

By mail

**Office of the Revenue Divisional Commissioner,
Southern Division, Odisha, Berhampur.**

L. No 3462 //Peskar
ODA Appeal Case No. 4/22

Date 25-05-2023

From

The Court Officer to RDC (SD)
Berhampur.

To

The Secretary, BeDA,
Berhampur, Dist- Ganjam.

The Asst. Commissioner, BeMC,
Berhampur, Dist-Ganjam.

Sub: ODA Appeal Case No. 4/22 filed by Sisira Kumar Choudhury -Vs- BeMC,
Berhampur and Others.

Sir,

I am directed to send herewith the copy of orders, dtd. 23.05.2023 passed in ODA Appeal Case No. 4/22 filed by Sisira Kumar Choudhury - Vrs- BeMC, Berhampur and Others by the Revenue Divisional Commissioner, Southern Division, Berhampur in his Court for your information and necessary action.

Yours faithfully,


25/05/23
Court Officer to RSD (SD)

IN THE COURT OF REVENUE DIVISIONAL COMMISSIONER,

SOUTHERN DIVISION, ODISHA, BERHAMPUR

ODA appeal Case. No.4/22
(Order by Sri T. Ao, I.A.S,
Revenue Divisional Commissioner, (SD), Berhampur)

Decided On 23-05-2023

Sisira Kumar Choudhury
S/o- Lingaraj Choudhury
Viii- Bada Sahi,
Po/Ps-Gosaninuagaon,
Berhampur, Dist-Ganjam.

.....Petitioner

-Vrs-

1. BeMC, Berhampur, Dist-Ganjam.

2. BeDA, Berhampur, Dist-Ganjam

.....Respondents

For the Petitioner

.....Sri B.K.Mohanty, Advocate

For the Respondents

.....Sri S.K.Jena, Advocate

Prayer

This revision petition is filed U/s 18 of ODA Act,1982 to set aside order No.15 dtd.10.01.2022 of Assistant Town Planner, BeMC, Berhampur regarding change of land use zone of area of Ac.0.285 of Plot No.583 of Khata No.133/20 of Uttareswar Mouza and to allow change of zone of suit land to residential zone from Green Zone. In this case, the Petitioner prays to "admit the appeal, call for the records from the learned Court below and after hearing the parties pleased to set aside the order passed by learned Municipal Planner, Berhampur Municipal Corporation, by allowing the change of zone pertaining to the plot owned by the Petitioner, in the interest of justice." Petitioner has filed delay condonation Petition U/s 5 of Limitation Act,1963 wherein ignorance of law and effect of Corona Pandemic has been cited as the reason for delayed filing of this appeal petition.



Contention

The Petitioner is the owner of land of Ac.0.285 of Plot No.583 of Khata No.133/20 of Uttareswar Mouza of Berhampur Tahasil. When Petitioner came to know about the wrong zonal classification of the site of plot of the Petitioner as Green Zone, he submitted a letter requesting the Berhampur Municipal Commissioner to change the zonal classification of the suit land. The said application was rejected by the Berhampur Municipal Corporation vide letter No.15 Dtd.10.01.2022. Hence the Petition to set aside the order passed by learned Municipal Planner, Berhampur Municipal Corporation and to the change of zonal classification of the suit plot owned by the Petitioner.

Land Schedule

Mouza	Hal Khata No.	Hal Plot No.	Area	Kissam
Uttareswar	133/20	583	Ac.0.285	Bila-I

Documents relied upon

1. Copy of RSD No.4888/1985 of the Office of Sub-Registrar Office, Berhampur.
2. Copy of ROR No.133/20 of Uttareswar Mouza.
3. Copy of Letter requesting the Commissioner, Berhampur Municipal Corporation, Berhampur to change the land use from Green Zone to Residential Zone.
4. Copy of rejection order issued by Asst. Town Planner vide letter No.15 dtd.10.01.2022.
5. Sketch Map of the CDP indicating the zone use of land.
6. PWR filed by BeMC, Berhampur on 27.07.2022.

ORDER

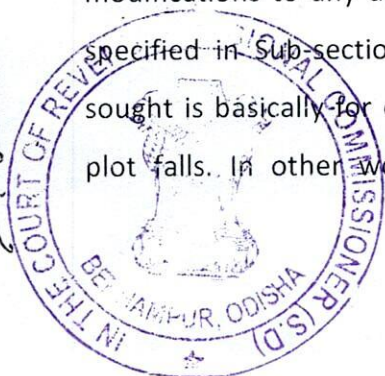
This case was taken up for hearing on 27.07.2022. Advocate for Petitioner was present in the Court and stood on the contention of the appeal petition. Advocate for BeMC and Assistant Town Planner, BeMC, Berhampur were present in the Court. Advocate for BeMC submitted that only basing on classification, BeMC rejected the application of Petitioner, BeMC has no other complaint regarding grant of permission for construction of residential building. On visit, it was found that the suit land is lying vacant. Advocate for petitioner said that the Petitioner has deposited fees for conversion and received the ROR accordingly. Advocate for BeMC stated that as it is presently covered under Green Zone, the BeMC has not made plan for proper drainage system to prevent water logging in case of incessant rain.



The PWR has been submitted by Be.D.A., Berhampur on 27.07.2022. As per the report of the BeMC, Berhampur the area has been earmarked as Green Zone. The Scheduled area is lying vacant surrounded by residential houses, Rajarani Apartment etc. The classification in the ROR has not been changed to Gharabari, hence approval for building plan over the suit plot is rejected.

Findings

- As per PWR, the suit scheduled area is classified as Green Zone in CDP.
- Copy of RSD No.4888/1985 shows that Petitioner purchased area of Ac.0.153 of Plot No.571 and Ac.0.285 of Plot No.583 of Khata No.60 of Uttareswar Mouza in the presence of witnesses Giridhar Sahu, S/o;S.N.Sahu and Prabhakar Sahu, S/o:Krupasindhu Sahu.
- Copy of ROR No.133/20 of Uttareswar Mouza shows that Plot No.583 of Uttareswar Mouza with area of Ac.0.285 stands recorded in the name of Petitioner in Gharabari kissam.
- Copy of Application addressed to the Commissioner, Berhampur Municipal Corporation, Berhampur shows that the Petitioner had filed application before BeMC, Berhampur for change of zonal classification of the suit scheduled area from Green Zone to Residential Zone.
- Copy of order communicated by Asst. Town Planner vide letter No.15 dtd.10.01.2022 shows that the BeMC Authorities rejected the prayer of the Petitioner for change of classification of suit scheduled area from Green Zone to Residential zone.
- The report of BeMC shows that the suit scheduled area has been earmarked as Green Zone and is lying vacant surrounded by residential houses, Rajarani Apartment etc.
- As per Section 14 of Odisha Development Authorities(Planning and Building Standards)Act,1982,"(1)The Authority may make any modifications to any development plan as it thinks fit being modifications which in its opinion do not affect important alterations in the character of the Plan and which do not relate to the extent of land uses or the standards of Population density.(2) The State Government may make any modifications to any development plan whether such modifications are of the nature specified in Sub-section(1) or otherwise." In the extant revision petition, the relief sought is basically for changing the classification of zone under which the Petitioner's plot falls. In other words, the present "Green Zone" is sought to be changed to



“Residential Zone” which, going by the aforesaid provisions of the Act, falls in the realm of “land uses”, that stands automatically precluded from the purview of the Authority (BeDA). Thus the BeDA, in the absence of any authorisation, can not accede to the prayer of the Petitioner at their level. Only the “State Govt.” can make any modifications to any development plan, in this case, the CDP.

- From an appraisal of photographic evidence of site presented by the Petitioner which was confirmed by the OPs, the particular suit plot which has been classified as Green Zone, and belonging to the Petitioner, is surrounded on all sides by Pucca buildings.
- From revenue records tendered by the Petitioner, it is seen that the kissam of suit lands has already been recorded as Gharabari.

Thus, taking into account, the above facts, this Appellate Authority arrives at the conclusion that the scheduled area is surrounded by residential apartments and the classification of the suit land in CDP as Green zone is not supported by bare reality as exists on ground. However, a reading of Chapter-IV of ODA Act, 1982 and Chapter-I (Preliminary) along with definitions contained in Section-2(x) indicates that the authority lies with State Government for any modifications to any development plan. As such it is in the best interest of all concerned that BeMC/BeDA, Berhampur at the first instance move a proposal under Section 14(2) of ODA Act to Govt. in H&UD Department with adequate justification for necessary change in classifications. Such proposal of the BeDA/BeMC be moved to the Govt. in the Department of H&UD at the earliest.

The Petition is disposed of accordingly.




Revenue Divisional Commissioner,
Southern Division, Berhampur.