

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 976 OF 2022

Harekrushna Sahu

....

Petitioner

Mr. Ajit Kumar Tripathy, Advocate

-versus-

State of Odisha and others

....

Opp. Parties

Mr. Swayambhu Mishra,
Additional Standing Counsel
(For Opp. Party Nos.1 and 2)

Mr. Subrat Satapathy, Advocate
(For Opp. Party No.3)

**CORAM:
JUSTICE K.R. MOHAPATRA**

**ORDER
09.12.2022**

Order No.

4. 1. This matter is taken up through hybrid mode.
2. The Petitioner in this CMP seeks to assail the order dated 26th July, 2022 (Annexure-8) passed in I.A. No.12 of 2022 (arising out of C.S. No.61 of 2020), whereby learned Civil Judge (Senior Division), Chandikhole dismissed an application filed by the Petitioner under Section 151 C.P.C.
3. Mr. Tripathy, learned counsel for the Petitioner submits that C.S. No.61 of 2020 has been filed for declaration and permanent injunction. During pendency of the suit, the Petitioner had filed I.A. No.53 of 2020 under Order XXXIX Rules 1 and 2 C.P.C. to restrain the Opposite Parties from entering upon the suit land and also to permit him to repair, renovate, remodel and reconstruct the shop house existing over the suit land. Said application was disposed of vide order dated 16th September, 2021 directing the parties to maintain *status quo* over the suit

property. But, in the meantime due to cyclone Jawad occurred in the month of December, 2021, the shop room as well as residential house of the Petitioner was completely damaged. Two side walls and roof of the house were partially collapsed and it requires immediate repairing/renovation and reconstruction to make the house habitable. Learned trial Court most erroneously taking into consideration that the earlier petition i.e. I.A. No.53 of 2020 was disposed of vide order dated 16th September, 2021 with a direction that the parties should maintain *status quo* over the suit property and that there is no change in circumstance in between, a successive petition for the self same prayer is not maintainable.

4. It is his submission that learned trial Court though took note of contention of the Petitioner to the effect that the cyclone Jawad took place during the month of December, 2021, but failed to appreciate that the order in I.A. No.53 of 2020 was passed earlier to that. Thus, the finding that there is no change in circumstance is not correct. Further learned trial Court has not dealt into the merit of the petition, as contended. Hence, he prays for setting aside the impugned order under Annexure-8 and to remit the matter back to learned trial Court for fresh adjudication giving opportunity of hearing to the parties.

5. Mr. Satapathy, learned counsel appearing for the Chief Administrator, Shree Jagannath Temple Managing Committee, Puri-Opposite Party No.3 submits that he has received the instruction. But, he could not file the counter affidavit. He, therefore, prays for an adjournment to file counter affidavit. But in view of the order of this Court dated 2nd December, 2022 to

the effect that, if no instruction is received by the next date, the Court will proceed in the matter in accordance with law, this Court refuses to grant any further adjournment. He, however, submits that the claim of the Petitioner in the suit is baseless as the lease deed in question was executed in his favour by the Jagannath Road Fund Authority, which was under the control of Endowment Commissioner. After enactment of the Jagannath Temple Act, 1954, the lease deed executed by the Jagannath Road Fund Authority is no more valid and thus, the claim of the Petitioner is not sustainable.

6. Mr. Mishra, learned Additional Standing Counsel appearing for the Opposite Party Nos.1 and 2 submits that since similar nature of application has already been rejected holding that no material was brought before the Court to substantiate the plea of the Petitioner, learned trial Court has committed no error in dismissing the petition.

7. Considering the rival contentions of the parties, this Court finds that the main ground on which the petition under Section 151 C.P.C. was dismissed was that there is no change in circumstance as was prevailing at the time of disposal of I.A. No.53 of 2020 on 16th September, 2021. But, learned trial Court has failed to take into consideration that cyclone Jawad occurred in the month of December, 2021 and the Petitioner alleges that due to such cyclone, his shop room and residential house have been substantially damaged. No endeavour has been made by learned trial Court to delve into the merit of the petition under Section 151 C.P.C. In that view of the matter, the petition under Section 151 C.P.C. requires fresh consideration.

8. Accordingly, the impugned order under Annexure-8 passed by learned Civil Judge (Senior Division), Chandikhole in I.A. No.12 of 2022 (arising out of C.S. No.61 of 2020) is set aside and the matter is remitted back to learned trial Court for fresh adjudication giving opportunity of hearing to the parties concerned.

9. This CMP is accordingly disposed of.

Urgent certified copy of this order be granted on proper application.

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(K.R. Mohapatra)
Judge