

I.A.35/2013

(Arising out of T.S.197/1999)

1. E.I.H. Limited (Formerly known as East India Hotels Ltd.) A Company incorporated under Indian Companies Act, 1913 having its Registered Office at: 4- Mango Lane, Kolkata – 700001. Local Office at: Plot No.CB-1, Nayapalli, P.S.Nayapalli, Town/Munsif : Bhubaneswar-13, District: Khurda.
Represented through its Principal Officer/General Manager: Shri Vishal Pathak.
2. Shri Vishal Pathak,
Aged about 38 years,
S/o. Omprakash Pathak,
Presently working as the Principal Officer/General Manager of Petitioner no.1.
.... Plaintiffs / Petitioners

- Versus -

1. STATE OF ODISHA
Represented through its Chief Secretary,
Secretariate Building, Schivalaya Marg,
P.S.Capital, Town/Munsif: Bhubaneswar,
District: Khurda.
2. General Administration Department,
Government of Odisha,
Represented through :
Director of Estates and Ex-Officio Joint Secretary,
To the Government of Odisha,
Secretariate Building, Sachivalaya Marg,
P.S.Capital, Town/Munsif: Bhubaneswar,
District: Khurda.
3. Orissa Industrial Infrastructure
Development Corporation
Having its Registered Office at:
IDCO Tower, Janpath,
Bhubaneswar,
Town/Munsif: Bhubaneswar,
District: Khurda.
Represented through its Managing Director.

4. Grid Corporation of Orissa Ltd.,
Having its Registered Office at:
Vanivihar Square,
Bhubaneswar – 7.
Represented through its Managing Director
Central Distribution Zone,
18 – Forest Park,
Bhubaneswar – 9, District: Khurda.

... Defendants / Opp. Parties.

17-06-2014 The plaintiff filed an application U/s 151 of C.P. Code seeking leave of this Court to raise permanent compound wall along the four sides of the boundary of the suit plot at its own cost.

The sum and substance of the petition is that the suit plot is leased out to the plaintiff / petitioner by defendants / O.Ps.1 and 2. A barbed wire fence was erected by the plaintiff-petitioner at his own cost after physical delivery of the property to him in the year 1986. But due to natural wear and tear the said barbed wire fence has got rusted and at places it has been disrupted causing intrusion of local hooligans. Now the plaintiff-petitioner wants to erect permanent boundary / compound wall along the four sides of the boundary of the suit plot at its own cost with leave of the Court in order to protect the property in question and the reason for seeking leave of this Court is because there is order of status-quo in respect of the suit property passed by this Court vide order dtd.07-04-1999 in Misc. Case no.166/1999. The plaintiff has filed the suit for decree of declaration that the lease deed executed in his favour by defendant no.1 and 2 is valid, subsisting and continues to subsist with a further declaration that the subsequent allotment and execution of lease in favour of defendant no.3 does not confer and convey any right, title and interest in favour of defendant no.3 and also for permanent injunction against the aforesaid defendant and also against defendant no.4 from not to proceed with further construction of tower.

The plaintiff filed this suit when the lease granted in his favour was unlawfully determined by defendant no.1 and 2. But the plaintiff still is in possession and is paying rent.

O.P. nos.1 and 2 resisting the petition filed objection averring therein that the lease of the suit land was determined vide Govt. in G.A. Department Order no.19636 dtd.26-12-1992 and this Court has not passed any order either keeping the said order in abeyance or quashing the same and thus, the petitioners have no semblance of any lease hold right or interest or possession left over the suit property. Hence, the present prayer seeking leave of the Court to raise permanent compound wall all along the four sides of the case land in the name of sporadic intrusion is misconceived both in fact as well as in law. It is the Govt. in G.A. Department has necessary means and authority to protect the same. It is also averred that Govt. had taken over possession of the suit land and permissive possession over the suit land was granted in favour of Bhubaneswar Development Authority in the year 1996. Government also allowed lease of the suit land in favour of O.P. no.3 in the year 1994 for construction of Convention Centre and handed over possession and thereafter O.P. no.3 is the lawful lessee in possession of the case land. This Court in I.A.166/1999 passed interlocutory order on 07-04-1999 directing the party in possession over the suit land to remain there and the parties were directed to maintain status-quo. As on the date of said order O.P. no.3 was in possession. Hence, the present prayer of the petitioner is an attempt to violate the aforesaid order of status-quo passed by this Court.

O.P. no.3 has not filed any written objection but orally resisted the petition by submitting that Government has allotted the suit land on lease in favour of the plaintiff but after eight years of allotment the lease was determined and it was allotted to O.P. 3 and now O.P. 3 is in

possession. The land in question is a vacant land. The purpose of allotment of land in favour of O.P.3 is to construct a multi storeyed playing complex and hence, if, the plaintiff-petitioner be allowed to construct boundary wall around the suit plot, O.P. 3 will be prejudiced.

O.P. no.4 filed written objection averring therein that he has constructed 33 KV Double Circuit Power line outside of the suit plot. The petitioner has no right, title, interest over the suit plot after allotment of the same by O.P. no.2 in favour of O.P. no.3. It is further averred that if the petitioner be permitted to construct boundary wall around the suit plot then it will change the nature and character of the suit plot and it will violate the order of status-quo passed by this Court.

The plaint averments reveals that the suit land was allotted in favour of the plaintiff-petitioner by O.P. nos.1 and 2 but subsequently the lease was determined and the suit plot has been allotted in favour of O.P. no.3. Challenging the subsequent execution of lease by O.P. nos.1 and 2 in favour of O.P. no.3 the suit has been filed and this Court in Misc. Case no.16/1999 vide order dtd.07-04-1999 directed the parties to maintain status-quo over the case land. It is the case of the petitioner that there is barbed fence wire around the suit plot but the said barbed fence wire has got rusted and on several occasions there has been sporadic attempts of intrusion by local hooligans for which construction of boundary wall around the suit plot is very much needed. In course of argument, it is submitted that in case, permission is granted for construction the petitioner will not claim equity in future. In essence, I find the petition U/s. 151 of C.P.C is modification of the status- quo order passed earlier. Trial has already commenced. So at this stage, considering the rival contentions of the parties, I feel it proper that the order of status-quo passed earlier should not be disturbed. Accordingly, the petition U/s.151 of C.P.C filed by the plaintiff-petitioner is rejected.

1st Addl. Senior Civil Judge,

Bhubaneswar