

(2026) 03 OHC CK 1056
In the Orissa High Court
Case No : Writ Petition (C) No. 19533 Of 2023

Manoj Kumar Sahoo

APPELLANT

Vs

State Of Odisha

RESPONDENT

Date of Decision : 17-03-2026

Acts Referred:

Citation : (2026) 03 OHC CK 1056

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.176 under Kalinga Vihar Housing Scheme (MIG Category). The order of allotment under Annexure-1 was issued on 9th August, 1995.

3. The case of the petitioner is that there is a surplus patch of land behind his plot measuring 40 feet X 31 feet (1240 square feet) belonging to the BDA (O.P. No.2), adjacent to his land and the same is left unused. Accordingly, the petitioner made an application in the year 2008 vide Annexure-5 series and on consideration of such application of the petitioner opposite party No.2 (BDA) vide their letter dated 23rd July, 2008 intimated the Petitioner that his request for allotment of the available surplus land measuring 1230 square feet adjacent to the allotted house in Plot No.176 will be considered after finalization of the land cost. 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.

4. It is submitted by Mr. Bose, learned counsel for the Petitioner that admittedly his application for consideration of allotment of said additional land adjacent to his residential plot No.176 is still vacant and left unused by the authority, which is in possession of the Petitioner since the date of allotment of his land in Plot No.176. According to Mr. Bose, after issuance of the letter dated 23rd July 2008 by opposite party No.2 to consider his case upon finalization of land cost for allotting the surplus land in his favor give rise to an expectation legitimate on his part for getting such additional land in his favor. It is also submitted on behalf of the Petitioner that BDA has allotted other additional patch of lands on payment of consideration by some of the plot owners, viz. Plot No.169 & 178.

5. Mr. Mohapatra, learned senior counsel for BDA submits that the decision to allot such an 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 authorities. Mr. Mohapatra further submits that the petitioner is a sheer encroacher of the additional land adjacent to his allotted plot and he has constructed a boundary wall around the same. After issuance of the advertisement under Annexure-3 prescribing the norms for allotment of such additional lands, the letter issued by BDA on 23rd July 2008 has become redundant since in any case the surplus land is required to be allotted upon satisfaction of the prescribed terms and conditions as per Annexure-3. He further submits that the authority has not taken any decision yet, regarding allotment of those additional lands to the contiguous land owners within the housing scheme area and so, no right can be said to have accrued in favour of the Petitioner to get that additional land allotted in his favour by virtue of the letter dated 23rd July 2008 issued by the BDA.

6. The fact that the petitioner is the allottee of Plot No.176, 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 is much prior to the 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 given to opposite party no.3 is presently disputed by the petitioner to claim for in his favour since the land which is in possession of the Municipal Corporation is not presently disputed by the petitioner, 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 the GA Department in present of opposite party No.2, 3 and the petitioner on 8th December, 2025 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 land 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 thereupon. It is also seen that the petitioner's claim is in respect of the additional land measuring 40 feet X 31 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 31 feet as per the demarcation report under Annexure-A/2 since the date of allotment of the land in Plot No.176. 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.176, 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 said additional land adjacent to his allotted land. On the application of the petitioner dated 3rd April 2008, opposite party no.2 assured the Petitioner to consider his prayer upon finalization of the land cost vide their letter dated 23rd July 2008. It needs to be stated here that such letter dated 23rd July 2008 has not been withdrawn yet, though not acted upon, by opposite party No.2 and in the meantime the advertisement dated 30th December 2020 under Annexure-3 has been published. Therefore, the contention of Mr. Mohapatra, learned Senior Counsel appearing for opposite party no.2, to the extent that the letter dated 23rd July 2008 issued by opposite party no.2 has lost its validity automatically

upon issuance of the advertisement under annexure-3 is not found conceivable. It is for the reason that by issuing the letter on 23rd July 2008 to consider the prayer of the Petitioner upon finalization of the land cost, opposite party no.2 has indirectly assured to the Petitioner to allot such surplus land in his favour and moreover, that assurance has not been withdrawn yet. So, this raises the expectation legitimate on the part of the Petitioner to get allotted the land in his favour upon payment of due consideration amount.

It is true that the Petitioner has not made any application after issuance of the advertisement under Annexure-3. When the Petitioner was assured in the year 2008 to get the land allotted in his favour upon finalization of the land cost, he of course is not required to apply as per the advertisement under Annexure-3 and in such event, the prayer of the Petitioner can be considered as a separate case against the assurance given by opposite party no.2 in their letter dated 23rd July 2008. So, this condition gives rise expectation in favour of the Petitioner to get the land, which is left out by the authority as unused for last 30 years, to be granted in his favour. 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 by virtue of his possession as the owner of the contiguous land and it would not 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 unused till date for more than 25 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 issuance letter dated 23rd July 2008 is much prior to the advertisement issued under Annexure-3 and specifically says that his request for allotment will be considered upon finalization of the land cost. Despite such assurance was given in favour of the Petitioner, nothing progressed and at the same time, the undisputed fact remains that the additional land has been left unused by the BDA despite it has the knowledge of occupation by the Petitioner. So now, the authority on the guise that no decision has been taken yet on the use of those additional lands, cannot simply brush aside or wash away the expectation of the Petitioner accrued in his favour for last so many years in the given facts of the case. It is true that as a matter of Policy the authority has issued the advertisement under Annexure-3 for use of such additional lands to be given to contiguous land owners or the adjacent land owners on payment of the consideration amount. Therefore, it is not that the authority by granting the additional land in favour of respective owners of the allotted plots would give away his right to fair price of the same and when it is admitted that the decision is yet to be taken by the authority, it would be appropriate to left open for opposite party no.2 to take 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 30 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.