

(2026) 03 OHC CK 1057
In the Orissa High Court
Case No : Writ Petition (C) No. 19531 Of 2023

Bijayalaxmi Ojha

APPELLANT

Vs

State Of Odisha

RESPONDENT

Date of Decision : 17-03-2026

Acts Referred:

Citation : (2026) 03 OHC CK 1057

Hon'ble Judges : B. P. Routray, J

Bench : Single Bench

Advocate : Amit Prasad Bose, R. Pradhan, D. Mohapatra, Debakanta Mohanty

Final Decision : Disposed Of

Judgement

B.P. Routray, J

1. Heard Mr. A.P. Bose, learned counsel for the petitioner, Mr. D. Mohapatra, learned senior counsel for Bhubaneswar Development Authority (BDA) (O.P. No.2), Mr. D. Mohanty, learned counsel for Bhubaneswar Municipal Corporation (BMC) (O.P. No.3) and Mr. R. Pradhan, learned ASC for opposite party No.1.

2. The petitioner is the allottee of residential plot No.167 under Kalinga Vihar Housing Scheme (MIG Category). The order of allotment was issued on 24th January, 2004.

3. The case of the petitioner is that there is a surplus patch of land behind his plot measuring 40 feet X 55 feet (2200 Sq. Feet) belonging to BDA (O.P. No.2), adjacent to his land and the same is left unused. Accordingly the petitioner made an application in the year 2004 vide Annexure-6 series and subsequent thereto on different dates. In the year 2020 an advertisement dated 30th December, 2020 was issued by the BDA proposing to dispose of un-allotted cut piece lands available to the allotted house / residential / commercial plots within the housing / plotted development / commercial scheme under the BDA with such specified terms and conditions, inter alia, that the left out patches of land within

the buildable area of the scheme cannot be used otherwise or developed as independent residential or commercial plots, which may be considered for allotment to the land owner who has a plot contiguous or adjacent to it, and the additional land can be allotted on payment of price which is equivalent to double of the present Benchmark value. There are many other stipulations as prescribed under the said advertisement at Annexure-3 including such other criteria to be decided by the authority. Pursuant to the advertisement at Annexure-3, the petitioner made an application at Annexure-4 series for allotment of the additional adjacent land measuring 40 feet x 55 feet along with depositing the processing fee of Rs.5000/-.

4. It is submitted by Mr. Bose, learned counsel on behalf of the petitioner that, admittedly his application for consideration of allotment of the said additional land contiguous to his residential plot No.167 is still vacant and left un-used by the authority, which is in possession of the petitioner since the date of allotment of his land in Plot No.167. According to Mr. Bose, by keeping pending his application for allotment of the additional land since 2021 along with acceptance of the processing fee deposited by the petitioner, and being the owner of the contiguous plot, the petitioner has an expectation legitimate on his part for getting such addition land in his favour. It is also submitted on behalf of the petitioner that BDA has allotted such addition patch of lands on payment of price by some of the plot owners, viz., Plot No.169 and 178.

5. Mr. Mohapatra, learned senior counsel for BDA submits that the decision to allot such additional lands pursuant to the advertisement under Annexure-3 is yet to be taken by the authority subject to such terms and conditions prescribed in Annexure-3 and such other conditions to be fulfilled as per the decision of the authority. Mr. Mohapatra further submits that the petitioner is a sheer encroacher of the additional land adjacent to his allotted land who has constructed a boundary wall around the same and now by virtue of his application as per Annexure-4 series the petitioner is claiming right for allotment of such additional land in his favour. According to Mr. Mohapatra, when the authority has not yet taken the decision regarding allotment of such additional lands to the contiguous land owners within the housing scheme area, no right can said to have accrued in favour of the petitioner to get the additional land allotted in his favour.

6. The fact that the petitioner is the allottee of Plot No.167, measuring area 40 feet x 60 feet within the housing scheme is admitted, and it is also not disputed that the owners of Plot No.169 and 178 have been allotted with such additional lands adjoining to their respective plots. But according to opposite party no.2 such additional lands were allotted in favour of owners of those plots No.169 and 178 was much prior to the notification of present advertisement under Annexure-3 as effected on 10th August 1999 and 19th March 2005, respectively.

7. Opposite party no.3 is the BMC who has been subsequently handed over such lands by the BDA (O.P. No.2) and according to the submission of the petitioner as well as Mr. Mohapatra, learned senior counsel for opposite party no.3 present

dispute with regard to the additional lands is no way connected with BMC since no such land is given to opposite party no.3 presently disputed by the petitioner to claim in his favour. The land which is in possession of Municipal Corporation is not presently disputed by the petitioner and so, opposite party no.3 has no occasion to object to the prayer of the petitioner.

8. Pursuant to order dated 10th September 2025 of this court, a joint demarcation of the land was conducted by GA Department on 8th December 2025 in presence of opposite party No.2, 3 and the petitioner and the report thereof has been filed at Annexure-A/2 to the counter of opposite party no.2. Said joint demarcation report dated 8th December 2025 under Annexure-A/2 reveals that the lands allotted to BMC in respect of each plot named in the report have been segregated and there is no dispute about the land allotted to BMC. It is also seen that the petitioner's claim is in respect of the additional land measuring 40 feet x 55 feet as shown in the chart under Annexure-A/2.

9. As stated above the petitioner was in occupation of the extra land measuring 40 feet x 55 feet as per the demarcation report under Annexure-A/2 since the date of allotment of the land in Plot No.167. The prayer of the petitioner is of two-fold, first, not to demolish the boundary wall constructed covering such additional patch of land and secondly, to consider his application under Annexure-4 for allotment of the additional land in his favour keeping in view the fact of advertisement made by BDA in the year 2020 as well as the allotment of land to similarly situated land owners.

10. As per the submissions made on behalf of opposite party no.2 the authority is yet to take a decision on the allotment of extra patch of land in terms of the advertisement made on 30th December, 2020 under Annexure-3. In this regard opposite party no.2 has stated at paragraph 4 of its counter as follows:-

"4.xxxxxxxx xxxxxxxx

As regards the request of the petitioner to allot the said extra land in their favour citing allotment made in favour of other house owners, it is submitted that the Authority has not yet considered the same for the reason to examine as to whether such area cannot otherwise be utilized for the purpose of BDA. Upon decision taken and in case it is found that the encroachers comply the conditions, the encroached land may be allotted to the adjoining land owners on such terms and conditions to be fixed by BDA as per Land Allotment Regulation and the decision of the Authority in this regard. Except the contentions referred to above, other contentions made in these paragraphs of the writ petition are stoutly denied."

11. The petitioner submits that he has the legitimate expectation to get the land allotted in his favour by virtue of the advertisement issued under Annexure-3 as well as by virtue of his continuous possession over the same and non-consideration of his application by the BDA till date. As per the doctrine of legitimate expectation, it needs to be fulfilled that the petitioner has raised a

legitimate claim in support of his prayer that he has expectation to get the land allotted in his favour as a matter of course and not contrary to law. The doctrine of legitimate expectation operates in the domain of public law and its scope, inter alia, includes the assurances given either by way of express policy or notification or circular or even to certain extent of consistent past practice. In the matter of land allotment priority within the policy frameworks, individuals can also rely on the doctrine of legitimate expectation. In *Navjyoti Coop. Group Housing Society v. Union of India* (1992) 4 SCC 477, the Hon'ble Supreme Court, in a matter relating to allotment of land for group housing societies, have observed as follows:-

"15. It also appears to us that in any event the new policy decision as contained in the impugned memorandum of January 20, 1990 should not have been implemented without making such change in the existing criterion for allotment known to the Group Housing Societies if necessary by way of a public notice so that they might make proper representation to the concerned authorities for consideration of their viewpoints. Even assuming that in the absence of any explanation of the expression "first come first served" in Rule 6(vi) of Nazul Rules there was no statutory requirement to make allotment with reference to date of registration, it has been rightly held, as a matter of fact, by the High Court that prior to the new guideline contained in the memo of January 20, 1990 the principle for allotment had always been on the basis of date of registration and not the date of approval of the list of members. In the brochure issued in 1982 by the DDA even after Gazette notification of Nazul Rules on September 26, 1981 the policy of allotment on the basis of seniority in registration was clearly indicated. In the aforesaid facts, the Group Housing Societies were entitled to ?legitimate expectation? of following consistent past practice in the matter of allotment, even though they may not have any legal right in private law to receive such treatment. The existence of ?legitimate expectation? may have a number of different consequences and one of such consequences is that the authority ought not to act to defeat the ?legitimate expectation? without some overriding reason of public policy to justify its doing so. In a case of ?legitimate expectation? if the authority proposes to defeat a person's ?legitimate expectation? it should afford him an opportunity to make representations in the matter. In this connection reference may be made to the discussions on ?legitimate expectation? at page 151 of Volume 1(1) of Halsbury's Laws of England, 4th edn. (re-issue). We may also refer to a decision of the House of Lords in *Council of Civil Service Unions v. Minister for the Civil Service* [(1984) 3 All ER 935] . It has been held in the said decision that an aggrieved person was entitled to judicial review if he could show that a decision of the public authority affected him of some benefit or advantage which in the past he had been permitted to enjoy and which he legitimately expected to be permitted to continue to enjoy either until he was given reasons for withdrawal and the opportunity to comment on such reasons.

16. It may be indicated here that the doctrine of ?legitimate expectation?

imposes in essence a duty on public authority to act fairly by taking into consideration all relevant factors relating to such 'legitimate expectation'. Within the conspectus of fair dealing in case of 'legitimate expectation', the reasonable opportunities to make representation by the parties likely to be affected by any change of consistent past policy, come in. We, have not been shown any compelling reasons taken into consideration by the Central Government to make a departure from the existing policy of allotment with reference to seniority in registration by introducing a new guideline. xxxx"

12. Further, in the case of Food Corporation of India v. Kamdhenu Cattle Feed Industries, (1993) 1 SCC 71, Hon'ble Apex Court have held at paragraph 8 as follows:-

"8.The mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirement of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness, a necessary concomitant of the rule of law. Every legitimate expectation is a relevant factor requiring due consideration in a fair decision making process. Whether the expectation of the claimant is reasonable or legitimate in the context is a question of fact in each case. Whenever the question arises, it is to be determined not according to the claimant's perception but in larger public interest wherein other more important considerations may outweigh what would otherwise have been the legitimate expectation of the claimant. A bona fide decision of the public authority reached in this manner would satisfy the requirement of non-arbitrariness and withstand judicial scrutiny. The doctrine of legitimate expectation gets assimilated in the rule of law and operates in our legal system in this manner and to this extent."

13. It is admitted that from the date of allotment of the land when the petitioner got possession of his land in Plot No.167, such extent of additional land contiguous to his allotted land is left un-used and under occupation of the petitioner. Even the petitioner has constructed a boundary wall around the said additional land adjacent to his allotted land. He has repeatedly made applications to the authority for allotting said additional patch of land in his favour and more particularly after issuance of the advertisement made in the year 2020 at Annexure-3. He even made the application by depositing the prescribed processing fee of Rs.5000/-. So this is the condition that gives rise in favour of the petitioner to expect that the land which is left out by the authority as un-used for last 22 years to be granted in his favour, more particularly after issuance of the Advertisement on 30th December 2020. In addition to the same, the additional patch of lands allotted to the owners of Plot No.169 and 178 also has given a boost to such expectation of the petitioner that the same will be applied in his case also.

14. It is true that the petitioner has no right to get the land allotted in his favour or by virtue of his possession as the owner of the contiguous land it would accrue

a right in his favour to get such additional extent of land. No such right also accrues in favour of the petitioner by any such statutory provision under the Odisha Development Authorities Act, 1982 and the Regulations made thereunder. His expectation is based on the fact that such additional land has been left un-used till date for more than 22 years which comes within the buildable area in the housing scheme area and more to add that, the petitioner is in uninterrupted occupation of the same. The advertisement at Annexure-3 specifies such terms and conditions in terms of the BDA land (Disposal and Allotment) Regulations, 2015 and as per the decision of the authority meeting dated 11th January 2008. But at the same time the fact that the additional land has been left un-used by the BDA despite it has the knowledge of

occupation by the petitioner cannot be ignored. When the application of the petitioner has been made first in the year 2004, an expectation arose to him to get the land in his favour upon payment of due price. So now the authority on the guise that no decision to use such additional lands has been taken till date, cannot simply brush aside or wash away the expectations of the petitioner accrued in his favour for last so many years in the given facts. As per the advertisement at Annexure-3, such additional lands can be given to the contiguous land owners or the adjacent land owners on payment of double of the present Benchmark value. So it is not that the authority by granting such additional plot in favour of the owner of such allotted plot would give away his right to get fair price of the same. When it is admitted that decision is yet to be taken by the authority, it would be appropriate to left open for opposite party no.2 to take a decision on the prayer of the petitioner within a stipulated period.

15. Accordingly opposite party no.2 is directed to take a decision in respect of the petitioner's prayer to get such adjacent additional land to be allotted in his favour with a view that he has an expectation for the same for last 22 years and also in possession of the same. Opposite Party No.2-authority is further directed to take such decision within a period of three months from the date of receipt of certified copy of this order along with a copy of the brief. In the event, the decision is taken in favour of the petitioner, present Benchmark value may be considered as on the date of this judgment.

16. Till such decision is taken, status quo as on date in respect of nature of the additional land shall be maintained.

17. With aforesaid observation and direction the writ petition is disposed of.