

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**W.P.(C) No. 30537 of 2021**

***Rajyabardhan Dhal Mahapatra* ..... *Petitioner***

Mr. Mohit Agarwal, Advocate

*-versus-*

***State of Odisha and others* .... *Opp. Parties***

Mr. Swayambhu Mishra,

Additional Standing Counsel

(For Opposite Party Nos.1 & 2)

**CORAM:**

**JUSTICE K.R. MOHAPATRA**

**ORDER**

**18.05.2022**

**Order No.**

12. 1. This matter is taken up through Hybrid mode.
2. On the oral prayer of learned counsel for the Petitioner he is permitted to implead Additional Tahasildar, Bhubaneswar, as Opposite Party No. 2(a) to the writ petition in Court.
3. Petitioner in this writ petition seeks to assail the order dated 22<sup>nd</sup> February, 2021 (Annexure-5) passed by Additional Tahasildar, Bhubaneswar-Opposite Party No.2(a) in OLR Case No.8512 of 2020 filed under Section 8-A of the Odisha Land Reforms Act, 1960 (for short, 'OLR Act') and further to direct the Tahasildar to allow the said OLR Case in accordance with provisions of Section 121(2) of the Odisha Development Authorities Act, 1982 (for short 'Development Act').
4. Mr. Agarwal, learned counsel for the Petitioner submits that the Petitioner initially filed the writ petition with a prayer to direct the Tahasildar, Bhubaneswar to dispose of OLR Case No.8512 of 2020, which was pending for consideration. From the counter affidavit filed by the State, the Petitioner came to

know that the Additional Tahasildar has already disposed of said mutation case without serving any notice on the Petitioner and without affording any opportunity of hearing to him. Hence, the Petitioner filed an application to amend the relief sought for suitably by praying for the aforesaid reliefs.

5. Mr. Agarwal, learned counsel further submits that the Petitioner had purchased the land in question, i.e., Plot 1537/2457 (bearing sub-plot No.13) under Khata No.511/2457 to an extent of area Ac.0.046 decimal, kism Sarada-II, situated in mouza Raghunathpur under Bhubaneswar tahasil (for short, 'the case land') under Plotting Scheme vide RSD dated 8<sup>th</sup> October, 2010 from Bhubaneswar Town Development Housing Co-operative Society Ltd. for a valuable consideration. After purchase, Petitioner mutated the case land in his name and ROR under Annexure-1 was prepared accordingly. As the land was Sarada-II kism (agriculture), Petitioner filed OLR Case No.2263 of 2015 for conversion of the land to homestead to construct his residential house. Upon receipt of the said petition, the Tahasildar, Bhubaneswar, vide his letter dated 5<sup>th</sup> December, 2015 (Annexure-2) intimated Opposite Party No.3-Bhubaneswar Development Authority (BDA) to intimate if the proposed conversion of land would violate any master plan of Town Planning Scheme. In the meantime, BDA vide letter dated 17<sup>th</sup> December, 2018 (Annexure-3), communicated to Opposite Party No.2 to go ahead with conversion of the case land of the Petitioner over the unaffected area of the Comprehensive Development Plan(CDP) of Bhubaneswar. The Petitioner, who was working as Regional Manager of Utkal Gramin Bank,

Berhampur at the relevant time, visited the office of the Tahasildar, Bhubaneswar on many occasions, but to no effect. However, in the year 2020, when the Petitioner visited office of Opposite Party No.2 in order to enquire about the status of OLR Case No.2263 of 2015, he was intimated that the record of the OLR Case is not traceable. He was also advised to file a fresh petition under Section 8-A of the OLR Act for conversion of the case land. Accordingly, the Petitioner filed OLR Case No.8512 of 2020 for conversion of the agricultural land to homestead. However, the impugned order under Annexure-5 has been passed by rejecting the petition under Section 8-A of the OLR Act, vide order dated 22<sup>nd</sup> February, 2021, which reads as under:-

*“The C.R. is taken up today. The R.I., Balipada has reported vide his Letter No.399 dtd.22.2.2021 in connection with OLR Case No.8512/2020 that Plot No.1537/2457 in Mouza-Raghunathpur Jali comes under Transportation Use Zone. As per BDA Gazette Notification No.15190-Planning (R&L)- 120/2016 dtd.26.5.2018 transportation use zone is not permissible for conversion.*

*Hence, the case is dropped.”*

Referring to paragraph-9 of the counter affidavit filed by the Tahasildar, Bhubaneswar on 22<sup>nd</sup> December, 2021, it is further submitted by Mr. Agarwal, learned counsel for the Petitioner that Comprehensive Development Plan (CDP) over the area was prepared in 2010. Again, referring to the counter affidavit dated 6<sup>th</sup> May, 2022, filed by the Opposite Party No.2-Tahasildar, Bhubaneswar, Mr. Agarwal submits that the case land was within the road category of Transportation Use Zone as per CDP map of BDA published in 2010 in respect of the village. Thus, the petition under Section 8-A of the OLR Act filed by the

Petitioner was rejected on the ground that no conversion is permissible over the case land. Referring to Section 121 of the Development Act, Mr. Agarwal, learned counsel submits that since in the meantime ten years have already elapsed and till date the case land has neither been acquired nor used for development purpose, his application under Section 8-A of the OLR Act requires fresh consideration. It is his submission that by filing application under Section 8-A of the OLR Act and also by serving the notice of this writ petition on the government, the Petitioner has complied with the requirement of service of notice on the State Government expressing his interest. In the meantime, six months have already elapsed and there is no acquisition of the said land. As such, the case land is available to the owner, namely, the Petitioner for construction of his residential house as permitted in cases of adjacent land. In the case at hand, the Tahasildar, Bhubaneswar has already allowed conversation of the land adjacent to the land of the Petitioner to be used for homestead purpose. Thus, the Petitioner should not be discriminated. Since the Petitioner has retired from service and eagerly waiting for conversion of the case land to be used for homestead purpose to construct his residential house, the Tahasildar, Bhubaneswar may be directed to consider his application in accordance with law keeping in mind that the CDP is no more stand as a bar for consideration of his application.

6. Mr. Mishra, learned ASC submits that pursuant to the direction of this Court, the Additional Tahasildar, Bhubaneswar has filed additional affidavit stating as under:-

*“3. That in obedience to kind order dated 04.03.2022 of Hon’ble High Court passed in W.P.(C) No.30537 of 2021,*

*the Town Planner, B.D.A., Bhubaneswar was requested to furnish their views in the matter on the applicability and compliance of Section 13 as well as Section 121 of the Orissa Development Authorities Act, 1982.*

*4. That, the Planning Member, BDA, vide his letter No.15742 dtd. 29.04.2022, has intimated that, provisions, of Section 13 & Section 121 of ODA Act, 1982 are applicable for the case land, i.e., Plot No.1537/2457 of Mouza – Raghunathpur Jali affected by proposed CDP road. As regards compliance of Sec.13, ODA Act, the Planning Member, BDA has informed that the notice u/s 13(2), ODA Act has been published in the Odisha Gazette vide Extraordinary issue No.474 dtd.8<sup>th</sup> April, 2010.....”*

Referring to letter No. 15242 dated 29<sup>th</sup> April, 2022, (Annexure-A/2) of the Planning Member, Bhubaneswar Development Authority, Mr. Mishra submits that it is already clarified as under:-

*“With reference to the subject cited above letter in reference, I am to intimate that in respect of the plot number 1537/2457 of mouza Raghunathpur jail affected by proposed CDP road, the provision of Section-13 of ODA Act, 1982 is applicable as the CDP has already come into operation in pursuance of aforementioned section of the ODA Act, 1982 after due approval of the State Government; and the notice under sub-section (2) of aforementioned section has been published in the Odisha Gazette vide extraordinary issue no.474 dated 8<sup>th</sup> April 2010.*

*Accordingly in respect of the aforementioned plot, it is to further mention that 10 years has been completed from the date of coming into operation of the CDP and hence the provisions u/s-121 of ODA Act, 1982 is applicable for the aforesaid plot.”*

Since in the meantime, ten years have already elapsed from the date coming into operation of CDP under Section 13 of the Development Act and the land has not yet been acquired or purchased by the State Government, Section 121 of the Development Act will come to the aid of the Petitioner. Thus, the Tahasildar, Bhubaneswar may consider the application of the Petitioner keeping in mind the aforesaid position of law.

7. Taking into consideration the rival contentions of the parties, this Court, finds that the CDP was prepared in the year 2010 as borne out from counter affidavit filed by Opposite Party No.2. In the meantime, ten years have already elapsed. Neither any development has been made pursuant to the CDP over the case land nor has the same been acquired in the meantime. The Petitioner has also filed an application under Section 8-A of the OLR Act intimating his intention to make construction over the land by converting the land from agriculture to homestead. The said application was rejected only on the ground that the case land comes under the CDP. The State Government cannot deprive a common citizen from enjoying his immovable property in violation of the provisions of law. Since the CDP has already expired after ten years from its publication and the land has neither been acquired nor purchased by the State Government and further, no proceeding for acquisition of the case land has yet been initiated, the same is not required to be kept un-built upon by the land owner (the Petitioner) and the same is available to the Petitioner to seek for conversion to be used for homestead purpose. Thus, the ground on which the OLR Case No.8512 of 2020 was rejected does not any more stand as a bar to consider the said petition. As such, the Tahasildar, Bhubaneswar is required to consider OLR Case No.8512 of 2020 afresh taking note of the aforesaid position of law.

8. In view of the above, the impugned order dated 22<sup>nd</sup> February, 2021 under Annexure-5 is set aside. The matter is remitted back to Tahasildar, Bhubaneswar who shall do well to adjudicate OLR Case No.8512 of 2020 filed under Section 8-A of

the OLR Act *de novo* giving opportunity of hearing to the parties concerned and pass a reasoned order thereon, as expeditiously as possible, preferably within a period of six months hence, keeping in mind the observations made hereinabove.

9. The writ petition is accordingly disposed of with the aforesaid observation and direction.

10. A copy of this order shall be made over to Mr. Mishra, learned ASC for communication and compliance.

Issue urgent certified copy of the order on proper application.

**(K.R. Mohapatra)**  
**Judge**

