

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.9852 Of 2013
(Through video conferencing mode)

Abhiram Rout

....

Petitioner

Mr. Partha S. Nayak, Advocate.

-versus-

***The Executive Officer, Talcher
Municipality***

....

Opposite Party

Sk. Zafarulla, Advocate

CORAM: JUSTICE ARINDAM SINHA

Order
No.

ORDER
11.01.2022

15.

1. Mr. Nayak, learned advocate appears on behalf of petitioner and submits, by notice dated 1st January, 2002 applications were invited by Municipal Council, Talcher for allotment of shop rooms. His client wanted allotment of shop room under serial no.5 in clause-11 of the notice. His client made the required deposit of Rs.92,000/-. Though there was allotment by communication dated 17th July, 2002, his client did not actually get the shop room. Hence, relief sought is issuance of writ of Mandamus directing the municipality to proceed with construction of shop room no.59, Hatatota Market complex and hand over the same to petitioner within stipulated time.

2. Mr. Zafarulla, learned advocate appears on behalf of the Municipal Council. He submits with reference to paragraph 3 to 6 in the counter that the allotment was cancelled. Petitioner was informed

of the cancellation by notice dated 24th February, 2012. Petitioner deliberately avoided collecting refund of his deposit.

3. Paragraphs 3 to 6 in the counter are reproduced below.

“3. That it is respectfully submitted that the aforesaid writ application has been filed by the petitioner to provide him shop room No.59 at Hatatota Market Complex under Talchet Municipality is not maintainable, as because the petitioner has deposited Rs.92,000/- before the Talcher Municipality for the purpose of security deposit to avail the proposed shop room 18' x12' as per the sketch Map. There was an understanding between the petitioner with Talcher Municipality Council that petitioner has to construct shop room at his own cost.

4. That it is respectfully submitted that the petitioner has failed to construct the shop room in his own cost and accordingly Talcher Municipality Counsel vide resolution No.6 dated 27.01.2012 at page 15 (clause-p) cancelled the lease allotment granted in favor of the petitioner for the proposed shop room.

*The attested true Xerox copy of Resolution dated 27.01.2012 passed by the Talcher Municipality Counsel is filed herewith as **ANNEXURE-A**.*

5. That it is respectfully submitted that the cancellation of allotted lease was also duly intimated by the O.P. to the petitioner on 24.02.2012 vide Notice No.377(K) and the petitioner received the said cancellation order on 25.02.2012 without any objection.

The attested true Xerox copy of the Notice No.377(K)

*dated 24.02.2012 and it's back side acknowledgement of the petitioner on 25.02.12 are filed herewith as **ANNEXURE-B Series.***

6. That it is respectfully submitted that the petitioner has avoided to receive the letter No.1901 dated 25.05.2013 in which he was instructed to receive his security amount."

4. Court has perused said notice dated 1st January, 2002. It clearly says applications were invited for allotment of shop room. It also talked about provisional and final allotment. Rent shall be charged from date of final allotment of shop room.

5. Petitioner has relied upon allotment order dated 17th July, 2002. It says as follows.

"Allotment order of Shop room of Hatatota Market.

The newly constructed market shop room No. 59 measuring size 18 x 12 as per map at Hatatota Market building is allotted in favour of Sri Abhiram Rout S/o Musa Rout village Biradar Pada Talcher.

The shop room will be handed over after finishing of the above said shop room."

(emphasis supplied)

6. It appears from extract of paragraphs 3 to 6 in the counter that thereafter the council decided to refer to the shop room as 'proposed' shop room. Petitioner cannot be faulted for not toeing the line. The council has the deposit but did not make available newly constructed shop room to petitioner. As such, it is irrelevant that the council cancelled the allotment.

7. The writ petition succeeds. Opposite party is directed to forthwith construct shop room no.59 at Hatatota Market Complex and

hand over same to petitioner within six weeks from communication of this order. Final allotment is to be made on handing over the shop room. Petitioner thereupon will pay the rent.

8. The writ petition is disposed of.

(Arindam Sinha)
Judge

Sks

