

Government of Odisha
Housing & Urban Development Department

No. 15299 /HUD, Bhubaneswar, dated 6-7-17
TP-(apl)-50/2015

From

Shri A.K.Singh
Desk Officer

To

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

Sub: Appeal Case No.50/2015 under section 91(2) of the Orissa Development
Authorities Act, 1982 filed by Sri Priyadarshi Sourav-vrs-CDA, Cuttack.

Sir,

I am sending herewith the copy of the Order dated 30.06.2017 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,



Desk Officer 6.7.17

Memo No. 15300 /HUD., dated the 6-7-17

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 6.7.17

Memo No. 15301 /HUD., Dated 6-7-17

Copy along with copy of the order forwarded to Sri Priyadarshi Sourav, At-Hazari
Lane, P.O.-Telenga Bazar, P.S.-Purighat, Cuttack/Dipak Kumar Dey, At-Hazari Lane, P.O.-
Telenga Bazar, P.S.-Purighat, Dist-Cuttack for information and necessary action.



Desk Officer 6.7.17.

08.06.2017

The learned advocate on behalf of the appellant, the learned advocate for the intervener and the planning member of Cuttack Development Authority are present.

Heard.

Order is reserved.

Sd/-
(P.K.Jha)

30.06.2017

In this appeal u/s 91(2) of the Orissa Development Authorities Act, 1982, the appellant who was the respondent before the court below assails the order passed by the lower court in U.C. Case No.162/2014. The facts giving rise to the instant appeal are that the appellant has constructed the building over the plot in question without approval of the building plan, for which the demolition order as in challenge has been passed.

Being aggrieved, the instant appeal has been filed on the following ground:-

1. Sufficient opportunity has not been afforded to the appellant to establish his case that the construction made by him does not violate the approved plan.
2. The Original Authority without considering the show cause and the Area Amins report and without giving due weight to the evidence led and relied by the appellant has passed the demolition order in mechanical manner. He should have held that there was already a construction over the suit plot and a holding number has been assigned for the same. But the present construction is nothing but only renovation and repairing of the existing construction.
3. The said demolition order has been passed without conducting proper enquiry which is not permissible under law.
4. The provision which makes it imperative to obtain permission from the authority has been spelt out under section 15 of the Odisha Development Authorities Act, 1982. The said section provides interalia that no person within the development area can construct or change house or any land or building or undertake or carryout any development in any building or over any land without obtaining permission in writing from the authority and as per section 16(3) of the aforesaid Act before the grant of permission the authority has been conferred with the right to make such enquiry as

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considered necessary in relation to any matter specified in development plan and there being no other provision in the Act or Rules or any other matter relating to the construction of the building, imposing any condition at the time of grant of permission was beyond the competency to the development authority. The building standing over the land in question was prior to the enactment of the Odisha Development Authorities Act.

5. In view of the Notification dated 30.03.2010 of Housing and Urban Development Department the power of Cuttack Development Authority for initiation of proceeding under section 91 of the Odisha Development Authorities Act, 1982 against the appellant and direction for demolition of the entire construction violates not only the statutory provisions but also the constitutional provisions.

The learned advocate appearing on behalf of the appellant submitted that one Brajasundar Dey is the original owner of the land in question who sold the said land along with a thatched house with brick wall standing over the suit land to Sri Binod Bihari Parida on 02.05.1961 by Registered Sale Deed. Thereafter Sri Parida has developed the land by constructing single storied pucca building. After death of Sri Binod Bihari Parida the said property was recorded in the name of his son Kunja Bihari Parida as Hal Plot Nos.-1518 and 1519. In course of time, Sri Kunja Bihari Parida for legal necessity sold the said land along with single storied building standing over the property to the appellant by way of Sale Deed on 22.06.2009. He further contended that the appellant submitted building plan for construction of double storied building in terms of the provisions of the Odisha Development Authorities Act, 1982 and Rules framed there under. After due verification, the Cuttack Development Authority approved the said plan under sub section 3 of section 16 of the Odisha Development Authorities Act, 1982 in favour of the appellant on 05.10.2010. After obtaining the said approval, the appellant has started construction of the 2nd floor building. While the matter stood thus, the unauthorized construction case bearing U.C. No.162 of 2014 was initiated against the appellant on the ground that construction of building/structural change in building is in contravention of provisions of the Odisha Development Authorities Act and Rules framed there under as alleged by the intervener. Accordingly, notices were

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issued to the appellant in terms of the provisions of the said Act for filling of show cause and also for stopping further unauthorised construction. In pursuance of the said notice, the appellant appeared before the original authority and filed show cause wherein he has categorically stated that the construction in question is nothing but only renovation of the old ones i.e. plastering and white washing. But without considering the same, the demolition order has been passed. The learned advocate for the appellant placed reliance on Order of Housing and Urban Development Department dated 30.03.2010 wherein the State Government have directed all the Development Authorities of the State that they may delegate the functions of Urban Planning including Town Planning functions and Regulation of Land Use and Construction of Building functions to the Urban Local Bodies concerned under Section 111 of the Odisha Development Authorities Act, 1982. Accordingly, the Cuttack Development Authority has no jurisdiction for initiation of proceeding u/s 91 of the Odisha Development Authorities Act against the appellant. Rather the Cuttack Municipal Corporation have jurisdiction to draw the proceeding under section 91 of the said Act and to adjudicate this case. He further pointed out that the appellant purchased the land measuring Ac.0.051 decs with 276 sqft of RCC roof and 161 sqft Tin roof house in R.S.D.dated 22.06.2009 for which the appellant is rightly the owner of Ac 0.051 dec of land. But at the time of initiation of the case the field staff of Cuttack Development Authority has taken the plot area of Ac 0.047.84 decs instead of recorded area of Ac. 0.051 decs without proper measurement. He once again pointed out that the building plan as submitted by the appellant before the Cuttack Development Authority has been approved considering the area measuring Ac 0.051 decs. But the proceeding has been initiated on the basis of area measuring Ac.0.047.84 decs. He argued that the appellant has obtained the approved plan from Cuttack Development Authority. If the construction has been undertaken deviating the approved plan, the lower court should pass the order to demolish the deviated portion. But the lower court has directed to the appellant to demolish the entire construction within one month from the receipt of the order failing which CDA will be constrained to demolish the same at the cost and risk of the O.P. Hence it is clear ascertained that the order passed by the lower court is not proper and logical in the eyes of law.

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The learned advocate on behalf of the intervener submitted that the intervener's plot and the appellant's plot are adjacent to each other; the appellant has constructed the building contravening the norms and regulations of Cuttack Development Authority. He further contended that the first floor of the appellant extends up to boundary of the plot for which the intervener has been deprived from getting air and light. He further vehemently opposed the ownership of the appellant i.e. the land measuring Ac.0.051decs since the total land is only ac.0.050decs.

The Planning Member, Cuttack Development Authority submitted that the appellant constructed G+1st floor building over plot in question in gross violation of approved plan. Accordingly, an unauthorized construction case bearing U.C. Case No.162 of 2014 was initiated against the appellant and demolition order has been passed by way of providing ample opportunity for hearing to the appellant. He further submitted that on field verification it is found that the appellant has constructed the building deviating 100% in rear setback, 50% in respect of F.A.R. and coverage in ground floor and first floor by deviating 22.6 sqm and 66.9 sqm respectively from the approved plan. Since the deviation in respect of rear setback is beyond 20% and FAR is beyond 10%, the deviations in question cannot be regularised on compounding as per Cuttack Development Authority Planning and Building Standards Regulations, 2010.

In view of above submissions and perusal of records, it is admitted fact that the construction has been made deviating the approved plan.

Further, the issue of non-transfer of planning functions as envisaged in the 74th Amendment Act is a much larger issue, which is beyond the competence of this court. However, it is noted that with a view to complying with the mandatory reforms prescribed under JnNURM scheme, the State Government had issued order on 30.3.2010 directing all the Development Authorities of the State to delegate the functions of urban planning, including town planning functions and regulation of land use and construction of buildings to urban local bodies concerned under Section 111 of the Odisha Development Authorities Act, 1982.

Regarding ownership of land measuring area Ac. 0.051 decs or area measuring Ac.0.047.84 decs, it is observed the matter is purely civil in nature which is beyond the jurisdiction of this court.

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Regarding construction in question, on going through the orders of the original authority, it is found that the appellant has been directed to demolish the entire construction which is not proper. Hence the case is remitted back to the Cuttack Development Authority with a direction to dispose of the matter with proper field verification and measurement in accordance with approved plan and the provisions as envisaged in the Odisha Development Authorities Act, Odisha Development Authorities Rules and Planning and Building Standards Regulations of the Authority concerned in presence of both the appellant as well as the intervener, providing ample opportunity for hearing to both the parties.

Sd/-
(P.K.Jha)

