
(2025) 03 OHC CK 1370
In the Orissa High Court
Case No : Writ Petition (C) No. 30721 Of 2023

Kiran Projects Pvt. Ltd, Dist Cuttack	APPELLANT
Vs	
Cuttack Development Authority & Others Vs	RESPONDENT

Date of Decision : 10-03-2025

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2025) 03 OHC CK 1370

Hon'ble Judges : Ananda Chandra Behera, J

Bench : Single Bench

Advocate : G. Mukherji, S. Acharya, D. Mohapatra, P.K. Singhdeo, Soumyajyoti Biswal

Final Decision : Disposed Of

Judgement

Ananda Chandra Behera, J

1. Since both the writ petitions have been filed by the respective petitioners thereof against each other relating to the matter concerning same and one project i.e. Kiran Projects Private Limited, then, both the writ petitions are taken up together analogously for their final disposal through this common Judgment.

2. According to the petitioner in WPC No.30721 of 2023, the petitioner being a private limited company i.e. M/s. Kiran Projects Private Limited entered into a collaboration agreement with land owners Sri Ananda Parija & Sri Goutam Parija as per Annexures-5 & 6 for development of two residential plots specifically indicated in Para Nos.4 & 5 of the writ petition by constructing multi-storeyed/ high-rise building comprising of flats/units and after construction, 37% of the built up area and proportionate built up area of the flats would be allocated to the land owners and remaining parts of the built up area would be held by the petitioner for selling of the same to the interested flat buyers. On the basis of such agreement and power of attorney, the petitioner approached Cuttack Development Authority-Opposite Party No.1 (in short CDA) seeking permission

for construction of a B+S+4 storeyed residential building and after accepting such request of the petitioner, permission for construction was granted by the CDA (Opposite Party No.1) on dated 13.08.2013 vide Letter No.20602/CDA, file number.PLN-BDP-1480/11 (Annexure-7).

3. On the basis of such permission/authorization of the CDA-Opposite Party No.1, the petitioner started construction of flats on the said two plots since April 2014 and completed the same by August 2016 and the respective flat buyers/owners were given possession starting from October 2016 and the registration process of the flats in favour of the flat buyers started since 31.03.2017. On completion of the sale of the flats and allotment of parking areas to the flat buyers, it was found that, some areas in the stilt floor was available with the petitioner having commercial viability, because, commercial establishments have mushroomed in the area of the said building. When it is found that, some constructions have already been made in deviation to the approved plan of the C.D.A., then, the petitioner as per letter dated 28.11.2018 submitted drawings before the C.D.A. (Opposite Party No.1) under the scheme for regularisation of the deviated constructions and also for using the unused stilt floor for its commercial use. Then, after taking into consideration to the application of the petitioner and on proper verification of documents with spot verification, the Opposite Party No.1 (C.D.A.) granted permission on dated 01.09.2021 as per Annexure-8 to the petitioner for using 565.45m² in the stilt floor for commercial use on payment of required fees for its regularization and allowed to use the said apartment for commercial-cum-residential purpose.

4. When on the basis of above authorization of the Opposite Party No.1 (C.D.A) as per Annexure-8, the apartment was using by the petitioner in WP(C) No.30721 of 2023 as commercial-cum-residential purpose, the Opposite Party No.1 started issuing notices to the petitioner in WP(C) No.30721 of 2023 one after another vide letters dated 14.02.2022, 07.07.2022, 21.02.2023 & 23.08.2023 (Annexures-1 to 4) directing to stop commercial activity in that building, even though, the petitioner in WP(C) No.30721 of 2023 was allowed to do the same through letter dated 01.09.2021 (Annexure-8) issued by the Opposite Party No.1 (C.D.A) in favour of the petitioner.

5. In response to the said notices, the petitioner replied through letters dated 14.03.2022, 26.07.2023 and 08.09.2023 (Annexure-9,10 & 11) respectively indicating in detail therein that, when the petitioner was allowed for commercial activities only in respect of the limited stilt areas i.e.565.45m² by the Opposite Party No.1 as per letter dated 01.09.2021 (Annexure-8) according to the scheme, later on the Opposite Party No.1 should not have issued notices for stopping commercial use in the said permitted area of the stilt floor.

6. Thereafter, the Opposite Party No.1 along with the staffs of Opposite Party No.3 (Cuttack Municipal Corporation) conducted a joint spot inspection to the site in question and satisfied that, the commercial use by the petitioner in WP(C) No.30721 of 2023 in the permitted area of the stilt floor shall in no way cause

any hardship or inconvenience to the flat buyers/owners of that apartment. Even after the said joint inspection by the Opposite Party Nos.1 and 3, the Opposite Party No.1 (CDA) did not withdraw the notices 14.02.2022, 07.07.2022, 21.02.2023 & 23.08.2023 (Annexure-1 to 4) respectively, those were issued to the petitioner in WP(C) No.30721 of 2023 directing to stop commercial use in the permitted stilt area i.e. 565.45m² of the stilt floor, then, without getting any way, the petitioner approached this Hon'ble Courts by filing the writ petition vide WP(C) No.30721 of 2023 praying for directing the Opposite Party No.1 (CDA) to recall its letters dated 14.02.2022, 07.07.2022, 21.02.2023 & 23.08.2023 (Annexure-1 to 4) respectively or in alternative to quash the said letters dated 14.02.2022, 07.07.2022, 21.02.2023 & 23.08.2023 (Annexure-1 to 4) of the Opposite Party No.1 (CDA) and to pass such order/direction as the Court thinks fit taking into account the averments and conditions in the sale deeds of the flat buyers of the apartment.

7. After filing of the above writ petition No.30721 of 2023 by the Kiran Projects Pvt. Ltd., Cuttack, the flat buyers association i.e. Kiran Parijatak Enclave Apartment Owner's Welfare society along with Mr. Reaz Ahmed Khan filed another writ petition against the petitioner of WP(C) No.30721 of 2023 and others including CDA vide WP(C) No.38997 of 2023 praying for quashing the written permission dated 01.09.2021 (Annexure-5) issued by the Opposite Party No.1 (CDA) in favour of the petitioner in WP(C) No.30721 of 2023 for commercial use of 565.45m² area in the stilt floor on the ground that, the said Annexure-5 is violative of scheme for Regularization of Unauthorized Constructions and such permission has been granted by the CDA without complying the principles of natural justice i.e. without affording any opportunity of being heard to the Petitioners in WP(C) No.38997 of 2023 by the C.D.A prior to granting such permission and Kiran Parijatak Enclave Apartment is exclusively meant for residential use. At any cost, the same can never be changed/used from residential purpose to any commercial purpose by the Opposite Party No.1 (CDA). Because, on being allured by the published brochures of the Opposite Party No.5 for the exclusive use of the said apartment as residential purpose, they (flat buyers) were interested to purchase the flats in that apartment. If there would have been any advertisement relating to any commercial use of the said apartment, they would not have purchased any flat in that apartment. Any use of the stilt floor of the apartment for any commercial purpose shall cause much inconvenience to the flat owners of such apartment. As such, granting of permission as per letter dated 01.09.2021 (Annexure-5) by the Opposite Party No.1 to the Opposite Party No.5 after receiving the required amount as per the scheme towards deviation fees by the Opposite Party No.1 (CDA) is purely illegal and contrary to law. Therefore, the Annexure-5 cannot be sustainable under law. That apart, the Opposite Party No.5 was trying to block the parking place of the flat owners in the stilt floor installing shutters, to which, the flat owners did not allow and for such protest and disturbance, a case has been registered at Mangalabag P.S. against the petitioner in WP(C) No.30721 of 2023.

8. When the above permission as per Annexure-5 has been granted by the Opposite Party No.1 to the Opp. Party No.5 illegally and unauthorizedly violating the settled position of law, then, the petitioners approached this Court by filing the WP(C) No.38997 of 2023 praying for quashing the Annexure-5 and after quashing the Annexure-5 to pass an order directing CDA (Opp. Party No.1) to give opportunity of being heard to the petitioners in WP(C) No.38997 of 2023 by the Opposite Party No.1 to dispose of the application of the Opp. Party No.5 for granting permission to use a portion of stilt floor of the apartment for commercial purpose.

9. CDA and its Vice-Chairman filed a joint counter affidavit in both the writ petitions taking their stands identically that, the application of the petitioner in WP(C) No.30721 of 2023 for regularization of the deviations made in the construction was allowed on dated 01.09.2021 through its self-disclosure statements and facts indicating that, the constructions of the concerned commercial portion in question in the stilt floor had already been made on the date of floating of the scheme. So, on the basis of the said self-disclosure made by the petitioner in WP(C) No.30721 of 2023, letter dated 01.09.2021 was issued by the CDA to the petitioner in WP(C) No.30721 of 2023 for using 565.45m² area in the stilt floor as commercial purpose.

10. In Para No.10 of the Notification No.231 dated 20.06.2018 of the Housing & Urban Development Department scheme on the basis of the Odisha Development Authorities Act, 1982, it has been specifically indicated and clarified that,

“in the event of misrepresentation or suppression of facts, the compounding fee shall be forfeited and the permission for regularization so issued shall be revoked and the matter shall be reported to the Council of Architecture, New Delhi for cancellation of the license of the concerned Architect and Director Town Planning for cancellation of registration in case of technical persons.”

In Para No.12 of the said notification, it has been indicated that, “any person aggrieved by the decision of the Development Authority may prefer an appeal under the relevant sections of the Act and the decision of the Appellate Authority shall be final.”

As, the permission for regularization as per letter dated 01.09.2021 was granted by the C.D.A. in favour of the petitioner in WP(C) No.30721 of 2023 on self-disclosure statements, for which, the letters dated 14.02.2022, 07.07.2022, 21.02.2023 & 23.08.2023 were issued by the C.D.A. to the petitioner in WP(C) No.30721 of 2023 lawfully to stop any commercial activity in the permitted stilt area and to file show cause for its appropriate decision as per law to be taken by the CDA after hearing from the applicant and flat owners, for which, the WP(C) No.30721 of 2023 filed by the petitioners is liable to be dismissed.

11. The Kiran Parijatak Enclave Apartment Owner’s Welfare Society & another (those are the petitioners in WP(C) No.38997 of 2023) filed their counter in WP(C) No.30721 of 2023 taking their similar stands, those were taken in their

petition in WP(C) No.38997 of 2023.

The Opposite Party No.5 in WP(C) No.38997 of 2023 filed its counter reiterating the grounds, those were taken by it in its petition in WP(C) No.30721 of 2023.

12. I have already heard from the learned counsels of the petitioners in both the writ petitions and the learned Sr. Counsel for the CDA and its Chairman.

13. The crux of both the writ petitions filed by the respective petitioners is same and one i.e.

Whether the permission granted by the CDA as per letter dated 01.09.2021 in favour of the petitioner in WP(C) No.30721 of 2023 for regularization of the deviations in the constructions of the Kiran Parijatak Enclave Apartment after receiving required fees for the same as per scheme by the Opposite Party No.1 (CDA) permitting for using the said apartment as residential-cum-commercial and to use 565.45m² in the stilt floor of the apartment for commercial purpose is illegal and unauthorized and;

Whether the said letter dated 01.09.2021 is liable to be quashed (set aside/recalled) and after quashing the same, opportunity of being heard is required to be given by the CDA to the petitioners in both the writ petitions by the CDA for the disposal of the application for permission and whether the letters dated 14.02.2022, 07.07.2022, 21.02.2023 & 23.08.2023 (Annexure-1 to 4 in WPC No.30721 of 2023) issued by the CDA to stop any commercial activity in the permitted stilt floor granted as per letter No.01.09.2021 are liable to be quashed/set aside?

14. Now, it will be seen, whether CDA (Opposite Party No.1) had authority or jurisdiction under law for regularization of any deviation in the construction and to allow the petitioner in WP(C) No.30721 of 2023 for using the apartment as residential-cum-commercial purpose giving permission for using 565.45m² in the stilt area for commercial purpose.

All the parties are relying upon the scheme prepared by the Housing & Urban Development Department as per Notification No.231 dated 20.06.2018 on the basis of the Odisha Development Authorities Act, 1982.

"The preamble of the said notification clarifies that, the said notification was made in order to give one time opportunity for regularising the unauthorized constructions within the frame work of standards prescribed in the scheme.

Para No.3 of the said notification provides that, the Scheme intends to give an opportunity to every person for regularizing unauthorized constructions undertaken within the Development area, prior to the date of the commencement of the Scheme, by way of compounding on payment of fee at the rate prescribed in the scheme and the Scheme is applicable only to such unauthorized constructions that are structurally safe and do not affect any public interest or safety or interfere with any public activity.

Para No.10 (2) of that Scheme clarifies that, in the event of misrepresentation or suppression of facts, the compounding fee shall be forfeited and the permission for regularization so issued shall be revoked and the matter shall be reported to the Council of Architecture, New Delhi for cancellation of the license of the concerned Architect and Director Town Planning for cancellation of registration in case of technical persons.

Para No.12 of that Scheme also clarifies that, Any person aggrieved by the decision of the Development Authority may prefer an appeal under the relevant sections of the Act and the decision of the Appellate Authority shall be final.”

15. It is the undisputed case of the parties that, as per letter dated 01.09.2021, CDA has granted permission to the petitioner in WP(C) No.30721 of 2023 after receiving the required fees/amounts as per the Scheme for using 565.45m² of the stilt floor as commercial purpose and to use the apartment as commercial-cum-residential.

Thereafter, CDA issued letters dated 14.02.2022, 07.07.2022, 21.02.2023 & 23.08.2023 respectively to the petitioner in WP(C) No.30721 of 2023 to stop any commercial activity in the aforesaid permitted 565.45m² area in the stilt floor in respect of which, previously permission was granted as per letter dated 01.09.2021.

The flat buyers of the apartment are bound by the contents of their respective purchase deeds (sale deeds) as per Annexure-13, on the basis of which, they have stepped their shoes into the apartment. So, the sale deeds of the respective flat buyers are their source/basis of entry into the apartment.

It has been specifically indicated in page No.7 of Annexure-13 (sale deed) that,

“The construction is in consonance with the specific stipulations that spelt out in the agreement for sale, full satisfaction with regard to the quality of construction of the flat, workmanship, the facilities and amenities provided both in the flats as well as in the apartment/complex. The vendee further explicitly states that, there is no deficiency in service by the builder and have no claim/demand in respect of any additional construction in the top floor and in the stilt floor and also have no claim for any portion of stilt floor or for any other allotment.”

16. The aforesaid contents in Page No.7 of the purchase deed (sale deed, Annexure-13) of the flat owners are clearly and unambiguously going to show that, they (flat buyers) have no claim/demand in respect of any additional construction in the top floor & in the stilt floor and also have no claim for any portion of the stilt floor or for any other allotment by the builder.

17. The above binding effect of the contents in the respective sale deeds upon the respective flat buyers indirectly authorizing the builder i.e. petitioner in WP(C) No.30721 of 2023 for making additional construction in the stilt floor, in which, they (flat buyers) will have no claim/objection.

When the notification No.231 dated 20.06.2018 has authorized the CDA for regularization of any unauthorized construction deviated from the original plan after receiving the required fees and when the CDA has granted permission as per letter dated 01.09.2021 to the petitioner in WP(C) No.30721 of 2023 for using the apartment as residential-cum-commercial by the builder in order to use 565.45m² in the stilt floor for commercial purpose and when the flat buyers have indirectly authorized the builder in their respective sale deeds for making additional construction in the stilt area, in which, they will have no objection, then, at this juncture, it cannot be held that, the permission granted by the CDA through letter No.01.09.2021 to the petitioner in WP(C) No.30721 of 2023 for using 565.45 M² in the stilt area for commercial purpose after receiving the required fees from the builder as per the scheme is illegal, unauthorized and without jurisdiction.

18. CDA is a model litigant being a statutory authority. As per law, always, all fairness is to be expected from the CDA. When the CDA had permitted the builder (petitioner in WP(C) No.30721 of 2023) after accepting its letter on the basis of the requirements under the scheme vide Notification No.231 dated 20.06.2018 and on verification of reports and plans submitted by the empanelled registered architect of the CDA for the use of 565.45m² in the stilt floor of the apartment as commercial purpose after receiving more than forty lakhs rupees towards its fee as per the scheme then, later on, the CDA should not have issued letters vide 14.02.2022, 07.07.2022, 21.02.2023 & 23.08.2023 to the builder (petitioner in in WP(C) No.30721 of 2023) to stop any commercial activity within the said permitted area of the stilt floor indirectly recalling/withdrawing its earlier permission dated 01.09.2021. Because, the CDA is estopped under law to recall/withdraw its permission indirectly by issuing the above letters to the builder, because, CDA is not permitted to "blow hot and cold", "fast and loose" or "approbate and reprobate" at the same time.

19. On analysis of the facts and circumstances of the writ petitions, as per the discussions and observations made above, it is held that, CDA should not have issued the letters dated 14.02.2022, 07.07.2022, 21.02.2023 & 23.08.2023 to the petitioner in WP(C) No.30721 of 2023. For which, the said letters are required to be quashed allowing the WP(C) No.30721 of 2023 filed by its petitioner.

When, it is held that, the WP(C) No.30721 of 2023 filed by the petitioner is to be allowed, then, the WP(C) No.38997 of 2023 filed by the petitioners to quash the letter dated 01.09.2021 cannot be allowed, as, the petitioners in WP(C) No.38897 of 2023 instead of challenging the letter dated 01.09.2021 of the CDA preferring an appeal as per law, they have filed WP(C) No.38997 of 2023 to challenge the same.

20. In the result, the writ petition No.30721 of 2023 filed by the petitioner is allowed on contest.

The letters dated 14.02.2022, 07.07.2022, 21.02.2023 & 23.08.2023 issued by the CDA to the petitioner in WPC No.30721 of 2023 are quashed.

21. The writ petition No.38997 of 2023 filed by the petitioners is dismissed.

22. Accordingly, both the writ petitions are disposed of finally on contest.

23. Pending application(s), if any, in both the writ petitions, shall stand disposed of due to the final disposal of the writ petitions.

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