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Government of Odisha
Housing & Urban Development Department

No. 22418 /HUD, Bhubaneswar, dated 4.10.17
TP-(apl)-26/2016

From

Shri A.K.Singh
Desk Officer

To

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

Sub: Appeal Case No.26/2016 under section 91(2) of the Orissa Development Authorities Act, 1982 filed by Sri Ramesh Chandra Mohapatra-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 appellant immediately.

Yours faithfully,



Desk Officer 31/112

Memo No. 22419 /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 31/112

Memo No. 22420 /HUD., Dated 4.10.17

Copy along with copy of the order forwarded to Sri Ramesh Chandra Mohapatra, 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 31/112

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18.08.2017

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 assailing the order dated 22.08.2016 passed by the Law Officer, Cuttack Development Authority (C.D.A.) in UC Case No.172 of 2015 wherein the appellant has been directed to demolish the entire construction undertaken over Plot No.602 and 606 of Mz. Nuapada 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 appellant submitted that on the basis of the complaint of the intervention petitioners, the unauthorised construction case was initiated against him by the C.D.A. under section 91(1) of the Odisha Development Authorities Act, 1982. But the demolition order as challenged has been passed without providing opportunity of hearing to him which violates the fundamental principles of natural justice. He further submitted that the land in question was purchased in the year 1980 and the construction of residential house, asbestos shed and roads were also undertaken over the said plots in the 1980 much prior to the inception of the Odisha Development Authorities Act, 1982. At that time the said Mz. Nuapada was not included in Cuttack Municipal Area or Cuttack Development Authority area. Hence, the Cuttack Development Authority has no jurisdiction to initiate proceeding against the appellant under section 91 (1) of the Odisha Development Authorities Act, 1982. He again pointed out that in response to the notices issued by the Cuttack Development Authority under section 91(1) of the said Act, he appeared before the original authority with relevant documents i.e. Sale Deed, RoR, notification of inclusion and holding tax receipts. But without taking in to consideration of the same, the demolition order has been passed. Regarding construction undertaken in the year 1980, the appellant has submitted the receipt of Cuttack Municipality relating to holding tax from 1987. But no relevant document has been produced by the appellant in support of construction undertaken in 1980.

The learned advocate for the intervention petitioners submitted that on the basis of complaint filed by

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the intervention petitioners relating to the illegal encroachment of public road by the appellant, the Cuttack Development Authority initiated unauthorised construction case bearing U.C.No.172/2015 against the appellant in terms of the provisions of section 91(1) of the Odisha Development Authorities Act, 1982 and after detailed hearing the parties, the demolition order has been passed. He further submitted that being aggrieved; the appellant filed the instant appeal before the Appellate Authority. He once again contended that due to pendency of the instant appeal, the Cuttack Development Authority did not take any steps to demolish the said unauthorised construction for which the intervention petitioners as well as public in general are suffering a lot. For early disposal of the appeal, the said intervention petitioners agitated the matter before the Hon'ble High Court of Orissa in W.P. (C) No.9948 of 2017 with a prayer for a direction to the Appellate Authority to dispose of the Appeal case no.26 of 2016 at an early date. The Hon'ble High Court have disposed of the said writ petition on 13.06.2017 with the following directions:-

"Taking into consideration the submissions made, this writ petition is disposed of with a direction that in the event the petitioner files a properly constituted application for early disposal of the appeal within a period of two weeks hence, the same shall be considered and disposed of within a period of three weeks there from and follow up action shall be taken accordingly."

He further contended that in pursuance of the said order of the Hon'ble High Court, the aforesaid intervention petitioners have filed the application for early disposal of the instant appeal.

The Planning Member, Cuttack Development Authority submitted that the U.C. Case bearing NO. 172 of 2015 was initiated against the appellant on the basis of complaint of the aforesaid intervention petitioners of the locality for unauthorised construction of G+1 storied building and another A.C.C. shed under taken over plot No.602 and 606 in Mz. Nuapada. He further submitted that as per report of the area Amin dated 05.11.2015, a new construction has been made over the plot in question measuring an area of 34'-6" x 33'-0" (building) and 70'-0"x 30'-0" (A.C.Shed) 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 he 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 he stated that the constructions are very old for which the approval of Cuttack Development Authority was not required. But in support of the same, he could not produce

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any documentary evidence. He further submitted that the construction undertaken at site cannot be regularised on compounding as per the provisions of the Cuttack Development Authority (Planning and Building Standards) Regulations since the deviations in respect of Front, Rear and Left setbacks are 100 percent and the Right Setback is 40 percent which are beyond 25 percent. Accordingly, the demolition order has been passed.

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 his construction undertaken in 1980. Hence, 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 satisfied 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)