

**(2007) 10 OHC CK 0031**  
**In the Orissa High Court**

Doris Jao

APPELLANT

Vs

Orissa Tourism Development Corporation and Others

RESPONDENT

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**Date of Decision :** 01-10-2007

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 39 Rule 3

**Citation :** (2008) 105 CLT 117 : (2008) 1 OLR 114

**Hon'ble Judges :** L. Mohapatra, J

**Bench :** Single Bench

**Final Decision :** Dismissed

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## Judgement

L. Mohapatra, J.—Plaintiff is the petitioner before this Court challenging the order dated 31.8.2007 passed by the learned Civil Judge (Senior Division), 1st Court, Cuttack in I.A. No. 291 of 2007 rejecting the application filed by the petitioner for restoration of electricity connection to the suit premises by the opposite parties.

2. Petitioner is a tenant in respect of the suit premises owned by the opposite party No. 1 and the last agreement was for the period from 1.8.2004 till 31.7.2007. The petitioner represented for renewal for a further period of 5 years with effect from 1.8.2007 and it is alleged that assurance was given by the opposite parties for such renewal, as a result of which, the petitioner invested more than Rs. 5,00,000/- in renovating the premises, which is used as a beauty parlour. On 21.6.2007, she was served with a notice to vacate the premises from 31.7.2007. Therefore, the petitioner has filed the suit on the above allegation for a decree directing the defendant-opposite parties to execute a lease deed for a further period of five years commencing from 1.8.2007 and also to restrain the defendant-opposite parties from interfering with the peaceful possession of the plaintiff over the suit property. In the said suit, an application under Order 39, Rule 3 C.P.C. was filed to restrain the defendant-opposite parties from vacating the petitioner forcibly, which was registered as I.A. No. 291 of 2001. In the said interim application, the petitioner filed an application under Order 39, Rules 1

and 2 C.P.C. for grant of ex parte ad interim injunction. The said petition was moved on 31st July, 2007. The trial Court only issued notice without passing any interim order. Despite service of notice in the injunction petition, it is alleged that defendant-opposite parties disconnected the electricity and water supply to the petitioner's premises. The petitioner, therefore immediately moved the trial Court on 9.8.2007 seeking for a restraint order prohibiting the defendant-opposite parties from disconnecting the electricity and water supply. The trial Court refused to pass an order on the ground that water and electricity supply disconnection had already taken place. It is further alleged by the petitioner that on 10.8.2007, water and electricity supply to the premises was disconnected and finding no other way, it had moved this Court in W.P. (C) No. 10290 of 2007 for restoration of electricity supply. This Court disposed of the writ application with a direction the petitioner to file an application for restoration of electricity supply and for proponing the date in case it is necessary. Accordingly, the petitioner filed an application for restoration of electricity supply before the trial Court. In the impugned order, the said petition having been rejected, this writ application has been filed.

3. Shri Mukherjee, the learned Counsel appearing for the petitioner submits that there has been electricity disconnection since 10.7.2007 and it is difficult on the part of the petitioner to run the beauty parlour without electricity. According to Shri Mukherjee, the electricity has been disconnected under the instruction of opposite parties and so long as suit is pending, such methods should not be allowed to be adopted by the opposite parties to forcibly to evict from the premises. Accordingly, Shri Mukherjee prays for restoration of electricity supply with immediate effect. Shri Pitambar Acharya, the learned Counsel appearing for the Corporation submitted that the period of tenancy having come to an end with efflux of time and the same having not been extended, the petitioner has no right to continue in the suit premises. Since the petitioner continued to possess the premises in spite of notice to vacate the same by 31st July, 2007, the Corporation had no other option except intimating the said facts to the opposite parties 3 and 4 and, accordingly electricity supply was disconnected. Shri Acharya, further submitted that the Corporation intends to open a bar in the said premises and the petitioner having no right to continue therein, cannot seek for injunction. It was also contended by the learned Counsel that the prayer for injunction has already been refused by the trial Court and the matter is pending in appeal at the instances of the petitioner. The learned Counsel appearing for the opposite parties 3 and 4 submitted that electricity supply can be continued only when someone is legally possessing the premises and once it is intimated to the authority that the tenancy period is over by efflux of time and the same has not been extended, it cannot be said that the petitioner is in lawful possession of the premises and accordingly electricity disconnection has been done.

4. As is evident from the submission of the learned Counsel for the parties, undisputedly the petitioner was a tenant in the suit premises and the tenancy discontinued from 31st July, 2007. Undisputedly, the tenancy has not been

extended beyond 31st July, 2007. Whether opposite parties 1 and 2 promised to extend the tenancy or not is a matter to be decided in the suit. As on date, the plaintiff/petitioner is in occupation of the suit premises unauthorisedly since there is no agreement between the plaintiff and the defendant-opposite parties 1 and 2 covering the period from 1.8.2007 onwards. The petitioner having not vacated the premises cannot be said to be in lawful possession. If the petitioner's possession was not lawful, the Court cannot possibly find fault with opposite parties 1 and 2 in intimating the said fact to opposite parties 3 and 4 and, consequently no fault can also be found with the opposite parties 3 and 4 in disconnecting the electricity supply. I am, therefore, of the view that no illegality has been committed by the trial Court in rejecting the said petition. If the petitioner is so advised, she can submit an application before the opposite parties 3 and 4 for a new connection or restoration of the old connection.

The writ application is accordingly dismissed.