
(2020) 09 JH CK 0095
In the Jharkhand High Court
Case No : Writ Petition(C) No. 1437 Of 2020

S.R.P. Oil Pvt. Ltd.

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 11-09-2020

Acts Referred:

Indian Penal Code, 1860 — Section 30, 34, 188, 269, 270
Disaster Management Act, 2005 — Section 54
Epidemic Diseases Act, 1897 — Section 3
Immoral Traffic (Prevention) Act, 1956 — Section 3, 4, 5, 6
Code Of Criminal Procedure, 1973 — Section 102, 145, , 146, 451, 452, 453, 454, 455, 456, 457, 458, 459
Maharashtra Regional And Town Planning Act, 1966 — Section 126, 127
Constitution Of India, 1950 — Article 14, 19(1)(g), 19(1)(f), 21, 226, 300A

Citation : (2020) 09 JH CK 0095

Hon'ble Judges : Rajesh Shankar, J

Bench : Single Bench

Advocate : Indrajit Sinha, Darshana Poddar Mishra

Final Decision : Disposed Of

Judgement

1. This case is taken up through video conferencing.
2. The present writ petition has been filed for quashing the order as contained in memo no.705/GO dated 26th April, 2020 passed by the Sub Divisional Magistrate, Dhalbhum, Jamshedpur- respondent no.2 with a further direction to the respondents to remove the seal from "The Alcor Hotel", situated at Holding No.4, Ramdas Bhatta, opposite Indian Oil Petrol Pump, Bistupur, Jamshedpur, District East Singhbhum (hereinafter to be referred as 'the said premises').
3. The factual background of the case as stated in the writ petition is that the petitioner owns the Hotel Alcor, which provides facilities such as restaurants, bar, spa etc. On 25th April, 2020, a first information report being Bistupur P.S. Case no.87 of 2020 was registered under Sections 188, 269 & 270 of the Indian Penal Code; Section 54 of the Disaster Management Act, 2005; and Section 3 of the

Epidemic Diseases Act, 1897, alleging that during the lockdown period, a raid was conducted on 25th April, 2020 in the Hotel Alcor wherein it was found that the spa was opened and few people including two girls were present in the conference hall, adjoining the spa. Seeing the raiding party, some persons fled away, however, three persons were apprehended on spot. Thereafter, the said premises was sealed on 26th April, 2020 by the Special Officer, Jamshedpur Notified Area Committee and the Executive Magistrate-cum-Incident Commander, East Singhbhum, Jamshedpur in terms with the office order as contained in memo no.705/GO dated 26th April, 2020 passed by the respondent no.2. Another first information report, being Bistupur P.S. Case no.88 of 2020 was registered under Sections 3, 4, 5 & 6 of the Immoral Traffic (Prevention) Act, 1956 against one of the Directors of the petitioner- Company, namely, Rajiv Singh Dugal and other accused persons on 27th April, 2020, alleging therein that one Sharad Poddar had kept a lady, namely, Aishwarya Tarak Singh in the said hotel for last one month and had been establishing physical relationship with her since then. The petitioner vide letter dated 7th May, 2020 requested the Deputy Commissioner, East Singhbhum, Jamshedpur- respondent no.1 to unseal the hotel premises, so that day to day business of the petitioner-Company and firms having their registered offices located at Alcor Hotel Premises could function in a regular manner. The copies of the said letters were also sent to other authorities, however, no action in this regard was taken. The petitioner also served a reminder vide letter dated 15th May, 2020 to the respondent no.1, however, the same was also not responded. Hence the present writ petition.

4. Learned counsel for the petitioner submits that the petitioner was neither given any opportunity of hearing nor any lawful proceeding was initiated against it before sealing the entire premises of the said hotel. It is further submitted that there are offices of several companies/firms situated in the premises of the Hotel Alcor and by sealing the entire premises, functioning of the said offices are adversely affected for not fault on their part. There are about 475 direct and indirect employees involved with the said companies/firms and due to sealing of the entire premises, they are on the verge of starvation. It has become difficult for the petitioner-Company/firms situated in the said premises to carry on their respective business due to sealing of the entire premises leading to a situation that the salary of its employees is not being paid. Learned counsel for the petitioner further submits that even if the entire story of the prosecution in both the criminal cases are taken to be true on their face value, the said allegations do not in any manner reveal the involvement of the aforesaid companies/firms in which said Rajiv Singh Dugal is either Director or partner and hence the sealing of the office premises situated in the said hotel building is absolutely illegal. It is also submitted that even otherwise the said premises has not been sealed in connection with the investigation with respect to the said two criminal cases. In fact, the police has no power to seal an immovable property under the provisions of Code of Criminal Procedure. Moreover, the Sub Divisional Magistrate-cum-Senior Incident Commander does not have the power under the Disaster

Management Act, 2005 (hereinafter to be referred as 'the Act, 2005') or under any other law to seal an immovable property. Even assuming that there was a violation of certain norms of lockdown and thereby the orders issued under the Act, 2005 were violated, the immovable property of the petitioner could not have been sealed by any authority under the said Act. Sealing of an immovable property for an indefinite period that too without initiating any proceeding or providing any opportunity of hearing is grossly disproportionate and contrary to law. The action of the respondents in not communicating the order dated 26th April, 2020 by which the immovable property of the petitioner in question has been sealed is violative of Articles 14 and 19(1)(g) of the Constitution of India. Both the first information reports are completely false and baseless and till the investigation is over and the concerned accused persons are not found guilty by facing trial, it shall be presumed that they are innocent and, therefore, the order to seal the property is completely unwarranted. It is further submitted that the initiation of the criminal proceedings under the provisions of Immoral Traffic (Prevention) Act, 1956 against one of the Directors of the Company, whose name figured as an accused in Bistupur P.S. Case No.88 of 2020, has no bearing with the sealing of the premises, since the same was done prior to the institution of the aforesaid case. Though the criminal cases/first information reports have been instituted against few co-accused persons including the Director of the petitioner-Company, yet no criminal proceeding has been initiated against the petitioner-Company and as such the property belonging to the petitioner-Company cannot be subjected to any confiscatory proceeding. It is settled law that sealing of a property is confiscatory in nature and, therefore, it must be supported by the authority of law and any such action which does not find support from the statute cannot be allowed to continue.

5. Learned counsel for the petitioner further submits that an ex-proprietary legislation should be construed strictly and even in the cases of directory requirements, the substantial compliance of such provision would be necessary. It is also submitted by the learned counsel for the petitioner that the respondents are not authorized to seal the entire premises under the provisions of the Bihar (now Jharkhand) Excise Act, 1915, rather a suitable action by the excise authorities can be taken only to the extent of the bar premises.

6. Per contra, learned counsel for the respondents submits that after the aforesaid incident, the said premises was sealed for collection of evidence and to desist anyone from tampering with the evidences available at the place of occurrence. The respondent no.2 after realizing the entire facts reached a conclusion that the management of the Hotel Alcor was continuously violating the orders/directions contained in Consolidated Revised Guidelines dated 15th April, 2020 issued by the Ministry of Home Affairs, Government of India for the last many days and there was every possibility of violating the aforesaid directions in future and as such while exercising the power conferred to the said authority under Section 34 read with Section 30 of the Act, 2005 and in the capacity of being Senior Incident Commander, he ordered to seal the hotel premises until

expiry of the period of the lockdown or till further orders. The respondent no.2 also asked the team constituted by it to collect evidences from the said premises. The police team, constituted under the orders of the Senior Superintendent of Police, Jamshedpur for proper and effective investigation of Bistupur P.S. Case no.87 of 2020 dated 25 th April, 2020, searched the entire premises on 26th April, 2020 including the rooms and CCTV footage and it was found that a lady, namely, Aishwarya Tarak Singh, resident of Kolkata, was residing in room no.402 of the said hotel. The police team collected several incriminating articles and electronic evidences, which, prima facie, indicated that flesh trade was going on in the said hotel during lockdown period. Consequently, Bistupur P.S. Case no.88 of 2020 dated 27th April, 2020 was lodged under the provisions of Immoral Traffic (Prevention) Act, 1956, in connection of which five accused persons including the owner of the hotel were arrested and remanded to judicial custody. The police has filed Charge Sheet no.154 of 2020 in connection with Bistupur P.S. Case no.88 of 2020, keeping the investigation of the said case open for collection of some more evidences, which are likely to surface. So far as Bistupur P.S. Case no.87 of 2020 is concerned, the investigation is still continuing and several persons have been arrested on the basis of the evidences collected so far.

7. Learned counsel for the respondents also submits that on 26th April, 2020, a team of excise authorities conducted physical verification of the stock available in the licensed bar of Hotel Alcor and found deficient stock of liquor and increased consumption during the period of lockdown despite sealing of the bar with effect from 24th March, 2020. The said fact strongly indicates that the petitioner-Company was actively involved in defiance of the orders of different government agencies during lockdown period and certainly not for basic necessities of the kind mentioned in the direction of Ministry of Home Affairs, Government of India/ NDMA as exception, rather it was involved in commission of offence relating to moral turpitude. It is further submitted that the respondent no.1 issued show cause notice vide memo no.445/Excise dated 13th May, 2020 to the licence holder i.e. Rajiv Singh Dugal, who is one of the Directors of the petitioner-Company, as to why the petitioner-Company should not be blacklisted under the provisions of the Bihar (now Jharkhand) Excise Act, 1915. Learned counsel for the respondents also submits that the petitioner neither sought any permission from the district/ appropriate authorities nor any intimation was given with regard to the fact that few persons were stranded in the said hotel due to imposition of complete lockdown. The respondent authorities have exercised their discretionary power conferred under Sections 30 and 34 of the Act, 2005 to seal the hotel premises as well as have acted on the request of the Investigating Officer to preserve and collect evidences relating to criminal offences. It is also submitted that the petitioner could not have been allowed to remove or tamper with all the evidences from the place of occurrence relating to the offences of serious nature, which were deliberately committed during lockdown period. Hence, the petitioner was issued show cause notice for sealing the hotel premises.

8. Learned counsel for the respondents further submits that the report of the Special Officer, Jamshedpur Notified Area Committee, Jamshedpur, as contained in letter no.812 dated 26th April, 2020, clearly mentions that the Accommodation Manager of Hotel Alcor, namely, Pawan Deep was present at the time of sealing of the premises and an inventory was prepared in his presence. On his request, the electric connection in the cold storage situated in the basement of the hotel and staff quarters of 70 employees as well as in the parking area was not disconnected and the security guards as well as the maintenance staff were allowed to remain in the premises for security purpose. Moreover, the magistrate and police force have also been posted there for better security. Learned counsel for the respondents further submits that the investigation of the criminal cases is still going on and on the request of the Superintendent of Police (City), Jamshedpur, the seal of the hotel was opened on 21st June, 2020 for collection of some more evidence and it was re-sealed thereafter. The hotel premises of the petitioner is huge and as such certain evidences may come out in course of further investigation. Rajiv Singh Dugal is one of the Directors of all the companies whose offices are situated in the premises of the Hotel Alcor, who is accused in the criminal case, particularly instituted for using the said hotel for prostitution. It is settled position of law that one who seeks equity must do equity. No one is entitled to the aid of the Court of equity when that aid has become necessary through his/her own fault. Equity does not relieve a person of the consequences of his/her carelessness. It is lastly submitted that the respondents have acted in good faith in exercise of the power conferred under the provisions of the Act, 2005. The lockdown is still in force and as such the petitioner has not suffered any loss or injury by sealing of the said hotel premises.

9. Heard learned counsel for the parties and perused the materials available on record. Learned counsel for the petitioner in course of argument has confined the prayer made in the writ petition to the extent of opening of sealing of the premises in question and hence this court is not entering into the details of the allegations levelled against it for violation of the provisions of various Acts. The only question falls for consideration before this Court is as to whether the action of the respondents in sealing the said premises is in accordance with law.

10. The thrust of the argument of the learned counsel for the petitioner is that even if it is assumed that there were some violations of lockdown guidelines, there is no provision for sealing the premises either under the Act, 2005 or under the Code of Criminal Procedure. Moreover, the power under sections 30 and 34 of the Act, 2005 has been conferred to the district authority to act as the district planning, coordinating and implementing body for disaster management. The Senior Incident Commander-cum-Sub Divisional Magistrate was neither empowered nor authorized by the district authority to seal any property for alleged violation of the lockdown guidelines. Learned counsel for the petitioner has also submitted that the accused persons have already been granted bail by a Bench of this Court in connection with the criminal cases, however, the said

premises is still under seal of the district administration in the garb of collecting evidence, which is causing irreparable loss and injury to the petitioner.

11. Learned counsel for the respondents has contended that the seal of the said premises was quite necessary, considering the nature of offences committed in Hotel Alcor. It has also been submitted that the power of sealing of any immovable property for collecting evidence and to stop the offender from tampering the evidences available at the crime scene is inherently provided in the Code of Criminal Procedure. Moreover, though there is no direct power of sealing under the Act, 2005, the same can be said to be residuary/incidental power which has to be exercised for effective management and to prevent further violation of the guidelines issued under the said Act. Hence, the action taken by the respondents in sealing the said premises is not illegal and arbitrary either under the Act, 2005 or under the Code of Criminal Procedure.

12. To appreciate the rival submissions of learned counsel for the parties, it would be relevant to refer the judgment of the Hon'ble Supreme Court rendered in the case of Nevada Properties Private Limited through its Directors vs. state of Maharashtra & Anr., reported in 2019 SCC Online SC 1247. The relevant paragraphs of the said judgment are quoted as under:-

"20. Section 102 postulates seizure of the property.

Immovable property cannot, in its strict sense, be seized, though documents of title, etc. relating to immovable property can be seized, taken into custody and produced. Immovable property can be attached and also locked/sealed. It could be argued that the word 'seize' would include such action of attachment and sealing. Seizure of immovable property in this sense and manner would in law require dispossession of the person in occupation/possession of the immovable property, unless there are no claimants, which would be rare. Language of Section 102 of the Code does not support the interpretation that the police officer has the power to dispossess a person in occupation and take possession of an immovable property in order to seize it. In the absence of the Legislature conferring this express or implied power under Section 102 of the Code to the police officer, we would hesitate and not hold that this power should be inferred and is implicit in the power to effect seizure. Equally important, for the purpose of interpretation is the scope and object of Section 102 of the Code, which is to help and assist investigation and to enable the police officer to collect and collate evidence to be produced to prove the charge complained of and set up in the charge sheet. The Section is a part of the provisions concerning investigation undertaken by the police officer. After the charge sheet is filed, the prosecution leads and produces evidence to secure conviction. Section 102 is not, per se, an enabling provision by which the police officer acts to seize the property to do justice and to hand over the property to a person whom the police officer feels is the rightful and true owner. This is clear from the objective behind Section 102, use of the words in the Section and the scope and ambit of the power conferred on the Criminal Court vide Sections 451 to 459 of the Code. The expression

'circumstances which create suspicion of the commission of any offence' in Section 102 does not refer to a firm opinion or an adjudication/finding by a police officer to ascertain whether or not 'any property' is required to be seized. The word 'suspicion' is a weaker and a broader expression than 'reasonable belief' or 'satisfaction'. The police officer is an investigator and not an adjudicator or a decision maker. This is the reason why the Ordinance was enacted to deal with attachment of money and immovable properties in cases of scheduled offences. In case and if we allow the police officer to 'seize' immovable property on a mere 'suspicion of the commission of any offence', it would mean and imply giving a drastic and extreme power to dispossess etc. to the police officer on a mere conjecture and surmise, that is, on suspicion, which has hitherto not been exercised. We have hardly come across any case where immovable property was seized vide an attachment order that was treated as a seizure order by police officer under Section 102 of the Code. The reason is obvious. Disputes relating to title, possession, etc., of immovable property are civil disputes which have to be decided and adjudicated in Civil Courts. We must discourage and stall any attempt to convert civil disputes into criminal cases to put pressure on the other side (See Binod Kumar v. State of Bihar (2014)10SCC663). Thus, it will not be proper to hold that Section 102 of the Code empowers a police officer to seize immovable property, land, plots, residential houses, streets or similar properties. Given the nature of criminal litigation, such seizure of an immovable property by the police officer in the form of an attachment and dispossession would not facilitate investigation to collect evidence/material to be produced during inquiry and trial. As far as possession of the immovable property is concerned, specific provisions in the form of Sections 145 and 146 of the Code can be invoked as per and in accordance with law. Section 102 of the Code is not a general provision which enables and authorises the police officer to seize immovable property for being able to be produced in the Criminal Court during trial. This, however, would not bar or prohibit the police officer from seizing documents/papers of title relating to immovable property, as it is distinct and different from seizure of immovable property. Disputes and matters relating to the physical and legal possession and title of the property must be adjudicated upon by a Civil Court.

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."

13. The Hon'ble Supreme court in the aforesaid judgment has held that Section 102 Cr.P.C. postulates seizure of the property. However, an immovable property cannot, in its direct sense, be seized, though documents of title etc. relating to immovable properties can be seized, taken into custody and produced. Language of Section 102 Cr.P.C. does not support the interpretation that the police officer has the power to dispossess a person who is in occupation, to take possession of an immovable property in order to seize it.

14. Further in the case of Hari Krishna Mandir Trust vs. State of Maharashtra & Ors., reported in 2020 SCC Online SC 631, the Hon'ble Supreme Court has held that the right to property may not be a fundamental right any longer, but the same is still a constitutional right under Article 300A and it is also a human right and, therefore, no person can be deprived of his property except by the authority of law. The High Court exercising its jurisdiction under Article 226 of the Constitution of India does not only have the power to issue writ of mandamus, rather is duty bound to exercise such power where the government or a public authority has failed to exercise or has wrongly exercised discretion conferred upon it by a statute, or a rule, or a policy decision or has exercised such discretion with mala fide or on irrelevant consideration. The Hon'ble Supreme Court in paragraph no.103 of the said judgment has held as under:-

"103. The Court is duty bound to issue a writ of Mandamus for enforcement of a public duty. There can be no doubt that an important requisite for issue of Mandamus is that Mandamus lies to enforce a legal duty. This duty must be shown to exist towards the applicant. A statutory duty must exist before it can be enforced through Mandamus. Unless a statutory duty or right can be read in the provision, Mandamus cannot be issued to enforce the same."

15. In the case of M. C. Mehta vs. Union of India & Ors., reported in 2020 SCC Online SC 648, as has been relied upon by the learned counsel for the petitioner, the Hon'ble Supreme Court has held as under:-

"106. The power of sealing of property carries civil consequences. A person can be deprived of the property by following a procedure in accordance with law. The Monitoring Committee is not authorized to take action concerning the residential premises situated on the private land. If there is unauthorized construction or in case of deviation, the requisite provisions are under the DMC Act, such as sections 343, 345, 347(A), 347(B). The mode of action and adjudication under the Act is provided including appellate provisions and that of the Tribunal. It would not be appropriate to the Monitoring Committee to usurp statutory powers and act beyond authority conferred upon it by the Court. The Monitoring Committee could not have sealed the residential premises, which were not misused for the commercial purpose as done vide Report No. 149, nor it could have directed the demolition of those residential properties.

107. Article 300A of the Constitution provides that nobody can be deprived of the property and right of residence otherwise in the manner prescribed by law. When the statute prescribes a mode, the property's deprivation cannot be done in other modes since this Court did not authorize the Committee to take action in the matter. An action could have been taken in no other manner except in accordance with the procedure prescribed by law as laid down in the decisions referred to at the Bar thus:

(a) State of Rajasthan v. Basant Nahata, (2005) 12 SCC 77, wherein this Court observed:

"59.In absence of any substantive provisions contained in a parliamentary or legislative act, he cannot be refrained from dealing with his property in any manner he likes. Such statutory interdict would be opposed to one's right of property as envisaged under Article 300-A of the Constitution."

(b) K.T. Plantation Pvt. Ltd. v. State of Karnataka, (2011) 9 SCC 1 in which it was opined: "168. Article 300-A proclaims that no person can be deprived of his property save by authority of law, meaning thereby that a person cannot be deprived of his property merely by an executive fiat, without any specific legal authority or without the support of law made by a competent legislature. The expression "property" in Article 300-A confined not to land alone, it includes intangibles like copyrights and other intellectual property and embraces every possible interest recognised by law.

169. This Court in State of W.B. v. Vishnunarayan and Associates (P) Ltd. [(2002) 4 SCC 134], while examining the provisions of the West Bengal Great Eastern Hotel (Acquisition of Undertaking) Act, 1980, held in the context of Article 300-A that the State or executive officers cannot interfere with the right of others unless they can point out the specific provisions of law which authorises their rights."

(emphasis supplied)

(c) In T. Vijayalakshmi v. Town Planning Member, (2006) 8 SCC 502, the Court observed:

"13. Town Planning legislations are regulatory in nature. The right to property of a person would include a right to construct a building. Such a right, however, can be restricted by reason of a legislation. In terms of the provisions of the Karnataka Town and Country Planning Act, a comprehensive development plan was prepared. It indisputably is still in force. Whether the amendments to the said comprehensive development plan as proposed by the Authority would ultimately be accepted by the State or not is uncertain. It is yet to apply its mind. Amendments to a development plan must conform to the provisions of the Act. As noticed hereinbefore, the State has called for objection from the citizens. Ecological balance no doubt is required to be maintained and the courts while interpreting a statute should bestow serious consideration in this behalf, but ecological aspects, it is trite, are ordinarily a part of the town planning legislation. If in the legislation itself or in the statute governing the field, ecological aspects have not been taken into consideration keeping in view the future need, the State and the Authority must take the blame therefor. We must assume that these aspects of the matter were taken into consideration by the Authority and the State. But the rights of the parties cannot be intermeddled with so long as an appropriate amendment in the legislation is not brought into force.

15. The law in this behalf is explicit. Right of a person to construct residential houses in the residential area is a valuable right. The said right can only be regulated in terms of a regulatory statute but unless there exists a clear provision the same cannot be taken away."

(emphasis supplied)

(d) In the matter of State of U.P. v. Manohar, (2005) 2 SCC 126, this Court observed:

"7. Ours is a constitutional democracy and the rights available to the citizens are declared by the Constitution. Although Article 19(1)(f) was deleted by the Forty-fourth Amendment to the Constitution, Article 300-A has been placed in the Constitution, which reads as follows:

"300-A. Persons not to be deprived of property save by authority of law.--No person shall be deprived of his property save by authority of law."

8. This is a case where we find utter lack of legal authority for deprivation of the respondent's property by the appellants who are State authorities. ..."

(e) In Delhi Airtech Services (P) Ltd. v. State of U.P., (2011) 9 SCC 354, this Court held:

"83. The expression "law" which figures both in Article 21 and Article 300-A must be given the same meaning. In both the cases the law would mean a validly enacted law. In order to be valid law it must be just, fair and reasonable having regard to the requirement of Articles 14 and 21 as explained in Maneka Gandhi. This is especially so, as "law" in both the Articles 21 and 300-A is meant to prevent deprivation of rights. Insofar as Article 21 is concerned, it is a fundamental right whereas in Article 300-A it is a constitutional right which has been given a status of a basic human right."

(f) It was further argued that planning laws are expropriatory and should be strictly construed, and any ambiguity is to be construed in favour of the property owner as laid down in Delhi Airtech Services (P) Ltd. v. State of U.P. (supra) thus:

"129. Statutes which encroach upon rights, whether as regards person or property, are subject to strict construction in the same way as penal Acts. It is a recognised rule that they should be interpreted, if possible, so as to respect such rights and if there is any ambiguity, the construction which is in favour of the freedom of the individual should be adopted. (See Maxwell on The Interpretation of Statutes, 12th Edn. by P. St. J. Langan.)

130. This Court in Devinder Singh⁷ held that the Land Acquisition Act is an expropriatory legislation and followed the case of Hindustan Petroleum Corpn. v. Darius Shapur Chenai [(2005) 7 SCC 627]. Therefore, it should be construed strictly. The Court has also taken the view that even in cases of directory requirements, substantial compliance with such provision would be necessary."

(emphasis supplied)

(g) In *Ramchandra Ravindra Waghmare v. Indore Municipal Corporation*, (2017) 1 SCC 667, it was opined:

"67. It was also submitted that town planning and municipal institutes are regulating and restricting the use of private property under the aforesaid Acts. They are "expropriatory legislation". Thus they are liable to be construed strictly as laid down in *Indore Vikas Pradhikaran v. Pure Industrial Coke & Chemicals Ltd.* [(2007) 8 SCC 705]"

(h) In *Chairman, Indore Vikas Pradhikaran v. Pure Industrial Coke & Chemicals Ltd.*, (2007) 8 SCC 705, it was held:

"57. The Act being regulatory in nature as by reason thereof the right of an owner of property to use and develop stands restricted, requires strict construction. An owner of land ordinarily would be entitled to use or develop the same for any purpose unless there exists certain regulation in a statute or statutory rules. Regulations contained in such statute must be interpreted in such a manner so as to least interfere with the right to property of the owner of such land. Restrictions are made in larger public interest. Such restrictions, indisputably must be reasonable ones. (See *Balram Kumawat v. Union of India* [(2003) 7 SCC 628]; *Krishi Utpadan Mandi Samiti v. Pilibhit Pantnagar Beej Ltd* [(2004) 1 SCC 391] and *Union of India v. West Coast Paper Mills Ltd.* [(2004) 2 SCC 747] The statutory scheme contemplates that a person and owner of land should not ordinarily be deprived from the user thereof by way of reservation or designation.

58. Expropriatory legislation, as is well-known, must be given a strict construction."

(i) In *State of Gujarat v. Shantilal Mangaldas*, (1969) 1 SCC 509, it was held:

"55. Once the draft town-planning scheme is sanctioned, the land becomes subject to the provisions of the Town Planning Act, and on the final town-planning scheme being sanctioned, by statutory operation the title of the various owners is readjusted and the lands needed for a public purpose vest in the local authority. Land required for any of the purposes of a town planning scheme cannot be acquired otherwise than under the Act, for it is a settled rule of interpretation of statutes that when power is given under a statute to do a certain thing in a certain way the thing must be done in that way or not at all:"

(emphasis supplied)

(j) In *Bhavnagar University v. Palitana Sugar Mill (P) Ltd.*, (2003) 2 SCC 111, it was opined:

"40. The statutory interdict of use and enjoyment of the property must be strictly construed. It is well settled that when a statutory authority is required to do a thing in a particular manner, the same must be done in that manner or not at all.

The State and other authorities while acting under the said Act are only creature of statute. They must act within the four corners thereof."

(emphasis supplied)

(k) In *Shrirampur Municipal Council v. Satyabhamabai Bhimaji Dawkher*, (2013) 5 SCC 627 it was held:

"43. This is the reason why time-limit of ten years has been prescribed in Section 31(5) and also under Sections 126 and 127 of the 1966 Act for the acquisition of land, with a stipulation that if the land is not acquired within six months of the service of notice under Section 127 or steps are not commenced for acquisition, reservation of the land will be deemed to have lapsed. Shri Naphade's interpretation of the scheme of Sections 126 and 127, if accepted, will lead to absurd results and the landowners will be deprived of their right to use the property for an indefinite period without being paid compensation. That would tantamount to depriving the citizens of their property without the sanction of law and would result in violation of Article 300-A of the Constitution."

(emphasis supplied)."

16. It is, thus, well settled that the power of sealing of property carries civil consequences. A person can be deprived of the property only by following due procedure in accordance with law. No person shall be deprived of the right of property, except by the procedure prescribed under law.

17. In view of the aforesaid factual and legal position, I am of the considered view that the sealing of the said premises by the order of the respondent no.2 is not in accordance with the provisions of the Code of Criminal Procedure. So far as the provisions of Sections 30 and 34 of the Act, 2005, which have been referred by the learned counsel for the respondents to justify the order of sealing of the said premises, are concerned, no such power of sealing of any premise/building has been conferred to the Senior Incident Commander-cum-Sub Divisional Magistrate. Moreover, the order of sealing also does not appear to be reasonable and proportionate, as the same has been done for an indefinite period. Even if the alleged crime scene is to be protected to ensure that the evidence of alleged offence does not disappear, the concerned authority after locking and sealing the crime scene does not require much time to reopen the same and to prepare an inventory. Nonetheless, the authorities cannot be allowed to keep the premises locked for unreasonably long period than what is absolutely necessary. By doing so, the authorities definitely violate the right of the owner or occupier of the premises being without any legal sanctity. Even if it is assumed that there are evidences relating to the alleged offence in the premises of the said hotel, the same cannot empower the respondents to continue with the sealing for an indefinite period. The purpose of sealing must be to collect evidences within a reasonable time. In case, some of the evidences were of such nature which could not have been removed from the said premises, the requirement was to prepare a record of seizure of those articles pending trial

of the case. Undisputedly, there are several offices of different companies/firms in the hotel premises, which have no bearing with the allegations levelled in both the first information reports irrespective of the fact that one of the directors of the said companies/firms, namely, Rajiv Singh Dugal is also involved in commission of the alleged offence and, therefore, the respondent no.2 was otherwise not empowered to seal the entire premises particularly the offices of different companies/firms. The Court cannot be unmindful of the fact that due to sealing of the entire premises, several employees have gone unemployed and are facing financial difficulties.

18. One of the arguments of learned counsel for the respondents is that a proceeding under the Bihar (now Jharkhand) Excise Act, 1915 has also been initiated, as after verification of the bar situated in the Hotel Alcor, the liquor stock was found deficient which prima facie indicated the increase of consumption of liquor during the lockdown period. Learned counsel for the respondents has, however, failed to show any such provision under the Bihar (now Jharkhand) Excise Act, 1915 which empowers the excise authorities to seal rest of the premises except which has been shown as the bar premises. It may thus be concluded that the sealing cannot be held to be justified in absence of any express power under the statute conferred to any authority.

19. It also appears that the persons, who have been made accused in the criminal case, are now enjoying the privilege of bail, however, the premises of the concerned hotel is still under lock and seal. Though it has been stated in the counter affidavit that the matter is still under investigation, yet it certainly appears that the investigation has continued for fairly long period considering the nature of offence alleged in the first information reports.

20. Under the aforesaid facts and circumstances, the respondent no.2 is directed to remove the seal of the entire hotel premises including the offices of the companies/firms after preparing an inventory of articles, if so required, in connection with the pending criminal cases, which are lying there, and while doing so, the video recording of the same shall be done in presence of the representative of the petitioner. If any document/file/electronic device is required as evidence, the Investigating Officer is at liberty to recover the same. All such exercises must be concluded till 14th September, 2020. The seal of the entire hotel premises shall be opened on 15th September, 2020 at 10:00 a.m.

21. It is, however, observed that even after opening of the premises, the petitioner shall comply the lockdown guidelines being issued by the competent authority from time to time.

22. The writ petition is, accordingly, disposed of with the aforesaid observations and directions.