



IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.31846 of 2024

Latifa Khatun

..

Petitioner

Mr. C. Nayak, Advocate

-Versus-

State of Odisha & others

..

Opposite parties

Mr. C.M. Singh, ASC
(O.P. Nos.2 to 4)

Mr. P.C. Behera, Advocate
(O.P. No.5)

CORAM:

MR. JUSTICE R.K. PATTANAIK

ORDER

01.05.2025

I.A. No.1809 of 2025

Order No.

08.

1. Heard Mr. Behera, learned counsel for opposite party No.5 and Mr. Nayak, learned counsel for the petitioner besides Mr. Singh, learned ASC for the State appearing for opposite party Nos.2 to 4.
2. Instant I.A. is filed by opposite party No.5 seeking recall of the Court's order dated 20th December, 2024 in W.P.(C) No.31846 of 2024 on the grounds stated therein.
3. Mr. Behera, learned counsel for opposite party No.5 submits that for material suppression of fact regarding absence of any litigation before the Civil Court, the petitioner requested opposite party No.4 for demarcation of the case land and while claiming so, a copy of the application in Demarcation Case No.153 of 2024 is produced in Court today. The further submission is that opposite party No.4 was directed to hold the demarcation as per the SOP. Mr. Behera, learned counsel for opposite party No.5 further submits that



with such suppression of an order of status quo in C.S. No.303 of 2022 in I.A. No.163 of 2022, the petitioner managed the order dated 20th February, 2025 of this Court. It is claimed that opposite party No.5 though received notice but requested to file a response seeking an adjournment but in view of the Court's order in W.P.(C) No.31846 of 2024, such demarcation was held by opposite party No.4 in respect of the land in question, hence, the same is needed to be recalled in the interest of justice.

4. Mr. Nayak, learned counsel for the petitioner, on the contrary, vehemently opposed the contention advanced from the side of opposite party No.5 with the submission that I.A. is not maintainable in view of the decision of the Apex Court in **Jaipur Vidyut Vitran Nigam Ltd. & others Vrs. Adani Power Rajasthan Ltd & another 2024 SCC OnLine SC 313**. The further submission is that the demarcation with an application in respect thereof is with regard to MS Plot No.17/1385 situate over M.S. Khata No.646/164 and it has been held in the meantime pursuant to Court's order in W.P.(C) No.31846 of 2024. The further submission of Mr. Nayak, learned counsel for the petitioner is that the order of status quo in I.A. No.177 of 2022 arising out of the suit in C.S. No.327 of 2022 was challenged by the petitioner in FAO No.08 of 2023 and the same was set aside with the direction to opposite party No.5 and others not to collect rent from the tenants situate over the case land and at the same time, not to dispossess him therefrom. The contention is that in view of such an order in FAO No.08 of 2023, opposite party No.1 was not debarred from any such request being made for demarcation and rightly, it was applied for as per Annexure-5 and the same was according entertained and was finally held. In reply and response to the above, Mr. Behera, learned counsel for opposite party No.5 submits that there is an interim order in I.A. No.163 of



2022 corresponding to C.S. No.303 of 2022 and the same is staring at the petitioner and ignoring the same and despite the pendency of the litigation, opposite party No.4 should not have held demarcation as the same is against the SOP and the guidelines of the State Government.

5. A copy of the order in FAO No.08 of 2023 is made available to the Court by Mr. Nayak, learned counsel for the petitioner and the same is gone through. Mr. Behera, learned counsel for opposite party No.5 submits that an affidavit was filed before opposite party No.4 and the same is also perused.

6. Mr. Singh, learned ASC appearing for opposite party Nos.2 to 4 produced a copy of the letter received from opposite party No.4 by the Office of the Advocate General, Odisha indicating therein that at the time of demarcation, he was aware of the pendency of the suit before the Civil Court.

7. In **Jaipur Vidyut Vitran Nigam Ltd.** (supra), the apex Court held and observed as to the following:

“12. In the case of Ghanashyam Mishra & Sons Private Limited v. Edelweiss Asset Reconstruction Company Limited [M.A. No. 1166 of 2021 in CA No. 8129 of 2019], a two-Judge Bench of this Court in its judgment delivered on 17th August 2022 observed and held:

“4. Having heard learned senior counsel for the parties and having perused the relevant materials placed on record, we are of the considered view that the present applications are nothing else but an attempt to seek review of the judgment and order passed by this Court on 13th April 2021 under the garb of miscellaneous application.

5. We find that there is a growing tendency of indirectly seeking review of the orders of this Court by filing applications either seeking modifications or clarifications of the orders passed by this Court.



6. In our view, such applications are a total abuse of process of law. The valuable time of Court is spent in deciding such application which time would otherwise be utilized for attending litigations of the litigants who are waiting in the corridors of justice for decades together.”
(Emphasis supplied)

It is further observed therein and the same is reproduced below:

“25. We felt it necessary to examine the question about maintainability of the present application as we are of the view that it was necessary to spell out the position of law as to when such post-disposal miscellaneous applications can be entertained after a matter is disposed of. This Court has become functus officio and does not retain jurisdiction to entertain an application after the appeal was disposed of by the judgment of a three-Judge Bench of this Court on 31.08.2020 through a course beyond that specified in the statute. This is not an application for correcting any clerical or arithmetical error. Neither it is an application for extension of time. A post disposal application for modification and clarification of the order of disposal shall lie only in rare cases, where the order passed by this Court is executory in nature and the directions of the Court may become impossible to be implemented because of subsequent events or developments. The factual background of this Application does not fit into that description.”

Lastly, it has been held and concluded by the Court in the decision (supra) that the miscellaneous application upon disposal of the appeals finally decided not to be maintainable and observed as hereunder:

“27. So far as the observations made in the order passed in the present proceedings on 14.12.2022 are concerned, they were made only at a prima facie stage and do not have binding effect at the hearing stage. Moreover, the question whether such a prayer could be made in an application labeled as a “Miscellaneous Application” taken out in connection with a set of appeals which have been finally decided, does not appear to have been considered by this Court at the time of making of the order dated 14.12.2022. The order of this Court does not reflect any discussion on the issue of maintainability of the present application. It also does not appear to us that the maintainability issue was raised at that stage. Thus,



mere making of such observations cannot be construed to mean that this Court found such application to be maintainable.”

8. Referring to the above decision, the contention of Mr. Nayak, learned counsel for the petitioner is that the I.A. is not to be entertained.

9. This Court vide order dated 20th December, 2024 had directed for demarcation subject to the SOP issued by the Government. In fact, opposite party No.5 was noticed by opposite party No.4 and it is not in denial that the date fixed for demarcation was well within the knowledge of the parties. However, the further submission is that opposite party No.5 requested for an adjournment and it was entertained by opposite party No.4 but then, on the date of demarcation, according to Mr. Nayak, learned counsel for the petitioner, opposite party No.5 did not turn up. In so far as the interim order of status quo is concerned as per the order in FAO No.08 of 2023, it has been set aside restraining opposite party No.5 and others therein not to dispossess the petitioner and also them from collecting the rent from the suit land building till disposal of the lis. In respect of the self-same case land, it is claimed by Mr. Behera, learned counsel for opposite party No.5 that there is an interim order of status quo but then the order of status quo in I.A. No.177 of 2022 in C.S. No.327 of 2022 has been overturned by the learned Additional District Judge, Jajpur Road in FAO No.08 of 2023 which is in respect of the land in dispute. Under the above circumstances, as there has been notice issued to opposite party No.5 and it was in compliance of the order in W.P.(C) No.31846 of 2024, this Court is of the view that since demarcation has been held according to the SOP and it was for opposite party No.5 to respond and to remain present at the time of demarcation and in view of instructions



received and produced today by Mr. Singh, learned ASC for the State regarding the knowledge of opposite party No.4 about the litigation pending before the Civil Court, it is to be held that the order dated 20th December, 2024 is not to be disturbed in absence of any fraud demonstrated and proved. This Court is of the further view that no fraud though alleged but having not been proved and as there has been due notice by opposite party No.4 for the purpose of demarcation and it was for opposite party No.5 to respond but having not done so, this Court, taking judicial notice of the citations referred to herein above, is not inclined to interfere with the decision directing such demarcation, while disposing of W.P.(C) No.31846 of 2024.

10. Accordingly, it is ordered.
11. In the result, I.A. stands dismissed.
12. Issue urgent certified copy of the order as per rules.

(R.K. Pattanaik)
Judge

Alok

Signature Not Verified

Digitally Signed
Signed by: ALOK RANJAN SETHY
Reason: Authentication
Location: ORISSA HIGH COURT
Date: 03-May-2025 16:50:18

