

BEFORE THE REAL ESTATE APPELLATE TRIBUNAL : CUTTACK

Appeal Case No. 3(RE)/2018

(From the order of the Real Estate Regulatory Authority,
Bhubaneswar, in Complaint Case No.12/2018, dtd.17.05.2018)

**Present: Smt. Suchismita Misra, Chairman,
Sri Subrata Mohanty, 2nd Judicial Member,
&
Sri P.C. Pathy, Accounts Member-I**

Prasanta Kumar Sarangi,
Eden Garden, Johal,
P.O. Pahal, P.S. Baliana,
Dist. Khurda.

... Appellant

-Versus-

Birendra Kishore Das & Others,
Eden Garden, Johal,
P.O: Pahal,P.S: Baliana,
Dist. Khurda.

... Respondents

For the Appellant : **Mr. M.K. Pati, Advocate**

For the Respondents : **Mr. S.K. Behera, Advocate**

Date of Hearing: 21.01.2019 *** Date of Order: 31.01.2019

ORDER

The respondent before the learned authority below (Real Estate Regulatory Authority) has challenged the sustainability of the order in Complaint Case No. 12/2018 passed against him ex-parte, whereby he is directed to remove encroachment/blockage over the disputed road on Plot No.334 and to gift away the said disputed road to Municipality within the stipulated period of 30 days. For sake of convenience the parties to this appeal are termed as arrayed before the learned lower forum (RERA).

2. **Factual matrix :**

The complainants before the Odisha Real Estate Regulatory Authority in Complaint Case No.12/2018 have purchased housing plots in a project named "Eden Garden" developed by the Respondent (appellant in this appeal). The plots were having access to the public road as shown in the broucher published and distributed by the Respondent developer under the trade name of 'Sri Jagannath Associates'. As power of attorney holder of the original tenant of Plot No.334, 335 and 336 of Mauza Johal, the Respondent has sold the land dividing into many plots with boundary wall erected upto some extent giving 20 feet connecting "morum" road with electricity supply. Even though, it was assured by the Respondent to hand over the land used as road to the Bhubaneswar Municipality by way of gift for development but the Respondent did not comply the same, rather, he prevented the B.M.C. to lay water supply pipes on the road connecting to different households. When the matters stood thus, the Respondent encroached upon the entry point of the disputed road running over Plot No.334, which is the passage to approach the housing project and carved out an alternative narrow road running over Plot No.325 recorded in the name of his wife. The purchasers including the Complainants objected the above acts of the Respondent but when he turned his deaf ear to their approach, they filed a complaint before the learned authority below for the reliefs of removal of encroachment/blockage over the suit road under Plot No.334 and for a direction to the appellant to gift and hand over the road to local municipality.

3. The case was heard ex-parte since the Respondent did not turn up in spite of receipt of notice from the Authority. It is noticed that, in course of the hearing of the case, the Authority took assistance of a Commissioner, who made local enquiry/inspection about the existence and necessity of the road in dispute and

thereafter, in ultimate analysis, the Authority below has held that, the Respondent being a developer had promised to donate the land disputed road and hand over the possession of the same to the local authorities for developing the same and since he had promised the said piece of land as the project road to be used by different purchasers including the Complainants, he should remove the blockage put by him over the said road.

4. Felt aggrieved by the direction of the learned Lower Forum, the Respondent has preferred this appeal. It is contended that, since the case was decided without affording him proper opportunity of being heard, there was violation of principle of natural justice. The land in question, over which the Complainants are claiming a road, is not belong to him. He had not sold plots to the present complainants and the power of attorney on the strength of which, he had executed some of the sale deeds was already revoked by the principal earlier to the purchases of the complainants. Present dispute between the parties is civil in nature and RERA has no jurisdiction to entertain such claim. Further, since the land does not belong to the appellant, he is no way concerned about promise of gift of the land or about handing over the possession of the land to B.M.C. Moreover W.P. (C) No.12913/15 and 1629/2018 are also pending before the Hon'ble Court in connection with the same matter. So the RERA has no jurisdiction to entertain the complaint before him for self-same relief based on self-same cause of action. He has prayed for remanding the matter to the learned authority below for fresh adjudication.

5. The substantial question of fact and law raised by the appellant for decision are, (i) Whether the impugned order is passed without affording proper opportunity of being heard to the dealer and in the facts and circumstances of this case if there is sufficient reason to remand the matter for adjudication afresh?

Findings :

6. At the outset, it is pertinent to mention here that, the grounds taken in the appeal on the basis of the averments in the memo of appeal were not there before the learned forum below. If the averments in appeal are considered, then the issues like jurisdiction of the RERA, existence of road, promise to give road or gift of the land to the local authority etc. are the issues needed to be decided. As the appellant had no pleading before the lower forum, the learned lower forum had no occasion to frame and decide the issues of fact and law, which are raised here in this appeal. The question of jurisdiction, implantation/addition of parties in whose name the land/disputed road stands, the necessity of the disputed road, promises made in the broucher, locus-standi of the Respondent as a promoter or developer and his obligations, if any, as well etc. are many questions to be taken care of for final adjudication of the dispute. In that event, we are of the consensus view that, without proper opportunity of being heard to the appellant and without allowing him to raise his plea with evidence, no effective adjudication of the dispute can be made. For that, there is sufficient reason to interfere with the impugned order and liberty should be given to the respondent for an opportunity of being heard in the light of the principle of natural justice to be extended to a party to the lis. As per Sec.44(6) this appellate authority is competent to remand the matter, which is derived from the term "make such order as it thinks fit" as contemplated under the provision. It is felt that, an opportunity should be given to the respondent to raise his plea and since the statute mandates disposal of the appeal/case within a stipulated period, there is no reason to delay disposal of the appeal awaiting the LCR. In our opinion the ends of justice will be served if the matter will be remanded back to the learned lower authority for disposal afresh after giving an

opportunity to the appellant to lead his pleadings and evidence. Hence, ordered.

The appeal is allowed on contest. The matter is remanded back to the learned Real Estate Regulatory Authority, Bhubaneswar for disposal afresh by giving an opportunity to the complainant to file his show cause and hearing. The parties are directed to appear before the authority below within a period of 15 days hence to take necessary instruction from the forum below accordingly.

Dictated & corrected by me,

Sd/-
(S. Mohanty)
2nd Judicial Member-II

Sd/-
(S. Mohanty)
2nd Judicial Member

I agree,

Sd/-
(Suchismita Misra)
Chairman

I agree,

Sd/-
(P.C. Pathy)
Accounts Member-I