

ODISHA HIGH COURT: CUTTACK

W.P.(C) No. 31182 of 2020

In the matter of an application under Articles 226 & 227 of the
Constitution of India.

Manoranjan Das Mohapatra Petitioner

- versus -

State of Odisha and others Opp. Parties

For Petitioner : Mr. M.D. Mohapatra, Adv (in person)

For Opp. Parties: Mr. A.K. Mishra,
Addl. Govt. Advocate
(O.P. No.1)

P R E S E N T :

THE HON'BLE DR. JUSTICE B.R.SARANGI

DECIDED ON 03.06.2021

Dr. B.R.Sarangi, J. The petitioner, who is an advocate by occupation, has filed this writ petition in person seeking to declare the impugned proceeding vide memo no.4046 dated 04.05.2020 as illegal, arbitrary and unconstitutional, and consequentially issue direction to opposite party no.3 to allot a plot in favour of him either in the same project or in any other similar housing project under the control and management of the opposite party-Odisha Co-operative Housing Corporation Ltd., Bhubaneswar.

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2. The factual matrix of the case, in hand, is that opposite party no.3-Managing Director of opposite party no.2-Odisha Co-operative Housing Corporation Ltd. issued an advertisement in daily newspaper "The Samaja" on 01.01.2013 inviting applications for sale of 18 number of vacant plots of different sizes (1000-4000 sq.ft.) at the rate of Rs.160/- per sq.ft. at Kalinga Vihar Housing Project, Puri, Odisha. The advertisement specified that the applicants need to apply in plain papers indicating their choice of plot with booking amount of Rs.50,000/- and the mode of allotment would be on "First come first serve" basis and the deposit would be received in shape of Demand Draft/Bankers cheque issued in favour of "Odisha Co-operative Housing Corporation Ltd." payable at Bhubaneswar. The Managing Director, Odisha Co-operative Housing Corporation Ltd. reserved the right to accept or reject any application submitted without assigning any reasons whatsoever.

2.1. Pursuant to such advertisement, the petitioner submitted his application along with demand draft of Rs.50,000/- bearing demand draft no.132819 dated 01.01.2013 drawn on Syndicate Bank in favour of opposite party no.3, which was duly received by him. After receipt of his application along with requisite fees, the petitioner did not receive any communication from opposite party no.3 with regard to his selection or rejection of

allotment of plot. The petitioner waited from 2013 to 2016 with a hope that the plot would be allotted in his favour and intimation would be given to him. Opposite party no.3 neither allotted the plot nor intimated the petitioner regarding allotment of the plot. Therefore, the petitioner submitted representation on 02.01.2014 to opposite party no.3 with regard to consideration of his application dated 01.01.2013, but no reply was forthcoming from opposite party no.3. Consequentially, against inaction of opposite party no.3, the petitioner approached this Court by filing W.P.(C) No.2546 of 2016, which was disposed of vide order dated 22.02.2016 with a direction to opposite party no.3 to consider the application and dispose of the representation dated 02.01.2014 of the petitioner within a period of 4 weeks from the date of receipt of the order. Though the said order was communicated, opposite party no.3 slept over the matter and did not give any intimation to the petitioner. Due to non-compliance of the order dated 22.02.2016 passed in W.P.(C) No.2546 of 2016, the petitioner filed CONTC No.249 of 2017 in which upon receipt of notice, opposite party no.3 issued a letter and a cheque of Rs.50,000/- in favour of the petitioner dated 16.12.2019 stating that the earnest money received was returned herewith as the petitioner was not provided with the land applied for. Hence this writ petition.

3. Mr. M.D. Mohapatra, the petitioner appearing in person contended that he had deposited the earnest money of Rs.50,000/- in shape of demand draft pursuant to the advertisement issued on 01.01.2013, but opposite party no.3, having kept quiet for a period of six years, returned the aforesaid earnest money without any interest and without allotting any plot in his favour. He further contended that because of filing of W.P.(C) No. 2546 of 2016 and subsequently CONTC No. 249 of 2017, opposite party no.3 returned his earnest money of Rs.50,000/- in order to get rid of the charge of contempt. Thereby, opposite party no.3 has acted arbitrarily and unreasonably, for which the petitioner seeks interference of this Court at this stage.

4. Mr. A.K. Mishra, learned Additional Government Advocate appearing for the State contended that the petitioner having received back the earnest money deposited by him, with due acknowledgement, he cannot turn around and claim the plot and as such, the relationship between the petitioner and opposite parties no.2 and 3, which was continuing, has been ceased. More so, no contract is subsisting between the parties so as to claim the benefit in the present writ petition. Assuming but not admitting, if there is violation of any terms and conditions, which emanates from the so called contract, the petitioner should have approached the appropriate forum ventilating his grievances in accordance with

law, instead of approaching this Court by filing present writ petition invoking extra-ordinary jurisdiction under Articles 226 and 227 of the Constitution of India.

5. This Court heard Mr. M.D. Mohapatra, the petitioner in person and Mr. A.K. Mishra, learned Additional Government Advocate for the State through virtual mode. As the matter is being decided at the stage of fresh admission, this Court is not inclined to issue notice to opposite parties no.2 and 3 and has disposed of the matter on the basis of the argument advanced by the petitioner-Mr. M.D. Mohapatra and Mr. A.K. Mishra, learned Additional Government Advocate for the State and materials available on record itself.

6. The facts mentioned above are not in dispute. But the question raised that having retained the earnest money for a period of more than six years and refunded the same to the petitioner pursuant to contempt proceeding initiated against opposite parties no.2 and 3, the action of opposite parties no.2 and 3 is arbitrary and contrary to the law. No doubt, earnest money deposited by the petitioner was kept for a period of six years to provide a plot, pursuant to advertisement issued under Annexure-1. On perusal of advertisement under Annexure-1, it is made clear that the mode of allotment would be on "First come first serve" basis. Even though the petitioner applied in a plain paper by

depositing Rs.50,000/- as booking amount in shape of demand draft, but his right only accrues if he satisfies the requirement of "First come first serve" basis. Pursuant to the representation dated 02.01.2014, which was filed by the petitioner and was directed to be disposed of vide order dated 22.02.2016 in W.P.(C) No.2546 of 2016, opposite party no.3-Managing Director, Odisha Co-operative Housing Corporation Ltd. passed the following order:

"In obedience to Order dated 22.02.2016 of the Hon'ble High Court, Odisha passed in W.P.(C) No.2546 of 2016, the representation of the Petitioner Sri Manoranjan Das Mohapatra is taken up for disposal n dated 04.05.2020.

The brief history of the facts that the Odisha Cooperative Housing Corporation had invited application through advertisement dated 01.01.2013 in daily Odia Newspaper 'Samaj' for allotment of 18 Nos. of vacant plots at its Kalinga Vihar project at Puri on the first come first serve basis. In response to such advertisement 60 Nos. of applicants including the present Petitioner Sri Das Mohapatra applied for a plot in the said project. For the purpose of allotment the Corporation maintained the serial as per the date & time of submission of applications by the applicants. As per the serial the Corporation allotted 18 plots to the applicants from Sl. No.1 to 18 and the others could not be allotted any plots. It is to mention here that the Serial Number of the present Petitioner Sri Das Mohapatra was 32. As such he was not eligible for allotment of Plot in the aforementioned project. However, the Corporation tried to adjust the rest applicants in the same project as well as in other projects. However, such proposal of the Corporation could not be materialized.

In the instant case the Petitioner Sri Das Mohapatra was refunded back his deposited money vide Cheque No.596155 dated 05.12.2019 amounting to Rs.50,000/- (Rupees Fifty Thousand only). Hence, he has got no claim with the Odisha Cooperative Housing Corporation.

The representation is disposed off accordingly."

7. On perusal of the aforementioned order, it is made clear that the advertisement was issued by Odisha Co-operative Housing Corporation Ltd. for allotment of 18 number of vacant plots at its Kalinga Vihar Project at Puri on the "First come first

serve" basis. In response to such advertisement, all total 60 applicants, including the present petitioner, applied for plots in the said project. For the purpose of allotment, the Corporation maintained the serial as per the date and time of submission of applications by the applicants. As per the serial, the Corporation allotted 18 plots to the applicants from Sl. No.1 to 18 and the others could not be allotted any plot. As such, the petitioner's name finds place at serial no.32. Therefore, he was not eligible for allotment of plots in the aforementioned project. But the Corporation tried to adjust the rest applicants in the same project as well as in other projects, and such proposal of the Corporation could not be materialized.

8. In the above view of the matter, the claim of the petitioner that having retained his money for a period of six years he is entitled to get the plot under the scheme issued by opposite parties no.2 and 3 cannot sustain in the eye of law. More particularly, when the booking money was refunded and the petitioner acknowledged the same, he cannot turn around and say that the authority has committed any irregularity and illegality in not allotting the plot in his favour, pursuant to advertisement issued under Annexure-1. The entire action is hit by principle of estoppel.

9. In ***B.L. Sreedhar v. K.M. Munireddy***, (2003) 2 SCC 355, the apex Court held that „Estoppe“, commeth of a French work „estoupe“ from whence the English word stopped and it is called an „estoppel“, or conclusion, because a man“s owne act or acceptance stoppeth or closeth up his mouth to allege or plead the truth [Stroud“s Judicial Dictionary, 4th Edn., page.943].

It is further held that „Estoppel“ is based on the maxim *allegans contraria non est audiendus* (a person is not to be heard to allege the contrary), and is that species of presumption „juries et et jure“ (absolute or conclusive or irrebuttable presumption), where the fact presumed is taken to be true, not as against all the world, but against a particular party, and that only by reason of some act done, it is in truth a kind of *argumentum ad hominem*.

10. In ***Mahindra and Mahindra Ltd. v. Union of India***, (1979) 2 SCC 529, the apex Court held that „estoppel“ can arise only if a party to a proceeding has altered his position on the faith of a representation or promise made by another.

11. It is not to be forgotten that the advertisement clearly stipulated that the plot would be allotted on “First come first serve” basis. Therefore, on the basis of applications received if the chronology has been maintained by opposite parties no.2 & 3 on

the "First come first serve" basis and the petitioner's name was found place at serial no.32 and there were only 18 plots available, it cannot be said that illegalities and irregularities have been committed by opposite parties no.2 and 3 so as to cause interference of this Court at this stage.

12. Coming to the allegation as made, with regard to retention of booking money for a period of six years, for that the petitioner has alternative remedy to approach the appropriate forum claiming interest thereon.

13. For the reasons indicated hereinbefore, this Court is not inclined to interfere with the order impugned communicated to the petitioner vide memo no.4046 dated 04.05.2020 by opposite party no.3 in Annexure-7. However, it is left open to the petitioner to pursue his remedy before the appropriate forum claiming interest on the booking money, if he is so desired.

With the above observations and directions, the writ petition is disposed. However, there shall be no order as to costs.

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DR.B.R.SARANGI,
JUDGE

Odisha High Court, Cuttack
The 13th January, 2021/**Alok**

