



IN THE HIGH COURT OF ORISSA AT CUTTACK

W.A. No.717 of 2026

CNR No.ODHC010270802026

Ashalata Nayak

....

Appellant

Mr. Sudhansu Sekhar Jena, Advocate

-Versus-

State Of Odisha & Ors.

....

Respondents

Mr. Sanjib Kumar Swain, AGA

CORAM:

HON' BLE THE CHIEF JUSTICE

AND

HON'BLE MR. JUSTICE CHITTARANJAN DASH

ORDER

31.08.2026

Order No.

- 03.**
- 1.** Heard learned counsel for both the Parties.
 - 2.** A plea has been taken at the outset that the Writ Court ought not to have dismissed the writ petition at the threshold without inviting the other, side to disclose his stand and sought to have challenge the impugned order which *per se* disposed of the writ petition in presence of the State-respondents. There is no absolute inhibition created in the Court in not disposing of or dismissing the writ petition at stage of admission. The frivolous, vexatious and unmeritorious matter should not be allowed to occupy the space if the Court, on the face of it, finds that the same deserves dismissal.
 - 3.** Ordinarily, the Court should not adopt such procedure but if a case warrants such decision to be taken, we do not find any fetter in



law that the moment the unscrupulous litigant approaches the Court with the frivolous writ petition, the Court must oblige by issuing the notice and inviting the other side to file its pleading. If such notion is universally applied, it would not give a premium to the recalcitrant litigant to have an edge over meritorious cases but may take advantage of the pendency of the said litigation. Such recourse may search in the pendency and may explore the docket of the Court.

4. Neither the procedural law nor the substantive act creates any brindle into the Writ Court in not dismissing the frivolous litigation at the threshold and therefore, we do not concur with the view expressed by the learned counsel appearing for the appellant that the Writ Court committed an illegality in disposing of the writ petition on the day of an admission without inviting the other side to file its pleading.

5. The case pertains to an encroachment over the Government land and a notice was issued by the Bhubaneswar Municipal Corporation, Bhubaneswar, Khordha, to remove such encroachment. It appears from the tenet of the said notice that the iron grill gate affixed to the main building, in fact, has been put on the Government land and the petitioner was called upon to remove such iron grill gate.

6. The Petitioner's claims the right, title and interest in respect of the entire property which necessarily includes the fixation of the iron grill gate there. To assert such right, the petitioner has already approached the Civil Court and we are given to understand that the Civil Suit is pending and there is no injunction, ad interim, or interim or temporary order passed by the Civil Judge. Since the notice for



removal of the iron grill gate was issued by the Bhubaneswar Municipal Corporation, Bhubaneswar, Khordha, the approach was made to this Court by filing the writ petition with the following prayers:

“It is therefore prayed that this Hon'ble Court would be pleased to admit the Writ Petition (Civil) filed by the Petitioner and pass such necessary order(s), issuing the Rule NISI against the Opp. Parties calling on them through their Show Cause or in insufficient cause within the stipulated period as to why an appropriate writ of mandamus or any other writ(s) may not be made. If the said Opposite Parties fail to file their show cause/insufficient cause within the stipulated period fixed by the Hon'ble Court then the Rule NISI be absolute against their action and pass such other order/direction/writ protecting and preserving the property and life of the Petitioner and her other family members by staying up further action of the Opposite Parties from sl. nos;-2 to 4 respectively not to continue their further construction (Road Construction on the suit land and pass such any other order/writ(s) as the hon'ble Court may think fit and proper in the ends of justice.”

7. We had an occasion to peruse the averments made in the writ petition, wherein the petitioner claims the right in respect of the said property on the strength of long possession and has further relied upon the entry made in the Record-of-Right. We suggest that the property is in forcible possession for a forcible occupation of several persons.

8. So far as the name of the petitioner is concerned, it does not appear to have been reflected therein. The RoR is relied upon though not expressly pleaded in the writ petition but at the time of the argument, to the extent that the said plot of land is recorded in the name of deity being a “debottar property” is not owned by the Government. It is no longer *res integra* that the Record-of-Right neither creates title into a person nor extinguishes the title. It is



relevant for the purpose of the collection of the land revenue making a person responsible in this regard.

9. Apart from the same, the petitioner has already filed a Civil Suit for declaration of his title in respect of the property and therefore, we do not find that solely on the basis of the Record-of-Right, the petitioner cannot get away with the effect of the notice having issued upon him. It is a cardinal principle of law that the Writ Court enjoins the powers emanating from the provisions contained under Article 226 of the Constitution of India and existence of an alternative remedy may not be an absolute bar in entertaining the writ petition.

10. The aforesaid notion is fortified in the judgment of the Apex Court rendered in ***Whirlpool Corporation v. Registrar of Trade Marks, Mumbai & Ors.*** reported in (1998) 8 SCC 1. We do not have an inkling of doubt on the proposition of law laid down in the said judgment that the Writ Court would be denuded of its power to entertain the writ petition because the litigant has the alternative remedy available under the statute. But, equally, we cannot overlook the catena of the decisions rendered in this regard that it is a discretion of the Writ Court whether to entertain the writ petition or not, in view of the alternative remedy available to the litigant.

11. It is, thus, a rule of discretion than of compulsion. A distinction has to be born in mind between the maintainability and the entertainability of legal proceedings. It is one thing to say that a proceeding is not maintainable, meaning thereby, the Court has no other option but to dismiss the said matter at the threshold but it is quite different when the Court refuses to entertain a petition, meaning



thereby the Court does not feel that any relief claimed therein deserves to be granted at the given stage.

12. In the event, the Court exercises a discretion and relegate the party to exhaust the remedy provided in another forum, such discretion should not be readily interfered with by the Appellate Court unless the discretion so exercised is patently unreasonable, irrational and opposed to a settled legal parameters. The discretionary order is not susceptible to be easily interfered with unless the exceptions carved out in that regard is evidently and apparently found present therein.

13. We have invited our consideration on such aspect for the reason that the learned counsel appearing for the appellant argues the same but the record would reveal that the impugned order does not relegate the petitioner to exhaust the alternative forum rather the Court showed sympathy to the petitioner and permitted the petitioner to file an objection towards the said show cause notice issued to the petitioner by the Bhubaneswar Municipal Corporation, Bhubaneswar, Khordha, ventilating the grievance raised at the time of hearing. Though, no argument has been advanced yet, the petitioner perceives such notice to have encroached upon his right, title and interest in respect of a property and files the instant writ petition.

14. Admittedly, the petitioner did not file a reply to the said notice but challenged the said order before this Court and an argument is advanced, dehors the pleadings and a case is being made out for the first time at the Bar.

15. Learned counsel for the appellant vociferously argues that a person who is found in possession since long has a right to perfect



such possession by way of adverse possession. It has gone to the extent that a person can claim the adverse possession against the Government or in respect of a Government land. The legal maxim in order to decipher whether the right by way of an adverse possession has been fortified is sought to be projected before us as the *nec vi, nec clam, nec precario*.

16. It is thus submitted that once a person comes within the folds of the said legal maxim, his possession become adverse to the real owner and he has acquired a protective right from being evicted therefrom. Though, the possession is a nine-tenths principles on title, the concept of adverse possession has gradually gained significance under the Limitation Act. Mere long possession or an uninterrupted possession for a considerable period of time cannot be regarded as an adverse possession. In order to succeed on the adverse possession, the person in possession must prove that his possession is hostile, uninterrupted and overt, and is known to the whole world including the owner of the property.

17. We do not find any remanence of a document forthcoming from the possession of the petitioner touching upon his possession except the notice issued to him by the Bhubaneswar Municipal Corporation, Bhubaneswar, Khordha, that the iron grill gate fixed by the petitioner is regarded as an encroachment over the Government land. When the petitioner has openly declared his right, it is conspicuously neither absent in the pleading nor do we find a slightest of the averments in the writ petition on the adverse possession.



18. The question of adverse possession is essentially a question of facts having a slightest nexus with the law and the quality of the evidence could be a determinant factor. The adverse possession is not an abstractor nor can be used in such form unless a necessary pleading is made by the petitioner and sufficient evidence is adduced in support thereof.

19. It does not appear from the tenet of the impugned order that any such plea was, in fact, raised as the same was disposed of solely on the premise that the petitioner must respond to the notice issued to him and no further direction may be passed in the said writ petition. From whatever angle we look it does not find that the order impugned in the instant writ appeal warrants any interference and therefore, the same is hereby dismissed with exemplary cost, which should be assessed as ₹1,00,000/- (Rupees One Lakh only) to be deposited with the Odisha State Legal Services Authority (OSLSA) within two (02) weeks from today. If the aforesaid amount is deposited, the same shall be utilized for the benefit of the juvenile.

(Harish Tandon)
Chief Justice

(Chittaranjan Dash)
Judge