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

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No. 532 /HUD, Bhubaneswar, dated 7-1-17  
TP-(apl)-128/2015

From

Shri A.K.Singh  
Desk Officer

To

The Planning Member/ Secretary,  
Bhubaneswar Development Authority, Bhubaneswar.

Sub: Appeal Case No.128/2015 under section 91(2) of the Orissa Development Authorities Act, 1982 filed by M/s Aradhana Enclave Owners Association-vrs-B.D.A., Bhubaneswar and others.

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 appellants immediately.

Yours faithfully,

  
Desk Officer 7-1-17

Memo No. 533 /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.

  
Desk Officer 7-1-17

Memo No. 534 /HUD., dated the 7-1-17

Copy along with copy of the order forwarded to Shri Sridhar Mishra, Secretary, M/s Aradhana Enclave Owners Association, Flat No.303, Aradhana VIP Enclave, At- Plot No.E-16, B.J.B. Nagar, Bhubaneswar/ Shri Soubhagya Kumar Mishra, Plot No.B-86, Goutam Nagar, Bhubaneswar/ Shri Ashok Kumar Nayak, At- Dr Nayak's Nurshing Home, 2<sup>nd</sup> Mile, Sevoke Road, Siligudi, West Bengal for information & necessary action.

  
Desk Officer 7-1-17

128/15

26.11.2016

The learned advocate on behalf of the appellant, the appellant and the Associate Town Planner of Bhubaneswar Development Authority are present. But none appeared on behalf of O.P.No.4 & 5.

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 assailing the order dated 22.01.2007 and 30.03.2007 passed by the O.S.D.(ODA Act), Bhubaneswar Development Authority in UAP No.73 of 2006 along with Notice dated 16.03.2015 issued by the Enforcement Officer, Bhubaneswar Development Authority in pursuance of order bearing No.02, dated 02.11.2015 passed by the Hon'ble High Court in W.P.(C) No.17589 of 2015.

The learned advocate for the appellant submitted that the appellant is a registered society in the name of Aradhana Enclave Owners Association at plot No.E-16,BJB Nagar, Bhubaneswar. The said plot was allotted by General Administration Department to one Bidyadhar Nayak. But after death of Bidyadhar Nayak his son Sri Ashok Kumar Nayak (respondent No.5) converted the said land in to free hold. He further contended that thereafter Sri Nayak authorised Sri Soubhagya Kumar Mishra (respondent No.-4), Managing Director of M/s Aradhan Properties Development Pvt.Ltd. to develop the land in question by taking permission from the Bhubaneswar Development Authority and alienate it's share to the different purchasers. He further submitted that Bhubaneswar Development Authority accorded permission to construct S+4 storied residential building over plot in question in favour of Shri Ashok Kumar Nayak in 1999. Accordingly, Shri Soubhagya Kumar Mishra constructed the multi-storeyed building consisting of 24 flats in the name of Aradhana VIP Enclave. He again pointed out that during construction of the said building, Shri Mishra entered into contract with individual purchasers of flats and after completion of building the individual flats were transferred to the respective purchasers through different registered sale deeds. The said flats were occupied by the purchasers within the year 2002-2004 in phase manner. Thereafter the appellant registered society has been formed consisting of it's apartment owners in the name and style of Aradhana Enclave Owners Association. He further submitted that the

128/15

128/15

members of the said Society in due course came to know that the builder Shri Mishra has constructed the building by deviating the approved building plan of Bhubaneswar Development Authority. While the members enquired the matter, the builder assured them that the deviation as occurred is compoundable in nature which would be regularised through the Scheme for Regularisation of Unauthorised/Deviated Construction through compounding. While the matter stood thus, the members of the appellant Society came to know that the permission granted by the Bhubaneswar Development Authority for construction of the building in question has been revoked since 29.11.2006. Thereafter the unauthorised proceeding bearing UAP No.73 of 2006 was initiated against the builder as well as land owner under section 91(1) of the Odisha Development Authorities Act, 1982 and the said UAP case was disposed of by the OSD (ODA Act), Bhubaneswar Development Authority with a direction to remove the unauthorised construction within seven days. He pointed out that though the members of Society in question are affected party, they were not impleaded as party in the said unauthorised proceeding. He further contended that by the time when the unauthorised proceeding was initiated and show cause notice was issued to the builder as well as land owner in the aforesaid UAP case, the right, title and interest over the building in question had already been transferred to the flat owners on execution of sale deeds. Hence the orders as in challenged have been passed in violation of the principle of natural justice and not sustainable in the eyes of law. He also pointed out that it is settled proposition of law that any order which is adversely going to affect the rights of an individual cannot be passed without hearing such person. But in the instant case, the Bhubaneswar development Authority being well aware that the right, title and interest over the properties stood transferred to the flat owners have deliberately left them out in the said unauthorised proceedings. He again submitted that the builder after transfer of the building in favour of the members of Society had no interest over the buildings for which he ignored the notices issued by Bhubaneswar Development Authority from time to time regarding regularisation of unauthorised constructions since the said unauthorised constructions are compoundable in nature. He further contended that the builder was not interested for disposal of the said unauthorised proceedings for which the demolition order has been passed which caused inconvenience and irreparable loss to the appellant.

128/15

128/15

The Associate Town Planner, Bhubaneswar Development Authority submitted that the unauthorised proceeding was initiated against O.P.No.4 & 5 for unauthorised construction undertaken partly of B+S+4 and partly S+4 storied RCC roofed structure over plot in question. During hearing of the said proceeding, the O.P. No.4 & 5 filed a copy of approved building plan in support of the construction undertaken over the suit land which was accorded in favour of O.P.No.5, the owner of the land for construction of one S+4 residential apartments over the aforesaid plot in the year 1999. But the builder has constructed partly B+S+4 and partly S+4 storied building over the suit land along with RCC ground floor building on the front set back area. He further submitted that the builder has also undertaken excess construction in shape of balcony and roof projection in all sides of the building. He again pointed out that in the mean time the Planning Member, Bhubaneswar Development Authority has cancelled the permission granted on the ground that the construction was undertaken violating the provisions of the approved building plan and for non-compliance of show cause notice as issued. He further submitted that the said building was also occupied without obtaining occupancy certificate. He again contended that since the construction as under taken is compoundable, as per direction of the Appellate Authority, the O.P.No.4 was requested on 15.07.2016 to submit correct revised building plan as per actual construction at site along with the calculation of compounding sheet for needful since the site verification sketch and the building plan as submitted for regularisation was mismatched with each other. Thereafter, the Bhubaneswar Development Authority has communicated to the Builder to deposit required amount for regularisation of unauthorised construction on 24.11.2016.

In view of above submissions and perusal of records, it is admitted fact that the construction has been undertaken deviating the approved plan. Since the said construction is compoundable as per submission of Bhubaneswar Development Authority and the concerned builder has been communicated to deposit the required amount for regularisation, the appeal is disposed of with direction to deposit the required amount for regularisation within three months from the date of this order. If the said amount is not deposited within stipulated period, the order passed by the lower court shall prevail.

Sd/-  
(S.K.Ratho)