

Government of Odisha
Housing & Urban Development Department

No. 2242 /HUD, Bhubaneswar, dated 4.10.17
TP-(apl)-27/2016

From

Shri A.K.Singh
Desk Officer

To

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

Sub: Appeal Case No.27/2016 under section 91(2) of the Orissa Development Authorities Act, 1982 filed by Smt. Sailabal Mallick-vrs-CDA, Cuttack.

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 appellent immediately.

Yours faithfully,



Desk Officer 3/A/112

Memo No. 22422 /HUD., dated the 4.10.17

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 3/A/112

Memo No. 22423 /HUD., Dated 4.10.17

Copy along with copy of the order forwarded to Smt. Sailabal Mallick, At- Near Government Press Colony School, Nuapada, P.O./ P.S.-Madhupatna, Cuttack-10, Dist.-Cuttack / Sri Krushna Chandra Mohapatra, At- Near Government Press Colony School, Nuapada , P.O./P.S.-Madhupatna, Cuttack-10 , Dist.-Cuttack / Sri Krushna Chandra Palai, At- Near Government Press Colony School, Nuapada , P.O./ P.S.-Madhupatna, Cuttack-10 , Dist.-Cuttack / Sri Sailendra Routray, At- Near Government Press Colony School, Nuapada , P.O./P.S.-Madhupatna, Cuttack-10 , Dist.-Cuttack / Sri Nishamani Mohanty, At- Near Government Press Colony School, Nuapada, P.O./ P.S.-Madhupatna, Cuttack-10 , Dist.-Cuttack / Sri Bibhuti Bhusan Patnaik, At- Near Government Press Colony School, Nuapada , P.O./P.S.-Madhupatna, Cuttack-10 , Dist.-Cuttack for information and necessary action.



Desk Officer 3/A/112

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18.08.2017

The learned advocate on behalf of the appellant, the Planning Member of Cuttack Development Authority and the learned advocate on behalf of the intervention petitioners are present.

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 22.08.2016 passed by the Law Officer, Cuttack Development Authority in U.C. Case No.174 of 2015 wherein the appellant has been directed to demolish the entire construction within a period of one month from receipt of this order failing which C.D.A. will be constrained to demolish the same at the cost and risk of the appellant since the said construction have been made without any approval of the C.D.A. and encroaching the road land.

The learned advocate for the appellant submitted that the proposed intervening petitioners are not party in the lower court. Hence, the proposed intervening petitioners have no locus-standi to file such petition for intervening in the appellate stage. Hence he prayed to dismiss the same.

The learned advocate for the intervention petitioners submitted that the appellant has encroached the road land for which the intervention petitioners are affected. He further submitted that in pursuance of the order dated 13.06.2017 passed by the Hon'ble High Court in W.P. (C) NO.9953 of 2017; they have filed the memo for early disposal of the instant appeal. The learned advocate for the intervention petitioners submitted that let the appeal be heard on merit.

The learned advocate for the appellant submitted that the allegation made against the appellant is that she has undertaken the unauthorised construction of ACC shed and encroached the road over the Plot No. 602 and 606 in Mouza- Nuapada. On the basis of said allegation, the unauthorised construction case bearing U.C. Case No.174 of 2015 was initiated against the appellant by the Cuttack Development Authority and notice u/s 91(1) of the Odisha Development Authorities Act, 1982 was issued to the appellant on 27.11.2015 in respect of Plot No.602 wherein she was directed to file show cause for the unauthorised construction of the building. In response to the same, the appellant submitted her show cause on 09.02.2016 stating that Plot No.602 is the road and the appellant has not constructed any construction over the said plot. She has further intimated in the said show cause that the said plot

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as recorded in the name of the appellant and six other people is being used as road by the appellant as well as others. He again submitted that another notice was issued by the Cuttack Development Authority on 09.06.2016 to the appellant wherein she was directed to file the ROR and original approved plan and other relevant documents relating to the construction in question on 22.06.2016. In response to the same, the appellant proceeded to the Cuttack Development Authority to file written submission with ROR and rent receipts but the said case was not posted for hearing. However the same was submitted in the Diary section of the Cuttack Development Authority wherein she has pointed out that Plot No. 602 is a private road land used by herself as well as other people and no construction has been made thereon. He pointed out that the notice was issued to the appellant for hearing on 22.06.2016, but the case was heard on 25.06.2016 which is highly illegal. He again pointed out that the appellant filed her show cause on 22.06.2016 whereas in order sheet it has been mentioned as 23.06.2016. He again contended that notice was issued to the appellant in respect of Plot No.602 whereas in their office record it was found that the said notice was issued in respect of Plot No.602 and 606 which has been manipulated. He submitted that the area amin has submitted his report on 05.11.2015 without conducting the field enquiry since the sketch map as submitted is more than the area Ac.0.020 decimal including the land of the appellant. He further submitted that the appellant has been residing over her land since 1979. No new construction has been undertaken by the appellant since then. He again submitted that the plot No.606 as reflected in the order does not belong to the appellant.

The Planning Member, Cuttack Development Authority submitted that the U.C. Case bearing NO. 174 of 2015 was initiated against the appellant on the basis of complaint for unauthorised construction of A.C.C. shed under taken over the plot in question. He further submitted that as per report of the area Amin dated 05.11.2015, a new construction has been made measuring an area of 47'-7" x 9'-8" and 25'-11"x 7'-0" without taking approval of the Cuttack Development Authority. Accordingly, notices under section 91(1) and 92(1) of the Odisha Development Authorities Act, 1982 were issued against the appellant wherein she was directed to file show cause and to discontinue further development in the site respectively. In response to the same, the appellant submitted show cause wherein she stated that the plot No.602 is a private road and regarding her construction of ACC Shed nothing has been mentioned. But in support of the same, he could not produce any documentary evidence. He further submitted that the construction undertaken at site cannot be regularised on compounding under the provisions of the

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Cuttack Development Authority (Planning and Building Standards) Regulations. Accordingly, the demolition order has been passed. He further contended that if the plot No. 602 and 606 do not belong to the appellant, she has nothing to say on the demolition order in question.

In view of the above submissions and perusal of records, it is evident that the appellant could not produce any relevant document in support of her construction undertaken in 1979. Further on the basis of the report made by the area Amin on 05.11.2015, it is confirmed that the appellant has undertaken the new construction over the plot in question which requires the approval of the Cuttack Development Authority. Since the construction in question has been undertaken without obtaining approval from the competent authority, I am inclined to believe that the order directing demolition of the illegal construction by the Cuttack Development Authority is fair and justified. Regarding encroachment of road land, the matter is purely civil dispute which is beyond the jurisdiction of this Court. However, the demarcation of the road land shall be made by the revenue authorities with the CDA personnel. Accordingly, the Cuttack Development Authority is directed to make the measurement with revenue authorities in presence of the appellants as well as all the affected parties.

Sd/-
(P.K.Jha)