

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.11768 of 2014

Binod Pattnayak

....

Petitioner

Mr. Lalatendu Kanungo, Advocate

-versus-

State of Odisha & Others

....

Opposite Parties

Mr. Iswar Mohanty, Addl. Standing Counsel

**CORAM:
THE CHIEF JUSTICE
JUSTICE M. S. RAMAN**

**ORDER
17.11.2022**

Order No.

06. 1. On 14th August, 2014, the following order was passed by this Court:-

“Heard.

Counter affidavit sworn to by one Bibekananda Nayak, Inspector of Excise, Champua Range, Champua has been filed on behalf of Opposite Parties 3 & 4. Reliance is placed by the learned Additional Government Advocate on the letter of the Tahasildar, Barbil dated 19th May, 2014 (Annexure-A/4) to the counter affidavit purportedly said to have been issued where he has mentioned the details of the land purportedly encroached by the Petitioner. In the said letter, it has been stated as follows:

“The encroached land has been used by the Binod Pattnaik for his Hotel Business in which one IMFL ‘ON’ shop exists.”

We have also gone through the photographs annexed by the Petitioner as Annexure-3 series at pages-11 and 12 to W.P.(C) No. 22897 of 2013. On perusal of the same, we find that the Petitioner appears to have laid morum on the Government plot leading to the Highway and no construction on the Government plot has been raised and the Bar for which the license has been granted to the petitioner exists within the Hotel Complex constructed by the petitioner for which license has been granted by the Excise Department to sell Portable Foreign Liquor indicating Plot No.131/1480 under Khata No.174/313 of Ward No.11 under Joda Municipality over which the Hotel. Marriot International, Kamarjoda is situated. Admittedly, the said plot is a private plot of the Petitioner and he also claims to be the owner of adjoining Plot No.135 and submits that the encroached land is Plot No.1161, which adjoins Plot No.134/1161/1 under Khata No.178, is a Government land and the same abuts the highway and the Petitioner appears to have laid morum on the said plot for access.

Without entering into the controversy relating to the encroached land, we are of the considered view that since the IMFL ‘ON’ Shop is situated on the private plot of the Petitioner constructed on his own private plot inside the Hotel, as an interim measure, it is directed that there shall be stay of operation of the order dated 27.6.2014 passed under Annexure-3 since we are prima facie satisfied that the licensed ‘ON’ Shop of the Petitioner is not located on the Government land. The Petitioner shall be permitted to carry on the business subject to the outcome of the writ petition.

With the aforesaid observations and directions, this misc.case is accordingly disposed of.”

2. The above order was passed after perusing the counter affidavit filed by the Opposite Party Nos. 3 and 4, in which it was sought to

be asserted that the Petitioner had encroached upon the Government land. In the above order, the Court has specifically noted that the Petitioner appears to have only laid morum on a small portion on the Government land to provide access to the Bar that he was operating and there was no construction as such raised on Government. land. The further categorical finding is that “since the IMFL ON Shop situated on the private plot of the Petitioner constructed within the private plot inside the hotel”, the order dated 27th June 2014 challenged in the present writ petition was being stayed.

3. Having heard the learned counsel for the parties, the Court finds that the factual position as found by this Court in the above order remains unchanged. In that view of the matter, the impugned order dated 27th June, 2014 is hereby quashed.

4. The writ petition is allowed with the above terms. No order as to costs.

(Dr. S. Muralidhar)
Chief Justice

(M. S. Raman)
Judge

Aks/Laxmikant