

IN THE HIGH COURT OF ORISSA AT CUTTACK

WP(C) NO.39333 OF 2021

**Trident Galaxy Resident Welfare
Association**

....

Petitioner

Mr.M.Agarwal, Adv.

-versus-

State of Odisha & ors.

....

Opposite Party(s)

Mr.S.P.Panda, AGA for O.P.1

Mr.D.Mohapatra, Adv. for O.Ps.2 & 3

Mr.L.Mohapatra, Adv. for O.P.4

Mr.S.P.Mishra, Sr.Adv. for O.P.5

Mr.G.Mishra, Sr.Adv. for O.P.6

**CORAM:
JUSTICE BISWANATH RATH**

**ORDER
22.3.2022**

**Order
No.**

4.

1. Heard learned counsel for the Parties. On consent of the Parties, this matter is taken up for final disposal

2. The Writ Petition involves the following prayer :-

“The Petitioner, therefore, humbly prays that your Lordships would graciously be pleased to issue appropriate writ/writs/order/direction/declaration and most appropriately

1. Quash and set aside the occupancy certificate dated 9.6.2021 (Annexure-8) issued by the Bhubaneswar Development Authority under Regulation 15 of the BDA (Planning and Building Standards) Regulation, 2018.

2. Pass any such further direction/order as this Hon’ble Court may deem fit in the interest of justice.”

3. Taking through the allegations in the Writ Petition,

Mr.M.Agarwal, learned counsel for the Petitioner-Association of the

Housing Building concerned brought to the notice of this Court a number of lapses even now existing and it was not possible to grant Occupancy Certificate in this situation. Mr. Agarwal also alleged that the Bhubaneswar Development Authority in spite of taking up such issues, the Authority is in connivance with the Builder has already issued Occupancy Certificate, as appearing at Annexure-8. It is at this stage of the matter, it is also brought to the notice that for there is variety of discrepancies in handing over the Building to the Purchasers as of now and not only the Association is compelled to take up the issues before several Competent Authorities, such as ORERA, EOW, Hon'ble Lokayut etc. and all such matters are still pending. There is no dispute by the Parties regarding pendency of such complain before different Authorities. At this stage, Mr. Agarwal, learned counsel for the Petitioner contended that there have been some inspection reports by the ORERA through its Court Commissioner and it is claimed, the reports are the clear indication of variety infirmities still existing.

4. Mr.D.Mohapatra, learned counsel for the Bhubaneswar Development Authority submitted that considering the repeated requests of the Association and as it involved serious allegation, the Development Authority has already undertaken a process of

cancelling the Occupancy Certificate by issuing show cause, which is pending for consideration. Mr. Mohapatra thus claimed, the Writ Petition in the present circumstance remains premature.

5. Mr.G.Mishra, learned counsel for O.P.6 while strongly disputing the claim of the Petitioner, however, submitted that noticing certain infirmities, there has been action to remove the same and in between many of the issues have already been resolved. Mr.Mishra, however, did not dispute the pendency of cancellation issue as well as complaints before other Authorities and thus also claimed that in the circumstance, the present Writ Petition is not entertainable.

6. Mr.S.P.Mishra, learned senior counsel appearing for O.P.5 also supported the stand of Mr.G.Mishra, learned senior counsel for O.P.6 and Mr.D.Mohapatra, learned counsel for the Development Authority.

7. For the statement of the learned counsel for the Bhubaneswar Development Authority that there is already initiation of a proceeding to cancel the Occupancy Certificate and further undisputedly, there are so many proceedings pending before so many Authorities indicated herein above, interfering in the matter at this stage may be influencing such Authorities. In the circumstance,

this Court while declining to entertain the Writ Petition at this stage and disposing of the same on recording the statement of Mr.D.Mohapatra, learned counsel for the Bhubaneswar Development Authority that there is already initiation of a proceeding at the instance of the Development Authority for cancellation of Occupancy Certificate based on the complaint of the Association, directs the Bhubaneswar Development Authority to complete such exercise involving all Parties involved herein, if necessary having an inspection by its own Agency in presence of all Parties likely to be suffered. The inspection report may be obtained within fifteen days and decision by way of final disposal of the Proceeding at the instance of the Bhubaneswar Development Authority may be taken within a period of forty-five days from the date of communication of this order by any of the Parties involved. While providing copies of the inspection report to the Parties, the Parties may also be given opportunity of filing their response, if any, before taking final decision in the Proceeding.

8. For the aforesaid direction and there is already initiation of a Proceeding for cancellation of the Occupancy Certificate involved, this Court also observes, pending final outcome in the Proceeding pending, any action taking place on the basis of such Occupancy

Certificate remains bound by the ultimate decision of the Development Authority. All the Parties are directed to cooperate the Bhubaneswar Development Authority in the required enquiry and timely disposal of the Proceeding.

9. Issue urgent certified copy.

(Biswanath Rath)
Judge

M.K.Rout

