

**(2023) 01 OHC CK 0100**

**In the Orissa High Court**

**Case No : Writ Petition (C) No.4322 Of 2018**

Krushna Chandra Behera

APPELLANT

Vs

State Of Odisha And Others

RESPONDENT

**Date of Decision : 19-01-2023**

**Acts Referred:**

**Citation : (2023) 01 OHC CK 0100**

**Hon'ble Judges : Arindam Sinha, J;S. K. Mishra, J**

**Bench : Division Bench**

**Advocate : Soubhagya S. Das, G. N. Rout**

**Final Decision : Disposed Of**

## **Judgement**

Arindam Sinha, J

1. Mr. Das, learned advocate appears on behalf of petitioner and submits, impugned is communication dated 1st February, 2018. Text of the communication is reproduced below.

"In inviting a reference to your application dated 22.09.2017 on the subject cited above, I am directed to say that your conversion application dated 08.10.2004 is hereby rejected as your application was not completed in all respect. Further, you have failed to furnish the loan clearance certificate as well as the authenticity of letter No.275, dated 21.08.2009 of the Capital Co-operative Housing Limited, Bhubaneswar as sought for vide this Department letter No.4343/CA, dated 19.02.2016.

It is, therefore, intimated that you may apply afresh online application through GA Estate in this Department for consideration."

(emphasis supplied)

2. He proceeds to demonstrate from disclosures in the petition that purported reasons for rejection of the application were misconceived. He draws attention to

acknowledgement dated 8th October, 2004 made by Receiving Officer (page nos.33 and 34) acknowledging receipt of application from petitioner bearing no.3417 along with documents mentioned in the acknowledgment. The application was made as complete.

3. Regarding allegation that his client failed to obtain loan clearing certificate as well as authenticity of letter no.275 dated 21st August, 2009 from Capital Co-operative Housing Limited, Bhubaneswar (opposite party no.4), Mr. Das draws attention to annexure-8 being letter dated 26th February, 2016 issued by said opposite party and addressed to the Land Officer. Contents of the letter are reproduced below.

"With reference to your letter on the subject cited above, we are to inform you that Sri Krushna Chandra Behera, Plot No.-N/3-323, I.R.C. Village, Jayadev Vihar, Bhubaneswar has not availed any loan over mortgaging the above mentioned Plot from the Society. The Capital Cooperative Housing Ltd. (Formerly the Capital Urban house building Cooperative Society Ltd. and the Capital Cooperative building Society Ltd.), Bhubaneswar."

(emphasis supplied)

4. Mr. Rout, learned advocate, Additional Standing Counsel appears on behalf of State. He points out from letter dated 5th May, 2008 issued by the Additional Land Officer requesting petitioner to submit NOC. Description of opposite party no.4 does not match with the society described in said letter. Text of the letter is reproduced below.

"In inviting a reference to the subject cited above I am directed to say that you have availed mortgage permission towards obtaining of loan from Capital Urban House Building Co-operative Society vide letter No.10216 dt. 01.09.1994.

You are therefore requested to submit NOC on the aforesaid permission to this Department within 15 days from the date of receipt of this letter, failing which your conversion application dt. 08.10.2004 will be rejected."

(emphasis supplied)

Mr. Das in reply submits, aforesaid letter dated 26th February, 2016 also clarifies that there has been change in name of the society. He submits further, by impugned communication his client has been required to make fresh application, which will not be covered by the exceptions in Government Order dated 22nd February, 2010 (annexure-10).

5. In spite of valid service, opposite party no.4 goes unrepresented.

6. On considering above facts and circumstances we are convinced that petitioner's application merited action. Instead, it was rejected on reasons that cannot be sustained. The reasons are not based on the documents disclosed by the application, as demonstrated herein.

7. We set aside and quash impugned communication. The application is restored. Opposite party no.2 will expeditiously deal with the same. We make it clear that the application having been filed on 8th October, 2004 was, therefore, pending as on 14th December, 2009 and is covered by clause (i) in Government Order dated 22nd February, 2010. Action be taken on the application within three weeks of communication.

8. The writ petition is disposed of.

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