

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No.2729 of 2022

Rida Infra Pvt. Ltd. Company, ***Petitioner(s)***
Bhubaneswar Mr.A.Mohanty,
Senior Advocate

-versus-

State of Odisha & Ors. ***Opposite Party(s)***
Mr.P.K.Mohanty,
Senior Advocate

CORAM:
JUSTICE BISWANATH RATH

ORDER
18.04.2022

Order No.

12. 1. Heard the submission of Mr.Ashok Mohanty, learned Senior Counsel and Mr. P.K.Mohanty, learned Senior Counsel for petitioner as well as the Bhubaneswar Municipal Corporation, Bhubaneswar respectively.
2. There already involved three writ petitions. W.P.(C) No.31619 of 2021 involving the pendency of application for approval of revise plan initially filed before the Development Authority but by virtue of transfer of jurisdiction now pending consideration of Municipal Corporation. W.P.(C) No.13657 of 2021 involves a notice dated 25.03.2021 by the Development Authority involving a show cause notice in rejection of the revise plan granted in favour of the petitioner in the meantime. The dispute involves once the jurisdiction of the building shifted to the Municipal Corporation, the Development Authority has no jurisdiction in remanding such show cause notice. The third petition came to be filed by way of W.P.(C) No.2729 of 2022. Here this writ petition involves deciding proceeding under

Section 91 of the O.D.A. Act against the petitioner and an appeal filed by the petitioner has also come to be dismissed.

3. In course of argument taking this court to the variety of documents, it has been demonstrated that in the initial stage issuing of notice to show cause appeared under Section 91 of O.D.A. Act issued by the development Authority. There was in fact, no showing of deviation. Be that as it may, in course of undertaking of the proceeding, there has been also indication for calling of Amin Report. It is alleged by Mr.A.Mohanty, learned Senior Counsel that it is even not clear as to whether a final report is received or not. Taking to the further documents an attempt is also made by Mr. A.Mohanty, learned Senior Counsel that in the pendency of such consideration, in spite of filing of an application to regularize the deviation, if any, on compounding and in spite of clearing of one of the obstruction in the basement by undertaking vacation of the premises by the State Bank of India, there has been restoration of the plan approvals which is alleged to have not been taken into consideration by the authorities. It is also alleged that there has been development by way of bringing in violation even after disposal of the original proceeding by the Competent Authority being taken note in the appeal proceeding. It is also alleged that there has been no proper consideration and no appropriate opportunity of the petitioner in undertaking statutory exercise by a competent authority. On the other hand Mr. P.Mohanty, learned Senior Counsel, however in his objection taking this Court back to the show cause notice and the Amin report contended the petitioner herein not only involved in deviating the first plan approval but there is also involvement of second plan approval by way of revise approvals obtained by the petitioner. Mr. P.Mohanty , learned Senior Counsel also contended even on his own submission of the petitioner,

there has been clearing of some deviation by way of vacating the State Bank of India occupied portions from the basement. It is in the above view of the matter, there is attempt by Municipal Corporation to object the move of the petitioner.

4. Considering the rival contentions of the parties, this Court in deciding of W.P.(C) No.2729 of 2022, this Court finds while there is no proper response to the allegations of the petitioner that there has been no show cause attempt mentioning deviation either in the first plan approval or in the revise plan approvals. Further this Court also finds there is specific averments with affidavit that there is no clear of indication on deviation. In the meantime, by way of clearing the basement premises in clearing the occupation of the State Bank of India appears to not have been considered by either authority already involved. Further undisputedly there is also pendency of an application for regularization of deviation, if any at the instance of petitioner.

5. Reading through the impugned order of the original authorities, this Court finds there is clear recording of pendency of an application for regularization of plan deviation at the instance of the petitioner. Further proceeding at the initial stage also does not make it clear as to final report of the Amin has been involved or not. In the above background and for the building has already come into existence, even though this Court does not approved any deviation however for the allegation and counter of the opposite parties, this Court finds there should be complete adjudication of the allegation involving herein also simultaneously keeping in view the application for regularization of deviation pending at the instance of the petitioner. It is keeping the above in view this Court interfering in the appeal order as well as original order dated 27.07.2021 Page-43 in UAP case No.10 of 2021 and the appeal order at Annexure-8, this Court remitted the matter

back to the Court of OSD, ODA Court, Bhubaneswar Municipal Corporation, Bhubaneswar for re-adjudication of UAP Case No.10 of 2021. In the remand proceeding as first step the Bhubaneswar Municipal Corporation shall issue a fresh show cause notice summarizing the detail deviations taken place and alleged to have been continuing with demand of composite response. Upon receipt of the notice to show cause, the petitioner will file its response at least within a period of two weeks. After receipt of the response from the petitioner the OSD shall fix a date for inquiry by appropriate Amin in the involvement of both the parties which reports should also to be submitted within a period of two weeks further.

6. This Court directs the petitioner as well as the party in contest to cooperate in such inquiry. After the report of the Amin is submitted, the OSD shall fix a date of argument and dispose of the proceeding by providing/giving of opportunity to all parties. The entire proceeding shall be concluded within a period of four months till then there shall be maintenance of status quo by both parties involving the dispute structure. If OSD feels assistance of the Planning Officer of the Corporation he may involve the planning officer. This Court while disposing the above writ petition, finds the grievance of petitioner in the other two W.P.(C) No.31619 of 2021 and W.P.(C) No.13657 of 2021 are already met through the above order and shall disposed of both the above writ petition recording no cause of action surviving therein. It is the responsibility of the petitioner to serve copy of this order on the Officer on special duty involved at least within a period of one week hence.

(Biswanath Rath)
Judge