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IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.25115 of 2023

In the matter of an application under Articles 226 & 227 of the Constitution of India, 1950.

1. *Union of India, represented through the Surveyor General of India, Survey of India, Deheradun.*

2. *The Director, OGDC, Survey of India, Survey Bhawan, Bhubaneswar.*

3. *The Estate Officer, C/o.Director, Survey of India, Bhubaneswar.*

Petitioners

-VERSUS-

1. *Shri Satyananda Nayak* *Opposite Party*

Advocates who appeared in this case

For Petitioners - Mr.P.K. Parhi, DSGI,
Mr.D.R. Bhokta, CGC.

For Opp. Party - Mr.Bijay Ku. Nayak-3 &
P.K. Nayak,
Advocates.

CORAM :

MR. JUSTICE KRISHNA SHRIPAD DIXIT
MR. JUSTICE CHITTARANJAN DASH

Date of Hearing & Judgment : 26.02.2026



PER KRISHNA S DIXIT, J.

The Union Government & its officials having suffered an adverse order at the hands of the Central Administrative Tribunal, Cuttack entered in Opposite Party's O.A. No. 260/00182, are knocking at the doors of Writ Court for assailing the order dated 17.01.2023. The operative portion of the said order reads as under:

"5...by virtue of a civil court decree Kabita Pradhan has been declared as not his wife and, therefore, it is established that the quarters, in question, was not in possession of the applicant but under the possession of an unauthorized person, who had entered into the quarters forcibly by breaking the door lock, which fact was brought to the notice of the respondents immediately after such incident. Therefore, deduction made by the respondents towards HRA and other ancillary dues for the quarters, in question, from the salary of the applicant after 22.12.1998 is held to be illegal and arbitrary in view of the observation of the Hon'ble High Court of Orissa referred to above. Hence, the respondents are directed to pay the applicant HRA and to refund the deductions made from his salary towards occupation of quarters."

2. BRIEF FACTS OF THE CASE:

2.1. Opposite Party being an employee of Archeological Survey of India, was allotted Type-III Official Quarters vide order dated 03.11.1995. He had availed a leave of two months with effect from 13.12.1998 for seeing his aged & ailing mother, who was residing at a place about 110 Kms away. As bad luck would have, he suffered severe injury on account of fall and therefore, was hospitalized, there. Taking advantage of absence, a lady along



with others barged into the quarters, posing as his wife. They started using the said quarters as residence and the household items therein.

2.2. On coming to know of unauthorized occupation of the quarters, OP sent an intimation dated 28.12.1998 for taking action against the said occupants, with help of police, if need be. The Department conducted an inquiry proceeding examining certain witnesses, who stated that the occupant lady was the spouse of OP and men in her company were his brothers. Accordingly, a report was drawn on 21.01.1999. Opposite Party came to be suspended on 15.03.1999 and challenge thereto in OA No.53/2000 came to be negatived by the Tribunal vide order dated 17.03.2001.

2.3. Acting on the inquiry report, OP was held liable for the HRA/license fee for the official quarters and this led to filing of OA No.182/2001. That was dismissed by the Tribunal vide order dated 09.02.2004 leading to OP filing WP(C) No.3596/2004. In the meanwhile, OP had filed CS No.21/1999 seeking a decree of jactitation against the occupant Smt. Kabita Pradhan and that came to be decreed on 21.04.2012 with a finding that she was not his spouse. There being no further challenge, this decree attained finality. Eventually, albeit years thereafter, the said WP came to be



allowed by a Coordinate Bench vide order dated 24.08.2022 remanding the matter to the Tribunal for consideration afresh.

2.4. The Tribunal allowed OA No.182/2001 inter alia holding that the occupant lady not being the spouse of OP, no amount by way of HRS/occupation charge was payable by him. Therefore, a direction was issued for refund of whatever has been recovered from him. This order has been put in challenge at our hands.

3. CONTENTIONS OF PARTIES:

3.1. Learned CGC appearing for the Petitioners vehemently argues that once an official quarters is handed to the employee in terms of employment, he is liable to pay the admissible occupation charges/fees; whether he makes use of allotment of the quarters or permits others to occupy, is not the concern of the Department-employer; it is the duty of allottee-employee to ensure that others do not trespass the quarters. He also argues that the occupant lady was none other than the spouse of OP, which fact is vouched by inquiry report and the report submitted by the Inspector General of Police to the Mahila Commission; the jactitation is a matter between OP and the unauthorized occupant lady, the Department not being a party *eo nomine* thereto; therefore, that decree would not come to the rescue of erring employee. He also draws attention of this Court to various cases fought by and between OP, occupant



lady & another lady, who claimed to be the first wife of OP. These are PS Case No.26/1999, CRLMC No.1893/2011, etc.

3.2. Learned counsel representing the OP makes submissions in justification of impugned order of the Tribunal and the reasons on which it has been constructed. He contends that once a jactitation decree is obtained at the hands of competent court, the same binds non-parties as well since it is a decree in *rem*; the Department cannot be heard to say that it is not bound by the decree; in fact earlier OA No.182/2000 was dismissed by the Tribunal on 09.02.2004 and that came to be set aside by a Coordinate Bench in OP's WP(C) No.3596/2004 vide order dated 24.08.2022 on the basis of very same decree and matter was remanded; only thereafter the impugned order came to be entered. Lastly, he adds that the present Writ Petition is filed under Article 227 of the Constitution of India, Article 226 having been ornamentally employed in the pleadings and therefore, this Court cannot examine the matter as if it is sitting in Appeal over the Tribunal's order. So contending, he seeks dismissal of the Writ Petition. Counsel also refers to certain cases fought by OP including those waged against him.

4. Having heard learned counsel for the parties and having perused the petition papers, we decline indulgence in the matter for the following reasons:



4.1. AS TO DUTY OF EMPLOYEE TO WHOM OFFICIAL QUARTERS ARE ALLOTTED:

4.1.1. Official accommodation is granted by the employer in public employment sectors, is a matter of common knowledge. Such allotments are made on availability basis keeping in view certain parameters of entitlement of the employees, such as designation, seniority, necessity, etc. The allotment only creates the *vinculum juris* of *licensor-licensee*, and nothing more. For the occupation, the allottee has to pay the prescribed levies. Ordinarily, these matters are regulated under the extant Rules, orders, circulars & alike. These instruments regulate penal levy, recovery of dues and removal of occupants in a summary way. It hardly needs to be stated that, once the license is revoked, the occupant becomes trespasser.

4.1.2. The license to occupy ceases on revocation because of violation of the conditions or by efflux of time, resignation, removal, retirement or death in harness, as the case may be. It is not only undesirable but culpable, if the quarters are retained by the allottee even after cessation of license. Similarly, it is the duty of allottee to ensure that there is no unauthorized occupation of the quarters. If there is unauthorized entry of strangers, it is his duty to inform the employer immediately for taking necessary action. It is not uncommon that hooligans unauthorizedly



occupying the official quarters taking undue advantage of absence of allottee as has happened in this case. Once the same is reported, it is the duty of higher ups to take all necessary steps on a war footing to remove the trespassers, if necessary by using reasonable physical force or police assistance. It is the duty of police to render assistance in such circumstances. There is absolutely no need for taking up suit proceedings or the like, subject to all justice exceptions such as the cases of settled possession.

4.2. AS TO WHAT FACTS EMERGED FROM THE RECORD:

4.2.1. Allotment of the official quarters to the OP vide order dated 03.11.1995 and OP availing a sanctioned leave of two months w.e.f. 13.12.1998 are not in dispute. He had been to a faraway place to see his aged & ailing mother where he sustained grievous injuries leading to hospitalization. It is on record that he had informed the higher ups on 28.12.1998 by sending a speed post representation mentioning about a lady & others unauthorizedly gaining entry to the quarters and occupying the same. He had specifically requested to take police action against them. That being the position, it was duty of the Department to take steps for the removal of unauthorized occupants. The Department appears to have met the police in that connection. However, no concrete action was taken for the removal of unauthorized occupants,



presumably because the lady was claiming to be the spouse of OP and she was threatening of legal action. In these circumstances, the OP, as a scrupulous employee, has done what all was expected of him and therefore, no blame can be laid at his threshold.

4.2.2. There were some cases fought between the OP, his so-called first wife and the lady who had unauthorizedly occupied the official quarters. In CRLMC No.1893/2011 decided by a learned Single Judge of this Court vide order dated 23.09.2011, the criminal proceedings vide PS Case No.26/1999, *inter alia* for the offence of cruelty, etc. initiated against the occupant lady came to be quashed, is not in dispute. True it is that the Inspector General-Cum-Director General of Police, vide report dated 07.04.2001, had stated that the unauthorized occupant was none other than the wife of OP. This report prepared on the basis of certain witnesses and neighboring occupants was submitted to the Mahila Commission. This report does not reveal effective participation of the OP in the inquiry. Therefore, much credence cannot be lent to this.

4.2.3. It is also true that the Department conducted an inquiry in the matter with the participation of OP and other concerned. The inquiry report dated 21.01.1999 mentioned about spousal relationship between the OP and the lady, who had



unauthorizedly occupied the official quarters. That also led to suspension of the OP vide order dated 15.03.1999 and his challenge to the same in OA No.53/2000 was negatived by the Tribunal on 17.03.2001. However, it has been the consistent stand of the OP that the said lady was a stranger and she was falsely claiming to be his wife. On the basis of inquiry report, the Department cannot hastily jump to a conclusion as to the existence of spousal relationship, as rightly contended by learned counsel appearing for the OP. Disputes relating to marital status are for the Courts to adjudicate upon. However, that has nothing to do with the action to be taken by the Department for the removal of unauthorized occupant by using police force. In what circumstances, the Department had assured not to interfere with the occupation of the said lady up to a particular point of time remains a mystery wrapped in enigma.

4.3. IT IS NOT THAT JACTITATION DECREES ARE UNKNOWN TO NATIVE JURISPRUDENCE.

4.3.1. More than a century ago, the Allahabad High Court in *Mir Azmat Ali v. Mahmud-ul-nissa*¹, has observed as under:

“...A suit for jactitation of marriage is not by any means a novel description of suit: it was a suit in which relief was given in England in the Ecclesiastical Courts, and when the jurisdiction of those Courts was transferred to the Divorce Court by the Act of 1857, the jurisdiction of the Ecclesiastical Courts in suits for jactitation of

¹. (1897) ILR 20 ALL 96.



marriage was transferred to the Divorce Court. In England it was not only a well-known suit within the jurisdiction of the Ecclesiastical Courts, but it was considered proper that that jurisdiction should be continued by the Divorce Court in England, and there can be no doubt that unless a man is entitled by means of the Civil Courts to put to silence a woman who falsely claims to be his wife, the man and others may suffer considerable hardship, and his heirs may be harassed by false claims after his death. The suit for jactitation, however, is one not to be encouraged, particularly in a country like this, in which persons unfortunately are too anxious to discover forms of legal procedure by which they can annoy their neighbours. In our opinion, however, such a suit lies in a Civil Court in this country. The Court trying such a suit will of course take care, before granting a plaintiff a decree, to see that it is strictly proved that the defendant did seriously allege that the disputed marriage had taken place and that the plaintiff did not acquiesce in the claim or allegation of the defendant as to the disputed marriage, and further that in fact no marriage had taken place between the parties. We set aside the decree of the Lower Appellate Court, and remand the case under Section 562 of the Code of Civil Procedure to that Court to be disposed of upon the merits..."

4.3.2. A learned Single Judge of Bombay High Court in *Armaity Jimmy Sukhia v. Victoria Robert Crasto*², at paragraph 11 has observed "*Jactitation of marriage means a persistent boasting of a marriage, falsely alleged to have taken place between a boaster and the petitioner. The suit prays for a decree of perpetual silence on the subject : a petition in such a suit cannot be presented by anyone except the person so misrepresented. This is the only case in which a matrimonial suit can, as of right, be proceeded without prima facie proof of a marriage de facto; in these days it is rarely necessary to seek such a remedy.*". It is not

². (1997) 99 Bom. LR 1.



impertinent to mention a Madrass High Court decision treating the subject. A Three Judge Bench in *Mariasoosai v. Clara Mary*³, at para-11 has referred to the Halsbury's Laws of England, 4th Edition, Para 529 as to jactitation suits obtaining in English Law. The text & tenor gives an undeniable impression that same is the position in Indian Law as well, subject to all just exceptions.

4.4. AS TO JACTITATION DECREE AND ITS FALLOUT:

4.4.1. It emerges from record and it is the admitted position before us that when unauthorizedly occupying lady started claiming to be the lawful spouse of OP, he filed CS No.21/1999, i.e., soon after the filing of PS Case No.26/1999 and the inquiry report dated 21.01.1999. A full-fledged trial was conducted, multiple persons entering the witness box, apart from the parties. Several documents also have been marked as Exts. The jurisdictional court, on 21.04.2012, entered the judgment and granted a decree of jactitation holding that the said lady is not the spouse of OP and that she should not claim as spouse. During the relevant period, it was the Civil Judge, Junior Division, who had the competence to make such decree, in the matrimonial jurisdiction, Family Courts not yet being established. Halsbury's Laws of England⁴ reads as under:

³. AIR 1995 Mad. 35.

⁴. Halsbury's Laws of England, Fourth Edition, Vol. 13, para 531, Butterworths.



"531. False boast of marriage...A suit for jactitation is the only case in which a matrimonial suit can, as of right, be proceeded with without prima facie proof of a marriage de facto, for the object of the suit of jactitation is to prove that no valid marriage subsists between the parties."

4.4.2. The said decree would put the controversy to rest once for all. The inquiry report dated 21.01.1999 and the report of Inspector General-Cum-Director General of Police dated 07.04.2001 submitted to Mahila Commission would pale into insignificance. It is more so because a Coordinate Bench of this Court vide order dated 24.08.2022 had set aside Tribunal's order and remanded the matter for consideration afresh on the basis of jactitation decree. The Tribunal too decided the remand vide impugned order dated 17.01.2023 on the basis of this decree.

4.4.3. The vehement contention of learned CGC that the jactitation decree would not bind the Department, which was not arrayed as a party to the suit proceedings, is not sustainable. Decrees of the kind are granted in matrimonial jurisdiction, which ordinary Civil Courts were exercising prior to the establishment of matrimonial courts. When decrees are granted by the competent courts in matrimonial, probate, admiralty or insolvency jurisdiction, they partake the character of judgments in *rem*. In W.P.(C) No.20325/2014 between *State of Orissa v. Bibhu Prasad Mishra*, decided on 24.02.2026, we have observed as under:



"4.6.2. It has long been established by sages of law that the judgments in rem are those which have been rendered only in four conventional jurisdictions:

i) Sir John Woodroffe & Syed Amir Ali write as under:

"...Bower defines a judgment in rem as one which "declares, defines or otherwise determines the status of a person, or of a thing; that is to say, the jural relation of the person or thing to the world generally".... A judgment in rem like judgments passed in probate, insolvency, matrimonial or guardianship or other similar proceedings, is admissible in all cases whether such judgments are inter parte or not. "Judgment in rem" means an adjudication pronounced upon the status of a person or thing by a competent Court to the world generally..."

ii) Halsbury's Laws of England 2009, 5th Edition, Para 1161 reads as under:

"1161. Examples of judgments in rem. The following are examples of judgments in rem: the judgment of a prize court condemning a vessel as prize; the judgment of an Admiralty court establishing a lien, or condemning a vessel in a claim (for example for the supply of goods) ... the judgment of a probate court establishing a will or creating the status of administrators; the judgment of a divorce court of competent jurisdiction dissolving or establishing a marriage, or declaring the nullity of a marriage or affirming its existence; the judgment on a parliamentary election petition; a conviction for non-repair of a highway; a determination of justices that a street was a highway repairable by the inhabitants at large, establishing the status of the highway and the liability to repair; a determination that a path was subject to a public right of way; an order for revocation of a patent; a sentence or order of expulsion or rustication from a college or deprivation of a living. Condemnations in the old Court of Exchequer for breach of revenue laws and the order of justices for the removal of a poor person, establishing both his status and the place of his settlement, were also examples of judgments in rem. Upon the same principles it would seem that a bankruptcy order or an order of discharge in bankruptcy, and



an order for the dissolution of a company or an order declaring such a dissolution void, are in the nature of judgments in rem."

iii) To the four conventional jurisdictions, we can add one more with no risk of contradiction. That is where Constitutional Courts quash an instrument of law (as comprehensively mentioned in Article 13(3) of the Constitution), such judgments also operate in rem, in the sense that the quashment is not confined to parties to the litigation. Law does not create reality, but reality of life may create law..."

4.4.4. A judgment in *rem* operates as *res judicata* against one & all concerned, whether they were arrayed as parties to the proceedings in which such judgment is rendered. Where an issue of fact affecting the status of a person has been necessarily determined in a final manner as a substantive part of a judgment of a Court having jurisdiction to determine that status, and the same issue comes directly in question in subsequent proceedings, that cannot be re-agitated afresh. Hindu scriptures like 'Shukraneeti' treat this *doctrine* as *poorva nirnay siddhant*. In a conventional sense it means, a matter that has been already concluded by adjudication cannot be re-litigated. Such a concept obtained even in other jurisdictions. Two Latin maxims provide the rationale for it: firstly, *interest reipublicae ut sit finis litium* meaning that it is in the public interest that there should be an end of litigation and secondly, *nemo debet bis vexari pro una et eaden causa* meaning that no one should be proceeded against twice for the same cause⁵.

⁵. Halsbury's Laws of England, Fifth Edition, Vol. 12, para 1168, LexisNexis.



In the above circumstances, this Petition being devoids of merits is liable to be dismissed and accordingly it is, costs having been made easy. The impugned order of the Tribunal shall be given effect to within an outer limit of eight weeks, failing which the officials run the risk of contempt action.

We place on record our deep appreciation for the able research & assistance rendered by Law Clerk-cum-Research Assistant Mr. Mohammed Nihad Sharief.

Web copy of order to be acted upon by all concerned.

(Krishna Shripad Dixit)
Judge

(Chittaranjan Dash)
Judge

Orissa High Court, Cuttack
The 26th Day of February 2026/PK Sahoo

Signature Not Verified

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