

Sri Pitambar Prusty Vs. Cuttack Development Authority, Represented Through Its Vice-chairman

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Court : Orissa

Decided On : Feb-26-2004

Reported in : 97(2004)CLT426

Judge : Sujit Barman Roy, C.J. and ;B.P. Das, J.

Appeal No. : O.J.C. No. 13511 of 2001

Appellant : Sri Pitambar Prusty

Respondent : Cuttack Development Authority, Represented Through Its Vice-chairman

Advocate for Pet/Ap. : Mr. G. K. Behera

Judgement :

ORDER

1. Heard Mr. G. K. Behera, learned counsel for the petitioner and Mr. Mohanty, learned counsel appearing for the Cuttack Development Authority.

2. The grievance of the petitioner in this writ application is that petitioner had applied for a land under Sikharpur Housing Accommodation Scheme developed by the Cuttack Development Authority and he was allotted plot No. 77B-81 measuring 60' x 40' on 15.4.1981. On 19.4.1982 the said allotment was modified

and he was allotted plot No. 74/1/C measuring 50' x 60'. Accordingly, petitioner deposited Rs. 27,000/-. Finally the said allotment was also modified and he was allotted plot No. 276/SHAS in Mahanadi Vihar, Cuttack measuring 45' x 60' totalling 2700 sq. ft. Accordingly, Annexure-1 was issued by the Cuttack Development Authority which indicates that petitioner is entitled to get refund of Rs. 5451.20. According to the petitioner, while he was measuring the land allotted to him, he found that the adjacent plot owner has encroached upon his land and the area of the land was less than the actual area of land allotted to him, for which he made a representation to the authorities. As no action was taken on his representation, the petitioner was forced to file OJC No. 17775 of 1998. While disposing of the writ petition, this Court by its order dated 10.3.2000 directed the opposite party to look into the grievance of the petitioner and take a decision on the same within a time frame. According to the learned counsel for the petitioner, no action was taken on his representation and ultimately, he was forced to file a contempt application as the order of this Court was not implemented. Thereafter, according to the petitioner, Annexure-4 was issued on 20.6.2000 and petitioner was informed that initially he was allotted a plot measuring 45' x 60' totalling 2700 sq. ft. of land, but he was further allotted 150 sq. ft. of land increasing the size of the plot of the petitioner. Cost was assessed for 2700 sq. ft. @ 7.32 per sq. ft., for excess land of 90 sq. ft. @ Rs. 28/- per sq. ft. and for balance 60 sq. ft. it was assessed at Rs. 120/- per sq. ft. Thereby the total demand was increased to Rs. 29,898/- and deducting the amount of Rs. 27,000/- which had already been deposited by the petitioner, the petitioner was directed to make further payment of Rs. 2898/-. Against the aforesaid, the petitioner came before this Court alleging that he is not liable to pay excess cost for the land that has been assessed for further 150 sq. ft. which was added to the area of the petitioner. According to the learned counsel for the opposite party i.e., Cuttack Development Authority, after the petitioner filed his objection regarding the shortage of the land, a physical verification and measurement was done on the plot of the petitioner as well as its adjacent plot. After the measurement, it was found that there was excess land in the adjacent plot for which both the plots were measured and they were divided into two equal plots each measuring 2850 sq. ft. The opposite party, further states that the extent of land which has been added to the plot of the petitioner is 150 sq.

ft. and the rate of the excess land will be as per Annexure-4. The fact remains that the petitioner had applied for allotment of a land in 1981. Even though the cost of the land was taken from the petitioner during 1982 by the opposite party the possession of the plot was delivered to the petitioner in the year 1982. A lease-cum-sale agreement was executed between the petitioner and opposite party on 22nd March, 1982. Since the petitioner has already paid the entire amount, it is the bounden duty of the opposite party to give the exact extent of land for which the petitioner has paid the entire amount of cost. As it appears the petitioner could not get any benefit out of the same as it took quite a considerable time for settlement of dispute as regards the measurement of the plot. The fact also remains that the opposite party resolved the dispute only after increasing the plot allotted to the petitioner from 2700 sft. to 2850 sft. All these delays cannot be attributed to the petitioner and the petitioner cannot be saddled with extra cost that has been done by the opposite party by issuing Annexure-4 where the cost of 150 sft. of land has been assessed at a higher rate probably, the rate, prevailing at the relevant point of time when Annexure-4 was issued.

3. In view of the aforesaid, we are inclined to allow the writ application and set aside Annexure-4 dated 20.6.2000 and direct the opposite party to give possession of the land to the petitioner accepting cost of the land @ Rs. 7.32 per sft. which was initially assessed. After deducting Rs. 27,000/- which has been paid by the petitioner, in case it is found that the petitioner is required to pay any further amount, the opposite party shall issue fresh demand for the same which shall be paid by the petitioner within one month from the date of receipt of such demand. The delivery of possession of the land shall be given to the petitioner within one month after such payment if any. If it is found that the petitioner has paid any excess amount, the same shall be refunded to him within one month hence.

4. The writ petition is accordingly disposed of.

5. Urgent certified copy of the order be granted on proper application.