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IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) NO. 1734 OF 2016

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

Nirmala Sahu

....

Petitioner

-Versus-

**Telecom Regulatory Authority
of India (TRAI) & others**

....

Opp. Parties

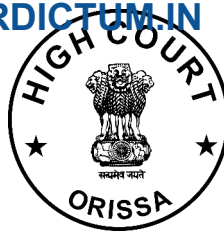
Advocates appeared in this case:

For Petitioner : M/s.U.R. Jena, (Ms.) Bini Mishra & B.K. Das, Advocates

For Opp. Parties : Mr. J.K. Ray,
Addl. Standing Counsel
[O.P. No.2]

Mr. M.K. Mishra, Sr. Advocate with M/s T. Mishra & P.K. Das, Advocates
[O.P.No.3]

M/s S.N. Biswal, G. Panda &
B. Rout, Advocates
[O.P.Nos.6 & 7]



CORAM:

THE HON'BLE MR. JUSTICE DIXIT KRISHNA SHRIPAD

J U D G M E N T

Date of hearing & judgment : 19.08.2025

PER DIXIT KRISHNA SHRIPAD, J.

Petitioner, being the lessor of a plot on which a mobile tower is constructed by OP No.5, who happens to be the lessee, is invoking the writ jurisdiction of this Court for assailing the order dated 01.07.2015 passed by the Collector in Misc. Case No.61 of 2014, whereby the standing tower has been rendered dis-functional and a direction has been issued for its dismantling.

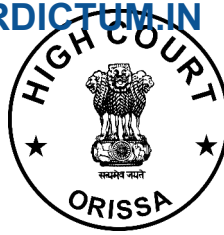
2. Learned counsel appearing for the Petitioner vehemently argues that the subject site was leased in favour of OP No.5, vide registered lease deed dated 05.05.2014, subject to certain terms & conditions, and that because of the impugned order, the tower having become dis-functional, the legal



interest of her client is hurt. Even otherwise, learned counsel makes submission that the impugned order is unsustainable. After service of notice, the OPs, having entered appearance through their counsel, resist the petition making submission in justification of the impugned order and the reasons on which it has been structured.

3. Having heard learned counsel for the parties and having perused the petition papers, this Court declines indulgence in the matter solely on the ground of Petitioner's lack of locus standii. By virtue of impugned order, the *vinculum juris* created by the subject lease deed, is not disrupted and therefore, the lessor continues to be the lessor and so does the lessee. Case of the Petitioner is largely one of *damnum sine injuria* and therefore, without a legal injury, legal remedy cannot be sought. In fact, Petitioner's Case No. 209 of 2025 is pending against the OP No.5 in the court of Civil Judge (Sr. Dn.)/Commercial Court, Kendrapara for recovery of rent.

4. The truly aggrieved person can be OP No.5, who happens to be the lessee and who has put up the tower on the plot belonging to the lessor, i.e., Petitioner. It has been the long settled position of law that lessor continues

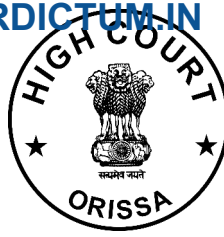


to be the owner of the plot, whereas lessee becomes the owner of the structure which he has built under the lease in question by virtue of doctrine of dual ownership. In Mulla's the Transfer of Property Act, 12th Edition, LexisNexis at Page-868, it is said as under:

“The lessee is the owner of the building put up by him on the land leased. It is by now well settled that the maxim, what is annexed with the soil goes with the soil, has not been accepted as absolute rule of law of this country. A person who bona fide puts up constructions on land belonging to others with their permission would not be a trespasser, nor would the buildings so constructed vest in the owner of the land.”

Of course, the above view gains support from the decision of Bombay High Court in **Lakshmipat v. Larsen & Toubro**, AIR 1951 Bom 205 & also Mohammed Abdul Kadar v. The District Collector of Kanyakumari, AIR 1972 Mad 56.

In the above circumstances, writ petition is disposed off reserving liberty to the Petitioner to prosecute the suit that shall not be influenced by the impugned order, otherwise. Learned jurisdictional Judge is requested to try and dispose off the suit and report compliance to the Registrar General of this Court within an outer limit of one year.



This Court places on record its appreciation for the performance of learned counsel Ms. Bini Mishra appearing for the Petitioner.

Costs made easy.

Web copy of this judgment to be acted upon by all concerned.

***Dixit Krishna Shripad,
Judge***

*Orissa High Court, Cuttack
The 19th day of August, 2025/Madhusmita*