



IN THE HIGH COURT OF ORISSA AT CUTTACK

WP(C) No.31259 of 2022

Ratnakar Baral

....

Petitioner

Represented by Adv.-
Mr. R.K. Kanungo, Adv.

-versus-

***BBSR Development
Authority***

....

Opposite Parties

Represented by Adv.-
Mr. D. Moahapatra, Sr. Adv.

CORAM:

JUSTICE DIXIT KRISHNA SHRIPAD

ORDER

20.08.2025

Order No.

10.

The petitioner has scripted his prayer as under.

“In the aforesaid facts and circumstances this humble petitioners fervently pray this Hon'ble Court to admit the writ petition and issue notice to the Opp. Parties asking them to show cause as to why the letter dt. 26.09.2022 sent by the Secretary, Bhubaneswar Development Authority in Letter No.34286 as at Annexure-6 shall not be quashed and if they fail to show cause or show insufficient cause then to make the rule absolute and quash the said order.”

2. The essential grievance of the petitioner is as to non-refunding of excess amount, which he had paid by way of consent charges to the BDA as a precondition for transferring the allotted property to another by way of sale.

3. Learned Senior Advocate-Mr. Nanda appearing for the petitioner submits that under the mistaken notion, his client has paid the consent charges for the transfer by taking the market value of not only the plot but also the structure put on it subsequently when what was payable as consent charges was on the basis of market value of the plot alone in terms of office order dated 27.05.2015. Therefore, the amount what is



wrongly paid in excess cannot be retained by the BDA without any authority of law.

4. Learned counsel representing the OP-BDA makes submission in justification of the impugned order contending that it is the petitioner, who himself had made valuation and accordingly paid the consent charges and therefore, now he should not be permitted to turn around for seeking the refund. He also adds that allowing the petition amounts to placing premium on mistake of the party.

5. Having heard learned counsel for the parties and having perused petition papers this Court is inclined to grant indulgence in the matter as under and for the following reasons:

5.1. The subject plot was allotted by the BDA with a rider that for its alienation certain amount has to be paid on the differential of sale proceeds. As to the liability for such payment, the petitioner has no quarrel. However, he justified in submitting that in a Welfare State, citizen's money in excess of what is payable by him cannot be extracted or retained with impunity. Section 72 of the Indian Contract Act, 1872 provides for refund/recovery of money mistakenly paid in excess of the liability. Therefore, OP-BDA cannot refuse to refund the excess amount consistent with the observations of Apex Court in *Mafatlal Industries Ltd. v. Union of India*, AIR 1996 SC 1268.

5.2. There is no dispute on the fact matrix that the petitioner, while computing the consent charges for transfer, has taken the value of the building constructed on the allotted plot and that eventually resulted into payment of excess amount. Mr. Nanda is right in pressing into service the BDA office order dated 27.05.2015, which has the following text:



“The consent fee for the transfer of ownership in respect of the leasehold assets allotted by BDA is being imposed at the rate of 25% of differential amount of the difference between the original cost/value of the assets allotted by the BDA and the present market price of the same asset as per the Para-34(b) of Property (Management & Allotment) Regulations'2015. The following procedure shall be followed for determining the market price of the assets keeping in view the decision of the 141st Authority Meeting held on 25.09.2021.

(a) In case of allotment of plots only the market price of the asset will be the present market value of the plot only even if a house is constructed over the plot by the allottee.

XXX

XXX

XXX

The above instruction is applicable only for assessing the market price of the asset for determination for consent fee only while transfer of assets.

This order will come into force with immediate effect.”

5.3. At this stage, learned Panel Counsel appearing for the OP-BDA submits and learned counsel for the petitioner, on instructions, agrees that the market value of the plot in question, as on the date of intended transfer, i.e., 20.11.2021 (the date of draft sale deed), has to be determined by an Approved Valuer of Income Tax Department and the expenses/charges therefor are to be borne by the petitioner himself. This exercise has to be accomplished within a period of six weeks. Both the sides shall cooperate in the exercise to be undertaken by such Valuer, as may be chosen by the BDA. To facilitate this, the impugned order is liable to be voided.

In the above circumstances, this writ petition is disposed off quashing the impugned order. Depending upon the outcome of valuation



exercise, the OP-BDA shall refund to the petitioner excess amount, if any, within two weeks reckoned from the date the valuation report is filed by the Approved Valuer. If delay is brooked, interest at the rate of 1% per mensem becomes payable on the amount due to the petitioner and that interest component may be recovered from the erring officials personally.

Costs made easy.

Web copy of this order to be acted upon by all the concerned.

(Dixit Krishna Shripad)
Judge

Prasant

Signature Not Verified

Digitally Signed
Signed by: PRASANT KUMAR SAHOO
Reason: Authentication
Location: Orissa High Court
Date: 21-Aug-2025 11:48:07

