

3/

Government of Odisha
Housing & Urban Development Department

No. 22424 /HUD, Bhubaneswar, dated 4.10.17
TP-(apl)-01/2017

From

Shri A.K.Singh
Desk Officer

To

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

Sub: Appeal Case No.01/2017 under section 91(2) of the Orissa Development Authorities Act, 1982 filed by Sri Manas Ranjan Kar-vrs-CDA, Cuttack & another.

Sir,

I am sending herewith the copy of the Order dated 23.09.2017 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 3/1/17

Memo No. 22425 /HUD., dated the 4.10.17


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 3/1/17

Memo No. 22426 /HUD., Dated 4.10.17

Copy along with copy of the order forwarded to Sri Manas Ranjan Kar, Secretary, Saraswati Sisu Gyana Mandir, At- Markatanagar, Plot No.2D/298, Sector-11, CDA, Cuttack-14 / Smt. Seema Mishra, At/P.O.- Karilopatna, P.S.-Patkura, Dist-Kendrapara for information and necessary action.


Desk Officer 3/1/17

TL, OUSIP
20

18.08.2017

1/17

The Planning Member of Cuttack Development Authority is present. But none appeared on behalf of the appellant as well as O.P No.3

Heard.

Order is reserved.

Sd/-
(P.K.Jha)

23.09.2017

The instant appeal has been filed under Section 91(2) of the Odisha Development Authorities Act, 1982 challenging the order dated 25.10.2016 passed by the Law Officer, Cuttack Development Authority in U.C. Case No.16 of 2016 wherein the opposite party i.e. Smt. Seema Mishra has been directed to demolish the unauthorised construction over the plot No.11-2D/298, Sector-11 beyond the approved plan and close the commercial use of the plot within a period of one month from receipt of this order failing which C.D.A. will be constrained to demolish the same and take steps for closure of the commercial use of the premises at the cost and risk of the O.P.

The learned advocate for the appellant in the appeal submitted that the appellant rented the building constructed over the plot in question for running a school namely Saraswati Sishu Gyan Mandir from 12.01.2016 with Deed of House Rent Agreement. While the School was running smoothly, the appellant was served a letter dated 07.12.2016 with an order dated 25.10.2016 passed by the Law Officer, Cuttack Development Authority in U.C. Case No.16 of 2016 directing the house owner to demolish the unauthorised construction undertaken over the plot in question and to close the commercial use of the plot failing which C.D.A. will be constrained to demolish the same and take steps for closure of the commercial use of the premises at the cost and risk of the O.P. He further submitted that the said School is imparting free education to 25% of the students free of cost as per the provisions of the Right to Education Act, 2009. While the annual examination of the students is scheduled to be held in the last week of March 2017, it may not be proper to carry out the said order of demolition at this juncture. He further pointed out that being aggrieved by the said order, the appellant agitated the matter before the Hon'ble High Court in W.P.(C) No.22585 of 2016 which was disposed of on 22.12.2016 with the following observations and directions:-

"However, considering the request of learned counsel for the petitioner, this Court disposes of this petition permitting the petitioner to withdraw this petition in order to file an appeal before the appellate authority along with a petition for condonation of delay within a period of two weeks from today. In the event, the

1/17

1/17

petitioner files an appeal along with a petition for condonation of delay on the plea that he was wrongly pursuing this Court by way of writ remedy, the delay shall be condoned and the appeal shall be heard on its own merit giving opportunity of hearing to all the parties concerned. It is also open for the petitioner to file an application for interim protection also within the time stipulated hereinabove and the same shall be considered and disposed of within a period of two weeks thereafter.

It is further directed that there shall be no demolition or seal of the petitioner's structure standing over the disputed property for a period of five weeks."

Accordingly, the appeal stands. The learned advocate for the appellant submitted a written statement on 29.04.2017 wherein he has pointed out that in the meanwhile the said school has already been shifted to another place. Hence the appellant has no role at all in the instant case.

The Planning Member of Cuttack Development Authority submitted that the appellant is not the owner of the plot in question. The U.C. Case No.16/2016 has been initiated against the owner of the plot i.e. Smt. Seema Mishra for construction of the building deviating the approved plan and using the premises for commercial purpose instead of residential use for which the allotment was made. In terms of the provisions of the Odisha Development Authorities Act, 1982, notices were issued for filing show cause and for discontinuing further development in the site and closure of unauthorised commercial use of the building which violates the terms and conditions of allotment as well as conditions of the sanctioned building plan. But Smt. Mishra has neither turned up to agitate the matter before the lower court nor filed any show cause in spite of repeated notices. In the meanwhile, the Hon'ble High Court of Odisha in W.P. (C) No.17960 of 2015 have directed Cuttack Development Authority on 24.06.2016 to take a decision on the notices issued to the allottees within a period of two months from the production of the certified copy of the order. As per the report submitted by the area amin, it is revealed that the construction has been undertaken over the plot in question deviating the approved plan and the premises are also used for commercial purposes instead of residential. He again submitted that since the owner of the plot has not responded in the matter in spite of repeated notices, the U.C. Case has been disposed of ex-parte by issuing demolition order.

In view of the above submissions and perusal of records, it is evident that the demolition order has been passed against the O.P. No.3, not against the appellant. The appellant filed the instant appeal with prayer to set aside the said order since the appellant rented the building

1/17

1/12
constructed over the plot in question for running a school
namely Saraswati Sishu Gyan Mandir from 12.01.2016 and
allow him to continue for running the school in the said
premises till the end of April, 2017. But as reported, the
appellant has already shifted the said school somewhere
else for which the appeal has no merit for further
consideration. Accordingly the appeal is dismissed.

Sd/-
(P.K.Jha)