

ORISSA HIGH COURT : C U T T A C K

W.P.(C) No.5274 of 2022

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

Nabakishore Naik

: Petitioner(s)

-Versus-

State of Odisha & Ors.

: Opposite Party(s)

For Petitioner

: Ms. D. Mahapatra,
Advocate

For the Opposite Party Nos.1 & 4

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

For Opposite Party Nos.2 & 3

: M/s. D. Mohapatra,
M.R. Pradhan,
J. Barik,
P.K. Singh Deo

J U D G M E N T

CORAM :

JUSTICE BISWANATH RATH

Date of hearing & Judgment : 19.07.2022

1. This writ petition involves the following prayer:-

“It is therefore prayed that this Hon’ble Court may graciously be pleased to issue Rule Nisi to the opposite parties and if the opposite parties will fail to

show cause or shown insufficient cause, made the said Rule absolute by directing the opposite parties to deliver possession of the plot in question to the petitioner and further be pleased to quash para-5 of the Resolution dated 30.01.2015 under Annexure-10 and further be pleased to pass any other order/ orders as may be deemed fit and proper.”

2. Taking this Court to the pleadings made in the writ petition and the show cause notice at Annexure-4 appears to have been attended to by the Petitioner through his response vide Annexure-5, Ms. Mohapatra, learned counsel for the Petitioner submitted that there is already exception of allottees under the discretionary quota under one plot/house/flat through fair means and by following the prescribed procedure and provisions for such transfer, from being undertaken for consideration for cancellation of such allotment. Ms. Mohapatra, learned counsel for the Petitioner referring to the exclusion of this particular category from the undertaking of working out raised through the recommendation involving the Task Force, submitted that there is no question of issuing of any show cause depending on the resolution vide Annexure-10 as well as Annexure-A/4. Reading through the exclusion particularly towards end of the sub-clause 7 of clause 48 of the recommendation in the report of the Task Force at Annexure-9, Ms. Mohapatra, learned counsel for the Petitioner submitted that for there is clear exclusion of the particular category, undertaking of exercise, if any, following the resolution at Annexure-10 and Annexure-A/4 should also exclude the Petitioner as the Petitioner’s case is already excluded from such exercise.

It is, in the circumstance, Ms. Mohapatra, learned counsel for the Petitioner submitted that issuing of show cause notice to the Petitioner at Annexure-4 itself is bad in law. Taking this Court to the pleadings in the writ petition, Ms. Mohapatra, learned counsel for the Petitioner made an

attempt to establish that here the Petitioner involved is a single allottee and there is no allegation as of now involving single allottee through discretionary quota like that of the Petitioner. In this contingency Ms. Mohapatra, learned counsel for the Petitioner sought for setting aside of the show cause notice at Annexure-4 for the same being contrary to the Task Force report and also for wrong application of the resolution at Annexure-10 even the communication vide Annexure-A/4.

3. To the contrary Mr. Ghose, learned State Counsel for the contesting State-Opposite Parties while not disputing existence of the Task Force report at Annexure-9 and not disputing the recommendations of the Task Force therein, also have no dispute with regard to the benefit claimed by the Petitioner in the last paragraph of Sub-clause 7 of Clause-48 therein and the exclusion thereof. Mr. Ghose, learned State Counsel, however, taking this Court to the resolution at Annexure-10 submitted that this resolution was issued in framing a mechanism in the matter of implementation of the report of the Task Force. Reading through the Clause-10 therein Mr. Ghose, learned State contended that for the provision in the resolution at Annexure-10, the General Administration Department was to work-out the modalities of implementation of the Task Force recommendation in a time bound manner in consultation with the Law Department as well as the Advocate General. It is on the undertaking of further exercise through counter affidavit of Opposite Party No.4, Mr. Ghose, learned State Counsel referring to Annexure-A/4 therein more particularly at page 45 of the brief claimed that there has been finalization of the modalities for implementation of the recommendation of the Task Force vide Annexure-A/4. Reading through the pleadings in paragraph no.9 in the counter affidavit of the Opposite Party No.4 Mr. Ghose, learned State Counsel advanced the case of the

General Administration Department that for the Task Force report at Sub-clause 7 of Clause 48 there is already instruction not to cancel the allotment in respect of the allottees getting only one plot/house/flat through fair means and by following the prescribed procedure and provisions. Mr. Ghose, learned State Counsel opposing the claim of the Petitioner on the premises that ultimately the case is to be decided by the Cuttack Development Authorities taking into account the modalities of implementation of the recommendation of the Task Force, submitted that the Development Authority is ultimately bound by the recommendation of the Task Force Committee and the direction contained in the resolution at Annexure-10 and communication at Annexure-A/4.

4. Mr. Mohapatra, learned counsel for the Cuttack Development Authority in his attempt to oppose the claim of the Petitioner reading through the modalities finally came in the implementation of the recommendation of the Task Force, referring to Annexure-10 submitted that for the prescription in Annexure-10 the parties are bound by the modalities framed by the competent authority and the Development Authority is only an implementing authority.

5. Considering the rival contentions of the parties, this Court finds, there is no dispute that the Petitioner's allotment falls in the category of allotment of one plot in the discretionary quota. It may not be out of place to mention that the entire Task Force report involves discretionary quota. Involving several aspects including that of single allotment finally the Task Force submitted its recommendation. This Court here finds, the Task Force made the following recommendations through clause-48:-

“RECOMMENDATIONS:

48. In light of the above, but in clear regard and exercise of its mandate, the Task Force makes the following general and specific recommendations which conform to the prescribed schematic conditions and the legal provisions including the law laid down by

the Hon'ble Apex Court in relation to the exercise of powers by a statutory authority, including under the discretionary quota:

(1) All such plots allotted by Government in GA Department, BDA, CDA and OSHB should be resumed, if the allottees have failed to construct houses within stipulated five years.

(2) Multiple allotments in favour of individuals or families can be listed out in two ways i.e. (i) multiple allotments done after 01.01.1995 by BDA and OSHB in Bhubaneswar, and (ii) CDA and OSHB in Cuttack. The comprehensive details of beneficiaries of multiple allotments, however, cannot be worked out without verifying the allotment database of G.A. Department, BDA, and OSHB for Bhubaneswar and CDA and OSHB for Cuttack. The Task Force has prepared the lists of multiple allottees on the basis of allotments after 01.01.1995 (Authority-wise), purely based on reports by BDA, CDA and OSHB, at Annexures- I-A to I-D. These lists are culled out from whenever the addresses reported in the Affidavit/application seeking another allotment were of the respective Municipal area or Planned Area of Bhubaneswar or Cuttack, as the case may be. Instances of false Affidavits/applications could not be addressed. The lists are indicative and omission of some names is not ruled out considering variation in the reports furnished by the concerned agencies.

The Task Force recommends that BDA, OSHB and GA Department in conjunction with each other should take up another exercise to obtain comprehensive details including the allotments made prior to 01.01.1995 to know the exact extent of individuals and families who have taken undue benefits of multiple allotments against the schematic provisions. Similar exercise is recommended for Cuttack by CDA and OSHB together.

The Task Force recommends that additional units allotted to ineligible individuals / families should be resumed. Beneficiaries who submitted false Affidavits/Declarations to get allotments should also be proceeded against under the relevant provisions of law. The plots/houses/flats allotted to them should either be put to auction or allotted to deserving applicants through lottery. For this purpose also, the lists in **Annexures I-A to I-D** may not be considered complete as it has been prepared on the basis of the limited information submitted by BDA, CDA and OSHB. Further independent investigation/ audit is necessary to quantify the actual number of multiple allotments of plots/ houses/ flats by GA Department, BDA, CDA and OSHB against Affidavits / applications, both false or not false.

(3) There are many instances of allotments before launching of a scheme and in a good number of cases, allotments have been made before the last date fixed for receipt of applications. All such allotments cannot be without ulterior motives and unwanted considerations. The Task Force recommends cancellation of all such allotments. **Annexures II-A to II-C** contain names of those

who got such allotments before launching of schemes. This list, drawn on the basis of limited information before the Task Force, may also be deemed as an initial list for taking suitable actions.

(4) State Government vide Notification dated 03.05.1995 appointed the Minister of State, U.D. as Chairman of Bhubaneswar Development Authority with effect from 20.03.1995. A similar notification was issued for appointment of Chairman, Vice-Chairman, CDA. By virtue of these notifications, Sri Amar Pradhan, Hon'ble Minister, H&UD functioned as Chairman, BDA, CDA from 20.03.1995 to 20.03.1998 and Sri Jagannath Rout, from 24.08.1998 to 21.08.1999. Sri Bhupinder Singh became Minister, Information & Public Relations and Urban Development with effect from 22.02.1999 to 24.03.2000. Sri Samir Dey worked as Minister, Urban Development from 05.03.2002 to 17.05.2004. The Notifications containing appointment of Minister of State (Independent Charge) as Chairman, BDA and CDA were not revised to appoint Sri Bhupindar Singh and Sri Sameer Dey for their respective appointment as Chairperson of BDA and CDA. The allotments under discretionary quota or otherwise approved by Sri Bhupinder Singh and Sri Samir Dey from 22.02.1999 to 17.05.2004 therefore, are illegal/ *ab initio* void. The Task Force, therefore, recommends cancellation of all such allotments. Legally speaking, the appointment to the post of Chairman being at the pleasure of Government under Sub Section (8), of Section-3, ODA Act, 1982, appointment to the post of Chairman BDA/CDA needed to be made by name.

All the allotments made by Minister, H&UD acting as Chairman, CDA from 1999-2004 and as Chairman, BDA from 2000-04 including under the DQ being illegal should be resumed as the Ministers concerned had not been appointed as Chairpersons of the concerned Authorities under the relevant Law and Rules.

(5) The information in relation to discretionary allotment submitted by the CDA, BDA and OSHB varies. The number extracted from the details of allottees given in the prescribed format shows that the Chairman, BDA has allotted 803 units (**Annexure-III-A**) from the discretionary quota from 01.01.1995 onwards. Information extracted from the details of allottees given in the prescribed format by CDA reveals allotment of 921 units from the discretionary quota of Chairman during the period under reference (**Annexure- III-B**). The number of discretionary units allotted as extracted from the information given in relation to allotment by OSHB is 67 (**Annexure III-C**).

The reasons or grounds for allotment under discretionary quota have not been specified in a single case placed before the Task Force for examination. The beneficiaries of such allotments appear to be people well connected and non-deserving. Considering the law laid down by the Hon'ble Apex Court, the Task Force recommends that all the discretionary allotments made after 01.01.1995 should be cancelled as such allotments have invariably

given undue benefits to undeserving persons. Many well placed/ connected individuals have received discretionary allotments more than once, from BDA, CDA and OSHB. **Annexures- IV-A to C)** indicate the names of the beneficiaries who have received multiple allotments under discretionary quota from one agency or more . Since the lists of DQ allottees have been prepared on the basis of limited information submitted by BDA, CDA and OSHB, further independent investigation/ audit is recommended to be undertaken to find out the actual size of discretionary allotments including those not placed before the Task Force for discovery.”

(7) As reported by the BDA, CDA and OSHB, a large number of allotments have been transferred to the third parties. The number of units transferred by BDA during the period under reference i.e. from 01.01.1995 to 31.07.2014 is 1038. CDA has allowed 2332 third party transfers, whereas the number of such transfers permitted by OSHB is 405. **Annexures V-A to V-C** contain the details of pre and post possession transfers. Barring exceptions (on the ground of death etc.), the only conclusion that can be drawn from such large scale third party transfers is that the allottees did not merit their allotment and they made commercial gains through such transactions in connivance with BDA/CDA/OSHB officials. The role played by intermediaries/ brokers, particularly in CDA needs to be probed independently considering that about 30% of their allotments had been transferred to third parties in apparent violation of brochure conditions. In any case, the lessee i.e. BDA, CDA and OSHB needed to take approval of GA Department / Revenue & Disaster Management Department i.e. the lessors, for allowing third party transfers as per the legal provisions.

Considering the large scale pre and post possession transfers of plots in CDA, as well as in BDA, albeit to a lesser extent, the role of brokers in connivance with the officials concerned needs to be independently probed in a time-bound manner to prevent festering of this malaise henceforth.

There are beneficiaries who got allotment under discretionary quota for a second time after transferring their earlier discretionary quota allotments. The Task Force recommends cancellation of all such pre-possession transfers except in the event of death of the allottee, and fixation of accountability against officials who granted permission for such transfers. As regards post-possession transfers, it is recommended that such transfers by discretionary quota allottees and multiple allottees should also be cancelled.

However, it is suggested that the cancellation may not be done in respect of an allottee getting only one plot/house/flat through fair means and by following the prescribed procedure and provisions for such transfer.”

6. For the relevancy of the recommendation involved herein and for the nature of litigations involved, this Court gives special attachment to the Sub-clause 7 of Clause 48 of the recommendation of the Task Force, which again reads as follows:-

“(7) As reported by the BDA, CDA and OSHB, a large number of allotments have been transferred to the third parties. The number of units transferred by BDA during the period under reference i.e. from 01.01.1995 to 31.07.2014 is 1038. CDA has allowed 2332 third party transfers, whereas the number of such transfers permitted by OSHB is 405. **Annexures V-A to V-C** contain the details of pre and post possession transfers. Barring exceptions (on the ground of death etc.), the only conclusion that can be drawn from such large scale third party transfers is that the allottees did not merit their allotment and they made commercial gains through such transactions in connivance with BDA/CDA/OSHB officials. The role played by intermediaries/brokers, particularly in CDA needs to be probed independently considering that about 30% of their allotments had been transferred to third parties in apparent violation of brochure conditions. In any case, the lessee i.e. BDA, CDA and OSHB needed to take approval of GA Department / Revenue & Disaster Management Department i.e. the lessors, for allowing third party transfers as per the legal provisions.

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However, it is suggested that the cancellation may not be done in respect of an allottee getting only one plot/house/flat through fair means and by following the prescribed procedure and provisions for such transfer.”

7. Considering the rival contentions of the parties and the particularly keeping in view the submissions made by Mr. Ghose, learned State Counsel and Mr. Mohapatra, learned counsel for the Cuttack

Development Authority, through Annexure-10 & A/4 respectively, this Court reading both the resolution finds, the resolution at Annexure-10 as well as Annexure-A/4 bring modalities to work-out the recommendation of the Task Force in Annexure-10. In the first instance the State Government in General Administration Department came forward with the modalities for working-out the recommendation, however, the Clause 10 therein requires the General Administration Department to work out the modalities for implementation of the Task Force after consultation with the Law Department and the Advocate General. It appears, pursuant to such rider in Annexure-10, Annexure-A/4 has been brought out looking to the resolution at Annexure-10. This Court finds, these are mere modalities to implement the recommendation of the Task Force. This Court at the cost of repetition finds, the Sub-clause 7 of Clause 48 the recommendation already excluded the single allottees like that of the Petitioner and the resolution or the communication at Annexure-A/4 has nothing to do with the exclusion made in the recommendation of the Task Force as there is no involvement of any restriction thereby through the Task Force even.

8. Coming back to the challenge of the Petitioner to the order vide Annexure-4 a show cause, this Court here considering the claim of the Development Authority that the show cause notice is an outcome of the recommendation of the Task Force followed by the resolution and the communication of the Government vide Annexure-10 and Annexure-A/4 and for the observation already there to exclude the single allottees like that of the Petitioner, this Court observes, there is no requirement of issuing show cause notice vide Annexure-4, which is, hereby, quashed and all consequential decision pursuant to such show cause notice is also declared as bad. For the setting aside of the show cause notice at

Annexure-4 and since there is already allotment of a plot bearing No.13-4F/1459 in Bidanasi plotted housing scheme in Sector-13, this Court directs, the process for handing over of the possession of the land involved to the Petitioner be expedited and completed within a period one month from the date of communication of an authenticated copy of this judgment by the Petitioner.

9. The writ petition succeeds to the extent indicated hereinabove. There is, however, no order as to the costs.

(Biswanath Rath)
Judge

Orissa High Court, Cuttack.
The 19th day of July, 2022//
Ayaskanta Jena,
Senior Stenographer

