

**ORISSA HIGH COURT : C U T T A C K**

**W.P.(C) No.42 of 2009**

*An application under Article 226 & 227 of  
the Constitution of India, 1950*

***Dr. Debasish Samal***

***: Petitioner***

***-Versus-***

***State of Orissa & Ors.***

***: Opposite Parties***

For Petitioner

: M/s. M.K. Mohanty,  
T. Pradhan,  
M.R. Pradhan

For Opposite Party No.1

: Mr. S. Ghose,  
Addl. Govt. Adv.

For Opposite Party Nos.2 & 3

: M/s. S. Swain,  
S.C. Panda,  
N.K. Behera,  
P.K. Mishra,  
B.R. Rath

**J U D G M E N T**

**CORAM :  
JUSTICE BISWANATH RATH**

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Date of hearing & judgment : 19.12.2022

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1. Heard the submissions of learned counsel for respective parties.
2. This Writ Petition involves the following prayer:-

“The petitioner most respectfully prays that the Hon’ble Court may be graciously pleased to allow the writ petition, issue a writ or direction in the nature of

certiorari or any other appropriate writ or direction quashing Letter No.26273 dated 20.12.2008 of opposite party No.4 under Annexure-8, and further this Hon'ble Court be pleased to issue a writ or direction in the nature of mandamus or any other appropriate writ or direction to the opposite parties to allot a 'B' category Commercial-cum-Residential Plot of land in favour of the petitioner in Section-13 of the Cuttack Development Authority and pass such other or further order or orders as are deemed just and proper."

3. This writ petition has been filed seeking a direction for quashing the communication at Annexure-8.

4. Taking this Court to the pleadings made in this writ petition and the development taken place in the matter of allotment of 'B' category Residential-cum-Commercial plot in Sector-13 area and drawing the attention of this Court to the order at Annexure-1 Mr. Mohanty, learned counsel for Petitioner attempted to establish that for the disclosure in page 11 at clause 2.5 therein, there was an attempt by the Development authority for allotment of Residential-cum-Commercial plot in 'B' category in Sector-13. It is also brought to the notice of this Court through disclosures at page 21 of the brief that the Development Authority has prescribed the rate inter alia making the payment schedule involving the categories of land involved therein. It is claimed through Annexures-2 & 3 that following the brochure brought by the Development Authority vide Annexure-1 the Petitioner being interested to buy a 'B' category plot made his application on 1.03.2004 Annexure-2 along with deposit of required sum of Rs.1,50,000/- also vide Annexure-3 as available at page 23 of the brief. Mr. Mohanty, learned counsel for Petitioner claims that following the application of the Petitioner and deposit being made, the Development Authority vide Annexure-4

acknowledging the receipt of amount provided a registration number to the Petitioner on 1.03.2004. Mr. Mohanty, learned counsel for Petitioner taking this Court to the order at Annexure-5 claims that there was showing of progress to the action involving allotment of land. It is urged, by the communication dated 29.07.2004 vide Annexure-5 the Petitioner was called for to attend the Office for drawing of lot on 13.08.2004 at 11.00AM in the Office of the C.D.A., Arunodaya Bhawan, Link Road, Cuttack. Taking this Court to the pleadings in the writ petition it is alleged that even though the Petitioner participated in the lottery process but there has been no communication to the Petitioner at least for nearly a period of three years. However surprisingly by the communication dated 5.02.2007 vide Annexure-6 the Petitioner was intimated about the decision in the matter of allotment of a plot subject to the Petitioner's agreeing to pay the enhanced cost disclosed therein. Through Annexure-7 Mr. Mohanty, learned counsel for Petitioner claims that under the impression that allotment of plot in Sector 13 in terms of the brochure at Annexure-1 is still possible, the Petitioner submitted his consent vide Annexure-7 at running page 27 of the brief. It is here alleged that even after giving the consent vide Annexure-7 to the asking of the Development Authority vide Annexure-6, the authority remained silent for long period and finally vide Annexure-8 the Development Authority was pleased to decline the request of the Petitioner and thereby attempted to refund the amount of Rs.1,50,000/- deposited by the Petitioner. Petitioner through the pleadings claims decline to receipt such amount, however, was under protest. Taking this Court to the counter pleadings Mr. Mohanty, learned counsel for Petitioner alleges that in filing counter the Development Authority is attempting to create a new case of non-selection of the Petitioner in the fresh consideration process. Following

the development through Annexure-1 Mr. Mohanty, learned counsel for Petitioner, therefore, claims that there is no involvement of the Petitioner at all in the consideration process and the counter claim is absolutely a concocted one. It is thereafter taking this Court to the communication at Annexure-6 Mr. Mohanty, learned counsel for Petitioner claims that unless the Development Authority was desirous to allot a plot in Sector 13 area to the Petitioner following the brochure at Annexure-1, there was no room for the Development Authority to send a communication vide Annexure-8 to the Petitioner thereby giving a further offer to the Petitioner, but however, at a higher rate. On the premises that the Petitioner was even willing to accept the offer at a higher rate, Mr. Mohanty, learned counsel for Petitioner thus requests this Court for issuing a writ of mandamus against the Development Authority in the matter of allotment of a 'B' category plot pursuant to the brochure at Annexure-1.

5. Mr. Swain, learned Counsel for the Development Authority while not denying to the aspect of submission of application by the Petitioner for allotment of a 'B' category plot in Sector 13 area pursuant to the brochure at Annexure-1 and also while not denying to the claim of the Petitioner that the Petitioner had not only made application pursuant to the call through the brochure at Annexure-1 along with deposit and that too the Petitioner has given consent for allotment of a piece of land vide Annexure-6, however reading through the counter averments in paragraph no.5 submits that it is not a case that the Petitioner's claim was not considered in the consideration process pursuant to brochure at Annexure-1 involving allotment of 'B' category Residential-cum-Commercial plot, however, there is even an attempt to involve the

Petitioner in the consideration process. The outcome indicates that 11 candidates succeeded and the Petitioner failed in lottery process pursuant to the follow up action involving brochure at Annexure-1. It is, in the above background of the matter though it is admitted that there was no immediate refund of the amount deposited by the Petitioner on his remaining unsuccessful in his attempt pursuant to the brochure at Annexure-1, however, an attempt was made to refund the same after three years. For the Petitioner not succeeding in the lottery process Mr. Swain, learned counsel for the Development Authority claims that the Petitioner may maximum deserve to the refund of the amount with interest and cost, if any, as deem fit and proper. In the process Mr. Swain, learned Counsel for the Development Authority claims for dismissal of the Writ Petition.

6. Considering the rival contentions of the parties and keeping in view the claim and counter claim of the respective counsel, this Court finds, there is no dispute in the Bar that the brochure vide Annexure-1 was floated calling for applications from the intending candidates desirous of purchasing 'B' category Residential-cum-Commercial plot and that too the Petitioner was an applicant from amongst 22 applicants already there and that the Petitioner was called to attend a lottery process to find-out 11 successful candidates amongst total 22 candidates. This Court, however, finds, there was no attempt in intimating the Petitioner to bring an application for his remaining successful. It is at this stage of the matter Mr. Mohanty, learned counsel for Petitioner gave much stress to support his case through Annexure-6 and submitted that for the development through Annexure-6 the issue involving the Petitioner through Annexure-1 was kept laying resulting providing opportunity to the Petitioner vide Annexure-6. This Court here takes into account the counter averments

clearly disclosing that the Petitioner failed in the lottery process pursuant to the brochure vide Annexure-1. This Court finds, the contents in Annexure-6 reads as follows:-

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By Regd. Post

Cuttack Development Authority,  
Arunodaya Bhawan : Link Road,

CUTTACK-12.

No.2726/CDA, Dt.5.2.07

From

The Secretary,  
Cuttack Development Authority, Cuttack.

To

Sri /Smt. Dr. Debashish Samal (MS Surgery) Gen.  
C/o. Rabindranath Samal, C.A. PADV,  
Janjirimangala, Cuttack-9

Sub : Allotment of plot in Sector-13 of Bidanasi Project  
Area.

Ref : Your Regd. No.34 B-607-Ref.&Dt.1.3.04.

Sir/Madam,

With reference to your application far allotment of 'B' category / residential-cum-Commercial plot no outright payment basis, I am directed to say that in the meantime the Authority has undertaken the infrastructural development works in Sector-13 and the plots are ready for delivery of possession in favour of the prospective allottees. As per the terms and conditions governing the allotment, the provisional cost of the plot has been revised and fixed @ Rs.278/- per sft. As a result of which the tentative cost of the plot comes to Rs.1112000/- (Rupees Eleven lakh twelve thousand).

In view of the above, you are requested to intimate this office within 10 days from the date of issue of this letter expressing your willingness if any, to accept the allotment on the above terms, so as to enable us to consider allotment of plot in your favour. If no reply is received by the Authority within the stipulated period, it

will be presumed that you are not interested for allotment of the plot on the above terms and conditions. In that event, you may apply for refund of initial deposit on submission of original money receipt showing the deposit, if any, made by you.

Yours faithfully,

Secretary”

7. Reading the first part of the contents in Annexure-6 this Court finds, the authority by such communication has a clear indication that they have undertaken infrastructural development works in Sector 13 and in the process the authority is ready for delivery of possession of some plots in favour of prospective allottees and creating an opportunity to the Petitioner. However, for the terms and conditions governing the allotment, the provisional costs of the plot has been revised and fixed and thereby the Petitioner was instructed to have his consent on the rate prescribed therein for being allotted with a plot in such developed area. This Court here considering the claim of Mr. Mohanty, learned counsel for Petitioner that the indication to the Petitioner through Annexure-6 presupposes that the case of the Petitioner was kept alive and there was no decision on the claim of the Petitioner at Annexure-2, finds no strength in the survivability of the claim of the Petitioner vis-à-vis distribution of the land vide Annexure-1. Communication vide Annexure-6 at maximum be construed to be an indication intimating desire of the Development Authority for allotting the Petitioner a plot developed in the meantime in Sector-13 completely separate from brochure vide Annexure-1. Considering the further indication through Annexure-8 this Court finds, there is no pleading as to the development on the consent of the parties either being rejected or allowed. There is even no indication whether the case of the Petitioner in terms of his consent vide Annexure-7 pursuant to

the offer vide Annexure-6 has been considered or not. This writ, however, did not involve such issue. It is at this stage of the matter considering the submission of Mr. Mohanty, learned counsel for Petitioner on the interim protection aspect, this Court finds, by order dated 10.02.2009 a Division Bench of this Court while entertaining the Writ Petition, in disposal of the miscellaneous case therein came to pass the following order:

**“W.P.(C) No.42 of 2009 & Misc. Case No.1355 of 2009**

On the request of the learned Addl. Government Advocate, list this matter on 17<sup>th</sup> of February, 2009.

As an interim measure, it is directed that one of the ‘B’ category Commercial-cum-Residential plots available under Sl. No.16 in Sector-13 of the Cuttack Development Authority shall be kept apart and shall not be allotted to anyone without leave of this Court, if the same has not been allotted so far.”

8. This Court here taking into account the plea of the Development Authority through their counter affidavit more particularly in paragraph no.5 therein finds, the Petitioner failed in the consideration process involving 22 number of applicants in the lottery process taken place on 13.08.2004 and the interim order was passed on 10.02.2009. This Court, therefore, observes, the order dated 10.02.2009 becomes innocuous for no land in ‘B’ category in Sector 13 following the brochure at Annexure-1 was available at the time of passing of interim order. In the circumstance this Court finds, the relief claimed by the Petitioner is not acceptable. In the process while turning down the relief claimed by the Petitioner seeking quashing of the order at Annexure-8, this Court observes, if the Petitioner is so advised, may bring the dispute involving Annexure-6 by way of a fresh application provided, however, such opportunity is still alive. At the same time considering the submission of Mr. Mohanty, learned counsel for Petitioner that the Petitioner declined to receive the

amount of Rs.1,50,000/- returned by the Development Authority, this Court observes, in the event the refund amount is still laying with the Development Authority, the said amount be refunded to the Petitioner alongwith interest @ 8% per annum all through by sending a Bank draft of the Nationalized Bank or a Bank in operation with the Development Authority, at least within a period of fifteen days from the date of communication of this judgment.

9. The Writ Petition stands dismissed, but however, with above observation. However, there is no order as to costs.

Orissa High Court, Cuttack.  
The 19<sup>th</sup> day of December, 2022//  
Ayaskanta Jena, Senior Stenographer

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(*Biswanath Rath*)  
*Judge*

