
(2014) 12 OHC CK 0032
In the Orissa High Court
Case No : O.J.C. No. 15068 of 1999

Santosh Kumar Tripathy

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 16-12-2014

Acts Referred:

Orissa Development Authorities Act, 1982 — Section 91, 91(1), 91(2)

Citation : (2015) 119 CLT 409 : (2015) 1 OLR 1000

Hon'ble Judges : Biswanath Rath, J.

Bench : Single Bench

Advocate : S.D. Das, Sr. Counsel, B.N. Udgata, L. Samantrary and H.S. Satpathy, for the Appellant; A. Mohanty, Learned Addl. Standing Counsel and D. Mohapatra, for the Respondent

Final Decision : Allowed

Judgement

Biswanath Rath, J.?This is a Writ Petition filed by the Petitioner assailing the order passed by the Appellate Authority under the Orissa Development Authorities Act, 1982 (hereinafter called as "O.D.A. Act") in Appeal Case No. 58/98 in exercise of power under Section 91(2) of the O.D.A. Act, 1982 thereby reversing the order passed by the Orissa Development Authority in the matter of regularization of the "roof projection" undertaken by the Petitioner. The Petitioner has assailed the impugned Order vide Annexure-7 on the following grounds.

1. Firstly, the appeal filed by the Opp. Party No. 3 was filed after long gap of period & further the said appeal memorandum did not accompany condonation of delay application & the appeal has been heard on merit even in absence of considering the delay aspect;
2. Secondly, the appeal at the instance of the Opp. Party No. 3 was not maintainable as because a third party has no right of appeal under the O.D.A. Act; &

3. Thirdly, Appeal No. 58/98 being an appeal in the 2nd instance was not maintainable in view of a decision in the matter earlier in Appeal No. 4/98 at the instance of wife of the Opp. Party No. 3 itself.

The case as involved in the Writ Petition is that the Petitioner possessed a land measuring Ac.0.040 decimals out of Plot No. 994 under Khata No. 330 purchased vide Registered Sale Deed No. 196 dated 13.1.1993. He constructed a building over the said plot after obtaining necessary permission/approval of the plan from the Opp. Party No. 2, i.e., Cuttack Development Authority (hereinafter called as "C.D.A."). It is averred that when the Petitioner was residing in his building constructed over the above plot, he received a notice from the Opp. Party No. 2 in a case initiated under Section 91(1) of the O.D.A. Act. The said case was instituted basing on a report of the Amin, which indicates that the Petitioner has unauthorizedly constructed his roof projection upto 2 ft. 8 inches to his western side deviating the approved plan. The Petitioner has appeared in the U.C. Case No. 110/95 & considering his submission & the ground reality the C.D.A. Authority compounded the illegalities on payment of compounding fee of Rs. 1010 for rear side & Rs. 745 for the roof projection towards western side. Following the aforesaid direction of the C.D.A. Authority, the Petitioner deposited a sum of Rs. 1755 for compounding the offence & applied for a revised plan for construction of the 1st Floor. Considering the application of the Petitioner, he was directed to go ahead with the construction of the 1st Floor, consequently Petitioner has also constructed the 1st Floor in the line of the construction made in the ground floor. It is alleged by the Petitioner that when the matter stood thus the wife of Opp. Party No. 3 filed an appeal vide Appeal No. 4/98 before the Opp. Party No. 1, which appeal was dismissed on the ground that the Opp. Party No. 3 is not an interested party to the proceeding after gap of some time. The Opp. Party No. 3 once again preferred an Appeal Case No. 58/98 against the order passed in U.C. Case No. 110/95. The said appeal was admitted without having application for condonation of delay. The Petitioner suo motu appeared in the said appeal challenged the maintainability of the appeal on the ground of limitation as well as maintainability in view of earlier disposal of an Appeal. During pendency of the appeal, a joint inspection report was called for from the Planning Member of the C.D.A. Consequently, a joint inspection report was submitted on 27.1.96. Considering the joint inspection report, the Secretary, Housing & Urban Development, i.e., Opp. Party No. 1 by his Order Dated 23.06.99 disposed of the appeal with a direction to regularize the compoundable portion of roof projection upto 2 ft. & demolish the balance of 8 inches of the roof projection of the building so as to avoid entering of rain water inside the compound of the Opp. Party No. 3. The Petitioner challenged the order in Appeal Case No. 58/98 on the grounds mentioned hereinabove. Even though, notice has been issued to all the parties in the present writ application, the Opp. Party Nos. 1 & 2 appeared in the matter & contested, Opp. Party No. 3 in spite of notice choose to remain absent. Learned Counsel for Opp. Party No. 2 submitted justifying the order passed by the Appellate Authority & claimed that the

impugned order is in strict term of Section 91(2) of the O.D.A. Act, 1982.

2. Heard Learned Counsel appearing for the parties. From the case record, it appears that the wife of the Opp. Party No. 3 had earlier moved an appeal vide Appeal No. 4/98 challenging the order passed in U.C. Case No. 110/95. The said appeal was decided on contest & dismissed on the findings that the wife of Opp. Party No. 3, is not an interested party to the proceeding. The material further disclosed that the Opp. Party No. 3 once again filed another Appeal No. 58/98 against the order passed in U.C. Case No. 110/95. Appeal Memo annexed at Annexure-5 discloses filing of Appeal No. 58/98 on 16.12.98 as against an order in U.C. Case No. 110/95 on 6.4.98. This appeal was filed beyond the period of limitation & as appears from the materials available on record, this appeal was entertained in absence of deciding the question of limitation.

Section 91(2) of the O.D.A. Act, 1982 prescribes provision for an Appeal as against an order passed under Section 91(2) of O.D.A. Act which reads as follows:-

Section 91 removal of unauthorised Development

1. xx xx xx xx

"2. Any person aggrieved by an order under Sub-section (1) may appeal to the State Government or an Officer appointed by the State Government in this behalf, against that order within thirty days from the date thereof, & the Government or the Officer, as the case may be, may after hearing the parties to the appeal either allow or dismiss the appeal or may reverse or vary any part of the order. The decision of the State Government or the Officer shall be final & shall not be questioned in any Court of law."

In view of above provision the appeal being an appeal as against the Order Dated 6.4.98 passed in U.C. Case No. 110/95 ought to have been filed within one month from the date of the above order. Neither the memorandum of Appeal contained an application for condonation of delay nor the memorandum of Appeal even explained the delay in filing the appeal after a gap of 8 months. Appeal memorandum not being contained reason for delay in filing the Appeal was no appeal in the eye law & this Court finds the disposal of Appeal not only a mechanical one but also in non-consideration of the statutory provision as contained in O.D.A. Act, 1982. Law is well settled that if an act requires to be done in a particular manner, it has to be done in that manner or not. In the particular case there is a statutory prescribed procedure in the matter of filing an Appeal which has been deviated.

Further since the earlier appeal at the instance of the wife of Opp. Party No. 3 on the self same issue was already dismissed, there was no question for entertaining another appeal vide Appeal No. 58/98 Further even though the provision contained in Section 91(2) providing a remedy of appeal by any person aggrieved by an order under Sub-section (1) of Section 91 yet considering the

question whether any person include a third party, this High Court in a case as reported in AIR 2001 Orissa 80 decided against the third party after coming to hold that any person does not include a third party. Therefore, no appeal is maintainable under Section 91(2) of the O.D.A. Act at the instance of a third party.

3. Under the facts narrated hereinabove, findings arrived at by me & particularly in view of the decision of this Court rendered in AIR 2001 Orissa 80, the impugned Order Dated 23.06.99 vide Annexure-7 is not sustainable in the eye of law, this Court, therefore, declares the impugned order at Annexure-7 as bad in law & sets aside the same. The Writ Petition succeeds. However, there shall be no order as to cost.