

BY SPEED POST

**IN THE COURT OF SRI SMT. USHA PADHEE, PRINCIPAL SECRETARY TO
GOVERNMENT, HOUSING AND URBAN DEVELOPMENT DEPARTMENT,
ODISHA, BHUBANESWAR.**

(Appellate Authority under O.D.A. Act, 1982)

Appeal No. 12 of 2024

Under Section 91(2) of the O.D.A. Act., 1982

Sri Pravash Chandra Mahapatra.....Appellant

-vrs-

BMC, Bhubaneswar Respondent

Date. 18 .01.2025

Both the parties and the Intervener are present.

Heard. This appeal is directed against the order dtd.12/01/2024 of the Deputy Commissioner ODA court, BMC, Bhubaneswar. The fact of this appeal in short is that the UAP Case No. 60/2021 was initiated in the lower court on the basis of allegation of Shri R.K. Choudhary and Dr. Snehalata Choudhary against Shri Pravasha Chandra Mahapatra, who is reportedly their neighbours, for undertaking unauthorized and illegal construction of Portico over the common boundary wall without leaving any set back area thereby causing obstruction to ventilation to the residence of the complainant.

The lower Court got the matter enquired and as there was no illegality in the alleged construction as per the field enquiry report, the allegation petition was rejected and the UAP Case no.60/2021 was accordingly disposed of.

Thereafter the complainant being aggrieved by the said rejection order approached the Hon'ble High Court, Odisha vide W.P(C) No . 4740/2022.

In the said writ petition the Hon'ble Court has observed that there is need for confirmation as to if the pillar is within the area of the plot possessed by opposite party No. 5 i.e the present appellant and in that case, any such construction over the common boundary wall allegedly obstructing ventilation. Whether to be permissible with nil setback which is also justified on the strength of Pokhariput Housing

Scheme, 2000 and except the above observation, the Hon'ble Court didn't find any other issues involved for being taken cognizance.

The Hon'ble High Court allowed the writ petition to the extent that the annexure-11 was quashed thereby restoring the proceeding in UAP Case No. 60/2021 and the annexure-9 was set aside leaving the matter for opposite party No.01 i.e Dy. Commissioner, ODA court, BMC, Bhubaneswar to examine the aspect which has been earmarked in the order of Hon'ble High Court and to pass a final order and to issue necessary direction to opposite party No.5 i.e Pravash Chandra Mohapatra, the present appellant.

Having regard to the direction of Hon'ble High Court, the Lower court directed for a joint verification to be conducted by the Assistant Town Planner and Amins of BMC in presence of both the parties. The Deputy commissioner himself also visited the dispute spot on 20.10.2023 as per the direction of Hon'ble High Court in W.P.(C). No. 33566 /2023. The joint verification report along with sketch map dtd.7.11.2023 of ATP and Amin was submitted in the Lower court and the same was given to both the parties.

The matter was heard by the Lower court. During course of hearing the complainant objected to the enquiry report on the various points and on the other hand, the opposite party submitted to decide the matter as per the direction of the Hon'ble High Court. The lower court having heard both the parties passed order on 12.01.2024 for demolition of deviation portion of construction. Being aggrieved by the said order this appeal has been filed by the opposite party, the present appellant.

Carefully examined the evidences available on record and as it reveals that the Lower court got the matter enquired. But, the complainant objected to the said enquiry report. His submission in the Lower court was that the report does not specify whether there is any construction over the common boundary wall or not and doesn't contain the ground reality and that the definition of Portico is a roof supported by columns forming a porch and a porch is a covered shelter over the entrance of a building. The opposite party has raised construction of permanent structure with RCC and concrete roof which is a room for habitation and construction has also been raised over the common boundary wall.

The complainant had also submitted that as per Rule 40 (2) of the ODA (Planning and Building Standard) Rules 2020, a portico upto 2.5 meters width and 4.6 meters length with minimum height of 2.4 meters from the plinth level is permitted from the side set back and Rule 40 (4) provides that the portico provided shall not rest on boundary wall and shall not be opened to provide thorough access to the rear part and the opposite party- the present appellant has violated the above rules and point 8 of enquiry report dated 07.11.2023 is false.

The opposite party – the present appellant further urged in the Lower Court to adjudicate the matter as per the direction of the Hon'ble High Court on earmarked points and he vehemently opposed the submission of the complainant. He also submitted that there is no construction over the common boundary wall and there is no obstruction of ventilation as alleged by the complainant and that zero set back is permissible as per Housing Scheme, 2000. He supported the joint inspection report.

The lower court after hearing and verification of joint enquiry report concluded that the pillars of the alleged portico are within the area of the plot of opposite party of the complainant and the pillars raised adjacent to the lateral side of the plot No. MIG 15 (opposite party's plot) and MIG No. 16 (complainants plot) has been approved in favour of opposite party with zero setback for the purpose of portico. Further, the lower court observed from the joint enquiry report and that there is no wall in between the two pillars adjacent to the common boundary wall raised by the opposite party for the purpose of portico except the sliding glass windows within the said pillar and the joint enquiry report reveals that there is no obstruction of ventilation as there is sliding glass and two pillars constructed adjacent to the lateral side of common boundary wall and the rest part up to roof level of portico is covered by RCC wall.

But, the Deputy Commissioner took a contrary view to the said part of report and observed that as there is a window fitted with sliding glass, there may not be obstruction in ventilation to both the premises. But construction of RCC wall up to the roof level over the common boundary wall and in between two adjacent pillars in the lateral side of the plot No. MIG-15 for the purpose of portico is not permissible in terms of the ODA (Planning and Building) Rules and the said construction is liable to be removed.

It reveals from the above narration that the matter was inspected thoroughly and the observation of the Deputy Commissioner ODA court, seems to be genuine and preponderant vis-à-vis the contention of the appellant and this court is therefore, not inclined to interfere with order of the lower court.

The appeal is dismissed.

Sd/-
(Smt. Usha Padhee)



GOVERNMENT OF ODISHA
HOUSING & URBAN DEVELOPMENT DEPARTMENT
3RD FLOOR, KHARAVEL BHAWAN, BHUBANESWAR, PIN-751001

Memo No. 2291 /HUD., Date. 03.02.2025

Copy forwarded to the Commissioner, Bhubaneswar Municipal Corporation (BMC), Bhubaneswar /OSD (ODA Act), Bhubaneswar Municipal Corporation (BMC), Bhubaneswar for information and necessary action.


Section Officer

Memo No. 2292 /HUD., Date. 03.02.2025

Copy forwarded to Pravash Chandra Mahapatra, At- House no. MIG-15, Ananta Vihar, Phase-III, Pokhariput, Bhubaneswar, Dist- Khordha, PIN- 751020/ Raja Kishore Choudhury, At- House no. MIG-16, Ananta Vihar, Phase-III, Pokhariput, Bhubaneswar, Dist- Khordha, PIN- 751020 for information and necessary action.


Section Officer

Memo No. 2293 /HUD., Date. 03.02.2025

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.


Section Officer