

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 27511 of 2013

Ashok Kumar Das

....

Petitioner

Mr. Karunakar Jena, Advocate

-versus-

State of Odisha and others

....

Opposite Parties

Mr. Parth Mukharjee, Advocate for Opposite Parties 2 and 3-
BDA and Mr. Ishwar Mohanty, ASC for State

**CORAM:
THE CHIEF JUSTICE
JUSTICE CHITTARANJAN DASH**

**ORDER
11.10.2022**

Order No.

04. 1. The challenge in the present petition is to an order dated 20th November, 2012 passed by the Officer on Special Duty (OSD) under the Odisha Development Authorities Act, 1982 (ODA Act), Bhubaneswar Development Authority (BDA) in UAP 684/2012 directing the Petitioner to remove the unauthorized construction. The challenge is also are to another letter dated 22nd November, 2012 issued under Section 91(1) of the ODA Act and an order dated 18th May, 2013 passed by the Principal Secretary, Housing and Urban Development (H&UD) Department, Government of Odisha again requiring the Petitioner to remove the unauthorized construction by dismissing the Petitioner's T.P. (Appeal) Case No.140 of 2012.

2. This Court has heard the submissions of learned counsel for the Petitioner as well as learned counsel appearing for the BDA.

3. It must be mentioned at the outset that while directing notice to issue in the present petition on 17th December 2013, this Court had stayed the operation of the impugned order dated 18th May, 2013 of Opposite Party No.1.

4. The background facts are that a piece of homestead land/residential site admeasuring 110' x 69'6" in Plot No.A/49 in Unit-III as per Drawing No.503 near Gurudwar at Bhubaneswar (hereafter 'the plot in question') was granted in favour of the Petitioner on lease by the Government of Odisha. It is stated that the possession of the plot in question was delivered to the Petitioner on 4th July, 1972.

5. It is seen from the document enclosed with the petition i.e. the letter dated 17th April 1974, a plan for construction of a residential building on the plot in question was approved by the Notified Area Council (NAC), Bhubaneswar with certain stipulations, one of which was that "no compound wall should be constructed within 5.0'" (five feet) from the boundary and conservancy lane." Further, it was added that adequate space should be kept vacant in the compound for planting of trees.

6. On 8th March 2000, the General Administration (GA) Department, Government of Odisha informed the Petitioner that as per the field enquiry report, Government land admeasuring 5'. 6" (approximately) x 68" (AC.0.009) on the western side of the plot in question had been encroached within the boundary wall. The

Petitioner was asked to intimate the Department if he was willing to take “permissive possession of the above land as per prevailing rules.” The Petitioner by a letter dated 15th March, 2000 expressed his willingness. However, as it transpires, the Petitioner was unable to actually get permissive possession for the additional plot of land.

7. The present round of proceedings were triggered by a show-cause notice (SCN) issued to the Petitioner on 17th July, 2012 by the BDA stating that the Petitioner had undertaken construction of the house G+2 storied RCC building and A.C. shed house “without leaving proper set back as per building regulation.” In reply to the SCN, the Petitioner contended that the building plan had been approved on 17th April, 1974 and renewed from time to time. The last renewal was on 25th July, 1980 and that all constructions over the plot in question had been completed prior to the enactment of the ODA Act. He claimed that “all such actions have been duly saved and protected under Section 128 of the ODA Act, 1982.” Claiming that Sections 91 and 15 of the ODA Act cannot be applied to his case, he contended that if the action initiated against him was entirely without the authority of law and should be dropped.

8. On the said SCN, an order was passed by the OSD, ODA Act on 20th November, 2012 noting *inter alia* that the Petitioner was unable to produce the approved signed plan for the plot in question. On the other hand, the letter dated 20th August, 1973 of the Chief Engineer (Roads and building) showed that the approved plan contained clear stipulations that no compound wall should be constructed and that adequate space should be kept vacant for planting trees. The order also referred to the field report which revealed that a boundary wall

had been constructed without leaving the minimum five feet set back. Further, it revealed that although the plot that was allotted was of the area of 110' x 69'.6", the Petitioner was in possession of a plot of a larger extent. Accordingly, the Petitioner was asked to remove the unauthorized construction.

9. As already noted the appeal filed against the said order was dismissed by the impugned order dated 18th May, 2013 where the contention of the Petitioner had been rejected because factually it was found that he had not adhered to the conditions on which the original plan was sanctioned.

10. Learned counsel for the Petitioner first of all argued that in the absence of any counter affidavit of the Opposite Parties, all the averments made in the writ petition should be deemed to have been accepted and the petition should be allowed. Reliance is placed on the decision of the Supreme Court in *Lohia Properties (P) Ltd. v. Atmaram Kumar* (1993) 4 SCC 6. Learned counsel for the Petitioner next relied on the decision of this Court in *Pratap Kumar Jena v. Government of Odisha* 2017 (1) OLR 222 in support of the same proposition.

11. It is seen that the above decision in *Lohia Properties (P) Ltd. (supra)* was in the context of a civil suit and a reference was made specifically to Order VIII Rule 5 (1) of the CPC, which itself states that if a fact in the plaint is not specifically denied then it should be taken to be admitted. That is not the position here at all. There are two impugned orders staring at the Petitioner where the entire case against the Petitioner is already set out. It was in fact the burden on

the Petitioner to show that those factual details on the basis of which the orders had been passed were contrary to what had been stated in the orders. Consequently, in a proceeding of the present nature where what is under challenge are orders of quasi-judicial authorities based on facts, it is for the Petitioner to demonstrate that factually those orders were wrong. The Petitioner has unfortunately not been able to do that in the writ petition.

12. Again, the decision in *Pratap Kumar Jena (supra)* is also of no help to the Petitioner since the Petitioner has not been able to dislodge the factual averments that form the basis of the impugned orders, which the Petitioner has challenged in the present petition.

13. As far as the legal argument about the applicability of the ODA Act is concerned, it is seen that the condition attached to the sanction order was violated by the Petitioner and, therefore, de hors the applicability of the provisions of the ODA Act, the fact remains that he not only failed to leave a 5 feet set back as per the condition imposed in the sanctioned letter but he also encroached upon the neighbouring plot without actually getting an order of permissive possession. On both these counts factually, therefore, the Petitioner has no answer whatsoever.

14. In the circumstances, the Court is unable to find any error having been committed by the authorities, who passed the impugned orders, which have been challenged in the present petition.

15. This petition is without merits and it is accordingly dismissed, but in the circumstance, with no order as to costs. The interim order passed earlier stands vacated.

(Dr. S. Muralidhar)
Chief Justice

(Chittaranjan Dash)
Judge

M. Panda

