



IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.33005 of 2022

(An application under Articles 226 and 227 of Constitution of India)

**Vishnu Associates Pvt. Ltd.,
Cuttack**

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Petitioner

-Versus-

State of Odisha & Others

Opp. Parties

For Petitioner

:Mr.S.S. Das, Sr. Advocate
Mr. S. Das, Advocate

For Opp. Parties

:Mr.S.N. Patnaik,
[Addl. Government Advocate]
With Mr. G. Mishra and Mr. A.K.
Mohapatra, Advocate (for Opp. Party
Nos. 1 and 3.
Mr. P.S. Nayak, Advocate for Opp.
Party No.2
[Opp. Party No.3]

CORAM:

JUSTICE SASHIKANTA MISHRA

JUDGMENT

31st July, 2026

SASHIKANTA MISHRA, J.

Being aggrieved by the rejection of its application for
registration by the Odisha Real Estates Regulatory Authority



(for short, 'ORERA'), the petitioner has approached this Court in the present writ application.

BRIEF FACTS

2. The petitioner is a company engaged in the business of developing and constructing buildings of different types and, as such, deals in all types of movable and immovable properties as buyer, seller, agent, distributor, etc. It received approval from the B.D.O., Salipur for its layout plan and group housing (duplex) project in the year 2016 for a project named, 'Exotica Garden'. The project envisages construction of 79 duplex buildings, out of which 40 have been constructed so far. The Orissa Real Estate (Regulation and Development) Act, 2017 (for short, the 'Act') along with the Orissa Real Estate (Regulation and Development) Rules, 2017 (for short, the 'Rules') were enacted and came into force w.e.f. 25.02.2017 and 29.08.2017, respectively. As per Section 3 of the Act, it became mandatory for all ongoing projects on the date of commencement of the Act, for which the completion certificate had not been issued, to apply for registration before ORERA within a period of three months from the date of



commencement of the Act. The petitioner submitted an application on 03.07.2018, after a delay of about six months, which was registered as Misc. Case No. 472 of 2018. By Order dated 07.07.2018, ORERA disposed of said Misc. Case directing the petitioner to submit application for registration within 30 days and imposed a penalty of Rs.60,000/- for the delay. The petitioner complied with such order by depositing the penalty amount and also submitted an application before the ORERA. After scrutiny of the application, ORERA issued several letters asking the petitioner to remove deficiencies in the application. Despite submission of the required documents, the petitioner's project was not approved. According to the petitioner, Section 5 (2) of the Act provides for deemed registration if the Authority neither registers nor rejects the application within 30 days. As such, the petitioner's application is deemed to have been registered from 24.02.2019.

When the matter stood thus, the Government of Odisha in Housing and Urban Development Department issued a notification on 15.02.2020 providing for the promoters of real estate projects to seek approval of the concerned District Urban



Development Agency (for short, 'DUDA') where such projects were already granted approval by the BDOs/PRIIs up to 07.06.2018. The petitioner's case being covered by such notification, it submitted application in the prescribed Form before DUDA on 25.05.2020 for grant of approval. The application was forwarded by the Project Director, DUDA to the Officer-in-Charge, Town Planning Unit, Cuttack to scrutinize the building plans/layout plans and undertake the necessary verification to confirm adherence to structural stability and fire safety norms and to submit report. The Town Planning Unit, in its letter dated 04.11.2020, after scrutinising the application of the petitioner, asked for compliance on as many as 19 points. The petitioner duly complied with the said deficiencies. The Town Planning Unit, in its letter dated 04.10.2021, granted technical sanction and intimated the Project Director, DUDA of the same. Despite grant of technical sanction, ORERA in its order dated 27.10.2020 rejected the application for registration on the ground that more than one and half years had passed since the issuance of Government Notification. Liberty was however, granted to the petitioner to apply afresh after



obtaining the plan approval from the competent authority. The petitioner sought for information under the RTI Act regarding the status of its application for approval from DUDA and was informed on 07.06.2022 that the same was under process. The petitioner submitted a representation to the Project Director, DUDA on 11.08.2022 with a request to grant approval. Since no action was taken, the petitioner has approached this Court in the present writ application seeking the following relief:-

“It is therefore, prayed that this Hon'ble Court may be graciously pleased to admit this Writ Petition issue Rule NISI calling upon the Opposite parties to show cause as to why the Order dtd. 27.10.2021, Annexure-10 shall not be quashed and why the Petitioner's project viz. Exotica Garden at Champati shall not be registered/approved and if the Opposite Parties fail to show cause or show insufficient cause issue writ in the nature of certiorari quashing Annexure-10 and further issue Writ in the nature of Mandamus directing the Opposite Party No.2 to act in accordance with the sanction dtd. 04.10.2021 of the Opposite Party No.4

And further issue any other Writ/Writs, Order/Orders and Direction/Directions which this Hon'ble Court deem fit and proper and the said Rule be made absolute.

And for this act of kindness, the Petitioner shall remain ever pray.”

STAND OF ORERA

3. Counter affidavit has been filed by ORERA (Opp. Party no.2) inter alia stating that the deeming provision under



section 5(2) is not attracted as the application submitted by the petitioner was not a valid application for non-compliance with the deficiencies. Time was granted thrice to the petitioner to cure the defects, but it failed to do so. The petitioner was duly heard and the application was ultimately rejected for non-compliance with the deficiencies. It is further stated that technical sanction granted by the Town Planning Unit does not amount to final approval by DUDA and hence, cannot be considered for grant of registration. Without final approval in Form-II from DUDA, the building plan cannot be treated as approved by the competent authority for the purposes of Section 4(2)(c) and (d) of the Act. It is also stated that the petitioner has already sold 40 duplexes out of 79 planned units in which the buyers have invested their life savings, in a project developed on the basis of a building plan approved by the BDO, Salipur, who had no technical competence to grant such approval. Therefore, in the public interest as well as keeping in view the objectives of the Act, the petitioner's application was rightly rejected.



STAND OF DUDA

4. Counter affidavit has also been filed by DUDA (Opposite party Nos. 1 and 3). While supporting the stand taken by ORERA more or less, it has been stated that the plan is to be approved as per procedure contained in PR and DW Department notification. The petitioner did not submit the necessary documents, for which ORERA rejected the application on 27.10.2021, granting liberty to the petitioner to apply afresh after obtaining approval from DUDA. Instead of complying with such order, the petitioner has filed the present writ application. In reply to the application under the RTI Act submitted by the petitioner, it was indicated that the approval of the project is under process. As the petitioner has not yet taken back its documents submitted at the time of filing the earlier application, it can be presumed that the petitioner is no longer interested in the registration of the company. The petitioner did not file the application for approval with the required documents and deposited Rs.1,00,300/- on 17.09.2002 before the Champati Gram Panchayat Office towards approval of building plan and to issue an NOC in its favour.



APPEARANCE

5. Heard Mr. S.S. Das, learned Senior Counsel along with Mr. S. Das, learned counsel appearing for the petitioner, Mr. A.R. Das, learned AGA for the State, Mr. P.S. Nayak, learned counsel appearing for the ORERA and Mr. G. Mishra and Mr. A.K. Mohapatra, learned counsel appearing for Opposite party Nos. 1 and 3.

SUBMISSIONS

6. Mr. S.S. Das, learned Senior Counsel appearing for the petitioner, draws attention of this Court to the provision under Section 5(2) of the Act to submit that the application of the petitioner having been submitted on 02.07.2018, the same was required to be either allowed or rejected within 30 days from the said date. Since neither was done, the project of the petitioner must be deemed to have been registered w.e.f. 01.08.2018. He further submits that it is not open to the statutory authority to act in a manner contrary to the statute. Mr. Das, alternatively argues that even otherwise, the Asst. Executive Engineer of the Town Planning Unit having accorded technical sanction of the project, DUDA is guilty of sleeping over



the matter without any justified reason. Despite the pendency of the application before the DUDA, rejection by ORERA of the application for registration by the impugned order is completely illegal and unjustified. As the petitioner could not have submitted the approval, it cannot be blamed for non-submission of the order of approval. Even after rejection of the application by ORERA, the application for grant of approval was said to be under process by DUDA. According to Mr. Das, the fundamental right of the petitioner under Article 19 (1)(g) has been thus violated.

7. Mr A.R. Das, learned AGA would submit that this is a matter exclusively between the petitioner and ORERA/DUDA, in which the State Government has no role to play.

8. Mr. P.S. Nayak, learned counsel for ORERA would argue that the writ application is not maintainable in view of availability of alternative remedy of appeal, which the petitioner has not invoked. On merits, it is argued that the deeming provision under section 5(2) of the Act is not applicable as the provision envisages submission of a valid and complete application, which the petitioner did not submit. The delay in



processing of the application is entirely attributable to the petitioner. The object of the Act is to protect home buyers, ensuring transparency, accountability and orderly development in the real estate sector. Therefore, invoking the deeming provision in the case of an invalid or incomplete application would run contrary to the very objective of the Act.

9. Mr. G. Mishra, learned counsel for DUDA would argue that the petitioner's application for registration was rejected by ORERA with liberty to apply afresh after obtaining approval of the local authority i.e. DUDA. The petitioner's application for approval was unable to be considered by DUDA because of non-rectification of the several deficiencies contained therein. It is the petitioner who is responsible for the delay in processing of his application.

ANALYSIS AND FINDINGS OF THE COURT

10. Having regard to the facts involved and the contentions raised, it is evident that the present case involves determination of the following points: -

- (i) Whether the writ application is maintainable?



- (ii) Whether the deemed registration clause (Section 5(2)) is applicable in the facts of the present case?
- (iii) Whether the rejection of the application for registration of the petitioner by ORERA was justified?
- (iv) What relief the petitioner is entitled to?

11. It has been argued that the statutory remedy of appeal being available in the form of Section 44 of the Act, the writ application is not maintainable. Section 44 is reproduced below:-

“44. Application for settlement of disputes and appeals to Appellate Tribunal

(1) The appropriate Government or the competent authority or any person aggrieved by any direction or order or decision of the Authority or the adjudicating officer may prefer an appeal to the Appellate Tribunal.

(2) Every appeal made under sub-section (1) shall be preferred within a period of sixty days from the date on which a copy of the direction or order or decision made by the Authority or the adjudicating officer is received by the appropriate Government or the competent authority or the aggrieved person and it shall be in such form and accompanied by such fee, as may be prescribed:

Provided that the Appellate Tribunal may entertain any appeal after the expiry of sixty days if it is satisfied that there was sufficient cause for not filling it within that period.

(3) On receipt of an appeal under sub-section (1), the Appellate Tribunal may after giving the parties an



opportunity of being heard, pass such orders, including interim orders, as it thinks fit.

(4) The Appellate Tribunal shall send a copy of every order made by it to the parties and to the Authority or the adjudicating officer, as the case may be.

(5) The appeal preferred under sub-section (1), shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal within a period of sixty days from the date of receipt of appeal:

Provided that where any such appeal could not be disposed of within the said period of sixty days, the Appellate Tribunal shall record its reasons in writing for not disposing of the appeal within that period.

(6) The Appellate Tribunal may, for the purpose of examining the legality or propriety or correctness of any order or decision of the Authority or the adjudicating officer, on its own motion or otherwise, call for the records relevant to deposing of such appeal and make such orders as it thinks fit."

12. The order of rejection of the application for registration was passed under section 5(1)(b) of the Act. Ordinarily, said order ought to have been challenged before the appellate authority constituted under section 43 of the Act i.e. the Real Estate Appellate Tribunal. It is however, well settled that alternative remedy is not always a bar to exercise of writ jurisdiction and that the High Court can exercise such jurisdiction in certain cases, such as a case involving a pure question of law. Reference in this regard may be made to the judgments of the Supreme Court in the case of **Godrej Sara Lee Ltd. -Vrs- Assistant Commissioner (AA) and others**



***reported in¹ and Executive Engineer SOUTHCO -Vrs.-
Sitaram Rice Mill².***

13. In the present case, the petitioner mainly claims that its application for registration not having been rejected within 30 days of submission, must be deemed to have been registered as per Section 5(2) of the Act. This is disputed by the opposite parties on the ground that the provision applies only to a valid application and not to defective ones. Thus, the question falling for consideration is the applicability of the deeming provision, which can be treated as a question of law. This is the main question to be decided in the present case, with the other questions framed being corollary and consequential. This Court, therefore, holds that the writ application is maintainable despite existence of the alternative remedy of appeal.

14. The question whether the deemed registration clause would be applicable or not shall now be considered. The petitioner submitted its application for registration on 02.07.2018. On 24.07.2018, ORERA pointed out certain deficiencies for rectification at the end of the petitioner. This

¹ (2009) 14 SCC 338

² (2012) 2 SCC 108



was followed by similar letters issued on 20.10.2018 and 22.10.2018. The petitioner contends that the application having been submitted on 02.07.2018 ought to have been disposed of within 30 days thereafter i.e. by 01.08.2018 either by rejecting it or by allowing it. Since neither of the course was undertaken, the application must be deemed to have been registered w.e.f. 01.08.2018. On the contrary, it is argued on behalf of ORERA that the word 'application' can only refer to a valid and complete application and not a defective one. The petitioner's application was found to contain several deficiencies and therefore, by no stretch of imagination can it be treated as a valid or complete application. Under such circumstances, the deeming provision shall not apply.

15. In order to appreciate the rival contentions noted above, it would be proper to refer to the provision itself, which is reproduced below;-

"Section 5: Grant of registration.

5. (1) On receipt of the application under sub-section (1) of [section 4](#), the Authority shall within a period of thirty days.-

(a) grant registration subject to the provisions of this Act and the rules and regulations made thereunder, and provide a registration number,



including a Login Id and password to the applicant for accessing the website of the Authority and to create his web page and to fill therein the details of the proposed project; or

(b) reject the application for reasons to be recorded in writing, if such application does not conform to the provisions of this Act or the rules or regulations made thereunder:

Provided that no application shall be rejected unless the applicant has been given an opportunity of being heard in the matter.

(2) If the Authority fails to grant the registration or reject the application, as the case may be, as provided under sub-section (1), the project shall be deemed to have been registered, and the Authority shall within a period of seven days of the expiry of the said period of thirty days specified under sub-section (1), provide a registration number and a Login Id and password to the promoter for accessing the website of the Authority and to create his web page and to fill therein the details of the proposed project.

(3) The registration granted under this section shall be valid for a period declared by the promoter under sub-clause (C) of clause (l) of sub-section (2) of [section 4](#) for completion of the project or phase thereof, as the case may be”

16. A careful reading of sub-section (2) would suggest that the authority (ORERA) has to take a decision on the application submitted within 30 days, either to reject it by giving reasons or to grant registration. It cannot keep the application pending beyond 30 days. It has been argued that the application was not valid because of several deficiencies. In such event, the application ought to have been rejected outright



instead of granting time to cure the defects. Even otherwise, if it was felt proper to grant time to the applicant (petitioner) to cure the defects, such time could under no circumstances exceed the limit of 30 days. It is well settled that the authority drawing power from the statute cannot suo motu extend the time expressly stipulated in the statute. Therefore, the application ought to have been rejected for being an invalid application within a period of 30 days. This Court would however, hasten to add that the above inaction or omission of the ORERA to act strictly as per the statutory prescription does not by itself clothe the petitioner's application with validity to be considered for deemed registration. This Court fully concurs with the contention raised that 'application' within the meaning of Section 5 has to be a valid application complete in all respects and free from deficiencies and incomplete or deficient application cannot be treated as a valid application. As per clause (b) of sub-section (1), the application must conform to the provisions of the Act, Rules or Regulations. There is no dispute that the application of the petitioner was not defect free and hence, incomplete. Therefore, this Court is of the



considered view that the deeming provision under section 5(2) of the Act shall not apply to the petitioner's application.

17. Coming to question No.3 i.e. justifiability and propriety of the order of rejection of the petitioner's application, this Court has already held that the statute prescribes a 30-day period for consideration of the application, whereupon it is to be either rejected or granted. It has also been held that the statute does not confer any power on the authority to extend the prescribed period. Therefore, keeping the application pending for one and half years i.e. till 27.10.2021 and rejecting it on the ground of delay in disposal cannot be countenanced in law. To reiterate, the petitioner could at best have been called upon within the stipulated 30 day period to cure the defects. In case the petitioner failed to do so, the application ought to have been rejected latest by the 30th day of its submission rather than keeping it pending any further. It is well settled that when the statute prescribes a thing to be done in a particular manner, it is to be done in that manner or not at all. Reference in this regard may be had to the case of **Nazir Ahmad v. King-**



Emperor³. Here, the statute does not provide for enlargement of time for consideration of application for registration but has itself capped the period at 30 days. The use of the word 'shall' implies that the provision is mandatory. It is well-settled that where the statute itself provides the consequences of non-adherence to the time stipulation, it can only be treated as mandatory. Reference in this regard may be had to the cases of **State of U.P. v. Manbodhan Lal Srivastava⁴**, **Rajsekhar Gogoi v. State of Assam⁵** and **Haridwar Singh v. Bagun Sumbrui⁶**. As per Sec 5(2), if the application for registration is not rejected or allowed within 30 days, it entails automatic or deemed registration from the next day onwards. Therefore, the application could not have been kept pending beyond 30 days. Even on merits, this Court finds from a reading of the impugned order that the application was rejected also on the ground of absence of the documents envisaged under Section 4(2)(c) of the Act. From the facts placed before this Court, it is seen that acting in line with the Government Notification dated

³ 1936 SCC OnLine PC 41

⁴ (1957) 2 SCC 759

⁵ (2001) 6 SCC 46

⁶ (1973) 3 SCC 889



15.02.2020, the petitioner submitted application before DUDA on 25.05.2020. Said application was forwarded to the Town Planning Unit for scrutiny and report vide letter dated 27.08.2020. The Town Planning Unit, by letter dated 04.11.2020 pointed out several deficiencies in the application and asked the petitioner to rectify the same. The petitioner claims to have submitted all the relevant documents in compliance through its letters dated 24.12.2020 and 22.01.2021. The Town Planning Unit thereafter granted technical sanction vide letter dated 04.10.2021. As is now apparent, no action whatsoever was taken by DUDA thereafter. While the matter stood thus, the order of rejection was passed by ORERA on 27.10.2021. The order was issued when the matter was pending before the DUDA. Even as on 07.06.2022, the application of the petitioner was said to be 'under process'. Nothing is forthcoming from the counter affidavit filed by DUDA as to what final decision was taken on the application of the petitioner. Learned counsel appearing for DUDA could not satisfy this Court in this regard at all, which implies that the application is pending. While both ORERA as well as DUDA



have referred to the so-called objective of the Act to justify their action/inaction, this Court fails to understand as to how said objectives would be achieved by keeping the application of the petitioner pending indefinitely.

18. Taking into consideration all these aspects, this Court is of the view that the inability of the petitioner to produce the required approval cannot be attributed to it, but solely to DUDA. Without considering this vital aspect, ORERA appears to have rejected the application somewhat mechanically even though the petitioner cannot be blamed for the delay. This Court therefore, holds that rejection of the application of the petitioner by ORERA was neither proper nor justified, apart from being contrary to the statutory provisions referred above.

19. This takes the Court to the final question as to what relief the petitioner would be entitled to in the peculiar facts and circumstances. Since the petitioner's application for grant of approval as required by the Government notification dated 15.02.2020 has not been disposed of by DUDA, the same is to be considered and disposed of in accordance with law without any further delay. This Court therefore, directs DUDA



to take a decision on the application of the petitioner within seven days from the date of production of certified copy of this order. If approval is granted by DUDA, the petitioner shall be at liberty to submit application afresh before ORERA for grant of registration and in such event, ORERA shall deal with the same strictly as per the procedure laid down under section 5 of the Act.

20. The writ petition is disposed of accordingly.

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(Sashikanta Mishra),
Judge

The High Court of Orissa, Cuttack
31st July, 2026/Pravakar

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