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**Government of Odisha
Housing & Urban Development Department**

No. 523 /HUD, Bhubaneswar, dated 7.1.17
TP-(apl)-20/2016

From

Shri A.K.Singh
Desk Officer

To

The Planning Member/ Secretary,
Puri Konark Development Authority, Puri.

Sub: Appeal Case No.20/2016 under section 91(2) of the Orissa Development Authorities Act, 1982 filed by Shri Mahanta Rajgopal Ramanuja Das, Emar Mathvrs-P.K.D.A., Puri.

Sir,

I am directed to send herewith the copy of the Order dated 31.12.2016 passed by the Appellate Authority i.e. the Special Secretary to Govt., Housing & Urban Development Department in the aforesaid appeal for favour of information and necessary action at your end.

You are further requested to furnish the copy of the said orders to the aforesaid appellant immediately.

Yours faithfully,

Shri
Desk Officer 7.1.17

Memo No. 524 /HUD., dated the 7.1.17

Copy along with copy of the order forwarded to the Team Leader, OUSIP, Housing & Urban Development Department for information & necessary action.

He is requested to take necessary steps in order to make the said order available in the official website of this Department.

Shri
Desk Officer 7.1.17

Memo No. 525 /HUD., dated the 7.1.17

Copy along with copy of the order forwarded to Shri Mahanta Rajgopal Ramanuja Das, At- Kalikadevi Sahi, P.O.-Puri Town, Dist-Puri for information & necessary action.

Shri
Desk Officer 7.1.17

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26.11.2016 The learned advocate on behalf of the appellant and the representative of Puri Konark Development Authority are present. But none appeared on behalf of the intervention petitioner.

Heard them.

Order is reserved.

Sd/-

(S.K.Ratho)

31.12.2016 The instant appeal has been filed under section 91(2) of the Odisha Development Authorities Act, 1982 challenging the order dated 16.06.2016 passed by the Secretary, Puri Konark Development Authority in U.C. Case No.1 of 2016 wherein it has been ordered that "the entire premises of the Math, on Plot No.19 of Kalikadevi Sahi Puri in the name of Rajgopal Ramanuj Dash, Mahanta Maharaj, Emara Math is to be sealed within a period of seven days as it is seen that the construction have been undertaken at his instance, with immediate effect by the Enforcement Officer so as to comply the provisions of the amended Odisha Development Authorities Act", in pursuance of the order dated 17.08.2016 passed by the Hon'ble High Court of Odisha in W.P.(C) No.13894 of 2016.

The learned advocate for the appellant submitted that for widening of the road before "Nabakalebar" the land along with the building of Emar Math were acquired. The 18 shopkeepers who were carrying on their business taking on rent the shop rooms of Emar Math filed several writ applications before the Hon'ble high Court against their eviction. The Hon'ble high Court hearing all the writ petitions have disposed of the same by a common order on 30.03.2012. He pointed out the relevant portion of the order:-

"4. We further direct that Raghunandan Library which is shown to be also in a dilapidated condition, is required to be preserved. For that purpose, the Math shall take all necessary steps for renovation of the same as far as practicable. The petitioners agree that they are prepared to spend the money required for renovation of the Raghunandan Library. As such, the petitioners, who are tenants, along with other tenants, if they agree, shall pay the amount required for renovation of the Raghunandan Library, in advance to the Math, which shall repair and renovate the same along with construction of new shop rooms.

5. For the above purpose, as agreed to between the petitioners/tenants and the Math, the plan of such building shall be made by the Math immediately and submitted to Puri Konark Development Authority (PKDA), the Archaeological Survey of India as well as Puri Municipal Authority and the said authorities are directed to

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approve/sanction the plan within a month from its submission. The demolition work shall be taken up immediately after the petitioners and other tenants vacate the said shop rooms as indicated above and shall be completed within three weeks thereafter. The debris shall also be simultaneously removed from the spot and the road work shall follow immediately thereafter for widening of the road. The District Administration is directed to ensure that the area amalgamated to the road for widening of the same is not re-encroached in future. In the event of any such encroachment, immediate steps shall be taken to evict such encroachers."

He further submitted that after demolition of 11 numbers of shop rooms, no new shop room could be constructed due to want of space. But only 7 shop rooms which are lying in the ground floor of Raghunandan Library were renovated along with renovation of Raghunandan Library. While the matter stood thus, the State Administration initiated a proceeding under section 133 of Criminal Proceeding Code to close the aforesaid shop rooms. He again contended that the appellant challenged the initiation of the said proceeding before the Hon'ble High Court which has been disposed of on 31.07.2014 with the following observations:-

"Considering the submissions made and keeping in view the fact that the petitioner has already submitted his show cause pursuant to the order of Sub-Divisional Magistrate, Puri, dated 03.05.2014 (Annexure-2), he is permitted to file all the relevant documents, including the order of this court dated 30.03.2012 in W.P.(C) No.11873 of 2006, in support of his challenge regarding maintainability of the proceeding under section 133 Cr.P.C., which shall be considered by the Sub-Divisional Magistrate, Puri, on merits and in accordance with law, after giving opportunity of hearing to the petitioner and dispose of the proceeding expeditiously.

Till disposal of the proceeding in Crl. Misc. Case No.299 of 2014 by the learned Sub-Divisional Magistrate, Puri, no coercive action shall be taken against the petitioner."

He again submitted that in pursuance of the said order of the Hon'ble High Court the Sub-Divisional Magistrate, Puri made a joint enquiry along with PKDA Authorities and Puri Municipality authorities and found that the building in question does not require any demolition rather the same can be repaired. Accordingly the Cr.Misc.Case No.299 of 2014 has been disposed of on 12.09.2014 with a direction to the Emar Math to repair the structures of Math, if reparable without affecting the structural beauties of Math on or before 30.11.2014 and demolish the structures which are beyond repair on or before 30.09.2014 subject to certification of Executive Engineer, R & B, Puri failing which unsafe structures which are beyond repair will be demolished by District

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Administration with help of Executive Officer, Puri Municipality, Puri and Secretary, PKDA, Puri in order to avoid untoward incidents during the period of Nabakalebar, 2015. It has also further ordered that Authorities of Archaeological Survey of India & P.K.D.A., Puri are directed to render necessary co-operation to Mahant of Emar math in repair works as when required. He again submitted that in pursuance of the said order the appellant as well as the shopkeepers continued in the said premises of the math after due renovation before "Nabakalebar, 2015". He further contended that in course of renovation two latrine and bathrooms were newly constructed inside the campus of Emar Math attached to the Raghunandan Library. But the said new constructions were also demolished by the State administration in course of removing debris. While the matter stood thus, the State Administration all of a sudden started demolishing the old structures inside the campus of Emar Math without any valid sanction of law for which the said matter was agitated before the Hon'ble High Court in W.P. (C) No.5868 of 2016 which is still pending. He further contended that while the proceeding under section 133 of Cr.P.C. was over, the Secretary, Puri Konark Development Authority started another proceeding under section 91 of the Odisha Development Authorities Act, 1982. In response to the same, the Secretary, PKDA, Puri has been intimated that the said provision of the Odisha Development Authorities Act is not applicable in the instant case as the appellant has not constructed any new building or unauthorised building. He has further submitted that in course of removal of debris the State Administration had already demolished the newly constructed latrine and bath rooms for which there is nothing remain as unauthorised construction for initiation of such proceeding. But without considering the same, the Secretary, PKDA has passed the order as in challenged. He again submitted that being aggrieved the appellant agitated the matter before the Hon'ble High Court in W.P.(C) No. 13894 of 2016 and the said writ petition has been disposed of with the following directions:-

"Considering the submission of Sri K.K.Jena, learned counsel for the petitioner that the petitioner wants to withdraw this writ petition in order to avail the remedy of appeal, he is permitted to withdraw the writ petition with liberty to file appeal along with an application for condonation of delay within a period two weeks hence. It is also open to the petitioner to file an Interim Application along with the appeal. In the event the appeal is filed, delay shall be condoned and the Interim Application shall be considered and disposed of within a period of two weeks thereafter. The order under Annexure-6 shall not be given effect to these four weeks. It is made clear that this direction will not prevail in the mind of the appellate authority while considering the application for interim protection and the application for interim protection is to

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be decided on its own merit." Accordingly the instant appeal has been filed.

The representative of Puri Konark Development Authority submitted that the appellant has undertaken construction by way of renovation of existing building over plot in question without obtaining permission from Puri Konark Development Authority which is a part of existing Emar Math building. On the other hand, during the Nabakalebar-2015, for widening of the existing road, a part of the building of Emar Math is acquired for eviction. He further pointed out that the Hon'ble High Court in W.P.(C) No.11873 of 2006 directed the appellant and the tenants that the building plan shall be made by the Math immediately and submitted to the Puri Konark Development Authority (PKDA), the Archaeological Survey of India as well as Puri Municipal Authority and the said authorities are directed to approve/sanction the plan within a month from its submission. He once again contended that in spite of the aforesaid order of the Hon'ble High Court the appellant did not submit the building plan along with requisite documents with PKDA for necessary approval. Rather the appellant has undertaken construction/remodelling the constructions of the shop rooms without approval of PKDA which is treated as unauthorised and violation of the aforesaid orders of the Hon'ble High Court. He submitted that the said construction also violates the provision of Ancient Monuments and Archaeological sites and remains Acts. Accordingly, the unauthorised proceeding has been initiated under section 91 of the Odisha Development Authorities Act, 1982 and passed order to seal the entire premises of the Math providing due opportunity to the appellant.

In view of above submissions and perusal of records, I am of considered view that the Hon'ble High Court of Odisha in W.P.(C) No.11873 of 2006 has specifically directed that for the purpose of renovation and repair along with construction of new shop rooms the plan of such building shall be made by the Math immediately and submitted to Puri Konark Development Authority (PKDA), the Archaeological Survey of India as well as Puri Municipal Authority and the said authorities are directed to approve/sanction the plan within a month from its submission. But it is admitted fact that the construction in question has been undertaken without submitting any document or obtaining approval of the authorities concerned. Hence the construction as undertaken is absolutely unauthorised and the order passed by the lower court is upheld. Accordingly, the appeal is dismissed.

Sd/-
(S.K.Ratho)