

I.A. 990/2011
(Arising out C.S. No. 1716/2011)

Bichitrananda Mallick, aged about 40 years,
S/o. Late Ghanshyam Mallick,
At. Plot No. 16/A, Station Square,
Kharavel Nagar, Unit-III,
Bhubaneswar, Dist. Khurda.

... Plaintiff/Petitioner

-Versus-

1. Executive Officer,
B.M.C, Bhubaneswar,
Dist. Khurda.
2. Secretary,
G.A., Govt. of Odisha,
Bhubaneswar

... Defendants/Opp. Parties

PETITION U/O. 39 RULE (1) & (2) OF C.P. CODE

09.10.2013

The plaintiff-petitioner filed application U/O 39 Rule (1) & (2) r/w Section 151 of C.P. Code praying therein to restrain the O.Ps to vacate him from the shop and from creating any sort of disturbance over the schedule of property till disposal of the suit.

2. The case of the petitioner in short is that the schedule of property belongs to Govt. which has been allotted to him by the Govt. in G.A. Department for running STD/PCO Shop but some employees of O.P. No.1 are giving threat to the petitioner to vacate the land whereon his STD/PCO booth is running. The petitioner has a valid order with him issued by O.P. No.2 i.e. G.A. Dept. bearing No.CA/AL(Misc.) 4299 but threat is being given by the employees of O.P. No.1 which is illegal. It is further averred that if O.P. No.1 succeeds in his plan, the petitioner would sustain irreparable loss. The petitioner filed Treasury Challan in support of deposit of rent for the allotted land.

O.P. No.2 filed show cause. It is averred that the petitioner has no right, title or interest over the schedule of property because as per Hal Settlement R.O.R published during 1987-88 the schedule of property has been recorded in favour of G.A. Department. An area of 10' x 10' (Ac. 0.002 decimals) with Revenue Plot No. 935 (Part) and Plot No. 934 (Part) in

Khata No. 235 (G.A. Dept.), Unit-III, Mouza Ashok Nagar was earlier allotted temporarily in favour of the petitioner for installation of STD Booth for a period of only two years under certain terms and conditions vide Order No.CA/AL(Misc.)-42-99-8454 dtd. 09.06.2000. This temporary allotment was provisional subject to cancellation at any time without any notice. The allotment was valid from 02.08.2000 till 03.08.2002. The allotment became infructuous automatically because the petitioner did not renew the license. Hence, running of STD Booth over the schedule of land is quite illegal and therefore Bhubaneswar Municipal Corporation (O.P. No.1) is at liberty to remove the unauthorized construction of the STD Booth Cabin and to evict the petitioner and to restore Govt. land to G.A. Dept. With these averments, it is prayed that balance of convenience leans in favour of the O.P. No.1 and irreparable loss will be caused to the O.Ps if injunction is granted in favour of the petitioner.

O.P. No.1 has not filed any written objection but submitted that he supports the written objection filed by O.P. No.2 but O.P. No.1 participated in the hearing and orally objected for grant of temporary injunction in favour of the petitioner.

3. In order to grant or refuse the prayer for temporary injunction during pendency of the suit, this Court is to decide the same with touch stone of the three golden principles:- (i) Prima facie case (ii) Balance of Convenience (iii) Irreparable Loss or injury.

4. This is a suit for permanent injunction. Admittedly the petitioner was allowed to construct cabin on the schedule of property to run a STD/PCO Booth. It is alleged by the O.P. No.2 that the allotment has not been renewed. On the other hand, the petitioner filed Treasury Challan showing deposit of rent for the schedule of properties. The claim raised by the plaintiff-petitioner is controverted by the O.Ps but this dispute will be decided in the suit on examination of witnesses and documentary evidence. So the Petitioner has got a prima facie case.

Considering the materials on record and rival submission, this Court is of the view that the petitioner may be prejudiced if no interim arrangement is made. Accordingly of balance of convenience leans in his favour.

It is alleged that threat is being given to the petitioner to vacate the schedule of property where he is running Telephone Booth. This shows that the petitioner is earning his livelihood from that source. Hence, if the petitioner is evicted at once, irreparable loss will cause to him.

In the facts and circumstances ends of justice will be sub-served if both parties be directed to main status quo over the schedule of property. Hence, order.

ORDER

The petition U/O 39 Rule (1) and (2) of C.P. Code is disposed of in view of the discussion made in the foregoing paras. The parties are directed to maintain status quo over the schedule of property till final disposal of the suit.

1st. Addl. Senior Civil Judge,
Bhubaneswar