

712

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

\*\*\*\*\*

No. 19585 /HUD, Bhubaneswar, dated 28.8.17  
TP-(apl)-6/2017

From

Shri A.K.Singh  
Desk Officer

To

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

Sub: Appeal Case No.6/2017 under section 91(2) of the Orissa Development Authorities Act, 1982 filed by Sri Manmohan Mohanty-vrs-B.D.A., Bhubaneswar.

Sir,

I am sending herewith the copy of the Order dated 19.08.2017 passed by the Appellate Authority i.e. the Commissioner-cum-Secretary to Government, 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 28.8.17

Memo No. 19586 /HUD., dated the 28.8.17


Copy along with copy of the order forwarded to the Team Lead, 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 28.8.17

Memo No. 19587 /HUD., Dated 28.8.17

Copy along with copy of the order forwarded to Sri Manmohan Mohanty, Vill-Basantapedi, P.O. Balakati, Pratap Sasan, P.S. Baliana, Dist-Khurda/ Sri Manas Mohanty, Vill-Basantapedi, P.O. Balakati, Pratap Sasan, P.S. Baliana, Dist-Khurda for information and necessary action.

  
Desk Officer 28.8.17

TL, OSVIP  
10

6/17

24.06.2017

The learned advocate on behalf of the appellant, Shri Samarendra Jenamani, Associate Town Planner, Bhubaneswar Development Authority and the intervention petitioner are present.

Heard.

Order is reserved.

Sd/-

(G.Mathi Vathanan)

19.08.2017

The instant appeal has been filed u/s 91(2) of the Odisha Development Authorities Act, 1982 challenging the order dated 09.03.2017 passed by the OSD(ODA Act), Bhubaneswar Development Authority in UAP case No-05/2016 wherein the appellant has been directed to remove the entire construction since G+1 storied RCC roof building has been constructed over plot No.2784/6743 in mouza-Pratapsasan samil Basantapedi for functioning the Kalyan Mandap without taking any permission from the competent authority.

The learned advocate for the appellant submitted that the appellant is the owner of Plot No.2784/6743, mutation khata No.1616/2079 measuring area Ac.0.125 decs. He further submitted that the appellant has constructed a two storied building over a portion of the said land measuring an Ac.0.050 decs in 2010 and has been utilising the same as Kalyan Mandap and the balance area measuring Ac.0.075 decs has been left over as open space and set back area of the concerned building. While the matter stood thus, a communication was made to the appellant wherein the appellant was asked to submit all documents to establish his ownership over the building in question along with the approved building plan in support of the construction as undertaken. Accordingly, the appellant produced all documents to prove his ownership over the land in question. It was brought to the notice of Bhubaneswar Development Authority that the double storied building has been constructed over an area measuring Ac.0.50 decs out of Ac.0.125 decs over the said plot. The appellant also admitted before the Bhubaneswar Development Authority that he was not aware regarding any approval of building plan by Bhubaneswar Development Authority prior to the construction of the building. He further pointed out in his reply to Bhubaneswar Development Authority that at the time of construction of the building i.e. in the year 2009, there was no requirement to obtain any permission/approval from the Bhubaneswar Development Authority. He also informed to the Authority that so many buildings in the area have been constructed without obtaining approval from Bhubaneswar Development Authority. Accordingly, he requested Bhubaneswar Development Authority to regularise the construction undertaken by him in accordance with

6/17

6/17

provisions of the Odisha Development Authorities Act by way of compounding. But without considering the same, the Bhubaneswar Development Authority issued show cause notice dated 07.04.2016 under section 91(1) of the Odisha Development Authorities Act, 1982 to the appellant wherein he was asked to show cause as to why an order shall not be passed directing the removal of the structure undertaken by him unauthorisedly without/in violation of the approved plan and rules and regulations should not be made as per the provisions of law. The learned advocate further contended that the said show cause notice issued by the Bhubaneswar Development Authority was first challenged by the appellant before the Hon'ble High Court in W.P. (C) No.9678 of 2016 stating inter-alia that the Odisha Development Authorities Act came in to force in the said mouza on 18.07.2011 where as the appellant's building has been completed by July, 2010 and relying the judgement passed in the case of Jagdish Prasad Naik and another-vrs-State of Orissa and another reported in 114(2012)CLT119. The said writ petition has been disposed of on 06.01.2017 with the following observation and directions:-

"XXX..... This writ petition has been filed at the stage of show cause under Annexure-3. Since this matter is at the stage of show cause, this court is not inclined to entertain the writ petition, but however keeping it open to the petitioner to file his show cause reply taking aid of the decisions the petitioner relied on. In the event, the show cause reply along with other supportive documents are filed within three weeks from today, the same shall be considered and a decision on the show cause notice be taken by providing opportunity of hearing to the petitioner within a period of two months thereafter. Till such period, both the parties are directed to maintain status quo over the disputed structure.XXX....."

He further submitted that in pursuance of the aforesaid order of the Hon'ble High Court, the appellant submitted show cause on 24.01.2017 before the Bhubaneswar Development Authority. But without considering the grounds taken in show cause reply, the original authority passed the demolition order on 15.02.2017 directing the appellant to remove the development within seven days from the date of service of the order. The learned advocate for the appellant contended that the said order has been passed without any specific findings on each and every issues raised by the appellant. He further pointed out that the original authority has not reflected in the said order as to why the settle principle of law laid down in Jagdish Prasad Naik Case is not applicable to the instant case. He again relied on applicability of the Odisha Development Authorities Act over the said Plot since the construction in question has

6/17

6/17  
been made much prior to enforcement of the said Act in the said Mouza. He further submitted that the appellant is ready and willing to regularise the construction undertaken by him on payment of cost. But without taking in to consideration of the same, the demolition order has been passed. He also pointed out that there are several buildings in the said area which have been constructed prior to 2010 without any approval. But no action has been initiated against them except the appellant. At last he prayed before the court to pass necessary direction to the original authority for the ends of justice.

The intervention petitioner submitted that the appellant has constructed the building over the plot in question without obtaining approval from the competent authority. He further pointed out that the status of the said plot is Devastali which has been illegally used as Kalyan Mandap in deviation to the Planning and Building Standards Regulations of Bhubaneswar Development Authority and without obtaining permission from the competent authority. The operation of the said Kalyan Mandap in the area in question creates the environmental pollution. He further submitted that the said Kalyan Mandap has been operated without any parking place neither of his own nor any vacant land existing there. He further pointed out that the appellant's reliance on the judgement passed in the case of Jagdish Prasad Naik and another-vrs-State of Orissa and another reported in 114(2012) CLT119 is not justified since the said case is quite different from the instant case. It is because in the case agitated before the Hon'ble High Court in W.P.(C) No.22357 of 2011 as reported in 114(2012) CLT119 the Block has given permission for construction being approved by the Kalarahanga Gram Panchayat but in the instant case the permission to operate Kalyan Mandap has been rejected by the concerned Gram Panchayat as well as Block. Hence he prayed to reject the appeal.

The Associate Town Planner, Bhubaneswar Development Authority submitted that the unauthorised proceeding case was initiated against the appellant bearing UAP Case No.05 of 2016 on the basis of grievance of the villagers of Basanta Pedi under Pratap Sasan Grampanchayat wherein they have alleged that the appellant has undertaken unauthorised construction of G+1 storied RCC building and operated the Kalyan Mandap over the plot in question without obtaining necessary permission from the competent authorities. Accordingly, in terms of the provisions of the Odisha Development Authorities Act, 1982 the show cause notice was issued against the appellant. But the appellant agitated the matter before the Hon'ble High Court in W.P. (C) No.9678 of 2016 challenging the action of the OSD (ODA Act), Bhubaneswar Development Authority inter-alia, the issue of show cause

6/17

6/17

notice dated 07.04.2016 in UAP Case No. 05 of 2016 under section 91(1) of the Odisha Development Authorities Act, 1982. The Hon'ble High Court disposed of the said writ petition on 06.01.2017 with certain observations and directions as cited in the previous paras. He further submitted that in pursuance of the said order of the Hon'ble High Court, the appellant submitted show cause reply in the Lower Court. After going through the said show cause, reports of the Tahasidar concerned and Block Development Officer, Baliana, inquiry report of the Revenue Inspector, Pratap Sasan, connected documents in respect of functioning of Kalyan Mandap in question and views of the Authorised Officer of Bhubaneswar Development Authority, the lower court disposed of the said U.A.P.case with a direction to demolish the unauthorised structure taken up with construction of G+1 storied Kalyan Mandap with nil setbacks rear site. He further pointed out that as per the norms of the Building Standards Regulations, the width of the approach road should be 12 mtr, but in the instant case the road is 11 to 13 ft wide which is gross violation. As such the construction undertaken by the appellant can not be compounded. He again contended that for functioning of the Kalyan Mandap and for construction of the building in question, the appellant has not obtained necessary permission from the competent authorities.

In view of the above submissions and perusal of records as submitted, it is admitted fact that the appellant has constructed the building in question without obtaining approval from the competent authority. Secondly, he has operated the Kalyan Mandap over the said plot without obtaining any permission from the competent authority. As Kalyana Mandap is a public building used by large number of public while attending the functions organised in the building- but built without obtaining necessary approvals /permissions/ clearances from various Government agencies involved while according building plan approval or occupancy certificate and hence can not be allowed to continue which may endanger public safety. Thus, on consideration of the relevant aspects brought to the notice; I am satisfied that the order directing demolition of the illegal construction by the Bhubaneswar Development Authority is fair and justified. It is also felt that persons should not have impression that they can violate with impunity any rule of law or regulation and then subsequently trying to get it regularised or legalised. Hence, the appeal has no merit for further consideration, accordingly dismissed.

Sd/-

**(G.Mathi Vathanan)**