

Government of Odisha
Housing & Urban Development Department

No. 13085 /HUD, Bhubaneswar, dated 24.5.18
TP-(apl)-18/2016

From

Shri Akshaya Kumar Singh
Under Secretary to Government

To

The Planning Member/ Secretary, Cuttack Development Authority, Cuttack

Sub: Appeal Case No.18/2016 under section 91(2) of the Orissa Development Authorities Act, 1982 filed by Dr. Prashanta Kumar Dash-vrs-C.D.A., Cuttack.

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. 13086 /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. 13087 /HUD., Dated 24.5.18

Copy along with copy of the order forwarded to Dr. Prashanta Kumar Dash, At-Jobra Nuasahi, P.O.-College Square, P.S. -Malgodown, Cuttack for information and necessary action.

 23.5.18
Under Secretary to Government

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15.12.2017

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

Heard.

Order is reserved.

Sd/-
(P.K.Jha)

21.05.2018

The instant appeal has been filed under Section 91(2) of the Odisha Development Authorities Act, 1982 challenging the order dated 30.05.2015 passed by the Secretary, Cuttack Development Authority in U.C. Case No.197 of 2013 wherein the appellant has been directed to remove the deviation portion of the building within thirty days.

The learned advocate for the appellant submitted that the appellant purchased the land in question on 19.02.1974. Thereafter the appellant submitted plan for construction of a double storied building over the plot in question before the Greater Cuttack Improvement Trust, Cuttack in terms of the provisions of the Odisha Town Planning and Improvement Trust Act, 1956 and Rules framed there under. The same was sanctioned on 26.06.1974 by the Greater Cuttack Improvement Trust. Thereafter, the appellant being constrained by his need submitted for modification of said building plan which was modified by the competent authority on 16.11.1981. Accordingly, the appellant constructed the building strictly adhering to the approved / modified plan without any deviation. While the matter stood thus, the appellant sold a portion of his land to one Sanjukta Padhiari contributing a joint passage starting from the main road. Then the purchaser constructed a three storied building over the said plot by extending chhaja and side of the RCC roof of her building over the said joint passage. Being aggrieved, the appellant submitted complaint petition before the Cuttack Development Authority on 07.08.1998 for which the unauthorised proceeding was initiated against the said purchaser in U.C. Case No 46 of 1998. He further submitted that while the said U.C case was pending, she constructed the third and fourth floor deviating the approved plan. The appellant informed to the Cuttack Development Authority regarding such illegal constructions undertaken during pendency of the U.C. Case. On the other hand, Smt. Padihari and her husband filed a complaint petition against the appellant before the Cuttack Development Authority alleging that the appellant has

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constructed his building deviating the approved building plan. Accordingly, unauthorised proceeding was initiated against the appellant in U.C Case No.197 of 2013. In terms of the provisions of the Odisha Development Authorities Act, the show cause notice was issued against the appellant on 15.12.2014 wherein the appellant was directed to appear and file written submission. In response to the same, the appellant submitted written submission. But without considering the same, the demolition order has been passed basing on the report of Amin and Planning Member. The learned advocate for the appellant submitted that the impugned order has been passed without providing opportunity to the appellant. He further pointed out that the field enquiry was made on 03.09.2012 by the Amin of Cuttack Development Authority without knowledge of the appellant. He also submitted that the said report was also not given to the appellant for his knowledge in respect of deviation. He further pointed out that without field verification; the Planning Member and the concerned Amin have prepared the report which is not sustainable in the eyes of law. He again pointed out that the deviation of the complainant was regularised under the Regularisation of the Unauthorised /Deviated construction through Compounding Scheme whereas the so called deviation of the appellant was not regularised. Rather, the demolition order has been passed. He contended that the so called deviation is not really a deviation in view of the modified approved plan. Hence, he prayed to set aside the impugned order in the interest of justice.

The planning Member, Cuttack Development Authority submitted that the appellant constructed a G+1 storied building over plot in question in violation of approved plan for which the unauthorised proceeding was initiated against the appellant in U.C. Case no.197/2013. As per provisions of section 91(1) of the Odisha Development Authorities Act, 1982, show cause notice was issued against the appellant on 09.12.2013 regarding taking up unauthorised construction in question. In response to the same, the appellant submitted copy of the approved plan for construction of double storied building over the said plot. While the matter stood thus, the Hon'ble High Court of Odisha while disposing the W.P. (C) No.17245 of 2014 filed by the Complainant directed the Secretary, Cuttack Development Authority to dispose of the aforesaid U.C.Case within a period of six months from the date of production of the certified copy of the order after affording opportunity of hearing the party. In pursuance of the said order, the appellant was asked to appear and submit the approved plan along with relevant documents and the Planning Member was also asked to submit the detail

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report in the matter on 15.12.2014. He further submitted that in response to the same, the Planning Member submitted the report on 06.01.2015 wherein the deviation on 1st floor is 30.01sft and in respect of setback in front, Left side and Right Side, the deviation is 100%, 85.94% and 100% respectively and he pointed out that the said deviation cannot be regularised through compounding basis as per regulation since the deviation in question is beyond 20%. During the hearing in the lower court, the field staff was directed for necessary measurement on 18.04.2015 and 13.05.2015 but the appellant did not cooperate for measurement. Hence, the said U.C. Case was disposed of with a direction to the appellant to remove the deviation portion of the building within thirty days.

The learned advocate for the appellant during hearing submitted that the Planning Member and the Amin have prepared the report without field verification. He prayed for field verification. Accordingly, he was directed on 27.10.2017 to submit written submission indicating the date for re measurement within 15 days. But the learned advocate for the appellant thereon submitted that the appellant does not want fresh demarcation/measurement in any manner at this juncture on 15.12.2017.

In view of the above submission and perusal of records as submitted, it is revealed that the appellant is not interested for fresh measurement to find out the actual deviation and the correctness of the report in question as alleged. Rather, he has argued that without field verification the Planning Member and the concerned Amin have fabricated the report as submitted. Accordingly, the objection on the report of Amin and Planning Member as raised by the appellant is not acceptable.

Thus, on consideration of the relevant aspects brought to my notice, I do not find any flaw in the order passed by the lower court. Hence the appeal merits no consideration and accordingly dismissed.

Sd/-
(P.K.Jha)