

IN THE HIGH COURT OF ORISSA AT CUTTACK
O.J.C. No.12916 of 1998

Ghanashyam Namtoar

....

Petitioner(s)

Mr. Namtoar,
Advocate

-versus-

Cuttack Development Authority

....

Opposite Party(s)

Mr. D. Mohapatra,
Advocate

CORAM:
JUSTICE BISWANATH RATH

ORDER

09.02.2022

Order No.

25. 1. This matter has been repeatedly heard.
2. This writ petition involves the following prayer:

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P R A Y E R

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Under the above said facts and circumstances it is most respectfully prayed that this Hon'ble Court may graciously be pleased to issue a writ in the nature of writ of certiorari quashing the impugned letters in Annexure-4 and Annexure-6;

And be further pleased to issue a writ of mandamus directing the Opp.party to demarcate the corner plot No.7D/1393 (30' x 50') in Sector-9, which has already been allotted in favour of the petitioner on 9.5.95 and handover the free and vacant possession of the said plot to the petitioner within the reasonable period which may be fixed by this Hon'ble Court;”

3. Brief facts involving the claim is based, on bringing out a brochure the Petitioner an Advocate applied for a plot in the C.D.A. area and got an allotment under Reg. No.34-D.O-565-38 on acceptance of Rs.6,100/- including Rs.6,000/- as first installment. For allotment of 'D' category plot he was required to pay the balance amount in 16 installments on specific dates as clearly indicated therein and as mentioned by the Petitioner himself in Annexure-8. Annexure-8 at running page 20 of the writ petition discloses the date of payment of all 16 installments involving a sum of Rs.1,912/- in each installment. Making it clear that when the Petitioner paid the 1st installment on 9.01.1989 he, however, failed in paying the rest 16 installments on the date required to be paid as per his own statement at Annexure-8. Undisputedly out of balance installments Petitioner paid a sum of Rs.15,000/- only on 31.10.1995 and a further sum of Rs.11,770/- as per his own document vide Annexure-8. Undisputedly the Petitioner clears the entire due only on 9.01.1996. Majority of installments remained unpaid for several years. Even assuming that the Petitioner has cleared the whole dues by 9.01.1996 as against clearing the dues in between 30.09.1989 till 31.03.1993, there is admitted delay in clearing the installment. There is no dispute that the C.D.A authority is entitled to interest as well as damage on the defaulted amount. Petitioner has no escape for the C.D.A's entitlement. It is surprise to note that the Petitioner even did not volunteer to bring the conditions binding the parties by producing the agreement between the parties. It is only through counter affidavit the Opposite Parties brought the condition applied to both the parties vide clause-5 of the brochure being quoted at para-6 of the counter affidavit and petitioner cannot escape such condition. Further both parties are also bound by clause-10 contained therein. Once the Petitioner himself committed breach of

conditions, he is not justified in claiming otherwise. In the event the Petitioner had any dispute on allotment, nothing prevented the Petitioner to have his claim of damage but on establishing any such claim by way of proper claim. It be made here clear that once the Petitioner on his own deposited the initial deposit on 9.01.1989 vide Annexure-1 it is too late to claim that the Petitioner was unaware of conditions in default of payment of balance installments. Petitioner's claim here fails solely on account of his own disclosures form Annexure-8 itself and there is admitted failure in clearing all the 16 installments in time and there is gross delay of almost 6 to 7 years in clearing the installments and the Petitioner automatically invited the application of penal interest on his own failure.

4. Considering the above and as this Court finds, there is already handing over of plot involved to the Petitioner and there is no ground to interfere in the demand of interest by the Development Authority, this Court directs the Petitioner to clear the whole outstanding involving Annexures-4 & 6 respectively at least within four weeks from the date of this order. This Court here also observes, since the plot is already handed over to the Petitioner on the Petitioner's depositing the amount under demand, there should not be any obstruction in approval of plan involving construction thereon, if any.

5. The writ petition thus stands disposed of.

(Biswanath Rath)
Judge