

(2026) 03 OHC CK 1058
In the Orissa High Court
Case No : Writ Petition (C) No. 19530 Of 2023

Diptikanta Biswal

APPELLANT

Vs

State Of Odisha

RESPONDENT

Date of Decision : 17-03-2026

Acts Referred:

Citation : (2026) 03 OHC CK 1058

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.174 under Kalinga Vihar Housing Scheme (MIG Category). The order of allotment under Annexure-1 was issued on 27th December 1995.

3. The case of the petitioner is that there is a surplus patch of land behind his plot measuring 40 feet X 35 feet (1400 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 on 19th June 2005 (Annexure-4) to allot said surplus land in his favour.

4. 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.

5. It is submitted by Mr. Bose, learned counsel on behalf of the petitioner that, the application of the petitioner for allotment of the surplus patch of land dated 19th June, 2005 is still pending consideration before opposite party no.2 and in the meantime the advertisement dated 30th December 2020 under Annexure-3 has been issued. It is true that after issuance of the advertisement under Annexure-3 the petitioner has not made any application for allotment of the surplus land in his occupation adjoining to his plot to the authority till date. But this court while considering cases of some other plot owners in different writ petitions, viz., WP(C) No.19522 of 2023, WP(C) No.19526 of 2023, WP(C) No.19532 of 2023, WP(C) No.19531 of 2023 and other writ petitions, where those respective petitioners had applied for grant of the surplus land in their favour pursuant to issuance of the advertisement under Annexure-3, has passed certain directions to take decision in respect of those petitioners regarding allotment of such surplus lands.

6. Mr. Bose further submits that though the petitioner has not applied for allotment of the surplus land in his favour but the fact remains undisputed that said surplus patch of land measuring 40 feet X 35 feet is in occupation of the petitioner till date from the date of his allotment of plot No.174. Accordingly he may be permitted to apply to the authority concerned pursuant to the advertisement at Annexure-3 and in such event the case of the petitioner may also be considered by the authority appropriately.

7. Mr. Mohapatra, learned senior counsel for BDA submits that the decision to allot such additional lands pursuant to the advertisement under Annexure-3 is to be taken by the authority yet, 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 taken the decision yet, 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.

8. Mr. Mohapatra, learned senior counsel further submits that in the given facts of the present case the petitioner cannot be treated equally with those other petitioners for the reason that he has not approached the authority for allotment

of the surplus land pursuant to issuance of the advertisement under Annexure-3.

9. 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.

10. 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 35 feet as shown in the chart under Annexure-A/2.

11. As stated above the petitioner was in occupation of the extra land measuring 40 feet x 35 feet as per the demarcation report under Annexure-A/2 since the date of allotment of the land in Plot No.174. 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.

12. 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."

13. Upon hearing both parties and considering the facts as submitted by the petitioner as well as opposite party no.2 and taking note of the direction of this court passed in other writ petitions stated above, present writ petition is also disposed of with a direction to opposite party No.2 to consider the prayer of the petitioner for allotment of the surplus land in his occupation as per the joint demarcation report under Annexure-A/2, in the event the petitioner makes an application to that effect in terms of the advertisement under Annexure-3, within a period of 30 days from today along with the certified copy of this order.

14. Opposite party no.2 is further directed to take decision in respect of petitioner's prayer to get such adjacent additional land to be allotted in his favour with a view that he is in occupation of the same for last 30 years and such decision shall be taken within a period of three months from the date of application of the petitioner. 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.

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

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