

**ORISSA HIGH COURT: CUTTACK.**

**W.P.(C). No. 13932 OF 2012**

In the matter of an application under Articles 226 and 227 of the Constitution of India.

Smt. Ushadevi Sukhani -----  
..... Petitioner

***-Versus-***

Cuttack Development Authority,  
and others. .... Opp. parties

For Petitioner : M/s. Dr. A.K.Rath,  
A.K.Nath & H.P. Mohanty.

For opp. parties : M/s. Dayananda Mohapatra,  
M.Mohapatra, G.R. Mohapatra,  
A. Dash & S.Mallick.  
(For O.Ps 1 & 2).

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***Decided on 30 .01.2013***  
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**PRESENT :**

**THE HONOURABLE SHRI JUSTICE M.M. DAS  
AND  
THE HONOURABLE SHRI JUSTICE C.R. DASH**

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***M. M. DAS, J.*** The petitioner in this writ petition has prayed for quashing the order dated 16.4.2012 passed by the Planning Member, Cuttack Development Authority (hereinafter referred to as 'the C.D.A.') – opp. party no. 3 vide Annexure-4 and for a direction to accord permission to the petitioner for construction of a residential house over the plot allotted to her by the C.D.A.

2. Facts of the case disclose that pursuant to an advertisement made by the C.D.A. for sale of plots for construction of residential houses in Sector-9, Markat Nagar under the scheme of Abhinaba Bidanasi Cuttack, the petitioner applied for a plot. Thereafter, a lottery was drawn and the petitioner was selected in the said lottery. On 13.12.1995, the Secretary, C.D.A. - opp. party no. 2 sent a letter to the petitioner stating therein that she has been allotted with plot No. 64 of 'C' category measuring an area of 3147.62 sqr. Ft. in Markat Nagar, Sector-9 at Bidanasi Project Area. She was requested to take over possession of the said plot on or before 30.12.1995 by depositing the balance amount of Rs. 29,918/-, the total cost of the land being Rs.1,15,058/- and the petitioner having paid the rest of the amount earlier. Thereafter, she paid the balance amount of Rs. 29,918/- and a possession handing over memo was given to the petitioner on 23.5.1996. The petitioner made an application for approval of the plan for construction of a residential house, before the opp. party no. 3 and as required, deposited an amount of Rs. 3540/- on 29.3.2012. However, by letter dated 16.4.2012, the opp. party no. 3 intimated the petitioner that as per the order of the Secretary dated 21.1.2012, any application for permission applied after expiry of the show cause period should not be considered till disposal of the show cause. The petitioner has

further averred that on 25.11.2009 the Administrative Officer, C.D.A. sent a letter to one Promod Kumar Choraria requesting him to appear in person on 8.12.2009 regarding handing over possession of his allotted plot No. 1C/62. A copy of the said letter was endorsed to the petitioner requesting her to appear on the said date to settle the dispute. On 15.12.2009, again a letter was sent to the said Pramod Kumar Choraria to appear on 21.12.2009 regarding handing over possession of allotted plot No. 1C/62 and a copy of the said letter was also endorsed to the petitioner requesting her to appear on the said date to settle the dispute. When the matter stood thus, on 23.12.2009, the Administrative Officer, C.D.A. deputed one Srikanta Das, Amin to conduct the spot enquiry in presence of the allottees of plot No. 1C/62 and 1C/63 in Sector-9 and demarcate their respective areas allotted in their favour on 29.12.2009. It may be mentioned that the petitioner is the adjacent plot owner of plot Nos. 1C/62 and 1C/63. On 7.6.2012, the opp. party no. 2 sent a letter to the petitioner stating therein that during demarcation, it was found that area of plot No. 1C/62 is 103 sqr. ft. less than the allotted area and there are some excess area in plot No. 1C/61, 1C/63 and 1C/64 than the area handed over to the allottees. The petitioner along with the adjacent plot owners were requested to be present on the site on 12.6.2012 for taking measurement of the aforesaid plots.

3. Dr. A.K. Rath, learned counsel appearing for the petitioner submits that though in pen and paper, possession of plot No. 1C/64 in Sector-9 was handed over to her by means of a possession handing over memo dated 23.5.1996, the C.D.A. authorities have not properly measured the land which is evident from the subsequent act and the letter of possession was a formal one. After refusal to accord permission for construction of the house, the petitioner on enquiry from the C.D.A. authorities came to know that a show cause notice was issued to her on 25.8.2011 calling upon her to show cause as to why the allotment in her favour should not be cancelled on the grounds, inter alia, that the petitioner had not constructed the residential house over plot allotted to her within five years from the date of allotment. The petitioner denies to have received such notice at any point of time. The petitioner on 5.3.2012 intimated the C.D.A. authorities that due to unavoidable circumstances and shortage of finance, she was not in a position to construct the house. Dr. Rath, learned counsel submitted that it is due to laches of the authorities, the exact plot allotted to the petitioner was not demarcated for which the petitioner amongst other reasons could not submit the plan for approval earlier and no laches can be attributed to the petitioner for the said act. He, therefore, submitted that the letter under Annexure-4 is contrary to law and should be

quashed with a direction to the C.D.A. authorities to approve the building plan submitted by the petitioner.

4. A counter affidavit has been filed by the Secretary, in-charge, C.D.A., Cuttack, inter alia, stating that many of the allottees who were allotted plots in the year 1995-96 and before have not undertaken construction within the time stipulated in the Brochure or in the allotment letter as the case may be. Consequently, a number of plots fell vacant though number of other eligible persons are waiting for a plot in C.D.A. Project Area. Attention of this Court has been drawn in the counter affidavit to the order passed in W.P. (C) No. 20427 of 2009.

It was submitted by Mr. Dayananda Mohapatra, learned counsel appearing on behalf of the C.D.A. that consequent upon the direction issued by this Court in W.P. (C) No. 20427 of 2009, the C.D.A. directed the field staff to make survey of those plots in different sectors where constructions have not been undertaken and after receipt of the report, issued notice to show cause to such allottees. In the present case, the petitioner was issued show cause in letter No. 17740 dated 125.8.2011. The petitioner also submitted a reply on 5.3.2012. The C.D.A. also issued a public notice widely circulating the same calling upon such allottees to show cause, who has not received notice in spite of sending the same through post and those who have not undertaken construction. The C.D.A. in

order to grant sufficient opportunity for construction and for the purpose of according permission as required under the Orissa Development Authorities Act, considered those applications submitted before the date fixed in public notice. The present petitioner did not submit any application for permission before the aforesaid date. The petitioner having not applied for permission for building the house for about sixteen years nor having prayed for any extension of period for construction as per the conditions of the Brochure and the allotment letter, her plan submitted for approval was not considered. Mr. Mohapatra further submitted that the process of considering show cause filed by various allottees on similar categories is continuing in accordance with the order passed by this Court in W.P. (C) No. 20427 of 2009. He further submitted that in view of the order passed in the said writ petition, i.e., W.P. (C) No. 20427 of 2009, the C.D.A. is undone and is not in a position to consider granting of permission for raising construction by approving the plan submitted by such allottees.

5.           Considering the facts of the present case, we come to the conclusion that the C.D.A. authorities practically taking the plea that the order passed by this Court in W.P. (C) No. 20427 of 2009 is a bar for them to consider applications for grant of permission to raise construction and as per the said

order, such allotments are to be cancelled, have rejected the application for approval of the plan made by the petitioner. .

6. On perusal of the order dated 24.2.2011 passed in W.P. (C) No. 20427 of 2009 by this Court, it appears that in the said case, the petitioner sought for a direction from this Court to the C.D.A. for allotment of a residential plot of 'G' Category measuring an area of 300 sqr. ft.

7. An additional affidavit was filed by the C.D.A. in the said case, wherein it was stated that the C.D.A. has proposed to develop the area in sector-15 on phased manner and in the meanwhile, nearly 11383 number of plots have been allotted including group housing and commercial -cum-residential plots, but many of the allottees have not undertaken construction over the said plots which are lying vacant. Therefore, the C.D.A. proposed to have a detailed survey sector-wise, to find out the particulars of vacant plots available and to apprise the matter to the authorities with a request to take necessary steps for cancellation of allotment of those plots, affording reasonable opportunity of hearing to such allottees and only if there is cancellation of allotment, it would recommend the authority to allot such cancelled plots to eligible persons in accordance with law. It was further stated in the said affidavit that it would request the revenue authorities for transfer of additional piece of land within the scheme area

and after such transfer is made by the revenue authority, the C.D.A. shall propose to carve out some more number of 'G' category plots and on approval of the authorities, the C.D.A. shall proceed to allot the aforesaid plots to the eligible persons in accordance with law with reference to Rule 54 of the O.D.A. Rules.

8. Considering the said additional affidavit, this Court on 24.2.2011 in W.P. (C) No. 20427 of 2009 has issued the following direction:

“In view of the aforesaid statement in the form of the affidavit filed by the Secretary, Cuttack Development Authority, we dispose of the writ petition with a direction to take necessary action against the allottees who have not yet started construction over the plots allotted to them and thereafter allot the same in favour of the eligible persons in accordance with law. It is further directed that the CDA shall proceed with the proposal for requesting the Revenue Authority as stated above to obtain some additional land for the purpose of carving out the plots to cater the need of the eligible persons including the physically handicapped persons including the petitioner for allotment of 'G' category plots”.

*(emphasis supplied)*

9. From a reading of the aforesaid directions in the context of the facts of the said case, it appears to us that this Court was conscious that many of the plots allotted have remained vacant and no steps by the allottees have been taken to raise construction thereon upon submission and approval of the building plan. The said order can never mean that allottees who have been recently allotted with plots, if have not raised



construction, their allotments will also be cancelled. This Court was further conscious that such allotments can be cancelled only in accordance with law.

10. In the case of **Teri OAT Estates (P) Ltd. v. U.T. Chandigarh and others**, (2004)2 SCC 130, the Supreme Court was considering the question which centers round the power of resumption of land/building of the respondent therein, leased out in favour of the appellant under the Capital of Punjab (Development and Regulation) Act, 1952 read with the Chandigarh Leasehold of Sites and Buildings Rules, 1973 and the Public Premises (Eviction of Unauthorized Occupants) Act, 1971. The appellant therein being the highest bidder purchased the site bearing No. SCO 126-27, Sector-34-A Chandigarh on leasehold basis in open auction held on 13.3.1988. It was stipulated that in the event the purchaser opting for payment in instalment, 7% interest was payable. 25% of the allotment price was required to be deposited within 30 days of auction and on compliance of the said term, the Estate Officer, Chandigarh was to confirm the lease of the land site in favour of the purchaser by issuing an allotment letter. 7% interest as prescribed was leviable on the balance 75% premium as contained in the letter of allotment in three equal instalments together with ground rent. Clause 8-A of the said letter of allotment, however, stipulated levy of interest at the rate of 12% per annum,

penalty and power of resumption in the event of delayed payment of instalments upon grant of an opportunity of being heard in the terms mentioned in the said clause. The appellant therein deposited certain amounts. But, thereafter, he did not pay the instalment in time. A proceeding for cancellation of lease by way of resumption of land and building was initiated by affording an opportunity of hearing. Ultimately, an order was passed in exercise of powers vested under Rule 12 (3) of the Chandigarh Leasehold of Sites and Building Rules, 1973 cancelling the allotment and forfeiting the deposit made. The Hon'ble Supreme Court after noting such facts in determining the question framed with regard to the power of resumption of land under the rules mentioned above, in paragraph – 24 of the judgment held as follows:-

“It is, therefore, not a case where the court will have to take one stand or the other in the light of the statutory provisions. The question as to whether the extreme power of resumption and forfeiture has rightly been applied or not will depend upon the factual matrix obtaining in each case. Each case may, therefore, have to be viewed separately and no hard-and-fast rule can be laid down therefor. In a case of this nature, therefore, the action of the Estate Officer and other statutory authorities having regard to the factual matrix obtaining in each case must be viewed from the angle as to whether the same attracts the wrath of Article 14 of the Constitution of India or not”.

11. The Hon'ble Supreme Court in the said decision has referred to various earlier decisions of the said Court, where the Hon'ble Supreme Court categorically held that resumption

and forfeiture is a drastic step. In paragraph – 57 of the said judgment, it has been held as follows:-

“We may, however, hasten to add that we do not intend to lay down a law that the statutory right conferring the right of the respondent should never be restored to. We have merely laid down the principle giving some illustrations where it may not be used. There cannot be any doubt whatsoever that if the intention of the allottee is dishonest or with an ill motive and if the allottee does not make any payment in terms of the allotment or the statute with a dishonest view or any dishonest motive, then Section 8-A can be taken recourse to”.

12. The ratio of the aforesaid decision in the case of Teri OAT Estates (P) Ltd. (supra) is, therefore, clear that the Hon’ble Supreme Court in no uncertain terms expressed that the drastic power of resumption and forfeiture should be exercised only as a last resort.

While issuing the directions in W.P. (C) No. 20427 of 2009, this Court was cautious in holding and directing the C.D.A. authorities to take necessary action as per law against the allottees before cancellation of allotment. The said direction has been issued taking into consideration the additional counter affidavit filed on behalf of the C.D.A. in the said case, i.e., in W.P. (C) No. 20427 of 2009, wherein it was mentioned that opportunity of hearing to such allottees shall be granted. It is, therefore, clear that as per the judgment of the Hon’ble Supreme Court in the case of Teri OAT Estates (P) Ltd. (supra), the authorities are required to examine each case by taking the

show cause into consideration and cannot just mechanically cancel the allotment just because the allottee has not been able to raise construction within the stipulated period as envisaged in the Brochure as well as the allotment letter.

13. Keeping in view the conclusion of the Supreme Court that cancellation of allotment should be adopted as a last resort as the same is a drastic action, the directions issued in W.P. (C) No. 20427 of 2009 are required to be supplemented by issuing specific directions with regard to dealing with the show cause shown by the allottees, who have not been able to build their houses over the allotted lands within the stipulated period. The right of the C.D.A. to cancel such allotment is derived from the clause mentioned in the Brochure and the allotment letter which are not statutory in nature. Hence, we add the following directions to the directions issued in the order dated 24.2.2011 passed in W.P. (C) No. 20427 of 2009:-

- (i) Before issuing a show cause notice to any allottee, who has failed to raise construction over his allotted plot within five years from the date of handing over possession, as an initial step, the C.D.A. shall issue a public notice that if such allottees submit building plans for approval within a reasonable period to be specified in the said notice,

such building plans will be taken up for consideration for approval and, if approved, the allottees shall be required to start raising construction in accordance with the approved plan as early as possible from the date of approval, preferably, within a period of three months from the said date.

(ii) The C.D.A., thereafter, shall issue notice to show cause to such allottees, who have not raised construction over their allotted plots nor have responded to the public notice to be published as per the directions given above.

(iii) Upon receiving the show cause, a fair, impartial and pragmatic approach should be made for considering the reasons assigned in the show cause by the allottees by giving an opportunity of hearing to such allottees;

(iv) In the event, the C.D.A. authorities find the show cause to have explained the delay in raising the construction, which are bona fide in nature, they, instead of cancelling such allotment should give an opportunity to such allottees to submit their building

plan for approval within a specified time if no such application was made earlier and start such construction within a stipulated period to be fixed by the authority from the date of approval of the plan.

(v) However, if the C.D.A. authorities find that the reasons assigned in the show cause are not bona fide and there is negligence on the part of the allottee for which the land has remained vacant, it would be open for them to cancel such allotment.

(vi) In case, where the C.D.A. authorities come to the conclusion that the allottee under some circumstances beyond his control has not been able to raise construction over the allotted land and further wants to alienate such land to any other third party and seeks permission of the C.D.A. authorities in that regard, the C.D.A. authorities shall consider the emergent requirement of the allottee for obtaining funds, viz. for undertaking any special treatment for any serious disease or for any imminent expenses which he is required to meet and

accord such permission to transfer the allotted plot.

- (vii) The C.D.A. authorities will be free to consider approval of building plan submitted by any such allottees even beyond the period stipulated in the Brochure/letter of allotment, if it comes to the conclusion that the allottee has genuine reasons for not applying for such building plan earlier.

14. It may be clarified here that the above directions will be issued only in respect of plots where allotments have been made, but no lease deed has been executed and registered by the C.D.A. in favour of the allottees, as, in case, where such deed has been executed and registered by the C.D.A., the right of resumption of such lease shall be governed in accordance with law and in accordance with the provisions of the Transfer of Property Act, 1882/Specific Relief Act, 1963.

15. Now coming to the facts of the present case, we find that the petitioner having already made an application for approval of building plan though beyond time and has also filed a show cause giving the reason that due to unavoidable circumstances and shortage of finance inasmuch as the boundary dispute between the petitioner's allotted plot and

other adjacent plots was not settled up to 7.6.2012, it cannot be presumed that the plot allotted to the petitioner was demarcated before or at the time of issuance of the possession handing over memo to her. Therefore, no latches can be attributed to the petitioner. The C.D.A. authorities are, therefore, directed to consider the plan submitted by the petitioner for approval and approve the same, if the same is in accordance with the regulations. This shall be done within a period of thirty days from the date of communication of this order to the Planning Member – opp. party no. 3. However, it is made clear that the petitioner shall start raising the construction within three months from the date of receiving the approved plan. In view of the above conclusion, the order under Annexure-4 stands quashed.

16. In the result, the writ petition is allowed with the above directions. No costs.

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**M.M. Das, J.**

**C.R. Dash, J.** I agree.

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**C.R.Dash, J.**

**Orissa High Court, Cuttack.**  
**January 30th ,2013/Biswal.**



