

(2022) 08 OHC CK 0001
In the Orissa High Court
Case No : Writ Petition (C) No. 14809 Of 2013

Sanjay Kumar Jena

APPELLANT

Vs

State Of Odisha And Others

RESPONDENT

Date of Decision : 01-08-2022

Acts Referred:

Citation : (2022) 08 OHC CK 0001

Hon'ble Judges : Dr. S. Muralidhar, CJ; R.K. Pattanaik, J

Bench : Division Bench

Advocate : Srinivas Mohanty, Debakanta Mohanty, Dayananda Mohapatra, S.P. Panda, K.K. Rout, T.K. Nayak

Final Decision : Disposed Of

Judgement

Dr. S. Muralidhar, CJ.

1. The present petition was filed on 3rd July, 2013 as Public Interest Litigation seeking cancellation of the public auction held in 2010 for development of a modern market complex at the entrance of Mahanadi Vihar on PPP mode. The allegation was that the allotment had been made in favour of Opposite Party No.4 in violation of the settled guidelines of the Government as also the Cuttack Development Authority (CDA). The further allegation was that CDA had unauthorizedly handed over excess land to Opposite Party No.4 which had raised unauthorized construction on the plot in question.

2. Notice was directed to issue in the present petition on 16th July, 2013. On 17th September, 2013 a reply was filed on behalf of CDA, in which inter alia it was stated as under:

(i) Initially a meeting was held by the CDA only on 19th January, 2010 for development of a Modern Market Complex (MMC) in PPP mode and an agency was selected as transaction advisor. However, at the subsequent meeting on 9th March, 2010 since no substantial response had been received from the advisor and since it was felt that the construction of MMC in PPP mode will take more

time, it was decided to lease out the plot with a condition to develop the Miniplex and Shopping Complex on the plot. Pursuant thereto, a notice was published in the local daily newspapers as well as in the Times of India editions of New Delhi, Mumbai and Kolkata.

(ii) While in the draft notice there was a requirement of deposit of Rs.20 lakhs by a participant towards participation fees, no such conditionality was provided in final version of the advertisement. The details and copies of the documents were made available on the website of CDA from 11th to 30th October, 2010. In terms of the auction notice, bidders were to purchase the documents on payment of Rs.10,000/- and 4% VAT through demand draft. They were also to pay refundable participation fees of 10% on the total deposit as quoted by them.

(iii) Four bids were received which include the bid of Opposite Party No.4. They also deposited the respective participation fees. Two of the bidders i.e. Opposite Party No.4 and one other were found eligible. Since Opposite Party No.4 quoted the highest amount of Rs.1314 per sq. ft. the allotment was made in its favour.

(iv) On 8th November, 2010 the CDA issued an allotment letter in favour of Opposite Party no.4. Although the allotment was made of 1948 sq.ft. it was found that the plot actually measured 10149.071 sq.ft. There was an excess of 601.071 sq.ft. Subsequently, the file was processed for allotment of the extra area and Opposite Party No. 4 was asked to deposit Rs.14,60,889/- which has since been deposited by Opposite Party No.4.

3. In an order dated 18th September, 2014 the Court noted the allegation of the Petitioner that Opposite Party No.4 was "in connivance" with CDA and raising construction on the land. The Court then directed "in view of the nature of allegation made, we direct the CDA to cause an inquiry into the matter and in case the allegation of illegal construction by the Opposite Party No.4 M/s. SGBL (India) Ltd. is found to be true, to take necessary action to prevent the same."

4. On 23rd December, 2014 a complete copy of the petition was asked to be handed over to the Standing Counsel for the Vigilance Department. Thereafter, the matter did not come up for hearing till 5th April, 2019 when learned counsel for the Petitioner sought one adjournment. On 13th May, 2019 the Court reproduced the order dated 18th September, 2014 and directed CDA to file an appropriate affidavit as to the action taken by it. One more opportunity was granted for the CDA to comply with the above order on 22nd July, 2019.

5. In the meanwhile, on 29th January, 2015 Opposite Party No.4 filed a counter affidavit inter alia pointing out that the writ petition suffers from delay and laches since the land in question has been allotted on 8th November, 2010 in favour of Opposite Party No.4 whereas the writ petition was filed only on 3rd July 2013. Further, it was stated as under:

(i) Possession of the land in question was handed over to Opposite Party No.4 by CDA on 28th December, 2010;

(ii) On 19th April, 2011 the building plan was approved by the CDA;

(iii) CDA also issued an NOC on 11th May, 2011 for Opposite Party No.4 getting electric connection from CESCO;

(iv) Although in the tender notice it was stated that the width of the approach road was 80 feet for which set back for front side was stated as 3 meter, however, on actual physical verification the road width was found to be 28 feet, which was later, on physical verification, corroborated by the CDA. Opposite Party No.4 had got approved the building plan showing the approach road as 80 feet but the actual approach road was 28 feet and therefore, it had changed the building plan by providing for lesser set back.

6. For the alleged deviation of the construction from the approved building plan CDA initiated proceedings against Opposite Party No.4 and registered U.C. Case No.341 of 2012. On 27th

December, 2012 Opposite Party No.4 submitted a detailed show cause and also applied for regularization of the construction with requisites component fees. On 7th January, 2013 Opposite Party No.4 requested the CDA to accept the price for the excess area allotted in its favour on physical verification. The CDA requested Opposite Party No.4 to await the outcome of the vigilance case by its letter dated 24th April, 2013. This was reiterated by the subsequent letter dated 6th August, 2013.

7. On 3rd June, 2014 the CDA informed Opposite Party No.4 that it was required to pay Rs.14,60,889/- for the excess land of 601.071 sq.ft. and this was deposited by Opposite Party No.4 with the CDA on 14th June, 2016. Opposite Party No.4 completed the construction of Miniplex/Shopping complex and a number of shop rooms have already been given on rent and were operational. This was the position as on the date of filing of the affidavit i.e. 29th January, 2015. The said status quo has continued since then.

8. Pursuant to the order passed by this Court, CDA filed an affidavit on 2nd August, 2019 stating that pursuant to the one-time regularization scheme brought forth by the Housing and Urban Development Department, Government of Odisha, Opposite Party No.4 had filed the application for regularization of the deviated construction. This was processed by CDA in the aforementioned UC case in accordance with law. CDA proposed to carry out the orders passed in the said U.C. case.

9. As far as Opposite Party No.4 is concerned, it filed an affidavit on 30th November, 2019 stating that it had already demolished part of the construction which was held to be unauthorized as per direction of the CDA under the supervision of the CDA authorities; that the existing structure was as per the revised plan submitted to CDA for approval under the regularization scheme of the H & UD Department.

10. The State Vigilance filed an affidavit on 5th August, 2019 confirming that

there had been a wrong measuring of the area at the time of handing over possession and therefore, an excess area of 601.071 sq.ft. had been handed over for which the Vice Chairman, CDA had already initiated the departmental proceedings against the errant Amins. Copy of the enquiry reports against the Amins dated 17th March, 2015 was enclosed. The Vigilance Department confirmed that the charges towards the cost of the excess area was deposited by the Opposite Party No.4. Importantly, in para 5 it was stated as under:

"5. That it is humbly submitted here that during enquiry the E.O. enquired into the allegations and it was concluded that the officials of Cuttack Development Authority have neither shown undue official favour nor made any irregularity in auction and allotment of commercial plot in question to the successful bidder on lease of land as is where is basis for the purpose of construction of Miniplex-cum-shopping center in the year 2010 as the auction was conducted fairly."

11. The Petitioner filed a rejoinder affidavit on 23rd December, 2019 stating that after receiving the show cause notice dated 26th July, 2019 Opposite Party No.4 had demolished some part of unauthorized construction and for the remaining part had applied for regularization under the regularization scheme.

12. What is relevant as far as the present proceedings are concerned, is the affidavit of the Vigilance Department. This Court had required the vigilance to inquire into the matter and the Vigilance Department has assured the Court on affidavit, a portion of which has been extracted hereinbefore, that no undue official favour was shown to anyone and nor there is any irregularity in the auction and allotment of the plot in question to the successful bidder. But it does appear that there was some excess land handed over to the extent of 601.071 sq.ft. It has been confirmed that Opposite Party No.4 has indeed paid for the extra land at the market value.

13. As regards the deviation from the sanctioned plan, the explanation offered appears to be a plausible one. In any event, under the one-time regularization scheme, it appears to have been regularized in favour of Opposite Party No.4. The status quo has continued for many years now.

14. The market complex and the shops have already been let out by Opposite Party No.4. In the circumstances, the Court is not satisfied that the Petitioner has made out any case for any further directions to be issued in the matter.

15. The writ petition is disposed of.

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