

IN THE COURT OF THE ADDL. DISTRICT JUDGE, BHUBANESWAR.

PRRESENT:-

Shri I.K. Das, LLB,  
Addl. District Judge, Bhubaneswar.

**FAO No. 5/72 of 2012-09**

(Arising out of order dtd. 28.8.09 passed  
by learned Civil Judge, Jr. Division, Bhubaneswar in CS No. 336  
of 2009)

Kanchan Bala Tripathy, aged about 73 years  
W/o: Late Gouranga Charan Tripathy  
Plot No. 280, Bomikhal, PO: Rasulgarh  
PS: Laxmisagar, Bhubaneswar, Dist: Khurda

... Appellant

Vrs.

Bhubaneswar Municipal Corporation  
represented through its Commissioner  
Vivekananda Marg, Bhubaneswar, Dist: Khurda

... Respondent.

Advocate for the appellant:- Sri S.Panda & Associates  
Advocate for the Respondent- Sri D. Chakraverty & Associates

Date of argument- Dt.29.10.14

Date of judgment- Dt.12.11.14

**JUDGMENT**

1) The appellant being the plaintiff filed the suit before the Court of Civil Judge, Jr. Division, BBSR with the pleading that she is the rightful owner having possession over a piece of land of plot No. 280 khata No. 116 area Ac.0.122 dec. under Mouza Bhubaneswar Sahara Unit since the year 1963. She is possessing the land by constructing her residential house there alongwth its boundary since the year 1964 admitting her title over the said plot final ROR was published in her favour and on dtd. 20.8.09 some officers of Bhubaneswar Municipal Corporation threatened her to demolish her house without any reason.

The plaintiff filed the suit with prayer to pass permanent injunction restraining the defendant from forcibly evicting her from the suit land. Before filing the suit she also issued a notice on dtd. 24.8.09 by registered post with AD u/s 629 (1) of OMC Act which contemplates that a prior notice is to be issued to OMC authorities before filing a suit in the Court of law. Only after two days of issuing notice i.e. on dtd. 26.8.09 plaintiff filed the suit in the Court below and filed a petition u/s 151 CPC praying to dispense with the statutory requirement of waiting for two months after issue of notice. But, the learned court below vide order dtd. 28.8.09 passed the impugned order as follows:-

“There are no express provisions in the OMC Act to dispense with the above statutory notice. In absence of any such provisions, I am not satisfied with the submission of the plaintiff to waive out the statutory period by exercising my inherent jurisdiction conferred u/s 151 CPC. Therefore, the petition being devoid of merit stands rejected. As a result, the suit is not admitted. Return the plaint to the plaintiff with a direction to file the same after expiry of the statutory period contemplated in Section 629 of OMC Act.”

2. Being aggrieved with such order, the plaintiff filed the instant appeal for setting aside such order in view of natural justice to the plaintiff.
3. During pendency of the appeal, the respondent filed objection to the appeal wherein it was stated that on the basis of one Amin report of Bhubaneswar Municipal Corporation regarding encroachment of public road by the appellant a decision has been taken by the BMC to demolish such unauthorized construction. Again, the appellant taking exception to such objection filed a petition before this Court U/o 6, R-16 of CPC to strike out the particular portion of the pleading of the respondent. The said petition was rejected after due hearing from both the sides. Such rejection order passed by this Court was again challenged before the Hon'ble Court vide CMP No. 810 of 2014 under Article 227 of Constitution of India. Hon'ble Court vide order dtd 28.7.14 observed that the Court below rightly

rejected the plaint of the petitioner directing her to file the same after expiry of the statutory period contemplated u/s 629 of OMC Act. Hon'ble court without expressing any opinion directed this Court to dispose of the FAO in accordance with law as expeditiously as possible.

4. During the course of hearing of the appeal, learned Counsel for the respondent has submitted that the civil Court is empowered to exercise its inherent jurisdiction u/s151 C.P.C when there is no statutory bar. But, in the instant case, the appellant filed the suit only after two days of issuing notice contravening the provision u/s 629 of OMC Act which is strictly prohibited under the statutory law. Therefore, learned lower Court has not committed any illegality by passing the impugned order and therefore, the appeal should be dismissed. On the other hand, learned counsel for the appellant objected such contention that the civil Court can exercise its inherent jurisdiction in order to prohibit violation of fundamental justice and submitted to allow the appeal by setting aside the impugned order passed by the learned lower Court.

5. After hearing from both the sides, I find the notice was issued by the appellant to BMC by registered post with AD on dtd. 24.8.09 and in the meantime, the statutory period is already over. Therefore, the appellant is at liberty to further proceed in her case and pursuing the appeal before this Court is no way essential for just decision of the case. Hence, it is ordered.

#### ORDER

The FAO is dismissed on contest but in the circumstance, without cost. The order passed by the learned Civil Judge, Jr. Division, Bhubaneswar is hereby confirmed.

Pronounced in the open Court today this the 12<sup>th</sup> day of November, 2014  
Dictated and Corrected by me.

Addl. District Judge, Bhubaneswar

Addl. District Judge, Bhubaneswar