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# IN THE HIGH COURT OF ORISSA AT CUTTACK

## W.P.(C) No.35753 of 2026

**[CNR No.ODHC010847782026]**

***Ratikanta Samantaray*** …. ***Petitioner(s)***

*Mr. Ajaya Kumar Moharana, Adv.*

***-versus-***

***State of Odisha & Ors.*** …. ***Opposite Party(s)***

*Mr. Sonak Mishra, ASC*

**CORAM:**
**HON'BLE DR. JUSTICE SANJEEB K PANIGRAHI**
**HON'BLE MR. JUSTICE MURAHARI SRI RAMAN**

**ORDER**
**03.11.2026**

**Order No.**
**02.**

***1.*** This matter is taken up through Hybrid Arrangement (video conferencing/physical mode).

***2.*** This matter was not listed today. On being mentioned and keeping in view the urgency, this matter is taken up by way of a Special Notice.

***3.*** Heard learned counsel for the parties.

***4.*** By filing the present Writ Petition, the Petitioner, Ratikanta Samantaray, seeks a direction to the Opposite Parties, particularly Opposite Party No.5, in relation to the eviction notice dated 26.10.2026, whereby date of eviction from his residential house has been fixed to 04.11.2026 and other

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structures standing on Plot No.279/1967, Khata No.389/68, measuring Ac. 0.100 dec.

***4.1.*** Learned counsel for the Petitioner submitted that Plot No.269/1967 under Khata No.389/68 in Mouza: Mudaamba measuring Ac.0.100dec. is in possession of the petitioner and out of said land the Opposite Parties have acquired Ac.0.081dec. It is explained that the petitioner's forefather were in occupation of a Government land which is situated adjacent to his private land *vide* Khata No.456, Plot No.269, measuring an area of Ac.0.065 dec. having status: Gharabari in Mouza: Mundaamba. He submitted that the Tahasildar, Khordha initiated encroachment case being 927/1986 and collected fee. However, over the said land the petitioner has erected three storeyed building and carrying on automobile business by obtaining loan from bank.

***4.2.*** While the situation so existed, after receipt of the notice under Annexure-4, the petitioner appeared before the authority concerned and inquired about the other land over which they are residing and constructed the commercial building bearing Khata No.456, Plot No.269, area Ac.0.065 dec. Status: Gharabari, Mouza: Mundaamba, P.S.-Jankia, Tahasil/District: Khordha, but the authority concern provided a copy of the list

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of structures existing over the notified plots for six lane of NH-16 (Old NH-5).

***4.3.*** The Petitioner alleges that adequate compensation has not been provided under the Land Acquisition Act, 1894, or the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

***4.4.*** The learned counsel contended that, although the petitioner is not entitled to compensation for occupying the Government land involved in Encroachment Case No.927/1986, initiated by the Tahasildar, Khordha, he is entitled to compensation for the structures erected thereon. He further alleges that the opposite parties are attempting to evict him without providing compensation for those structures and without following due process of law.

***5.*** The record transpires that the petitioner flagging non-providing of adequate compensation approached this Court in W.P.(C) No.27498 of 2024, which came to be disposed of on 04.12.2024 with the following observation:

> *"The petitioner, Ratikanta Samantaray has filed this writ petition seeking a direction to the opp. parties to provide adequate compensation under the provisions of Land Acquisition Act, 1984 and the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and*

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*Resettlement Act, 2013 as the opp. parties are acquiring the residential house and commercial building of the petitioner which is standing over his private land along with a piece of Govt. land, for which one Encroachment Case bearing No.927 of 1986 was initiated by the Tahasildar, Khurda for illegal occupancy of a Govt. land.*

***

*Taking into account the nature of relief sought for and the pendency of the representation at the instance of petitioner, this Writ Petition is disposed of directing the Land Acquisition Officer & Authorized Officer, N.H.-16, Khurda, Bhubaneswar, opp. party no.5 to consider the representation vide Annexure-5 and dispose of the same in accordance with law within a period of three months from the date of production of certified copy of this order by the petitioner and communicate the result thereof to the petitioner within two weeks from taking the decision. It is made clear that this Court has not expressed any opinion on the merits of the representation."*

***5.1.*** Despite this Court declined to entertain the writ petition, the petitioner again approached this Court by way of instant writ petition, being W.P.(C) No.1868 of 2026, which was dismissed on 19.02.2026 by recording the following:

*"2. Petitioner, in this writ petition, prays for the following relief:*

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*'In the circumstances mentioned above, it is therefore prayed that this Hon'ble Court may kindly be pleased to admit the writ petition, to issue rule NISI, calling upon the opp.parties to show cause, as to why the petitioner shall not be provided with adequate compensation for acquisition of the three storied commercial building situated over case land under Khata No.456, Plot No.269, area Ac.O.065 dec. status: Gharabari, Mouza: Mundaamba, Tahasil/Dist.: Khurda as calculated by the scrutiny committee in the abstract list for mouza: Mundamba & the other structure standing over the same.*

*And if the opposite parties fail to show cause or show insufficient cause to make the said Rule absolute by issuing an appropriate writ (s)/ order(s)/direction (s) as this Hon'ble Court deems just and proper according to the facts and circumstances of the present case.*

*And may pass any other order (s) as this Hon'ble Court thinks fit and proper.*

*And for which act of kindness the petitioner as in duty bound shall ever pray.'*

*3. Learned counsel for the Petitioner submits that for acquisition of the private land of the Petitioner pertaining to Plot No.269/1967 under Khata No.369/68 to an extent of Ac.0.100 dec. of Mouza-Mundaamba by the National Highways Authority, compensation has been awarded. Since*

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*the Bank raised an objection for release of compensation in favour of the Petitioner, the matter has been referred to the Civil Court under Section 3-H(4) of the National Highways Act, 1956 (for brevity, 'the Act').*

*4. However, in addition to the above, the Petitioner has also occupied a piece of Government land over Plot No.269 under Khata No.456 to an extent of Ac.0.065 dec under Mundaamba Mouza in the district of Khurda. Although the Petitioner is not entitled to compensation for acquisition of land but he is entitled to compensation for structures standing thereon.*

*5. While considering the case, the Competent Authority, Land Acquisition under the Act refused to grant compensation as it is a Government land.*

*6. Hence, Mr. Maharana, learned counsel for the Petitioner prays for withdrawal of the writ petition to seek remedy under Section 3-G(5) of the Act.*

*7. In view of the above, this Court without expressing any opinion on the merits of the case in the petition, if any, to be filed under Section 3-G(5) of the Act, disposes of the writ petition as withdrawn."*

**5.2.** Despite permitting to withdraw the writ petition with liberty reserved to the petitioner to file petition under Section 3G of the National Highways Act. 1956, present writ petition has

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been filed conveniently avoiding to array the National Highways Authority (necessary and proper party) and the petitioner also made identical prayer(s), which is reproduced hereunder:

> *"In the circumstances mentioned above, it is therefore prayed that this Hon'ble Court may kindly be pleased to admit the writ petition, to issue rule NISI, calling upon the opposite parties to show cause, as to why the eviction notice bearing Process No. 1310 dtd.26.10.2026 fixing the date of eviction on dtd.04.11.2026 shall not be quashed since no adequate compensation for acquisition of the residential house, three storied commercial building and other structures standing over case land under Khata No.389/68, Plot No.269/I967, area AcO.081 dec. in Mouza: Mundaamba, Tahasil/Dist.: Khurda which has been assessed and reflected in the abstract list issued and published by the authorities of NHAI, after due survey by the scrutiny committee for mouza: Mundamba. And if the opposite parties fail to show cause or show insufficient cause to make the said Rule absolute by issuing an appropriate writ (s)/ order (s)/dircction (s) as this Hon'ble Court deems just and proper according to the facts and circumstances of the present case.*
>
> *And may pass any other order (s) as this Hon'ble Court thinks fit and proper.*

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*And for which act of kindness the petitioner as in duty bound shall ever pray."*

**5.3.** In ***Ramesh Chandra Sankla Vrs. Vikram Cement, (2008) 14 SCC 58*** it has been observed as follows:

*'54. In the leading case of Daryao Vrs. State of U.P., AIR 1961 SC 1457 = (1962) 1 SCR 574 a Constitution Bench of this Court was called upon to decide whether withdrawal of a writ petition would operate as res judicata. The Court held that an order of withdrawal would not constitute res judicata inasmuch as there is no decision on the merits by the Court. The Court, however, proceeded to observe that* ***when a petition is withdrawn by the party without obtaining liberty from the Court to file a fresh petition on the same subject-matter, as a general rule, the petitioner is precluded from filing a fresh petition or an appeal against such an order because "he cannot be considered to be a party aggrieved by the order passed by the Court permitting withdrawal of the petition'****.*

*55. In Sarguja Transport Service Vrs. STAT, (1987) 1 SCC 5 the Appellate Tribunal set aside permit granted in favour of the petitioner by the Regional Transport Authority to run a stage carriage. The petitioner filed a writ petition under Article 226 of the Constitution in the High Court of Madhya Pradesh against the order of the Tribunal but withdrew it.* ***Then he filed a fresh***

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***petition. The High Court dismissed it holding that after the withdrawal of the first petition, the second petition was not maintainable.*** *The aggrieved appellant approached this Court. Dismissing the appeal and considering the ambit and scope of Order 23 of the Code and distinguishing it from the doctrine of res judicata under Section 11 of the Code, this Court observed:*

> *'7. … the law confers upon a man no rights or benefits which he does not desire.* ***Whoever waives, abandons or disclaims a right will lose it.*** *In order to prevent a litigant from abusing the process of the court by instituting suits again and again on the same cause of action without any good reason the Code insists that he should obtain the permission of the court to file a fresh suit after establishing either of the two grounds mentioned in sub-rule (3) of Rule 1 of Order 23. The principle underlying the above rule is founded on public policy, but it is not the same as the rule of res judicata contained in Section 11 of the Code which provides that no court shall try any suit or issue in which the matter directly or substantially in issue has been directly or substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating*

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*under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court. The rule of res judicata applies to a case where the suit or an issue has already been heard and finally decided by a court. In the case of abandonment or withdrawal of a suit without the permission of the court to file a fresh suit, there is no prior adjudication of a suit or an issue is involved, yet the Code provides, as stated earlier, that a second suit will not lie in sub-rule (4) of Rule 1 of Order 23 of the Code when the first suit is withdrawn without the permission referred to in sub-rule (3) in order to prevent the abuse of the process of the court.'*

56. *In A.K. Bhattacharyya Vrs. Union of India, 1991 Supp (2) SCC 109 the petitioner filed a writ petition in the High Court of Gauhati under Article 226 of the Constitution seeking selection grade in Tripura Civil Service and also promotion to the IAS cadre. A statement was made by the Advocate General that the case of the petitioner would be considered for selection grade in Tripura Civil Service. The petitioner, in view of the said statement, did not press the second relief. Subsequently, however, the petitioner prayed for*

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*that relief by filing a petition in this Court under Article 32 of the Constitution. Dismissing the petition, this Court commented: (Bhattacharyya case, 1991 Supp (2) SCC 109:*

> *'6.… He [petitioner] cannot, in this petition under Article 32 of the Constitution, ask for the same relief which he had himself given up in the High Court.'*
>
> *(See also State of Gujarat Vrs. Bhaterdevi Ramnivas Sanwalram, (2002) 7 SCC 500.)*

57. *In Murtujakhan Joravarkhan Babi Vrs. Municipal Corpn. of Ahmedabad, (1975) 16 Guj LR 806 a petition was filed under Article 226 of the Constitution challenging the constitutional validity of the Bombay Town Planning Act, 1954. The respondents appeared, filed affidavits and contested the petition on merits.* ***Ultimately, however, the petition was withdrawn by the petitioner since the point raised in the petition as to the validity of the Act was covered by the decisions of this Court and as such nothing survived. Then again a fresh petition was filed by the petitioner challenging the validity of the Act.*** *Dismissing the petition and applying the general principle of res judicata, the Court observed:*

> *'22. … The consequence of the withdrawal of the said writ petition in the eye of the law was that it stood dismissed on merits albeit on a*

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*concession made by or on behalf of the petitioner to the effect that the question of the constitutional validity of the Act was no longer open in view of the decisions of the Supreme Court.* ***In other words, the effect of the dismissal by withdrawal was that the challenge of the petitioner to the actions of the respondents under the Act on the ground that the said Act itself was ultra vires stood concluded by an adverse decision of this Court based on his own concession****.'*

*The Court proceeded to state:*

*'22. … **the petitioner having himself abandoned without reservation the previous writ proceeding initiated in this very Court with eyes open and after due deliberation cannot now be allowed to pick up the thread after a lapse of five years and to start a fresh proceeding to reagitate the very point which he expressly gave up in the previous proceeding.** He had set the machinery of law in motion but solemnly brought it to an abrupt halt, indeed forsaken it in midstream, in proclaimed obeisance to the decisions of the Supreme Court. He cannot be permitted to resume it now after a number of years and be*

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*heard to say that despite his earlier proclamation, he still wishes to persist in raising the same point in this litigation. Courts moved upon a prerogative writ are not the forum to flog a dead horse or to resuscitate a ghost already laid to rest.'*

***

62. *In Sarguja Transport Service, (1987) 1 SCC 5, extending the principles laid down in Daryao, AIR 1961 SC 1457 = (1962) 1 SCR 574], Venkataramiah, J. (as His Lordship then was) concluded:*

> *'9. … **we are of the view that the principle underlying Rule 1 of Order 23 of the Code should be extended in the interests of administration of justice to cases of withdrawal of writ petition also, not on the ground of res judicata but on the ground of public policy as explained above. It would also discourage the litigant from indulging in bench-hunting tactics.** In any event there is no justifiable reason in such a case to permit a petitioner to invoke the extraordinary jurisdiction of the High Court under Article 226 of the Constitution once again. While the withdrawal of a writ petition filed in a High Court without permission to file a fresh writ petition*

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*may not bar other remedies like a suit or a petition under Article 32 of the Constitution of India since such withdrawal does not amount to res judicata, the remedy under Article 226 of the Constitution of India should be deemed to have been abandoned by the petitioner in respect of the cause of action relied on in the writ petition when he withdraws it without such permission.'*
****"*

**5.4.** The view of the Hon'ble Supreme Court of India is reflected in the following manner ***Pandurang Vithal Kevne Vrs. Bharat Sanchar Nigam Limited, (2024) 12 SCR 2113***:

*"19. This Court in Dalip Singh Vrs. State of Uttar Pradesh and others, (2010) 2 SCC 114 has strongly condemned litigants who use the justice system for their benefit and thereby attempt to pollute the streams of justice. It was observed as under:*

*'1. In last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant,*

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*who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final.'*

*20. Time and again, this Court has raised deterrence against frivolous appeals and petitions by imposition of costs on the litigating parties. This court in the case of K.C. Tharakan Vs State Bank of India & Ors., 2023 SCC OnLine SC 2375 held the following:*

*'No legal system can have a scenario where a person keeps on raking up the issue again and again once it is resolved at highest level. This is complete wastage of judicial time. We, thus, dismiss this petition with costs, though we limit the amount of costs considering the petitioner is a dismissed person. The writ petition is dismissed with costs of Rs.10,000/- to be deposited with the Supreme Court Advocates-on-Record Welfare Fund to be utilized for the SCBA library.'*

*21. In view of the above discussions, we find no merit in this Special Leave Petition, hence, the same is dismissed. As there is no merit in the petition, we don't deem it appropriate to even condone the delay. Hence, the application for condonation of delay is also dismissed."*

**5.5.** It may not be out of place to refer to yet another judgment of the Hon'ble Supreme Court of India on point which is

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rendered in the case of ***State of U.P. Vrs. Labh Chand, (1993) 2 SCC 495*** wherein it has been observed thus:

> *"20. When a Judge of Single-Judge Bench of a High Court is required to entertain a second writ petition of a person on a matter, he cannot, as a matter of course, entertain such petition, if an earlier writ petition of the same person on the same matter had been dismissed already by another Single-Judge Bench or a Division Bench of the same High Court, even if such dismissal was on the ground of laches or on the ground of non-availing of alternate remedy.* ***Second writ petition cannot be so entertained not because the learned Single Judge has no jurisdiction to entertain the same, but because entertaining of such a second writ petition would render the order of the same court dismissing the earlier writ petition redundant and nugatory, although not reviewed by it in exercise of the recognised power.*** *Besides, if a learned Single Judge could entertain a second writ petition of a person respecting a matter on which his first writ petition was dismissed in limine by another learned Single Judge or a Division Bench of the same court, it would encourage an unsuccessful writ petitioner to go on filing writ petition after writ petition in the same matter in the same High Court, and have it brought up for consideration before one Judge after another. Such a thing, if is allowed to happen, it could result in giving full*

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*scope and encouragement to an unscrupulous litigant to abuse the process of the High Court exercising its writ jurisdiction under Article 226 of the Constitution in that any order of any Bench of such court refusing to entertain a writ petition could be ignored by him with impunity and relief sought in the same matter by filing a fresh writ petition.* ***This would only lead to introduction of disorder, confusion and chaos relating to exercise of writ jurisdiction by Judges of the High Court for there could be no finality for an order of the court refusing to entertain a writ petition. It is why, the rule of judicial practice and procedure that a second writ petition shall not be entertained by the High Court on the subject-matter respecting which the first writ petition of the same person was dismissed by the same court even if the order of such dismissal was in limine, be it on the ground of laches or on the ground of non-exhaustion of alternate remedy, has come to be accepted and followed as salutary rule in exercise of writ jurisdiction of courts****."*

***5.6.*** The petitioner at different stages of acquisition proceeding has been approaching this Court by way of writ petition with the self-same prayer to direct the opposite parties to grant "adequate compensation". It will be a matter of public policy that a person should not start a fresh round of litigation and

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the Court will not allow to re-agitate the claim which he himself had already given up earlier.

***6.*** In view of the above and considering that the petitioner has repeatedly been invoking the writ jurisdiction of this Court on the same cause of action with identical prayer, with only slight modifications, and has conveniently ignored to implead the National Highways Authority of India, as a necessary/proper party, this Court is not inclined to entertain the Writ Petition.

**7.** Accordingly, the writ petition is dismissed. Pending interlocutory application(s), if any, shall stand disposed of.

***(Dr. Sanjeeb K Panigrahi)***
***Judge***

***(Murahari Sri Raman)***
***Judge***

***Sipun***