

**IN THE COURT OF REVENUE DIVISIONAL COMMISSIONER,
SOUTHERN DIVISION, ODISHA, BERHAMPUR**

Cinema Appeal Case No. 2/16

(Order by Sri T. Ao, I.A.S.,

Revenue Divisional commissioner, (SD), Berhampur)

Decided on 04.11.2019

Manoj Sanklecha@Jain
S/o- Chhaganlal Jain,
At-ward No.18, Khariar Road,
PS- Jonk,
Dist-Nuapada.

.....Petitioner

-Versus-

The Collector & District Magistrate, Nuapada,
Dist-Nuapada.

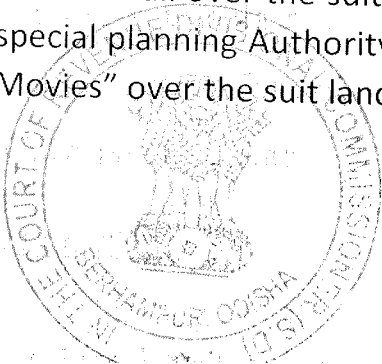
..... Opposite Party

Prayer

This appeal petition is filed U/s 5(3) of Odisha Cinemas (Regulation) Act, 1954 to set aside order dtd.09.09.2016 of Collector, Nuapada and to order for grant of license for opening of Cinema hall named "Lilas Movies" in Khariar Road NAC area of Nuapada District.

Contention:-

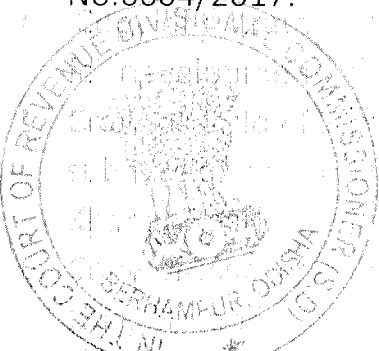
The original RT of the suit land is Nilesh Sanklecha (younger brother of the petitioner). Nilesh Sanklecha after obtaining permission of Special Planning Authority in the year, 2001 made a Godown building of rice mill over the suit plot and was running the same up to the year, 2014. As per intra family arrangement, Nilesh Sanklecha leased out the suit land in favour of the petitioner to run a Cinema Hall over the suit land. The petitioner without obtaining prior approval of special planning Authority, Khariar Road, constructed a Cinema Hall namely "Lilas Movies" over the suit land demolishing the existing Rice Mill Godown.



Thereafter the petitioner on 05.09.2014 filed application before Licensing Authority-cum-Collector, Nuapada for grant of license to run the Cinema hall which was rejected by Collector, Nuapada. Being aggrieved with the decision, the petitioner filed W.P. (c) No.1405/2016 before the Hon'ble High Court against the said order of Collector, Nuapada. The Hon'ble High Court, Odisha, Cuttack in judgement dtd.29.03.2016 quashed the order of Collector, Nuapada and ordered to consider the case of the petitioner and to accord permission in favour of the petitioner to run the Cinema Hall within a period of one month if the petitioner fulfils all norms to run the Cinema Hall. But as the petitioner failed to fulfil the safety criteria's prescribed in order dtd.05.03.2014 of Supreme Court of India pronounced in Uphar Cinema case (Sushil Angel-Vrs-State through CBI). The Licensing Authority-cum-Collector, Nuapada rejected the application of the petitioner for grant of license vide his order dtd.9.9.2016 in Misc case No.1/2016. Hence the petition to order for grant of license in favour of the petitioner to run "Lilas Movies".

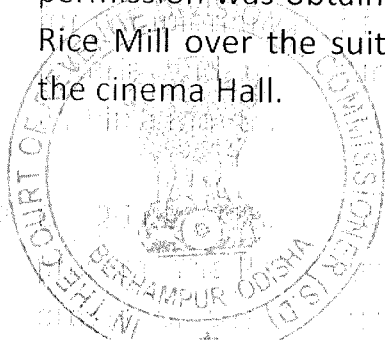
Documents enclosed :-

1. Certified copy of order dtd.09.09.2016 of Collector, Nuapada in Misc. case No.01/2016.
2. Copy of L.No.7569 dtd.13.04.2005 of Govt. in Industries Deptt. addressed to the Collectors.
3. Copy of L.No.13458 dtd.22.07.2005 of Chief Secretary of Odisha regarding Single Window Industrial Facilitation System.
4. Copy of extract of notification No.4863 dtd.07.03.1996 of Industries Deptt. for development of Film Industries.
5. Copy of L.No.483 dtd.24.05.2016 of Asst. Fire Officer, Nuapada regarding submission of fire prevention and safety Inspection report of Lilas Movies at Khariar Road.
6. Copy of Inspection report of Office of Director General, Fire Service, Home Guards and Civil Defence, Cuttack Communicated vide L.No.8255 dtd.02.09.2016.
7. Affidavit dtd.21.10.2019 of petitioner regarding submission of NOC from line authorities.
8. Copy of order dtd.19.03.2019 of High Court of Odisha, Cuttack in W.P.(c) No.6604/2017.



Date wise briefing

- On 09.04.2019, as per direction of the Hon'ble High Court of Odisha, Cuttack dtd.19.03.2019 in W.P.(c) 6604/2017, this case was decided to be taken up for hearing on 22.06.2019.
- On 22.06.2019, the Advocate for the petitioner was present. The Petitioner Manoj Kumar Sanklecha was present and established his identity vide Aadhaar Card No.201286162488. The Advocate for the petitioner prayed to enjoin the Supdt. of Police, Nuapada, Town Planning Officer, NAC, Khariar Road, Nuapada, (c) Executive Engineer PWD, Raj Khariar, Nuapada (d) Fire Officer, Khariar Road, Nuapada party in this case. Prayer was allowed. All the parties were asked to submit report on steps taken for issue clearance to "Lila Movies".
- On 08.07.2019, the Advocate for the petitioner was present. The Advocate for the petitioner submitted that as per order of the court, the Petitioner started expansion of water tank and took steps for compliance of all other instructions. The Petitioner has obtained structural stability certificate from NIT, Rourkela. The Advocate for the petitioner further prayed to give direction to the Govt. Offices involved in the process to make field visit to assess the progress. Interim order was issued in this regard asking the line officials to make weekly supervision of the developments made in this regard and issue necessary guidelines from time to time to the petitioner for completion of the pending task for fulfilment of the prescribed safety criteria and to ensure that all the shortfalls/deficiencies are complied within a month.
- On 26.08.2019, the Advocate for the Petitioner and the Petitioner were present. The Petitioner submitted that action is taken for compliance of the orders of the Collector, Nuapada. The Fire, Town Planning and PWD Officials visited the spot. Compliance report has been sent to Fire Department. As per instruction, water tank of 20,000 litres is under construction. The Petitioner has never submitted application before Town Planning Authority to obtain permission to construct cinema Hall. Earlier permission was obtained from Town Planning Authority for construction of Rice Mill over the suit land. Thereafter Rice Mill was demolished to build the cinema Hall.



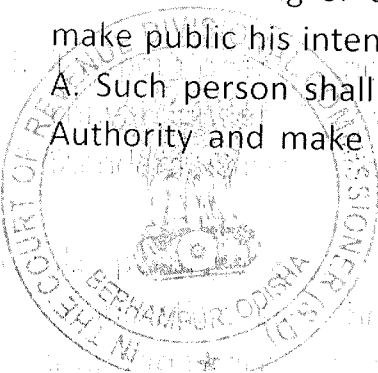
Application was submitted in the NAC Office, Khariar for permission to build cinema hall, which has not been communicated yet. As the Line Departments are not cooperating properly, it is difficult to comply the requirement. The Advocate for the petitioner prayed before the court to issue interim order directing the line Department to extend cooperation for issue of clearance in favour of the Petitioner.

An interim order was issued with extract to Town Planning, Municipality/PHED authority with specific direction not to cause unreasonable delay in checking of progress made by the petitioner and arriving at conclusion.

ORDER

This case was heard for the final time on 04.11.2019. The Advocate for the petitioner as well as the petitioner were present and stood on the contention of the appeal petition. Perused the order dtd. 09.09.2016 of Collector, Nuapada which reveals that due to failure of the petitioner to comply the following procedural necessities, the application of the petitioner for grant of licence to run the cinema Hall was rejected.

1. The petitioner has not placed any material or explained indicating that there is no danger to the life and property of the people, in running the Cinema Hall in the existing premises till date through he was given reasonable opportunity.
2. The petitioner has not followed the below mentioned norms in the time of conversion of Godown into a cinema hall as prescribed in the Indian Standard, Bye-laws for construction of cinema Building 1986.
 - (a) As per rule 8 (5) of The Orissa Cinema (Regulation) Rules, 1964 "Application shall be submitted to the Licensing Authority before any alteration necessary for the adaption of the premises for cinema exhibition are taken in hand.
 - (b) As per 3.6.1 (b & c) of Indian Standard, Bye-Laws for construction of Cinema building or converting existing premises into a cinema shall first make public his intention to do so by exhibiting a notice given in Appendix A. Such person shall also give a similar notice in writing to the licensing Authority and make an application to the licensing authority for grant of



'No Objection Certificate' specifying therein whether the application is in respect of a permanent cinema or a semi- permanent cinema. The application shall be accompanied by a plan of the proposed site drawn to scale and shall clearly indicate the surroundings, roads and buildings which exist up to a distance of 60 metres of the proposed site. Schools, hospitals, temples or other like places should be clearly indicated in the plan.

(c) As per 3.7.11.1 of India Standard, Bye-laws for construction of cinema "The building plans shall also be subject to the scrutiny of the fire Authority and the sanction through building permit shall be given by the Authority after the clearance from the Fire Authority.

(d) The applicant did not file application in prescribed format i.e. APPENDIX D "APPLICATION FOR CINEMA BUILDING PERMIT/LICENCE"

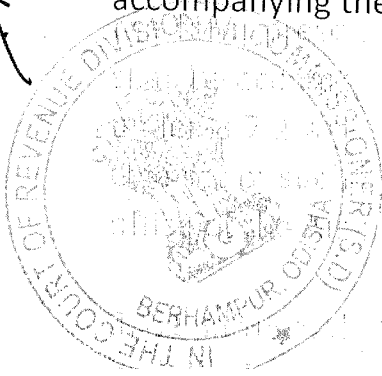
(e) AS PER 3.5.1 India Standard, Bye-laws for construction of Cinema , 1986 No cinema building or any part of cinema building shall hereafter be erected except in conformity with provisions of this code and a cinema building permit/licence is obtained from the licensing Authority/local body authority.

(f) Application for cinema Building permit/Licence as per Code of IS.

3.7.1. Notice – After the grant of 'No objection Certificate; every person who intends to erect or make material alteration in any place in a cinema building shall give notice in writing to the Authority of his said intention in the form prescribed (see Appendix D) from time to time and such notice shall be accompanied by plans and statements in quadruplicate, as required under 3.7.2 and 3.7.3. The Plans may be ordinary prints on Ferro paper. One set of such plans should be cloth mounted and shall be retained in the office of the Authority for record after the issue or refusal of permit.

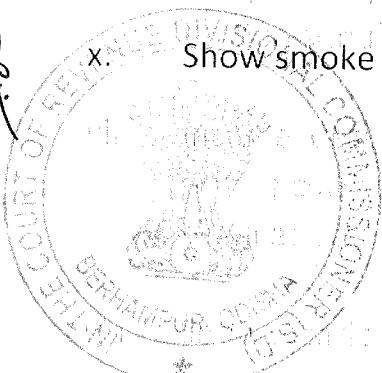
3.7.2 Information- The notice shall be accompanied by the site plan, building Plan, services plans, specifications and certificate of supervision as prescribed in 3.7.2.2 to 3.7.2.6

3.7.2.3 Building Plan- The plans of the building and elevations and sections accompanying the notice shall be drawn to a scale of 1: 100.



The Plan Shall

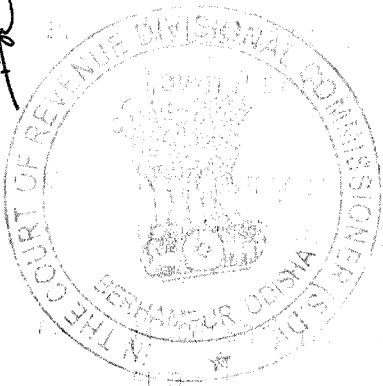
- i. Include floor plans of all floors together with the covered area clearly indicating the size and spacing of all framing members and sizes of rooms and the position of staircases, corridors, gangways, ramps with its slope and other exit ways, lift wells lift machine room and lift pit details;
- ii. Include detailed plan of auditorium, and balcony with its slope showing seating arrangements (the width of seats, back to back distance of seats, intervening distance between rows of seats), distance from the screen to row of the seats, details of longitude in a land cross aisles, etc.
- iii. Show the use or occupancy of all parts of the building;
- iv. Shows exact location of essential services, for example arrangement of drinking water, wc, sink, bath and the like;
- v. Show details of booking windows and booths
- vi. Include sectional drawing showing clearly the size of footings, thickness of basement wall, wall construction, size and spacing of framing members, floors slabs and roof slabs with their materials,. The section shall indicate the heights of building and rooms and also the height of the parapet; and the drainage and the slope of the roof. At least one section should be taken through the staircase;
- vii. Include details of buildings services, such as, air-conditioning system with position of dampers, mechanical ventilation system, electrical services etc.
- viii. Show location and details of electric sub-station;
- ix. Show projector room with the location and details of cinematograph equipment, plant for the generation and conversion of electrical energy, transformer and switchgear room;
- x. Show smoke exhauster system;



- xi. Include details of fire alarm system net work;
- xii. Show location of centralized control, connection of all fire alarm system, built-in fire protection arrangements and public address system etc.;
- xiii. Show location and dimensions of the static water storage tank and pump room;
- xiv. Show location and details of fixed fire protection installation such as sprinklers wet risers, hose reels drenches, Cos installations etc;
- xv. Show location and details of first –aid fire fighting equipments/ installations;
- xvi. Give access to fire appliances/vehicles with details of vehicular turning circle and clear motorable access way around the building;

The petitioner has produced No Objection Certificate issued by the NAC, Khariar Road where it is clearly mentioned that, No Objection Certificate is being issued subject to the following conditions.

- a. Necessary approval from Miniplex single Screen may be obtained from Town Planning Authority, Khariar Road.
- b. Necessary structural Certificate of the building may be obtained from the PWD Department.
- c. Necessary NOC Certificates may be obtained from PH division for water supply.
- d. Necessary Police clearance/NOC may be obtained from concerned department.

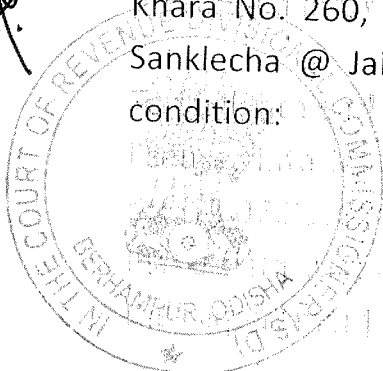


Perused the orders of the Hon'ble High Court, Odisha Cuttack dtd. 19.03.2019 passed in WP (C) No. 6604/2017 which reveals that:

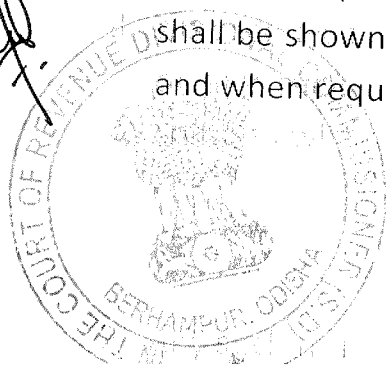
- The case was filed by Manoj Sanklecha @ Jain against the order dtd. 09.09.2016 of Collector, Nuapada in Misc, Case No. 1/2016 rejecting the prayer of the petitioner for the Cinema Hall (Miniplex) over his constructed building meant for exhibiting cinema.
- The petition was disposed off by order dtd.19.03.2019 of the Hon'ble High Court, Odisha, Cuttack with direction that as a Misc. Appeal Case No. 2/16 filed by the petitioner against order dtd. 09.09.2016 of Collector, Nuapada is pending before the Revenue Divisional Commissioner, (SD), Berhampur, the Hon'ble High Court is not in a position to pass any order. As such the Hon'ble High court disposed off the writ petition with direction to the Revenue Divisional Commissioner, (SD), Berhampur to dispose off the Misc Appeal Case No. 2/2016 within a period of four months giving opportunity of hearing to the petitioner and taking the application into consideration.

Findings

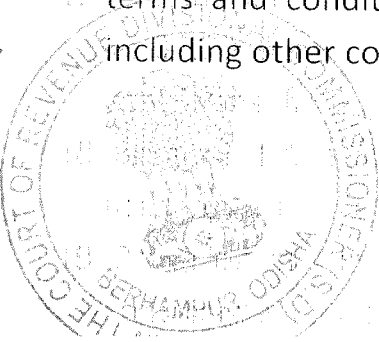
- The Licensing Authority-cum-Collector, Nuapada in his order Dtd. as well as in letter No. 650 Dtd.8.9.2017 and No. Dtd. has rejected the application of the Petitioner for grant of license due to non-fulfilment of criteria prescribed in Orissa Cinemas (Regulation) Rules,1964 .
- To facilitate early compliance of the necessities as pre condition for grant of license, interim orders were issued by this court vide Office Order 3868 dtd.12.07.2019 and No.4768 dtd. 30.08.2019 directing the authorities to make field visit and issue necessary direction to the petitioner to comply the requirements for grant of NOC in his favour.
- The Memo No. 3790 dtd. 03.11.2019 of NAC Khariar Road shows that permission was accorded by NAC, Khariar Road for regularisation of construction over Plot No. 138/924, 138/925, 138/926 and 138/927 of Khara No. 260, 211 and 248 of ward No. XIX in favour of Manoj Kumar Sanklecha @ Jain, proprietor Lila Movies, Khariar road on the following condition:



1. The owner cannot change the plan, design and ventilation arranged already shown in the plan after permission/regularisation is accorded.
2. The owner is prohibited not to encroach the NAC land, Govt. land and other private land adjoining to his sites.
3. During or after construction/regularisation, the NAC authority has the right to inspect the building at any time.
4. construction/regularisation of the commercial house shall be taken up strictly on the basis of the sanctioned plan and the design having provision of sanitary latrine.
5. The owner should intimate the date of completion of work without delay within 15 days for imposition of holding tax etc.
6. On receipt of the completion report, the NAC will assess or reassess annual rental value of the commercial building or collection of NAC tax.
7. No construction work shall proceed after regularisation of commercial complex within a period of one month as shown in the plan.
8. No such electrical or steam power motor, machineries can be installed or any such work shop, factory can be used in the said commercial complex without specific permission of the NAC.
9. Any such transfer/ mortgage/ exchange or gift of the site holding during the period of construction/regularisation for which the permission has been granted if made by the owner shall be intimated forthwith.
10. Sanctioned plan shall be kept with the owner for further reference and shall be shown to the NAC authority along with the permission order as and when required.



11. If in any document, dispute arises in future regarding ownership of the land, the license/permission granted now shall stand automatically cancelled.
12. That the owner is solely responsible to make arrangement to enter this building.
13. No Bricks, stone and building materials should be dumped on the Municipality road.
14. Soak Pit shall be constructed within the premises for drainage of used water, and shall not be drained out to the road and road side drain.
15. Necessary approval is to be obtained from fire Service/ PHD/ PWD/ WESCO Deptt./ any other Govt Department for safety of the building and running of commercial complex.
16. If the owner made construction beyond the approved plan, then he is required to deposit the additional security fees as per actual execution and tax will be imposed accordingly, failing which the plan shall stand cancelled automatically.
17. That the Para meter/conditions imposed vide letter No. 291/KRSPL, dtd. 30.08.2019 of S.P.A., Khariar Road shall be construed as part of the conditions, failing which the regularisation shall stand cancelled.
18. Breach of the above term and conditions will entail cancellation of license/permission.
19. Provision of water harvesting should be made in the regularisation of commercial complex.
20. He is to deposit trade licence fee and other fees as per norms within a period of seven days on receipt of notice from the undersigned failing which the permission shall be cancelled automatically and all other terms and conditions to be imposed by the NAC from time to time including other conditions in other laws.



21. Letter No. 291/KRSPL, dtd. 30.08.2019 of S.P.A., Khariar Road reveals that the prayer for regularisation of Lilas movies Hall (single storied commercial building) was allowed subject to fulfilment of the following terms and conditions:

➤ The building shall be used exclusively for Commercial (Movie Hall) purpose and the use shall not be changed to any other use without prior approval of the authority. In case the building is used for the purpose other than specified in this permission/License and the conditions enumerated below are violated, the Permission/License now given shall be deemed to have been revoked and the Petitioner shall be liable for prosecution under section 152 of Orissa Town Planning and Improvement of Trust Act, 1956. The Petitioner shall also have to restore the land to its original condition at his own cost.

➤ The front exterior wall of the building shall be at a distance not less than 3mtr and 20.98 Mtr from the centre of the approach road lying to the Eastern and Western side of the plot.

➤ The building plan shall be approved by the NAC, Khariar Road before starting construction and any restriction or condition imposed by the said NAC shall be strictly adhered to.

➤ The Petitioner is required to leave a parking space not less than 1314.60 Sqm as shown in the building plan and shall in no case be reduced without the prior permission of the authority.

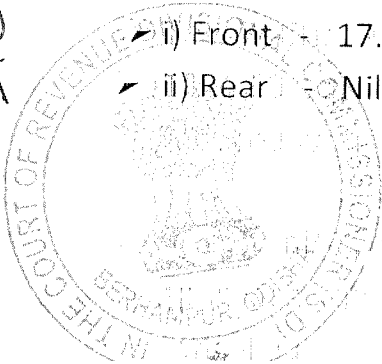
➤ If any dispute arises in future regarding ownership of land and approach road in question, the license granted shall automatically be cancelled.

➤ The Petitioner has to provide rain water harvesting structure to recharge ground water level while constructing the building.

➤ The Set backs shall be as follows:

➤ i) Front - 17.45 mtr

➤ ii) Rear - Nil



- iii) Side I - Nil
- iv) Side II- Nil
- The Petitioner has to obtain NOC from Fire Deptt./Wesco/PWD/PHED
- The Petitioner has to provide 20% plantation inside the premises
- The Petitioner has to open 3(three)nos. of entry/exit gate on the southern side.
- The Petitioner has to reduce compound wall height to 5'6" on the southern side.
- The Petitioner has to hand over the connecting road on the southern side to NAC, Khariar for future development.

22. The Letter No. 468 dtd. 30.10.2019 of special Planning Authority, Khariar road shows that the petitioner has complied all conditions imposed by the said authority for regularisation of single storied commercial building constructed for running "Lilas Movies".

23. The memo No.900 Dtd, 20.10.2019 of Deputy Fire Officer, Bhawanipana shows that fire safety certificate has been issued by the Fire Department for occupancy or usage by the Petitioner on the following conditions:

- Fire prevention and safety measures and appliances, availability of water supplies and means of access thereto etc provided in the building or premises, should be maintained by the occupier(s) in best repairs and efficient working condition at all times for use by the occupants or the members of Fire Service or both in the event of outbreak of fire.
- The Set backs, driveways, entrance gates, exits, stair cases, corridors and escape ways should not be changed ,obstructed or modified in any way.
- The occupiers shall train all staff and occupants periodically to make them well conversant in use and operation of the fire prevention and safety measures.
- Fire drills/rehearsals should be organised at least once in six months by involving Local Fire Station.



- Photocopies of the certificate should be framed and displayed at all conspicuous places of the building/premises.

24. The Letter No. 2467 dtd. 19.09.2019 of Executive Engineer, Khariar (R & B) Division shows that NOC has been accorded in favour of Lilas Movies provided compliance of all the observations made by Spl. Planning Authorities, Khariar Road in his letter No. 291/KRSPA dtd. 30.08.2019 and as per guidelines and specifications laid in Orissa Cinemas (Regulation) Appeal Rules, 1956.

The above facts show that NOC from some quarters have been issued in favour of the Petitioner as a pre-requisite for grant of license in favour of the Petitioner to exhibit Cinema in Lilas Movies, Khariar Road.

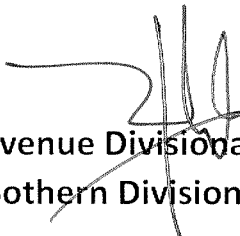
However visible cracks are apparent at the Entry/Exit door in the photographs submitted by the Petitioner which should be repaired immediately.

Though the various documents produced before this Authority by the petitioner, including NOCs of different licensing authorities in the district and Photographs of the property, it is amply clear that the petitioner is making efforts to comply to stipulations.

As per the provision of section 4 of Odisha cinema (Regulation) Act, 1954, the Collector and District Magistrate is the licensing authority to grant license. This case is, therefore, disposed with the direction to the Collector & D.M. Nuapada to appropriately weigh the measures already taken by the petitioner and satisfy herself that all stipulations, particularly with regard to public safety, have been fulfilled by the petitioner and accordingly finalise the matter within a period of 1(One) month from the date of this order or from the day a copy of this order is produced by the petitioner.

This case is accordingly disposed off.




Revenue Divisional commissioner,
Southern Division, Berhampur