

Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
Constitutional writ Jurisdiction
Appellate Side

Present : The Hon'ble Mr Justice Jay Sengupta

WPA No.20811 of 2023
Reckons Mercantile Private Limited & Anr.
-vs-
State of West Bengal & Ors.

Mr. Ankit Agarwala

Mr. Nilay Sengupta

Mr. Sujit Banerjee

....for the petitioners

Mr. Amal Kumar Sen

Mr. Jaladhi Das

...for the State

Heard on : October 6, 2023

Judgment on : October 6, 2023

Jay Sengupta, J:

This is an application under Article 226 of the Constitution of India praying for a direction upon the respondent-authorities to pay monthly user charges for the office unit of the first petitioner on the 6th floor of the building named as “Merlin Metropolis” situated at No.1858/1, Rajdanga Main Road, P.S. Kasba, P.O. East Kolkata Township, Kolkata-700 107 till handing over vacant possession of the same to the first petitioner.

At the outset, learned counsel for the petitioners submits that the petitioners are not pressing the prayer for payment of monthly user charges, and instead prays for simple vacation of the property and making it free for the user of the first petitioner or anybody claiming under him.

Learned counsel for the petitioners further submits as follows. The first petitioner is the owner of the property in question. He had granted a licence to one Regnum Hospitality Services Private Limited. A licence has come to an end on May 1, 2023. In the meantime, an FIR was registered in respect of certain wrongdoings committed by the licensee at the said office space. The petitioners are not admittedly connected to the said case. A notice dated May 4, 2023 was issued by the investigating officer of the case in connection with Kasba P.S. Case No.157 dated April 21, 2023 to the management of the concerned mall saying not to allow anyone to enter into the said office premises. Among other things, this is a violation of the ratio laid down by a Special Bench decision of the Hon'ble Supreme Court in the case of **Nevada Properties Private Limited v. State of Maharashtra & Anr.** reported in **(2019) 20 SCC 119**.

Learned counsel for the State submits as follows. In the facts and circumstances of the case, the investigating agency might need to visit the office space for the purpose of investigation. However, no steps can be taken by the investigating agency to see such immovable property as per Nevada Properties case (supra).

Heard learned counsel for the respective parties and perused the writ petition.

It appears that, admittedly, the petitioners are not the accused in the said case in question, even the licence agreement of the erstwhile licensee/accused had terminated with effect from May 1, 2023. Moreover, there is a bar on the investigating agency to see the immovable property in view of the Nevada Properties case (supra).

Therefore, the investigating agency erred in issuing the impugned notice. In view of the same, there is no fatal on the petitioners to use the property in question. Therefore, the impugned notice is quashed.

However, the investigating agency shall be at liberty to otherwise carry out the investigation of the criminal case.

With the above observations, WPA No.20811 of 2023 stands disposed of. No order as to costs.

Certified copy of this order, if applied for, shall be made available to the parties.

[Jay Sengupta, J]

Subrata