

ORDER SHEET
(RULE 129 OF THE RECORDS MANUAL, 1917)

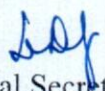
Order Sheet, dated from 25.11.2022 to

Case No: APC 02 of 2022

Nature of the case: -- Appeal u/s 33 of UL(C&R) Act, 1976 in the matter of Sova Sen & others
-Vs- Competent Authority, Kolkata.

Sl. No. and Date of Order	Order and Signature of Officer	Note of action taken on order
25.11.2022	<p>The case is heard today.</p> <p>Sri. Ranajit Chaudhuri , the constituted attorney of the appellants is present. Sri. Utpal Majumdar, Ld. Advocate & Sri. Pushan Kar , Ld. Advocate on behalf of the appellants are also present.</p> <p>Competent Authority, Kolkata & Sri. Amit Kumar Basu, SRO-I & Smt. Ananya Dutta,SRO-II attached to CA, Kolkata also present.</p> <p>It has been observed that in terms of order dated 13.09.2022, the appellants submitted a short notes in respect of the appeal along with annexures on 29.09.2022. Sri. Ranajit Chaudhuri also submitted a copy of the registered development power of attorney of the appellants in favour of R P Jeet Developers Pvt. Ltd represented by its directors Sri. Ranajit Chowdhuri & Yudhajit Chaudhuri .</p> <p>Heard the submission of the Ld. Advocates of the appellants. Perused the written submission of the appellants.</p> <p>The contention of the appellants, in brief, is that, the appellants submitted a return u/s 6(1) of UL(C&R) Act, 1976 before the Competent Authority, Calcutta for an area of 11 katha 7 Chittak and 10 sft in respect of 126/3D,123/3E & 126/3B Narkeldanga Main Road. After amalgamation, and separation, now the premises no. became 126/3E & 123/3E/1A Maulana Abul Kalam Azad Sarani. On 29th January 1983 , draft statement was prepared by the CA, Kolkata, indicating 265.98 sq. mt. of land as excess vacant land. The objection filed by the appellants against the draft statement was rejected by the competent authority and a final statement was served upon the appellants.</p> <p>Being aggrieved by such final statement, they preferred an appeal before the Appellate Authority u/s 33 of UL(C&R) Act,1976. The Appellate authority set aside the draft as well as final statement of CA, Kolkata & directed CA, Kolkata to prepare a draft statement afresh</p>	

Sl. No. and Date of Order	Order and Signature of Officer	Note of action taken on order
	<p>taking into consideration the contention of the Appellant regarding existence of dwelling unit & making an enquiry into the matter.</p> <p>In terms of said order of Appellate Authority, the competent authority prepared a draft statement on 21st February, 1991 and determined that the appellants hold EVL amounting 229.29 sq.mt and served a final statement upon them.</p> <p>Against such final statement another appeal being number 14/1991 was preferred an appeal before the Land Reforms Commissioner, WB & Ex officio Secretary, Urban Development Department. In the said Appeal The Appellate Authority rejected the contention of the applicant on 7th July 1994 declaring that the appellant held vacant land to the extent of 265.98 sq. mt.</p> <p>On 6th November, 1997, the Competent Authority, Kolkata published a Notification u/s 10(1) of the said Act, by not considering the Judgment of Hon'ble Supreme Court in Meera Gupta Case and not complying with the mandate sections 8,9,10 of the said Act and Rule 5,7 and other rules including the Schedule.</p> <p>In the meantime, on 14th January, 2020, the applicants filed an application for no objection certificate & the Competent Authority, by his communication dated 14th January 2020 requested the appellants to rectify the defects of the NOC application. However without giving any opportunity of hearing and/or without letting the appellants know about the fate of NOC application, the competent authority issued notification u/s 10(3) of 19.4.2021.</p> <p>Having no other remedies, the appellants filed a writ petition before the Hon'ble High Court, Calcutta, being no WPA No. 2010 of 2022, and the said writ application was disposed of by an order dated 18th February 2022. On the basis of said order they submit a comprehensive representation before Competent Authority, Kolkata on 28.02.2022. The Competent Authority in its order dated 27.04.2022, rejected the representation as the Competent Authority cannot alter the Final Statement issued by him earlier, by applying the appropriate section of UL(C&R) Act, 1976 where Declaration u/s 10(3) was published. The Appeal arises from the said order of Competent Authority.</p> <p>It is further contended that the Competent Authority does not follow the provisions of Section 8 & 9 of UL(C&R) Act, 1976, by not disclosing the particulars as contained in the said sections. Further no benefit was given in respect of "Tank" held by the appellants. Error had also been committed by not giving the benefits in terms of Judgment of Hon'ble Supreme Court of India in Meera Gupta Case(Supra)as reported in (1992) 2 SCC 492. There is also violation of section 10 & Section 11 of the said Act by not giving opportunity of hearing to petitioners. It has also been stated section 45 of UL(C&R) Act 1976 contemplates that in case of accidental errors, the officers/authorities to correct an error arising from an accidental slips/omissions either in own motion or on application. The Competent Authority may take recourse to the section 45 while disposing the case.</p>	

Sl. No. and Date of Order	Order and Signature of Officer	Note of action taken on order
	<p>On perusal of the order sheet of CA, Kolkata, it appears that, Notification u/s 10(1) in respect of the subject land was published on 17.11.1997. The proceeding was lying incomplete since then. Rest of the stages of incomplete proceeding was initiated again during scrutiny of documents and records available in the office. Later Declaration has been issued on 19.04.2021 u/s 10(3) of ULC Act upon the said excess vacant land u/s. 10(3) of the said Act. No action was taken since publication of the said declaration. It also appears that the Competent Authority in his proceeding observed that no benefit of additional Land Appurtenant was given as per section 2(g) of ULC Act & as per inspection book of KMC for relevant point of time there is existence of DH(Dwelling House)& Tank.</p> <p>At the time of hearing the Competent Authority, Kolkata does not refute any of the contentions of the appellants except that UL(C&R) Act does not provide the competent authority to alter the Final Statement issued by him earlier, where Declaration u/s 10(3) was published.</p> <p>Now, after going through the Appeal Petition, written notes of the appellants, the order sheet as well as verbal submission of the Competent Authority, it seems that the provisions as laid down in the UL(C&R) Act, 1976, as regards determination of excess vacant land have not duly been followed by the Competent Authority in the instant case. As a result the Appeal succeeds. The Notification u/s 10(1) dated 17.11.1997 in respect of the subject land as well as the subsequent Declaration dated 19.04.2021 u/s 10(3) of ULC Act are set aside. The Final Statement in respect of the notification dated 17.11.1997 is also set aside.</p> <p>The Competent Authority, Kolkata is directed to proceed the matter afresh in accordance with law after taking into consideration the contentions of appellants.</p> <p>Let the plain copy of order be served upon the parties.</p> <p style="text-align: center;"> Special Secretary & Appellate Authority U/S 33 of UL(C&R)Act,1976</p>	