

Government of Odisha
Housing & Urban Development Department

No. 13082 /HUD, Bhubaneswar, dated 24.5.18
TP-(apl)-146/2005

From

Shri Akshaya Kumar Singh
Under Secretary to Government

To


The Planning Member/ Secretary, Puri Konark Development Authority,
Puri.

Sub: Appeal Case No.146/2005 under section 91(2) of the Orissa Development
Authorities Act, 1982 filed by Sri Benudhar Jena-vrs-P.K.D.A., Puri
Sir,

I am sending herewith the copy of the Order dated 21.05.2018 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,

 23.5.18
Under Secretary to Government

Memo No. 13083 /HUD., dated the 24-5-18


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.

 23.5.18
Under Secretary to Government

Memo No. 13084 /HUD.,

Dated 24-5-18

Copy along with copy of the order forwarded to Sri Benudhar Jena, At-Sidha Bakula
Matha Lane near Gundicha Mandir, P.O.-Puri-2, P.S.-Kumbhar Pada, Dist-Puri/ Smt.
Kanchanbala Mohanty, At-Sidha Bakula Matha Lane near Gundicha Mandir, P.O.-Puri-2,
P.S.-Kumbhar Pada, Dist-Puri/Sri Harishankar Das, At-Sidha Bakula Matha Lane near
Gundicha Mandir, P.O.-Puri-2, P.S.-Kumbhar Pada, Dist-Puri for information and necessary
action.

 23.5.18
Under Secretary to Government

02.02.2018

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The learned advocate on behalf of the appellant, the representative of the intervener, Sri Harishankar Das and the Planning Member of Puri Konark Development Authority are present. But none appeared on behalf of the intervener, Smt.Kanchanbala Mohanty.

Heard them.

Reserved for order.

Sd/-

(P.K.Jha)

21.05.2018

The facts giving rise to the instant appeal is that the unauthorised proceeding was initiated against the appellant under section 91(1) of the Odisha Development Authorities Act, 1982 by Puri Konark Development Authority for undertaking construction in violation of the approved plan in U.C. No.16 of 2005. In terms of the provisions of the Odisha Development Authorities Act, 1982, the said U. C. Case was disposed of on 30.11.2005 wherein the Planning Member passed order for removal of excess construction made beyond the approved plan within 15 days. Accordingly the appellant was directed vide letter No.4645, dated 19.12.2005 to remove the same. Being aggrieved, the appellant filed the instant appeal under section 91(2) of the Odisha Development Authorities Act, 1982 before the Appellate Authority on 28.12.2005. After detailed hearing, the said appeal was disposed of by the Appellate Authority on 25.02.2006 with the following observations and directions:-

"After perusal of records the following are observed:

1. PKDA approved a double storied building plan with a covered area of 2150 sft in favour of the appellant.
2. While undertaking construction the appellant has violated the approved plan and has undertaken construction of two floors with a total covered area of 3360 sft.
3. PKDA passed order of demolition of construction made beyond the approved plan.
4. Appellant further continued the construction and has constructed a four storied building and added two more floors beyond the approved plan.
5. No open space has been left on any side as stated by Planning Member and Secretary, PKDA in violation of norms.
6. The maximum coverage limit has also been violated.

After careful perusal of the documents filed and hearing of the case, I am of opinion that since construction has been made in violation of the approved plan and of the norms, I am inclined not to interfere in the orders passed

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by the Secretary, PKDA. The appeal is therefore dismissed and the orders of Secretary, PKDA, Puri are upheld."

The appellant being aggrieved challenged the said order before the Hon'ble High Court in W.P. (C) No.4658 of 2006 which has been disposed of on 29.03.2017 with the following observation and direction:-

"Under the circumstance, this Court finds the impugned order under Annexure-4 is not sustainable and accordingly while setting aside the order at Annexure-4, this court remits the matter back to the appellate authority to hear the matter afresh and decide the same giving opportunity of hearing to all concerned.

Since the matter is decided on contest of all the parties concerned, this Court directs the parties to appear before the appellate authority on 6th of April, 2017 and the appeal shall be concluded afresh within a period of two months thereafter."

Accordingly, the learned advocate for the interveners submitted an application on 03.05.2017 for hearing of the instant appeal on merit arising out of an order dated 29.03.2017 passed by the Hon'ble High Court of Odisha in the aforesaid writ petition. But the learned advocate for the petitioner in pursuance of the said order of the Hon'ble High Court filed a Memo for immediate Notice to the appellants for his appearance on 28.04.2017. In pursuance of the Order of the Hon'ble High Court, the appeal has been fixed for hearing from 03.06.2017.

In course of hearing, the learned advocate for the appellant submitted that the building in question has been constructed with due approval of Puri Konark Development Authority since 1979. In this context he has submitted the certificate of holding Tax received from the Executive Officer, Puri Municipality. He further contended that the said building is not new one as alleged. But the Original Authority initiated unauthorized proceeding in U.C. Case No.16 of 2005 on the basis of allegation that the construction made projecting balconies to the neighbouring plots in violation of building norms. He again pointed out that the construction as made is within the plot of the appellant. He also prayed before the Appellate Authority for compounding on deviation if made at the time of construction beyond the approved plan since Puri Konark Development Authority has also regularised many unauthorized buildings.

The representative of the intervener Sri Das argued that since the Hon'ble High Court had fixed hearing date on 6th April, 2017, it is mandatory for all concerned to stick to the said date. Any further deviation on the aforesaid date of hearing should be in the direction of the Hon'ble High Court for the interest of justice. Hence she strongly objects hearing on any date without orders of the Hon'ble High Court.

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The learned advocate for the appellant submitted that he has solicited the discretion of the court to condone the delay from 06.04.2017 to 28.04.2017 with relevant documents.

The representative of the intervener contended that the appellant has made construction in gross violation without leaving set back on sides and making cornice projection and opening of water pipe connections to the side of her building for which their interest of right to light, ventilation and privacy has been infringed since 2005.

The learned advocate for the appellant submitted that he has prayed before the Secretary, P.K.D.A., Puri on 12.06.2017 for regularization of the building in question through compounding fees.

The learned advocate for the interveners objected that the third case in the instant appeal i.e. regularisation matter in the instant appeal should not be entertained since the Hon'ble High Court of Odisha has remitted the matter back to the appellate authority to hear the matter afresh and decide the same giving opportunity of hearing to all concerned.

The learned advocate on behalf of the appellant submitted that on the basis of allegation i.e. the construction made in violation to the approved plan and no set back has been left which is gross violation of the building norms, the unauthorised construction case was initiated against the appellant in terms of the provisions of the Odisha Development Authorities Act, 1982. The learned advocate submitted that the appellant has constructed his existing building after obtaining approval from the Puri Konark Development Authority. The appellant has never constructed the said building beyond his plot. He further pointed out that the Puri Konark Development Authority has also regularised many unauthorised buildings having constructions 100% of plot area. In this regard, the learned advocate for the appellant has cited the decisions of the Hon'ble High Court reported in 2003-AIR, Orissa 114 in the case of Smt. Santilata Sahoo-Vrs-State of Orissa and others. He further contended that most of the unauthorised buildings have been regularised by way of compounding by the Puri Konark Development Authority and prior to constitution of Puri Konark Development Authority, 253 cases within CRZ area and 175 cases beyond CRZ area have also been regularised by PKRIT and Puri Municipality has also regularised some cases by way of compounding as per Municipal Rules. Hence he argued that under these scenarios the deviation as occurred by the appellant deserves to be regularised by way of compounding.

The Secretary of Puri Konark Development Authority submitted that the unauthorised construction case was initiated against the appellant on the basis of allegation of the neighbours, i.e. the present interveners

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that the construction made projecting his balconies to their that plot is in violation of building norms. He further submitted that permission was accorded under section 16(3) of the Odisha development Authorities Act, 1982 for construction of double storied residential building in the year 2000. After obtaining approval, the appellant started construction deviating the approved plan. But he has not constructed the alleged projected balconies towards neighbours plot. Rather some openings of balconies are towards neighbours plot. He further pointed out that the team visited the site of the appellant for taking measurement of the building in question on 22.08.2017 and 28.08.2017. The family members of the appellant were present but not allowed them to take measurement of the building of the appellant. The said team informed that the permission was given for construction of G+1 storied residential building whereas the appellant has constructed G+2 storied on the front side and G+3 in the rear side deviating the approved plan. The appellant has not provided any set back rather he has constructed balconies towards road land. As per the said report, the deviation as made cannot be regularised by way of compounding.

The learned advocate on behalf of the interveners submitted that during pendency of the appeal, the Appellate Authority was pleased to pass an order on 21.01.2006 to prevent the appellant from unauthorised construction, in violation of the order of status quo with assistance of IIC, Kumbharpara Police Station. He further contended that while the appeal is under hearing in pursuance of the order of the Hon'ble High Court, the appellant was continuing with construction over the incompleated part of unauthorised constructed building in question without caring the law. When the interveners protested such activities of the appellant, the appellant along with his family members threatened for dire consequences of bloodshed and abused in obscene languages and threw bricks for which the wall, water tank roof, Aluminium grill of the appellant were damaged. Being helpless, the intervener lodged complaints to the Superintendent of Police, Puri.

In view of the above submission and perusal of records as submitted, it is admitted fact that the appellant has constructed the building deviating the approved plan and some new buildings have also been constructed without obtaining approval from the competent authority. Hence on an anxious consideration of the relevant aspects brought to my notice, I am satisfied that order directing removal of excess construction made beyond the approved plan is justified. It is felt that persons should not have an impression that they can violate with impunity any rule of law or regulation and then subsequently get it regularised, legalised or overlooked by using means fair and foul. The

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creation of such an impression in the mind of the people at large would result in the rule of law being discarded and the object of planned development of the town being lost and seriously retarding the development of the town.

Hence the appeal is dismissed.

Sd/-
(P.K.Jha)