M/s PACL Limited, a company registered under the Indian Companies Act, 1956, having its registered office at Jaipur for running the commercial activities commencing from 01.07.2008 which was further renewed through deeds of tenancy dated 19.06.2014 respectively for a period of 3 years commencing from 1st January 2014 and terminating on 31st December 2016.

4. Pursuant to some activities of the PACL, the



tenant, under the directions of the Securities and Exchange Board of India (for short 'SEBI'), an F.I.R. No. 408 of 2014 was registered under Sections 420, 467, 468, 406, 471, 120B of the I.P.C. and Section 66 of the Information Technology Act against the PACL Ltd. and its local employees and the company was closed under the directions of SEBI. Thereafter, the office of the company was seized and the premises were also sealed by the Gandhi Maidan Police. Since the petitioners are not accused in the aforesaid Gandhi Maidan P.S. Case No.408 of 2014 and their premises were sealed on 18.11.2014, being left with no other option, they moved an application on 23.06.2015 before the learned A.C.J.M.-VI, Patna, on which a police report was sought and, after hearing the parties, vide order dated 19.09.2017, the learned Magistrate directed respondent No.4 to prepare an inventory of all the items kept in the sealed premises and hand over the possession of the premises to the petitioners. Since the order of the learned Magistrate has not been complied, the petitioners have filed this case.

5. From perusal of the record, it appears that on 01.10.2019, this case was heard by a co-ordinate Bench of this Court and on the request of learned Advocate General, the case was adjourned. Again, the case was taken up for hearing on



22.10.2019 and on that date, it was submitted by learned Advocate General that since there is a judicial order, which has never been challenged and has attained finality, the authorities are preparing inventory of the premises in question which shall be handed over to the petitioners within a week. Again, on 23.10.2019, the case was taken up for hearing and on that date, a supplementary counter affidavit on behalf of respondent no.2 had been filed, wherein it has been averred that within 4-5 days it is expected that the premises of the petitioners would be fully vacated and will be handed over to the petitioners. Thereafter, the matter was listed for hearing on 06.11.2019. On that date, it was pointed out by learned counsel for the petitioners that despite an undertaking given on affidavit by respondent no.2, the premises of the petitioners have not been vacated and possession of the same has not been handed over to them. Thereafter, the matter was taken up on 22.11.2019, on that date, it was informed that the premises of the petitioners has now been de-sealed and possession of the same has now been handed over to the petitioners on 06.11.2019.

6. Since the flats of the petitioners has been de-sealed and possession of the same has already been handed over to the petitioners now, this Court has to decide the issue of



reimbursement of financial loss suffered by reason of delay and laches on the part of the respondent authorities, as claimed by the petitioners.

7. I have considered the submissions advanced by the parties on the issue of compensation. I have also gone through the records of the case.

8. From the record, it appears that against the inaction of the police, the petitioners have moved before the learned Magistrate for immediate release of their flats. On 23.06.2015 the learned Magistrate directed the Gandhi Maidan Police to submit a report but the same was not furnished. Again on 13.06.2016 a remainder was issued to the police officials for sending the report but again the same was not furnished. On 17.09.2016 show cause was issued to the police officials for not furnishing the report. Again, on 31.01.2017 the learned Magistrate directed the police officials to submit the report but the same was not furnished by the police. On 29.05.2017 further reminder was issued asking for the report. Ultimately, on 19.09.2017 the learned Magistrate directed the respondent no.4 to de-seal the flats of the petitioners and hand over the possession of the same to them. On 27.08.2018 an application was filed by the petitioners before the Senior Superintendent of



Police, Patna, apprising him of the fact that in spite of repeated requests, the officials of Gandhi Maidan Police Station are not adhering to the orders of the learned Magistrate and therefore, the petitioners requested the Senior Superintendent of Police to direct the I.O. of the cases to de-seal the flats and hand over the possession of the same to the petitioners. When nothing was done, under compulsion, the petitioners have to approach this Court by way of filing this application in the year 2018 and ultimately, on 06.11.2019 when this Court has taken cognizance in the matter, the premises of the petitioners has been de-sealed and possession of the same has been handed over to the petitioners.

9. It is an admitted position that neither the petitioners were named accused nor any materiel has come to show their complicity in the matter, inasmuch as, the SEBI in its order has not directed for seizure of the flats of the petitioners but illegally the flats of the petitioners were sealed on 18.11.2014 by the Gandhi Maidan Police.

10. The question of jurisdiction to seal any property by police officials which does not include immovable property has been settled by a Full Bench of the Hon'ble Supreme Court in the case of *Naveda Properties Private Limited through Its*



Directors vs. the State of Maharashtra & Anr. reported in ***AIR 2019 SC 4554***. It will be useful to quote relevant paragraphs of the aforesaid judgment, which are as follows:-

“10. 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 Criminal Appeal arising out of 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.

12. 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.

11. Further, a co-ordinate Bench of this Court in the case of ***Brajesh Kumar Srivastava vs. State of Bihar*** reported in **2016 (3) PLJR 464** has held that sealing of premises by police is patently illegal since neither office premises are stolen property nor object of the crime nor has any link with the commission of any offence. It will be relevant to quote paragraph no.41 of the aforesaid decision, which reads as under:-

“41. Keeping in mind the ambit and scope of Section 102 of the CrPC and the ratio laid down by the Full Bench of the Bombay High Court in Sudhir Vasant Karnataki Mohideen Mohammed Sheik Dawood (Supra) and the Kerala High Court in Kuriachan Chacko (Supra), this Court is also of the considered opinion that under Section 102(1) of the CrPC the police have no power to seal the immovable property and the word seize under Section 102 of the CrPC used under Section 102 of the CrPC would mean only actual taking possession of the moveable property. I find myself in complete agreement with the ratio laid down by the Full Bench of the Bombay



*High Court and the Kerala High Court in the
aforementioned decisions with regard to the
powers of the police officer to attach
immoveable property under Section 102(1) of
the Cr.P.C. ”*

12. From reading of Section 102 of Cr.P.C. and considering the above judicial pronouncements, I am also of the view that the police have no power to seal the immovable property and the word ‘seize’ used under Section 102 of the Cr.P.C. would mean only actual taking possession of the movable property.

13. In the present case, it appears that because of illegal, arbitrary and malafide action of the police, the flats of the petitioners were sealed on 18.11.2014 and being left with no other option, the petitioners moved before the learned Magistrate. It also appears from the record that the despite repeated orders of learned Magistrate from 23.06.2015 to 29.05.2017 directing the respondents to send the police report from the concerned police station, they did not send any report and finally the said report was received only on 19.09.2017 and on that date the learned Magistrate directed the respondent no.4 to de-seal the flats and hand over the possessions of the same to the petitioners. The police kept the matter pending by not



furnishing the police report from 23.06.2015 to 29.05.2015. It also appears from the report that despite repeated judicial orders, it took two years to the respondents in de-sealing the flats of the petitioners and to hand over the possession of the same to the petitioners. Ultimately, the petitioners compelled to approach this Court by way of filing this application in the year 2018 and pursuant to the various orders passed by this Court, the possession of the flats has been handed over to the petitioners.

14. In the case of *Common Cause, A Regd. Society vs. Union of India & Ors.* reported in (1999) 6 SCC 667 the Hon'ble Supreme Court has held that the High Court has jurisdiction not only to grant relief for the enforcement of fundamental rights but also for any other purpose which would include the enforcement of public duties by public bodies.

15. The Hon'ble Supreme Court in the case of *Rudal Sah v. State of Bihar* reported in AIR 1983 SC 1086 has held as under:-

“...The right to compensation is some palliative for the unlawful acts of instrumentalities which act in the name of public interest and which present for their protection the powers of the State as a shield. If civilization is not to perish in this country as it has perished in some others too well-



known to suffer mention, it is necessary to educate ourselves into accepting that, respect for the rights of individuals is the true bastion of democracy. Therefore, the State must repair the damage done by its officers to the petitioner's rights. It may have recourse against those officers."

16. Considering the aforesaid facts as discussed above and also considering the law laid down by the Hon'ble Supreme Court in the case of ***Common Cause, A Regd. Society vs. Union of India & Ors. (supra)*** and ***Rudal Sah v. State of Bihar (supra)***, I am of the opinion that the for the contemptuous act of the respondents the petitioners are entitled for compensation from the date of order of the learned Magistrate directing the respondent to hand over the possessions of the flats to the petitioners till handing over the actual possession of the flats to the petitioners.

17. Now, the question is as to what would be the compensation amount. It has been claimed by the petitioners that when flat no. 307 was sealed by the police the monthly rent of the said flat was Rs.13,320/-. The aforesaid claim is supported by the lease deed dated 01.03.2006 (Annexure-1) in which it has been mentioned that the lessee will pay the monthly rent of Rs.9250/- to the lessor and there will be 20% increase in



the monthly rent after every three year. As per the aforesaid lease deed, at the time of sealing the flat no.307, the monthly rent of the flat was Rs.13,320/-. Hence, taking a montly rent of Rs.13,320/- for flat no.307, the total compensation of rent would come to Rs.3,46,320/- i.e. from the date of order of learned Magistrate directing the respondents to hand over the possession of the said flat till the handing over the actual possession of the flat (total 26 months).

18. It has also been claimed by the petitioners that when flat no.308 was sealed by the police the monthly rent of the said flat was Rs.28,000/-. The aforesaid claim is also supported by lease deed dated 19.06.2014 (Annexure-2)pawan. Hence, taking a monthly rent of Rs.28,000/- for flat no.308, the total compensation would come to Rs.7,28,000/- from the date of order of learned Magistrate till the handing over the actual possession of the flat (total 26 months).

19. So far as the flat no. 309 is concerned, the same came to be amalgamated with flat no.308 which finds support from perusal of the seizure memo as well as the supplementary country affidavit filed by the State.

20. Though it has been submitted by learned counsel for the petitioners that when the flat no.309 was sealed,



the monthly rent of the said flat was Rs.42,000/- but he failed to bring on record any supporting document in support of his submission. Therefore, this Court is not inclined to award compensation with respect to flat no.309.

21. In view of the aforesaid, the petitioners are entitled to compensation towards rent of their flats to the tune of Rs.10,74,320 (Rs.3,46,320 + Rs. 7,28,000).

22. The State will pay the aforesaid amount of compensation, as indicated above, to the petitioners within a period of four weeks from the date of receipt/production of a copy of this order. If the aforesaid amount is not paid to the petitioners within the aforesaid period of four weeks, the Chief Secretary, Government of Bihar, Patna, will be held responsible for the same and for the delay in payment, the amount of compensation would carry 6% interest per annum from the date of order of this Court.

23. However, the State is at liberty to recover the aforesaid amount of compensation from the police officer found responsible for non-sending the report before the Court below and not de-sealing the flats of the petitioners in spite of repeated judicial orders.



24. With the aforesaid observations and directions,
this criminal writ application is allowed.

(Sandeep Kumar, J)

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AFR/NAFR	A.F.R.
CAV DATE	N/A.
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