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

No. 536 /HUD, Bhubaneswar, dated 7.1.17
TP-(apl)-38/2015

From

Shri A.K.Singh
Desk Officer

To

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

Sub: Appeal Case No.38/2015 under section 91(2) of the Orissa Development Authorities Act, 1982 filed by Shri Kailash Chandra Jethi-vrs-B.D.A., Bhubaneswar.

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,

Sh
Desk Officer 7.1.17

Memo No. 537 /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.

Sh
Desk Officer 7.1.17

Memo No. 538 /HUD., dated the 7.1.17

Copy along with copy of the order forwarded to Shri Kailash Chandra Jethi, At-Plot No. 1260(p), Mouza-Bhimpur, Near Forest Park, Bhubaneswar/ Smt. Bibasini Panda, Plot No. 1263(p), Mouza-Bhimpur, Near Forest Park, Bhubaneswar for information & necessary action.

Sh
Desk Officer 7.1.17

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26.11.2016

The learned advocate on behalf of the appellant, the intervener and the Associate Town Planner of Bhubaneswar Development Authority are present.

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 25.03.2015 passed by the Enforcement Officer in pursuance of order dated 26.06.2014 passed by the O.S.D.(ODA Act), Bhubaneswar Development Authority in UAP No.246 of 2014 wherein the appellant has been directed to demolish/remove the unauthorised construction in question within seven days failing which Bhubaneswar Development Authority will take necessary steps to demolish the same as per the orders of the OSD (ODA Act), Bhubaneswar Development Authority.

The learned advocate for the appellant submitted that the appellant is the owner of Plot No.1260 (p) of Mz. Bhimpur. He submitted that in order to construct the building the appellant applied to Bhubaneswar Development Authority with required documents for approval of the building plan on 27.06.2014. But no communication in this regard has been received from the concerned authority of Bhubaneswar Development Authority. He further submitted that the appellant has constructed single storied RC building and A.C.shed house over the plot in question and resided with his family since long. He further submitted that the land in question while purchased was under Lake Zone which has already been converted to Residential Use Zone. He also contended that almost all the land owners of the said locality have constructed the building without approval of Bhubaneswar Development Authority since the said area was Lake Zone. As the construction has been undertaken without approval of Bhubaneswar Development Authority, the appellant applied for regularisation of the said construction through the Scheme for Reugularisation of Unauthorised/Deviated construction through compounding. While the matter stood thus, the unauthorised proceeding bearing UAP 246 of 2014 was initiated against the appellant for unauthorised development of RCC and ACC roof housing by way of encroaching road over plot No.1263 (p) and issued notice to the appellant by the Bhubaneswar Development Authority. In pursuance of the said UAP, the appellant submitted written note of submission refuting the encroachment of road land. He further pointed out that the eastern side of the appellant's building belongs to the land vendor with whom the appellant has negotiated to purchase that piece of land for which the same is no longer a public road. He has further pointed out that the road land as alleged has not yet been gifted to Bhubaneswar Municipal Corporation. But without considering all these facts, the demolition order as challenged has been passed.

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He has further pointed out that the said unauthorised case was initiated against the plot ONo.1263 (p) which belongs to the intervener.

The Intervener submitted that the demolition order has been passed by the Bhubaneswar Development Authority on the basis of her complaint petition. She further submitted the appellant is her neighbour. While she and her family were out of station, the appellant has blocked the road and constructed unauthorisedly over the said road land as well as some portion of her land. The result is that the air and light to her house has been restrained and the drainage system has also been paralyzed.

The Associate Town Planner of Bhubaneswar Development Authority submitted that the unauthorised proceeding case was initiated against the appellant on the basis of a grievance petition filed by the present intervener for encroachment of road land. As per field inspection, it is revealed that the appellant has unauthorisedly constructed one RCC roofed house along with A.C.shed and also acquired government land. He further contended that during the course of hearing, the appellant also admitted that there is no approved building plan and encroachment of Government land. He again submitted that the UAP case was initiated against the appellant over plot No.1263 (p) which belongs to the intervener.

In view of above submissions and perusal of records, it is admitted fact that the construction has been undertaken without approved plan. But the unauthorised proceeding was initiated against the appellant over the plot No. 1263(p) which belongs to the intervener which is not at all proper in the eyes of law. Hence, the case is remanded to Bhubaneswar Development Authority with a direction to rectify the order as well as notice with correct plot No. and dispose of the matter afresh in accordance with procedure as enshrined in the Odisha Development Authorities Act, 1980 and rules framed thereon. Accordingly, the appeal is disposed of.

Sd/-
(S.K.Ratho)