

GOVERNMENT OF ODISHA
HOUSING & URBAN DEVELOPMENT DEPARTMENT
Kharavel Bhawan, Keshari Nagar, Unit-5, Bhubaneswar, Pin-751001

No 20792 /HUD Dated 3.12.2021 /

TP-APPEAL No.22/2021

From:

Sri Sankar Behera ,
Deputy Secretary to Government.

To

City Planner/ Municipal Commissioner,
Bhubaneswar Municipal Corporation,
Bhubaneswar


Sub: Appeal Case No. 22/2021 under section 91(2) of the Odisha Development Authorities Act, 1982 filed by RIDA Infra Private Limited Company Vrs- Commissioner, Bhubaneswar Municipal Corporation, Bhubaneswar.

Sir,

I am sending herewith the copy of the order dated 20.11.2021 passed by the Appellate Authority i.e. the Principal Secretary to Govt., Housing & Urban Development Department in the aforesaid appeal case for favour of information and necessary action at your end.


You are further requested to furnish the copy of the said orders to the aforesaid appellant immediately.

Yours faithfully,


Deputy Secretary to Government

Memo No. 20793 /HUD, Dated 3.12.2021


Copy along with copy of order forwarded to Mr. Azit Kumar Mishra, M.D. RIDA Infra Pvt. Ltd. Plot No. 227/228, Gajapati Nagar, Near Sainik School Square, Bhubaneswar, Dist-Khurda for kind information and necessary action.


Deputy Secretary to Government

Memo No. 20794 /HUD, Dated 3.12.2021

Copy along with copy of the order forwarded to the Team Lead ,TASU ., Housing & Urban Development Department for information and necessary action.

It is requested to take necessary steps in order to make the said order available in the official website of this Department.


Deputy Secretary to Government

18.11.2021

The learned Advocate Sri Kishore Kumar Mishra on behalf of the appellant, Sri G.S.Bhuyan, Planning Member, Bhubaneswar Development Authority, Sri Lingaraj Prasad Patnaik, City Planner, Bhubaneswar Municipal Corporation & Sri Ramesh Chandra Jena, Deputy Commissioner & OSD (ODA) Court, Bhubaneswar Municipal Corporation are present in the hearing in Virtual Mode. The Respondents are appearing in the hearing from the conference room of the office of the B.D.A., Bhubaneswar.

Apparently due to some technical snag microphone of the advocate for the appellant was not working. Therefore he was instructed to be present in the next hearing in virtual mode from the conference room of the office of the B.D.A., Bhubaneswar and present his case. The officials of the BDA are directed to facilitate the hearing on behalf of the appellant.

The respondent has submitted the L.C.R. and the preliminary reply with reference to the said Appeal Case to this Court.

Heard.

Put up the case on 20.11.2021 at 12.30.P.M for final hearing in Virtual Mode .

No further notices shall be issued as both the parties are verbally informed to be present on scheduled date and time .


(G.Mathi Vathanan)
Principal Secretary to Govt.
H & U D Department

This matter is taken up through Video Conference mode.

20.11.2021

The learned Advocate Sri Kishore Kumar Mishra on behalf of the appellant, Sri G.S.Bhuyan, Planning Member, Bhubaneswar Development Authority, Sri Lingaraj Prasad Patnaik, City Planner, Bhubaneswar Municipal Corporation & Sri Ramesh Chandra Jena, Deputy Commissioner & OSD (ODA) Court, Bhubaneswar Municipal Corporation are present in the hearing in Virtual Mode from the conference room of the office of the B.D.A., Bhubaneswar.

The instant appeal has been filed under section 91(2) of ODA Act 1982 against the order dated 27.07.2021 passed by the ODA Court, BMC for removal of unauthorized construction undertaken by the appellant.

The City Planner, BMC submitted that earlier Bhubaneswar Development Authority has approved B+S+4 storied residential apartment over Plot No. 799/2997 in Mouza Shampur with Basement & Stilt Floor meant for parking. Bhubaneswar Development Authority initiated an unauthorized proceeding vide UAP- 140/13 for deviation to the approved building plan. Thereafter, on receipt of complain petition from Flat Owners of Rudrayana Apartment constructed by promoter M/s RIDA Infra Pvt. Ltd., Bhubaneswar, BMC initiated UAP Case No. 10/2021. It was alleged by the owners of the Rudrayana Apartment that the builder has violated the approved plan of BDA and constructed the 5th floor and let out the stilt floor to SBI for commercial establishment. It is reported by Amin that the appellant has unauthorizedly constructed the 5th floor and has converted the stilt floor parking into commercial use by letting out to SBI & Bank

G. Yan

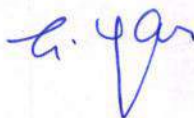
of Maharashtra. While referencing to the provisions of BDA (Planning & Building Standards) Regulations he said that that space meant for the parking cannot be converted into other purposes and hence need to be vacated and resumed for use as parking only. He also submitted that construction undertaken in the rear side of the apartment and the fifth floor is in gross violation of approved plan.

He has further contended that the appellant has submitted revised building plan misrepresenting the fact of use of stilt for commercial purpose. Hence the application was not considered by BDA for:

- (i) Violation of permitted use.
- (ii) Carrying out construction without prior approval.
- (iii) Misrepresentation of facts in the regularization application.

Accordingly, a 'show cause notice' was issued by BDA as to why the application for regularization shall not be rejected for above reasons. Against the above notice the applicant filed a case bearing No. W.P. (C) No. 13657 of 21 and obtained interim stay order of operation of the notice till next day and therefore no action could be initiated for rejecting the application. He also mentioned that the applicant has never submitted a revised plan to the BMC.

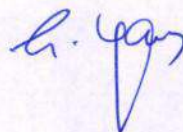
Learned Advocate for the appellant submitted that the construction of the apartment was completed in all respects sometime in the year 2012 and when he applied for occupancy certificate it was found by the Authority that there is some deviation from the approved plan as the owner has constructed a mezzanine floor in the top floor of the building though it is not more than 1/3rd of the total floor area. He further explained that the definition of the 'Storey' and 'Mezzanine Floor' in the context of



Regulation 2(126) and claimed that the construction made in the top floor is a mezzanine floor. He reiterated that the revised plan for regularization is still pending for consideration of BMC, but not before BDA. As per Amin report of the BDA dated 10.02.2021, some internal work is going-on in the ground floor and before proceeding into the case in hand, it has to be ascertained by the Authority whether there is any deviation in the building plan while making internal addition and alteration of completed building plan. Further, he raised two issues regarding maintainability of the proceedings initiated based on the private complaint and other one that the revised plan is filed before BMC and is still pending.

Considering the above submissions and relevant matters brought to the notice, it ~~can~~ will not be difficult to assume that the provisions as enshrined in the Bhubaneswar Development Authority (Planning and Building Standards) Regulation has been violated by the appellant deviating from approved plan. The revised building plan said to have been submitted and pending with BMC has actually been submitted to Bhubaneswar Development Authority and BDA has acted upon the revised application on its merit. As regards maintainability of proceedings, at the behest of the private complaint, it is an admitted fact that the complainant is not a private party but are Flat Owners of Rudrayana Apartment and that their interest in the matter of conversion of parking and addition and alteration to the apartment building is deeply attached.

Secondly, it has been rightly cited by the learned advocate for the appellant that 'Deviation' means any construction made in departure from the approved plan by way of alteration or additions, modification in the floor area, average Floor Area Ratio (FAR), Setbacks, Heights, Parking Space, Provision



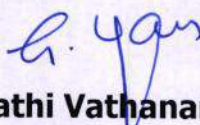
of public utilities etc,. In the context of the above definition of deviation, the appellant has altered the stilt floor through partitions and converted the parking space into commercial space and let it out to SBI and Bank of Maharashtra. In its true meaning, the top floor, so argued to be a mezzanine floor is also an additional construction to B+S+4 Storied residential apartment. This has been constructed unauthorziedly, for which no approval has been given.

Further the appellant has admitted that Still Floor(Ground Floor) of the building has been used for commercial purpose since 2014 by State Bank of India for which no approval has been given by BDA or any occupancy certificate has been obtained in this regard.

Apart from that at the cost of public interest, commercial activity is in no way admissible in the space designated for parking, against the interest of flat owners. It appears to be a case of gross violation of the provisions of law in so far as the appellant has converted the parking space to commercial use and effected addition of extra floor without any approval.

Hence the order passed by ODA Court, BMC is upheld, and appeal is dismissed.

Further the BMC is directed to take steps for initiation of proceeding against the unauthorized construction undertaken by the appellant as provided by law ~~is~~ in consonance with the orders issued by Honourable High Court in this regard.


(G.Mathi Vathanan)

GOVERNMENT OF ODISHA
HOUSING & URBAN DEVELOPMENT DEPARTMENT
Kharavel Bhawan, Keshari Nagar, Unit-5, Bhubaneswar, Pin-751001

No 21015 /HUD Dated 7.12.2021

TP APPEAL No-08-2020

From:

Sankar Behera
Deputy Secretary to Government

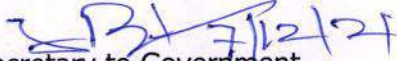
To

The Secretary/ Planning Member,
Bhubaneswar Development Authority

Sub: Appeal Case No. 08/2020 under section 91(2) of the Odisha Development Authorities Act, 1982 filed by Sri Rabinarayan ram Vrs- Secretary Bhubaneswar Development Authority, Housing & Urban Development Department in the aforesaid appeal case for favour of information and necessary action at your end.

You are further requested to furnish the copy of the said orders to the aforesaid appellatant immediately.

Yours faithfully,


Deputy Secretary to Government

Memo No. 21016 / Date: 7.12.2021

Copy along with copy of order forwarded to Sri Rabinarayan Ram, Plot No. 890 & 891, Mouza Jajarsingh, Dist- Khurda , for information and necessary action.


Deputy Secretary to Government

Memo No. 21017 /HUD., Dated 7.12.2021,

Copy forwarded to the Team Lead, TASU, Housing & Urban Development Department with a request to take necessary steps in order to make the said notice available in the official website of this Department.


Deputy Secretary to Government

(CONTINUATION OF ORDER SHEET)

ଅନୁକ୍ରମ ସଂଖ୍ୟା ଓ ତାରିଖ	ଅନୁକ୍ରମ ସଂଖ୍ୟା ଓ ବିଷୟ	ଅନୁକ୍ରମ ସଂଖ୍ୟା ଓ ତାରିଖ
1	2	3

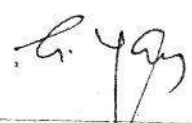
This matter is taken up through Video Conference mode.

20.11.2021

The appellant Sri Rabinarayan Ram along with his learned Advocate and Sri G.S. Bhuyan, Planning Member on behalf of the Bhubaneswar Development Authority are present in the hearing in Virtual Mode from the conference room of the office of the B.D.A., Bhubaneswar. The appellant and his learned advocate also attended the said hearing from the office of the Bhubaneswar Development Authority.

The instant appeal has been filed under section 91(2) of ODA Act 1982 challenging the order dated 17.09.2019 passed by the OSD(ODA Act), Bhubaneswar Development Authority in UAP case No-116/2018 wherein the appellant was directed to remove the unauthorized construction of G+2 storied R.C.C. roofed building made over Plot No-890(pt) & 891(pt) Mz- Jajarsingh, Dist- Khordha within a period of seven days from the date of service of order failing which it was mentioned in the order that action under sub-section (1) of section 91 of the Odisha Development Authorities Act, 1982 shall be taken and the Enforcement Squad will do the needful to demolish the same.

The Associate Town Planner submitted that Bhubaneswar Development Authority initiated an unauthorized proceeding UAP Case No. 116/2018 against the appellant on receipt of complaint by Sri. Shyamsundar Ram, younger brother of the appellant.



(CONTINUATION OF ORDER SHEET)

ପ୍ରକାଶନ କ୍ରମ ନମ୍ବର ଓ ତାରିଖ	ଅନୁପ୍ରାପ୍ତ ହେଉଥିବା ନିୟମାବଳୀ	ପ୍ରକାଶନ କ୍ରମ ନମ୍ବର ଓ ତାରିଖ
1	2	3

It was alleged that the appellant had undertaken an unauthorized construction without an approved building plan, covering part of the complainant's land in Jajarsingh Mouza. It is reported by the Amin that the appellant has constructed a G+2 RCC roofed building over plot no. 890 (P) and 891 (P). The appellant was issued a show cause notice and to explain why an order directing the appellant to remove the unauthorised structure shall not be issued. The appellant submitted that he has renovated his home and undertaken some construction work as per his requirement without change of the original structure constructed by his forefathers and has not violated the ODA Act, 1982 and prayed to drop the proceedings. The appellant as the O.P. (in U.A.P. case no. 116/2018) failed to produce the approved Building Plan from the Competent Authority so the structure constructed over the suit land is treated as unauthorised and illegal and accordingly a demolition order has been passed against the appellant on 17.09.2019 with a direction to remove such unauthorised construction within a period of seven days.

It was further stated that, the appellant Sri. Rabinarayan Ram has also applied for regularisation of his existing G+2 storied residentia-cum-commercial building on dated 20.02.2020 over plot no. 890 (P), 891/4374 and 893 (P), of Mouza- Jajarsingh. It is reported by the BDA that, on scrutiny, it was found that

(Handwritten signature)

(CONTINUATION OF ORDER SHEET)

ଅନୁକ୍ରମ ସଂଖ୍ୟା ଓ ତାରିଖ	ଅନୁକ୍ରମ ସଂଖ୍ୟା ଓ ବିଷୟ	ଅନୁକ୍ରମ ସଂଖ୍ୟା ଓ ତାରିଖ
1	2	3
	<p>the building was not approved earlier and the plot Nos. 895 and 890 are partly affected by 100 ft. wide proposed CDP road. The building is also getting affected by the CDP road. Accordingly, the applicant was asked to submit clarification/compliances wherein the applicant was intimated that the application cannot be considered as the plot is affected by proposed CDP road. The applicant on reply to the aforesaid clarification letter submitted that approval letter and drawing are not available with him as the building is an old building constructed prior to formation of BDA and he has occupied 1/3 of the building by partition deed. Thereafter, BDA issued a show cause notice to the applicant asking him to submit as to why his application should not be rejected as the plot was reportedly getting affected by the CDP road. It is reported that no reply to the show cause has been received till date. Further, it is stated that a writ petition bearing number W.P. (C) No. 29775 of 2021 has been filed before the honourable High-Court by Sri. Shyamsundar Ram who is also the complainant in the U.A.P. Case no. 116/2018 in the Court of OSD (ODA Act) and brother of Sri. Rabinarayan Ram (appellant in the court of Appellate Authority) with a prayer for directing the opposite party no. 2 (Chairman, BDA) and O.P. no. 3, (i.e. Enforcement Officer-1, BDA) to take steps to expedite the eviction process by implementing their own order (CEMC programme for eviction) dated 05.02.2020 and</p>	

Handwritten signature

(CONTINUATION OF ORDER SHEET)

କ୍ଷେତ୍ର ନମ୍ବର ଓ ବିବରଣ	ଅନୁରୋଧ କରାଯାଇଥିବା କାର୍ଯ୍ୟ	ଅନୁରୋଧ କରାଯାଇଥିବା ତାରିଖ
1	2	3

06.10.2020. The case is now subjudice before the Hon'ble High Court.

Learned Advocate for the appellant submitted that his construction is very old and in existence since generations, which is his parental property. After partition through Civil Court, the appellant just renovated the old construction and staircases for his convenience which is entirely within the old constructions. It is further submitted that no part of the renovation is exposed to outside and it does not create inconvenience to the neighbours or the public. It was further submitted that the complainant on the whose complaint the proceeding was initiated by the Authority is the blood relative i.e. the younger brother of the Appellant Sri Shyamsunder Ram. It is further submitted that the house in question has an old roof which was constructed in the year 1970 much prior to the Odisha Development Authorities Act, 1982 . The portion over which the appellant is staying is completely old one and out of the entire constructions over Plot No.- 890 and 891, Shyam Sundar Ram is enjoying about 75% area and the present Appellant is possessing only about 25% area.. The appellant submitted that he has applied to the BDA for regularization of his unauthorised construction.

Considering the above submissions and relevant aspects brought to the notice, it appears appropriate to presume that the appellant has undertaken

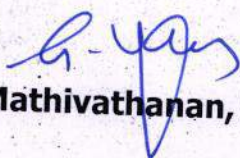
G. Das

(CONTINUATION OF ORDER SHEET)

ଅନୁକ୍ରମ ନଂ & ପୃଷ୍ଠା	ଅନୁକ୍ରମ ନଂ & ପୃଷ୍ଠା	ଅନୁକ୍ରମ ନଂ & ପୃଷ୍ଠା
1	2	3
	<p>construction within his private plot, which does not cause any hindrance to the public. The complainant, Sri Shyamsunder ram is the younger brother of the appellant and apparently he also shares a portion of land with appellant. It raises a lot question regarding the motive of the complainant which led to initiation of the whole proceeding. With reference to section 91 (1) of the Odisha Development Authorities Act, 1982 the authority has the power to remove unauthorized constructions.</p> <p>Section 91(1) of Odisha Development Authorities Act, 1982 deals with unauthorised constructions but, it is evident from the facts on record that the building under question is inherited by the appellant from his predecessor and the case has arisen out of dispute between two brothers. The Bhubaneswar Development Authority under the aforesaid provisions of ODA Act, 1982 should not be drawn into the dispute of two private individuals. The Authority should use its instruments for businesses wherein lies the public interest not for the cases involved between private parties fuelled by their own self interests. The learned advocate has submitted that the appellant's building is a parental property, built within the limits of his private land and does not cause any inconvenience to the public. He has also applied to the BDA for regularization of his unauthorised construction only to get rejected on the ground that his building and his Plot No. 890 are getting partly affected by 100ft. Wide proposed road. However, it is learnt that not much progress has been</p>	

Handwritten signature

(CONTINUATION OF ORDER SHEET)

ଅନୁକ୍ରମ ସଂଖ୍ୟା ଓ ବିଷୟ	ଅନୁକ୍ରମ ସଂଖ୍ୟା ଓ ବିଷୟ	ଅନୁକ୍ରମ ସଂଖ୍ୟା ଓ ବିଷୟ
1	2	3
	<p>made to implement the major projects as per Bhubaneswar Master plan for years. It is also in the interest of the Authority to address the grievances of the common public who are living / depending on the land coming under the Comprehensive Development Plan. The Authority from time to time may after taking consultations from the public/grievances may change/modify its Master plan may release older lands or acquire the required newer lands under the provisions of ODA Act. The BDA has the authority to modify the CDP to address genuine and lawful grievances of petitioners under various provisions of law and ODA Act provided they find it reasonable.</p>	
	<p>In view of the above submissions made by the both parties, I am inclined to believe that Bhubaneswar Development Authority has insufficient ground to demolish the house of the appellant at the present stage. Hence, the order of demolition passed by OSD (Enf.), BDA is set aside and the case is disposed.</p>	
	<p style="text-align: center;">  (G. Mathivathanan, IAS) </p>	

