

**ORISSA HIGH COURT: CUTTACK**

**W.P.(C) No. 8158 of 2019,**  
**W.P.(C) No. 11863 of 2019**  
**And**  
**W.P.(C) No. 3029 of 2020**

In the matter of applications under Articles 226 and 227 of the Constitution of India.

-----

***AFR***

**W.P.(C) No. 8158 of 2019**

Bimalendu Pradhan

.....

Petitioner

-Versus -

State of Odisha and another

.....

Opp. Parties

For Petitioner : Mr. Mohit Agarwal, Advocates.

For Opp. Parties : Mr. P.K. Muduli,  
Addl. Government Advocate

**W.P.(C) No. 11863 of 2019**

Hi-Tech Estate & Promoters (P) Ltd.

.....

Petitioner

-Versus -

Asis Panda and another

.....

Opp. Parties

For Petitioner : M/s. Debashis Nanda and M.Dash,  
Advocates,

For Opp. Parties : M/s. Ajit Kumar Ray and  
R.N. Das, Advocates  
[O.P. 1]

Mr. P.K. Muduli,  
Addl. Government Advocate  
[O.P.No.2]

**W.P.(C) No. 3029 OF 2020**

M/s. Vipul Limited ..... Petitioner

-Versus -

State of Odisha and others ..... Opp. Parties

For Petitioner : M/s. S. Mohapatra, P.K. Chand,  
P. Behera and B.P. Das, Advocates.

For Opp. Parties : Mr. P.K. Muduli,  
Addl. Government Advocate  
[O.P. Nos. 1, 2 and 5]

Mr. Mohit Agarwal, Advocate  
[O.P. Nos. 3 and 4]

P R E S E N T:

**THE HONOURABLE DR. JUSTICE B.R.SARANGI**

---

**DECIDED ON : 01.07.2020**

---

**DR. B.R. SARANGI, J.** Bimalendu Pradhan, complainant before

Real Estate Regulatory Authority, Bhubaneswar, has filed

W.P.(C) No. 8158 of 2019 seeking following relief:-

*“1. Direct the Opposite Party No.2- Odisha Sales Tax Tribunal to discharge its statutory functions under the Real Estate (Regulation and Development) Act, 2016 till the effective functioning of Odisha Real Estate Appellate Tribunal as per Section 45 of Real Estate (Regulation and Development Act, 2016.*

*2. Direct the Opp. Party No.1 to establish the office of the Odisha Real Estate Appellate Tribunal, and*

*appoint its Judicial and Administrative Members within a period of one month.”*

W.P.(C) No. 11863 of 2019 has been filed by a private limited company, which is a builder and promoter of real estate, seeking following relief:-

*“It is therefore, prayed that this Hon’ble Court be pleased to admit the writ petition, issue notice to the Opp.Parties and after hearing the parties further be pleased to stay the Execution case No. 20/2019 pending before the Real Estate Regulatory Authority till admission of the appeal bearing No. 1 of 2019 pending before the Real Estate Appellate Tribunal Cuttack and for which act of kindness petitioner shall be as in duty bound every pray.”*

Similarly, W.P.(C) No. 3029 of 2020 has been filed by a builder and promoter of real estate with the following relief:-

*“It is therefore humbly prayed that, this Hon’ble Court may kindly be graciously be pleased to admit the writ application, issue notice to the opposite parties, and after hearing the parties further be pleased to quash the notices dt. 02/07/2019 as at Annexure-4 series.”*

2. The factual matrix of the case in W.P.(C) No. 8158 of 2019 is that the petitioner had filed a complaint case before the Real Estate Regulatory Authority, Bhubaneswar (in short “RERA”) being Complaint Case No.55/2018 against a real estate builder, namely, M/s. Vipul Limited, Bhubaneswar alleging violations of several provisions of the Real Estate (Regulation and Development) Act, 2016 (in short “the Act”) and, as such, the possession of the flat booked by him was not provided even after lapse of considerable time, as specified in the agreement. After hearing, the RERA by order dated 12.06.2018 allowed the complaint of the petitioner and issued several directions to the builder. Challenging the said order, the builder, M/s. Vipul Limited, Bhubaneswar preferred statutory appeal before the appellate tribunal, i.e., the Odisha Sales Tax Tribunal vide Appeal Case No. 7 (RE)/2018. But the said appeal could not be taken up for hearing, as because the designated tribunal suo motu refused to take up appeal matters or register fresh appeal cases on the pretext that

the Chairperson of the regular Real Estate Appellate Tribunal has been appointed.

2.1 Similarly, the fact in W.P.(C) No. 11863 of 2019 is that the opposite party no.1-Asis Panda filed a complaint before the RERA with a prayer to refund the amount deposited by him, along with the compensation claimed to the tune of Rs.28,73,600/- with interest @ 18% per annum on the deposited amount of Rs.18,23,600/-. The said complaint was registered as Complaint Case No. 110 of 2018. Pursuant to notice, the builder- present petitioner- filed objection raising question of limitation and maintainability of the complaint petition and contended that the private limited company is ready to give possession of the flat to the complainant-opposite party no.1. But the RERA allowed the complaint case on 30.11.2018 and directed the petitioner to refund the payment of Rs.18,23,600.00 along with interest. Against that order the petitioner already preferred an appeal before the Real Estate Appellate Tribunal, which has been

registered as Appeal No. 01/2019, but the same could not be taken up because of non-functional of the tribunal and no effective order could be passed. Consequentially, the complainant filed Execution Case No. 20 of 2019 before the RERA for execution of the order passed by the very same authority.

2.3 So far as the fact in W.P.(C) No. 3029 of 2020 is concerned, the petitioner is a real estate company from whom the opposite parties no. 3 and 4 seek for allotment of flats. As the same could not be done, opposite parties no. 3 and 4 filed complaint case, being Complaint Case No. 163/2018, before the RERA, alleging non-compliance of the provisions of the Act, 2016 and consequentially claimed for allotment of flat and payment of interest for delay in completion of the project. On consideration of the same, the RERA allowed such complaint case, vide order dated 27.02.2019, against which though appeal lies to the appellate tribunal, but due to non-functioning of the same, the petitioner filed W.P.(C) No. 10139 of 2019, which was

dismissed on 19.06.2019 on the ground that statutory remedy have been provided under the Act, 2016. Against the said order the petitioner filed W.A. No. 302 of 2019, which is pending. But in the meantime, the petitioner has already preferred statutory appeal before the Real Estate Appellate Tribunal. As the appellate tribunal is not functioning, immense difficulties have been caused for adjudication of the matter in proper perspective.

3. Taking the facts in all the three writ petitions into account, the sum total of the grievance made by the petitioners in their respective writ petitions is that due to non-functioning of the Real Estate Appellate Tribunal, they are facing difficulties, for which they have approached this Court by filing these writ applications. In other words, though the writ petitions have been filed with different cause of actions, but essence is the non-functioning of the Tribunal. Since in all the three writ petitions the petitioners have sought for similar nature of relief, they

have been heard together and are disposed of by this common judgment.

4. Mr. Mohit Agarwal, Mr. Debasis Nanda and Mr. S. Mohapatra, learned counsel appearing for the respective petitioners in the above noted three writ petitions argued unequivocally and contended that since the Real Estate Appellate Tribunal is not functioning, in view of the remedy available under the statute, the benefits could not be availed by the petitioners, as a consequence of which they have been deprived of their statutory rights, therefore, seek for interference of this Court.

5. Mr. P.K. Muduli, learned Addl. Government Advocate contended that in the meantime Chairperson of the tribunal and two other Members have already been appointed. Though the tribunal has been constituted by appointing the Chairperson and two Members, but it could not be able to function as the financial autonomy has not been given to it. It is further contended that the proposal



for creation of different posts in the tribunal have not been done and, as such, the discussion in the high level committee meeting has already been held to that extent and proposal for giving financial autonomy with separate heads of account and engagement of staff for effective function of the tribunal is under active consideration by the government. It is further contended that all effective and possible steps have been taken by the government to make the tribunal functional. But because of intervening of the Covid-19 pandemic, there is some delay in implementation thereof. Therefore, some time may be granted to make all endeavor to see that the appellate tribunal can function effectively.

6. This Court heard Mr. M. Agarwal, Mr. D. Nanda and Mr. S. Mohapatra, learned counsel appearing for the respective petitioners in the above noted three writ petitions; and Mr. P.K. Muduli, learned Addl. Government Advocate and Mr. A.K. Ray, learned counsel for the opposite parties; and perused the record. In view of the

development taken place during pendency of the writ petition, instead of awaiting for counter affidavit to be filed by the opposite parties in each of the writ petitions, on the basis of the instructions submitted by learned counsel appearing for the State, as well as the affidavit and additional affidavit filed in W.P.(C) No. 11863 of 2019, and with the consent of the learned counsel for the parties, these writ petitions are being disposed of finally at the stage of admission.

7. Before advertng into the merits of the case, it is essential to have a glimpse over the provisions of law governing the field for establishment of the Real Estate Appellate Tribunal. Needless to mention, by an Act of Parliament to establish the Real Estate Regulatory Authority for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner and to protect the interest of consumers in the real estate sector and to

establish an adjudicating mechanism for speedy dispute redressal and also to establish the Appellate Tribunal to hear appeals from the decisions, direction or orders of the Real Estate Regulatory Authority and the adjudicating officer and for matters connected therewith, an Act has been enacted called “The Real Estate (Regulation and Development) Act, 2016”.

8. The relevant provisions required for just and proper adjudication of the case, in hand, are as follows:-

*“2. In this Act, unless the context otherwise requires,*

*(a) “adjudicating officer” means the adjudicating officer appointed under sub-section (1) of Section 71;*

*xxx*

*xxx*

*xxx*

*(f) “Appellate Tribunal” means the Real Estate Appellate Tribunal established under section 43.*

*xxx*

*xxx*

*xxx*

*(i) “Authority” means a person registered as an architect under the provisions of the Architects Act, 1972.*

*xxx*

*xxx*

*xxx*

*(zo) “regulation” means the regulations made by the Authority under this Act.*

(zp) “rule” means the rules made under this Act by the appropriate Government.

xxx

xxx

xxx

**20.** (1) The appropriate Government shall, within a period of one year from the date of coming into force of this Act, by notification, establish an Authority to be known as the Real Estate Regulatory Authority to exercise the powers conferred on it and to perform the functions assigned to it under this Act:

Provided that the appropriate Government of two or more States or Union territories may, if it deems fit, establish one single Authority:

Provided further that, the appropriate Government may, if it deems fit, establish more than one Authority in a State or Union territory, as the case may be:

Provided also that until the establishment of a Regulatory Authority under this section, the appropriate Government shall, by order, designate any Regulatory Authority or any officer preferably the Secretary of the department dealing with Housing, as the Regulatory Authority for the purposes under this Act:

Provided also that after the establishment of the Regulatory Authority, all applications, complaints or cases pending with the Regulatory Authority designated, shall stand transferred to the Regulatory Authority so established and shall be heard from the stage such applications, complaints or cases are transferred.

(2) The Authority shall be a body corporate by the name aforesaid having perpetual succession and a common seal, with the power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall, by the said name, sue or be sued.

xxx

xxx

xxx

**43.** (1) *The appropriate Government shall, within a period of one year from the date of coming into force of this Act, by notification, establish an Appellate Tribunal to be known as the — (name of the State/Union territory) Real Estate Appellate Tribunal.*

(2) *The appropriate Government may, if it deems necessary, establish one or more benches of the Appellate Tribunal, for various jurisdictions, in the State or Union territory, as the case may be.*

(3) *Every bench of the Appellate Tribunal shall consist of at least one Judicial Member and one Administrative to Technical Member.*

(4) *The appropriate Government of two or more States or Union territories may, if it deems fit, establish one single Appellate Tribunal:*

*Provided that, until the establishment of an Appellate Tribunal under this section, the appropriate Government shall designate, by order, any Appellate Tribunal Functioning under any law for the time being in force, to be the Appellate Tribunal to hear appeals under the Act:*

*Provided further that after the Appellate Tribunal under this section is established, all matters pending with the Appellate Tribunal designated to hear appeals, shall stand transferred to the Appellate Tribunal so established and shall be heard from the stage such appeal is transferred.*

(5) *Any person aggrieved by any direction or decision or order made by the Authority or by an adjudicating officer under this Act may prefer an appeal before the Appellate Tribunal having jurisdiction over the matter:*

*Provided that where a promoter files an appeal with the Appellate Tribunal, it shall not be entertained, without the promoter first having deposited with the Appellate Tribunal at least thirty per cent. of the penalty, or such higher percentage as may be determined by the Appellate Tribunal, or the*

*total amount to be paid to the allottee including interest and compensation imposed on him, if any, or with both, as the case may be, before the said appeal is heard.*

xxx

xxx

xxx

**45.** *The Appellate Tribunal shall consist of a Chairperson and not less than two whole time Members of which one shall be a Judicial member and other shall be a Technical or Administrative Member, to be appointed by the appropriate Government.*

*Explanation.—For the purposes of this Chapter,—*

*(i) "Judicial Member" means a Member of the Appellate Tribunal appointed as such under clause (b) of sub-section (1) of section 46;*

*(ii) "Technical or Administrative Member" means a Member of the Appellate Tribunal appointed as such under clause (c) of sub-section (1) of section 46.*

**46.** *(1) A person shall not be qualified for appointment as the Chairperson or a Member of the Appellate Tribunal unless he,—*

*(a) in the case of Chairperson, is or has been a Judge of a High Court; and*

*(b) in the case of a Judicial Member he has held a judicial office in the territory of India for at least fifteen years or has been a member of the Indian Legal Service and has held the post of Additional Secretary of that service or any equivalent post, or has been an advocate for at least twenty years with experience in dealing with real estate matters; and*

*(c) in the case of a Technical or Administrative Member, he is a person who is well-versed in the field of urban development, housing, real estate development, infrastructure, economics, planning,*

*law, commerce, accountancy, industry, management, public affairs or administration and possesses experience of at least twenty years in the field or who has held the post in the Central Government, or a State Government equivalent to the post of Additional Secretary to the Government of India or an equivalent post in the Central Government or an equivalent post in the State Government.*

*(2) The Chairperson of the Appellate Tribunal shall be appointed by the appropriate Government in consultation with the Chief Justice of High Court or his nominee.*

*(3) The judicial Members and Technical or Administrative Members of the Appellate Tribunal shall be appointed by the appropriate Government on the recommendations of a Selection Committee consisting of the Chief Justice of the High Court or his nominee, the Secretary of the Department handling Housing and the Law Secretary and in such manner as may be prescribed.*

**47.** *(1) The Chairperson of the Appellate Tribunal or a Member of the Appellate Tribunal shall hold office, as such for a term not exceeding five years from the date on which he enters upon his office, but shall not be eligible for re-appointment:*

*Provided that in case a person, who is or has been a Judge of a High Court, has been appointed as Chairperson of the Tribunal, he shall not hold office after he has attained the age of sixty-seven years:*

*Provided further that no Judicial Member or Technical or Administrative Member shall hold office after he has attained the age of sixty-five years.*

*(2) Before appointing any person as Chairperson or Member, the appropriate Government shall satisfy itself that the person does not have any such financial or other interest, as is likely to affect prejudicially his functions as such member.*

xxx

xxx

xxx

**51.** (1) *The appropriate Government shall provide the Appellate Tribunal with such officers and employees as it may deem fit.*

(2) *The officers and employees of the Appellate Tribunal shall discharge their functions under the general superintendence of its Chairperson.*

(3) *The salary and allowances payable to, and the other terms and conditions of service of, the officers and employees of the Appellate Tribunal shall be such as may be prescribed.*

xxx

xxx

xxx

**54.** *The Chairperson shall have powers of general superintendence and direction in the conduct of the affairs of Appellate Tribunal and he shall, in addition to presiding over the meetings of the Appellate Tribunal exercise and discharge such administrative powers and functions of the Appellate Tribunal as may be prescribed.*

xxx

xxx

xxx

**71.** (1) *For the purpose of adjudging compensation under sections 12, 14, 18 and section 19, the Authority shall appoint in consultation with the appropriate Government one or more judicial officer as deemed necessary, who is or has been a District Judge to be an adjudicating officer for holding an inquiry in the prescribed manner, after giving any person concerned a reasonable opportunity of being heard:*

*Provided that any person whose complaint in respect of matters covered under sections 12, 14, 18 and section 19 is pending before the Consumer Disputes Redressal Forum or the Consumer Disputes Redressal Commission or the National Consumer Redressal Commission, established under section 9 of the Consumer Protection Act, 1986, on or before the commencement of this Act, he may, with the*



*permission of such Forum or Commission, as the case may be, withdraw the complaint pending before it and file an application before the adjudicating officer under this Act.*

*(2) The application for adjudging compensation under sub-section (1), shall be dealt with by the adjudicating officer as expeditiously as possible and dispose of the same within a period of sixty days from the date of receipt of the application:*

*Provided that where any such application could not be disposed of within the said period of sixty days, the adjudicating officer shall record his reasons in writing for not disposing of the application within that period.*

*(3) While holding an inquiry the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which in the opinion of the adjudicating officer, may be useful for or relevant to the subject matter of the inquiry and if, on such inquiry, he is satisfied that the person has failed to comply with the provisions of any of the sections specified in sub-section (1), he may direct to pay such compensation or interest, as the case may be, as he thinks fit in accordance with the provisions of any of those sections.*

*xxx*

*xxx*

*xxx*

**75.** *(1) The appropriate Government shall constitute a fund to be called the 'Real Estate Regulatory Fund' and there shall be credited thereto,—*

*(a) all Government grants received by the Authority;*

*(b) the fees received under this Act;*

*(c) the interest accrued on the amounts referred to in clauses (a) to (b).*

*(2) The Fund shall be applied for meeting—*

*(a) the salaries and allowances payable to the Chairperson and other Members, the adjudicating officer and the administrative expenses including the salaries and allowances payable to be officers and other employees of the Authority and the Appellate Tribunal;*

*(b) the other expenses of the Authority in connection with the discharge of its functions and for the purposes of this Act.*

*(3) The Fund shall be administered by a committee of such Members of the Authority as may be determined by the Chairperson.*

*(4) The committee appointed under sub-section (3) shall spend monies out of the Fund for carrying out the objects for which the Fund has been constituted.*

**76.** *(1) All sums realised, by way of penalties, imposed by the Appellate Tribunal or the Authority, in the Union territories, shall be credited to the Consolidated Fund of India.*

*(2) All sums realised, by way of penalties, imposed by the Appellate Tribunal or the Authority, in a State, shall be credited to such account as the State Government may specify.”*

9. On perusal of the above mentioned provisions, it would be evident that an adjudicating officer is to adjudicate compensation under sections 12, 14, 18 and 19 in view of the provisions contained under sub-section (1) of Section 71 and such authority is being appointed in consultation with the appropriate government, as per the provisions contained therein. Similarly, the authority,

which has been defined under Section 2(i), is the Real Estate Regulatory Authority and it shall be appointed by the appropriate government within a period of one year from the date of coming into force of the Act and to perform the functions assigned to it under the Act. Likewise, Section 2(f) deals with Appellate Tribunal, which is to be established by the appropriate government within a period of one year from the date of coming into force of the Act, in view of the provisions contained under sub-section (1) of Section 43 of the Act itself. As per the provisions contained under Section 45, the appellate tribunal shall consist of a Chairperson and not less than two whole time Members of which one shall be a judicial member and other shall be a Technical or Administrative Member to be appointed by the appropriate government. As per sub-section (1)(a) of Section 46, a person shall not be qualified for appointment as the Chairperson or a Member of the appellate tribunal, unless he is or has been a Judge of a High Court and in case of Judicial Member,

he must have held a judicial office for at least fifteen years or must be a member of the Indian Legal Service and must have held the post of Additional Secretary of that service or any equivalent post, or must be an advocate for at least twenty years with experience in dealing with real estate matters. So far as Technical or Administrative Member is concerned, he must be a person well-versed in the field of urban development, housing, real estate and development, infrastructure, economics, planning, law, commerce, accountancy, industry, management, public affairs or administration and possesses experience of at least twenty years in the field or must have held the post in the Central Government, or a State government equivalent to the post of Additional Secretary to the Government of India or an equivalent post in the Central Government or an equivalent post in the State Government. Section 51 stipulates that the appropriate government shall provide the appellate tribunal with such officers and employees, as it may deem fit, and the said employees shall discharge

their functions under the general superintendence of its Chairperson and salary and allowances payable to and the other terms and conditions of service of the officers and employees of the appellate tribunal shall be such as may be prescribed. Similarly, administrative power of the Chairperson has been provided under Section 54 of the Act itself. Section 75 empowers that the appropriate government shall constitute a fund to be called the “Real Estate Regulatory Fund” and all government grants received by the authority, the fees received under the Act and the interest accrued on the amounts received from government grants and fees received under the Act. Sub-section (2) of Section 75 specifically provides that the salaries and allowances shall be payable to the Chairperson and other Members, the adjudicating officer and the administrative expenses including the salaries and allowances payable to the officers and other employees of the Authority and the Appellate Tribunal. Sub-section (3) of Section 75 provides that fund shall be administered by a

committee of such Members of the Authority as may be determined by the Chairperson. Sub-section (2) of Section 76 provides that all sums realized, by way of penalties, imposed by the Appellate Tribunal or the Authority, in a State, shall be credited to such account as the State Government may specify.

10. In pursuance of Section 84 of the Real Estate (Regulation and Development) Act, 2016, the State Government made the Rules called “Odisha Real Estate (Regulation and Development) Rules, 2017” (hereinafter referred to “Rules, 2017”). Chapter-VII deals with Real Estate Appellate Tribunal. Rule-32 of the Rules, 2017 deals with categories of officers and employees of the appellate tribunal, which reads as follows:-

*“The nature and categories of officers and employees of the Tribunal shall be recommended by the Tribunal for consideration of the Government which shall be approved with or without modifications, as the case may be.*

Rule-35 of the Rules, 2017 reads as under:-

*“35. Administrative powers of the Chairperson of the Appellate Tribunal – (1) The Chairperson of the*

*Appellate Tribunal shall exercise the following administrative powers namely:-*

- (a) Officiating against sanctioned posts.*
- (b) Authorization of tours to be undertaken by any Member, officer or employee within India.*
- (c) Matters in relation to reimbursement of medical claims.*
- (d) Matters in relation to grant or rejection of leaves.*
- (e) Nominations for attending seminars, conferences and training courses in India.*
- (f) Permission for invitation of guests to carry out training course.*
- (g) Matters pertaining to staff welfare expenses.*
- (h) Sanction or scrapping or write-off of capital assets which due to normal wear and tear have become unserviceable or are considered beyond economical repairs.*
- (i) All matters relating to disciplinary action against any Member, officer or employee.*

*2. The Chairperson of the Appellate Tribunal shall also exercise such other powers that may be required for the efficient functioning of the Appellate Tribunal and enforcement of the provisions of the Act and the rules and regulations made thereunder.”*

11. Needless to say that in order to give effect to the purpose of the Act, 2016, Rules, 2017 have been framed and more specifically the powers and functions of the Appellate Tribunal have been elaborately discussed in the Rules itself. Therefore, Real Estate Regulatory Authority and Real Estate Appellate Tribunal are two separate

establishments and they have been regulated by the Act, 2016 and Rules framed thereunder. In the Real Estate Appellate Tribunal, the Chairperson, being the Judge of a High Court, has been vested with power to have superintendence of the officers and employees of the Appellate Tribunal in due discharge of their function and their salary and allowances payable and other terms and conditions of service as prescribed under the Rules and more particularly the Chairperson shall have powers of general superintendence and direction in conducting the affairs of Appellate Tribunal and in addition to presiding over the meetings of the Appellate Tribunal, exercise and discharge such administrative powers and functions of the appellate tribunal as may be prescribed. Therefore, the statute has given independent authority on Real Estate Appellate Tribunal to function independently. Thereby, the staff of the tribunal, its management, its maintenance, its superintendence so also its salary and allowances are to be paid by the tribunal under the superintendence and



administrative control of the Chairperson. In view of the provisions contained under sub-section (1) of Section 75, if the appropriate government has constituted funds called “Real Estate Regulatory Fund”, on the basis of the government grants, fees received and interest accrued on the amounts received from the government grants and fees received under the Act, the fund is to be applied for meeting the salaries and allowances payable to the Chairperson and other Members, the adjudicating officer and the administrative expenses including the salaries and allowances payable to the officers and other employees of the authority and the appellate tribunal and, as such, the said fund shall be administered by a committee of such members of the authority as may be determined by the Chairperson. But fact remains, since the Real Estate Appellate Tribunal is an independent body from that of Real Estate Regulatory Authority, it has to function independently with the statutory duties assigned to it, thereby, financial autonomy be given to both the

independent authorities from out of the same fund, namely, Real Estate Regulatory Fund. From out of Real Estate Regulatory Fund, independent allocation of funds be made to two separate authorities, namely, RERA and Real Estate Appellate Tribunal to manage their respective institutions in proper perspective to achieve the objectives of the Act, 2016 and the Rules framed thereunder, as the employees of respective institutions are to be paid salaries, allowances and administrative expenses, as due admissible to them, by the respective controlling authority independently. Therefore, the manner in which the State Government proposed to proceed, that is to say, that the funds allocated to Real Estate Regulatory Authority will manage the affairs of the Real Estate Appellate Tribunal cannot have any justification to that extent. Because of constitution of both the forums under the provisions of the Act, 2016, as the appeal lies to the Real Estate Appellate Tribunal against the order passed by the Adjudicating Officer and RERA, both are subordinate to Real Estate

Appellate Tribunal. As such, budgetary provisions be made from out of the Real Estate Regulatory Fund and the same be allocated in favour of RERA and Real Estate Appellate Tribunal separately for smooth functioning of both the institutions independently.

12. The legislature has enacted the Act, 2016 and Rules framed thereunder to allow Real Estate Regulatory Authority and Real Estate Appellate Tribunal to act independently in order to achieve the object but not to frustrate the purpose by any means. In view of the provisions contained under Section 44(1) of the Act itself, that 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. As per subsection (2) of Section 44, appeal should 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 along with accompanied fees.

13. In **Nagendra Nath Dey v. Suresh Chandra Dey**, AIR 1932 PC 165 it was held, an 'appeal' is an application by a party to an appellate Court asking it to set aside or revise a decision of a subordinate Court.

14. Similar view has also been taken in **Tirupati Balaji Developers (P) Ltd. V. State of Bihar**, (2004) 5 SCC 1.

15. In **Akalu Ahir v. Ramdeo Ram**, AIR 1973 SC 2145 the apex Court held, the 'appeal' is a creature of statute and there is no inherent right of appeal.

16. In **V.C. Shukla v. State Through C.B.I.**, AIR 1980 SC 962 the apex Court held that an 'appeal', in substance, is in the nature of a judicial examination of a decision by a higher Court of a decision of an inferior

Court, to rectify any possible error in the order under appeal.

17. In ***State of Gujarat v. Salimbhai Abdulgaffar Shaikh***, (2003) 8 SCC 50 the apex Court held that the 'appeal' is a proceeding taken to rectify an erroneous decision of a Court by submitting the question to a higher Court.

18. In ***Bolin Chetia v. Jagdish Bhuyan***, (2005) 6 SCC 81 the apex Court held, in its natural and ordinary meaning the word 'appeal' means a remedy by which a cause determined by an inferior forum is subjected before a superior forum for the purpose of testing the correctness of the decision given by the inferior forum.

19. In ***Kamla Devi v. Kushal Kanwar***, (2006) 13 SCC 295 the apex Court held, an 'appeal' is the right of entering a superior court invoking its aid and interposition to redress an error of the Court below. The central idea

behind filing of an appeal revolves round the right as contra-distinguished from the procedure laid down therefore.

20. In ***James Joseph v. State of Kerala***, (2010) 9 SCC 642 the apex Court held, an 'appeal' is a proceeding where a higher forum reconsiders the decision of a lower forum, on questions of fact and questions of law, with jurisdiction to confirm, reverse, modify the decision or remand the matter to the lower forum for fresh decision in terms of its directions.

21. Therefore, if any order passed by the adjudicating officer or by the authority, the same is appealable before Real Estate Appellate Tribunal, which has got right to see its correctness and validity and make a judicial examination of the same and if necessary rectify any possible error in the order under appeal. This being the requirement of law to be discharged by the Real Estate Appellate Tribunal in appeal, it can be said that the RERA

and Real Estate Appellate Tribunal are two separate and independent authorities to function independently in accordance with law. Therefore, in view of such position, the financial autonomy be given to Real Estate Appellate Tribunal for its smooth management from out of the Real Estate Regulatory Fund as per the budgetary provision to be placed by respective forums to make the expenditure to be incurred for such establishment every year in order to achieve the ultimate objective of the Act and Rules framed thereunder.

22. On perusal of the order-sheets of the above mentioned three writ petitions, it appears that on 26.04.2019 in W.P.(C) No. 8158 of 2019 this Court passed the following order:-

*“List this matter three months after. In the meantime, learned State Counsel is directed to obtain instruction as to the effective functioning of the Appellate Tribunal as well as the competent authority therein and file the same before this Court by way of affidavit on the next date.”*

On 11.07.2019 in W.P.(C) No. 11863 of 2019, this Court passed the following order:-

*“Heard Shri D. Nanda, learned counsel for the petitioner.*

*This Court finds, it has become a regular feature alleging that in spite of appointment of the appellate authority under the Real Estate (Regulation and Development) Act, 2016, the court is not functioning in the particular case. There is an allegation that in spite of appeal being filed along with an application for interim protection and registered even, but for non-functioning of the Court, the petitioner is unable to move the interim application. It is also submitted that the Executing Authority is to decide the matter first.*

*Considering the grievance of the petitioner and repeated mentioning in this Court that the appellate authority is not functioning rendering the system remediless, this Court directs the petitioner to serve an extra copy of the brief on Shri S.N. Mishra, learned Additional Standing Counsel by tomorrow (12<sup>th</sup> of July, 2019), who is directed to obtain instruction regarding nonfunctioning of the Appellate Authority under the Real Estate (Regulation and Development) Act, 2016 by Monday (15<sup>th</sup> of July, 2019). It is further directed that there shall be stay of further proceeding in Execution Case No.20/2019 till 16<sup>th</sup> of July, 2019.*

*List this matter on Tuesday (16<sup>th</sup> of July, 2019).”*

On 16.07.2019 in W.P.(C) No. 11863 of 2019, this Court passed the following order:-

*“Put up this matter tomorrow (17.07.2019) on the request of the learned counsel for the petitioner.*



*Interim order passed earlier shall continue till the next date.”*

On 17.07.2019 in W.P.(C) No. 11863 of 2019, this Court passed the following order:-

*“Learned Addl. Standing Counsel by producing instruction from H & UD Department, Govt. of Orissa submits that for the disclosures therein, it may take some months time for functioning of the appellate forum and the appellate forum can only be made functional after the full infrastructures is provided to it. Shri Behera, learned Standing Counsel is unable to submit to the Court as to what time is required for providing the full infrastructures along with detailed manpower for actual functioning of the appellate forum. He wants some time to obtain such instruction. Matter stands adjourned to 18.7.2019.*

*Instruction in the light of observation be obtained specifically as to what much time will be required to make the appellate forum operational. This Court since finds the appellate forum remains non-functional, for State Govt. not making available the appellate forum to undertake its actual exercise and for the parties suffer on account of closure of the proceeding before the Original authority, in preferring appeal and stay, this Court observes, the parties may file appeal by sending the appeal memo and other petitions through Regd. Post with A.D. for the time being, all the appeals shall be sent to the office of the Joint Secretary, H & UD Department, Govt. of Orissa who will be custodian of the appeal memo. This direction is given keeping in view the parties aggrieved does not suffer for no fault of them as the appeal goes time barred. Till the appeals are taken up along with the interim application fled therein, execution proceeding, if any, involved therein shall remain stayed.*

*Place the matter tomorrow (18.07.2019).*

*Free copy of this order be given to Shri Behera, learned Addl. Standing Counsel for communication along with forwarding with a copy to the Executing Authority under the Real Estate (Regulation and Development) Act, 2016 by our Registry.”*

On 18.07.2019 in W.P.(C) No. 11863 of 2019, this Court passed the following order:-

*“Heard.*

*Learned Advocate General appearing for the State submits that the selection process of the members of the appellate authority is under process and in view of the long list of applicants, the selection may also take some time and there may be also some time consumed for giving effect to the functioning of the appellate forum. Learned Advocate General however, seeks some time to take concrete information within what period the State Govt. will be in a position to make the appellate forum operationalised. The matter stands adjourned to 29.07.2019 for further consideration.*

*Interim order passed earlier shall continue till the next date.*

*Affidavit filed in Court today be kept on record.*

*Copy of the order be handed over to Shri Behera, learned counsel appearing for the State-opp. parties.”*

On 29.07.2019 in W.P.(C) No. 11863 of 2019, this Court passed the following order:-

*“‘VAKALATNAMA’ filed on behalf of the opposite party no.1 in Court today be kept on record.*

*Heard Shri D. Nanda, learned counsel for the petitioner, Shri A. Parija, learned Advocate General of Odisha being assisted by Shri B. Behera, learned Additional Standing Counsel for the State-opposite parties and Shri A.K. Roy, learned counsel for the opposite party no.1.*

*Shri Parija, learned Advocate General by producing a communication along with the Office order before this Court submits that there is already appointment of the Secretary in the Odisha Real Estate Appellate Tribunal. Shri Parija, learned Advocate General further submitted that there is already appointment of Secretary and the Secretary has already started the Office and therefore, there is no difficulty in receiving the appeals through the Secretary of the Odisha Real Estate Appellate Tribunal. So far as the functioning of the appellate authority is concerned, Shri Parija, learned Advocate General submitted that it may take at least four to six weeks time at the minimum for constitution of the Appellate authority and thus requested this Court for granting at least six weeks time for making the appellate authority functional.*

*Considering the submission of Shri Parija, learned Advocate General and going through the Office order, this Court observes, since the Secretary Odisha Real Estate Appellate Tribunal is already appointed and started its Office, it will be open to the parties to submit Appeal before the Secretary, Odisha Real Estate Appellate Tribunal. For the direction to the parties to file appeal before the Secretary, Odisha Real Estate Appellate Tribunal henceforth, the interim direction by this Court for submitting the appeal before the Joint Secretary, H & UD Department, Government of Odisha stands modified accordingly. The interim order passed by this Court earlier staying the execution proceeding in Execution Case no.20/2019 as well as all other execution cases shall continue till the next date.*

*List this matter on 13th of September, 2019.*

*Free copy of this order be handed over to Shri B. Behera, learned Additional Standing Counsel for necessary compliance.*

On 13.09.2019 in W.P.(C) No. 11863 of 2019, this Court passed the following order:-

*“List this matter on 30.09.2019.  
Interim order passed earlier shall continue till  
the next date.”*

On 30.09.2019 in W.P.(C) No. 11863 of 2019, this Court  
passed the following order:-

*“It is submitted by Sri S.N. Mishra, learned  
Additional Government Advocate that there is some  
improvement facilitating early functioning of the Real  
Estate Regulatory Appellate Tribunal.*

*However, considering that the Appellate  
Forum still remains non-functional and creating  
immense inconvenience to the litigants, this Court as  
a matter of last chance adjourns this matter to  
15.10.2019. Interim order passed earlier shall  
continue till the next date.”*

An additional affidavit has been filed by Sri Sushanta  
Kumar Mishra, who was working as Joint Secretary to  
Government, Housing and Urban Development  
Department on 04.11.2019, which reads as follows:

*“2. That, this deponent has earlier filed a status  
report on dtd. 17.07.2019 as per the direction of this  
Hon’ble Court and the present status report, by way  
of an affidavit, is being filed to supplement the earlier  
affidavit filed by this deponent.*

*3. That, it is humbly submitted that the Odisha Real  
Estate Appellate Tribunal (OREAT) has already been  
established vide Notification No.233/date  
02.02.2019. The Government has appointed Hon,ble  
Shri Justice Subash Chandra Parija (Retired Judge),  
High Court of Orissa as Chairperson of OREAT vide  
Notification No.241/date 02.02.2019. In pursuance of*

*such notification, Hon'ble Justice Sri Parija assumed office of the Chairperson on dated 06.02.2019. Subsequently, as per recommendation of the Selection Committee headed by Hon'ble Chief Justice of Orissa High Court, Government has appointed two Members of OREAT vide Notification No.1650 dated 05.09.2019. In pursuance of the above notification, Sri Malay Chatterjee assumed office of the Technical/Administrative Member of OREAT on 11.09.2019. Similarly Sri Ishan Kumar Das assumed the office of Judicial Member, OREAT on 12.09.2019.*

*4. That, it is humbly submitted that in order to make the Tribunal fully functional, Government has already sanctioned the support staffs and Home Department has been requested vide letter no.1704, 1706, 1708 date 12.09.2019, letter no.2018 date 23.10.2019 & UOI No.316 dated 25.10.2019 of H&UD Department for posting of staff to OREAT. It is humbly submitted that Home Department is taking necessary steps to appoint the staffs at the earliest.*

*5. That, it is humbly submitted that a space measuring 6626 sq.ft. has been allotted by General Administration & Public Grievance Department at Seventh Floor of A1 Block of Toshali Bhawan, Satya Nagar, Bhubaneswar for establishment of the permanent office of OREAT. It is humbly submitted that Infrastructure Development Corporation of Odisha (IDCO) has been engaged to take up the interior work at Toshali Bhawan. Subsequently, IDCO has submitted a detailed plan and estimate for the renovation and internal work for an amount of Rs.6,09,46,500/-. It is humbly submitted that the work may take some more time to complete.*

*6. That, it is humbly submitted that in compliance of the orders of the Hon'ble High Court of Orissa, Secretary of Odisha Real Estate Regulatory Authority (ORERA) has been designated as the Secretary of OREAT. He has been receiving the appeals preferred by the appellants as per kind directions of the Hon'ble Court.*

*7. That, however, in pursuance to the order passed by this Hon'ble Court, the Housing & Urban Development Department, Odisha, Bhubaneswar is trying sincerely to provide a temporary accommodation for the office of the OREAT till the permanent office building of the Tribunal is prepared. It is humbly submitted that proposal for establishing the temporary office either at the State Guest House, Bhubaneswar or at 4<sup>th</sup> Floor of Fortune Towers, Bhubaneswar is under active consideration and the same will be finalized very soon. It is humbly submitted that the said Tribunal will be made fully functional as soon as the proposed temporary site is finalized and after posting of the support staffs by Home Department."*

On 04.02.2020 in W.P.(C) No. 3029 of 2020, this Court passed the following order:-

*"Sri Mohit Agarwal, learned counsel has entered appearance on behalf of the opposite party nos. 3 and 4 by filing Vakalatnama in Court today and he prays for some time to file counter affidavit in this case. The Vakalatnama filed be kept on record.*

*Put up this matter on 19.02.2020.*

*Counter affidavit, if any, shall be filed in the meantime.*

*In the meantime, further proceedings in Execution Case no. 22 of 2019 as well as suo-motu C.C. No. 113 of 2019 arising out of the order dated 27.02.2019 passed in C.C. No. 163 of 2018 pending before the Real State Regulatory Authority, Bhubaneswar shall remain stayed."*

On 20.02.2020 in W.P.(C) No. 3029 of 2020, this Court passed the following order:-

*"List this matter on 28.02.2020 along with the records of W.P.(C) N o. 11863 of 2019."*

On 28.02.2020 in W.P.(C) No. 3029 of 2020, this Court passed the following order:-

*“As requested by Mr. Rath, learned Additional Standing Counsel, list this matter on 3.3.2020 along with the connected records.*

*In the meantime, Mr. Rath is directed to obtain instruction in the matter.*

*Interim order passed earlier shall continue till the next date.”*

This Court also passed the order on 28.02.2020 in W.P.(C) No. 11863 of 2019 to the following effect:-

*“List this matter on 03.03.2020.*

*Interim order passed earlier shall continue till the next date.”*

On 03.03.2020 this Court passed order in W.P.(C) No. 3029 of 2020 to the following effect:-

*“Mr. Parija, learned Advocate General appearing for the State prays for short adjournment to file an affidavit in the matter.*

*List this matter on 13.03.2020.*

*Interim order granted earlier will continue till the next date.”*

On 03.03.2020 this Court also passed order in W.P.(C) No. 11863 of 2019 to the following effect:-

*“List this matter on 13.03.2020.*

*Interim order passed earlier shall continue till the next date.”*

On 12.03.2020 this Court passed order in W.P.(C) No. 8158 of 2019 to the following effect:-

*“Heard learned counsel for the parties.  
List this matter tomorrow(13.03.2020).”*

On 12.03.2020 an additional affidavit has been filed by Sri Sushanta Kumar Mishra, who was working as Joint Secretary to Government, Housing and Urban Development Department, which reads as follows:-

*“2. That, earlier a status report was filed by way of an affidavit dtd.04.11.2019 as per the direction of this Hon’ble Court and the present status report, by way of an affidavit, is being filed to supplement the earlier affidavit filed on behalf of the Principal Secretary, H&U.D Department.*

*3. That, it is humbly submitted that the Odisha Real Estate Appellate Tribunal (OREAT) has already been established vide Notification No.233/date 02.02.2019. The Government has appointed Hon’ble Shri Justice Subash Chandra Parija (Retired Judge), High Court of Orissa as Chairperson of OREAT vide Notification No.241/date 02.02.2019. In pursuance of such notification, Hon’ble Justice Sri Parija assumed office of the Chairperson on dated 06.02.2019. Subsequently, as per recommendation of the Selection Committee headed by Hon’ble Chief Justice of Orissa High Court, government has appointed two Members of OREAT vide Notification No.1650 dated 05.09.2019. In pursuance of the above notification, Sri Malay Chatterjee assumed office of the Technical/Administrative Member of OREAT on 11.09.2019. Similarly Sri Ishan Kumar*



*Das assumed the office of Judicial Member, OREAT on 12.09.2019.*

*4. That, it is humbly submitted that in order to make the Tribunal fully functional, Government in Finance Department has created 17 posts on 19.08.2019 and allowed OREAT to engage up to 10 number of retired Group-D personnel in addition to the above posts. Copy of details of the 27 posts is enclosed herewith and marked as **Annexure-A** for kind perusal of the Hon'ble Court.*

*5. That, it is humbly submitted that subsequently Home Department was requested vide letter no.1704, 1706, 1708 date 12.09.2019, Letter no.2018 date 23.10.2019 & UOI No.316 dated 25.10.2019 of H&UD Department for posting of staff to OREAT. Home Department regretted appointment/deputation of staff vide their letter no.51322, date 20.11.2019 & 52033, date 25.11.2019 citing the ground of acute shortage of staff and requested H&UD Department to explore alternatives. Copies of the communications made with Home Department and their replies are enclosed herewith and marked as **Annexure-B, C, D, E, F, G, H** respectively for kind perusal of the Hon'ble Court.*

*6. That, it is humbly submitted that consequent upon the reply of Home Department, H&UD Department moved Finance Department on 22.12.2019 to allow to engage retired Government employees. Government in Finance Department concurred to such proposal on 23.12.2019. That, the approval was communicated to the learned Tribunal vide H&UD Department Letter no.1, date 01.01.2020 and request was made vide Letter no.4, date 01.01.2020, to initiate the process of engagement of staff to make the Tribunal functional. Copy of letters of H&UD Department communicated to OREAT is enclosed herewith and marked as **Annexure-I &J** respectively for kind perusal of the Hon'ble Court.*

7. That, it is humbly submitted that the learned Tribunal further requested H&UD Department to move to Government for creation of 8 more posts in three different categories for smooth functioning of the learned Tribunal. Proposal of the learned Tribunal was submitted to Finance Department on 01.01.2020 and Finance Department accorded their concurrence on 20.01.2020 for creation of 5 posts and allowed OREAT to engage 3 Date Entry Operators (DEO) through outsourcing. That, the matter of creation of additional posts was communicated to the learned Tribunal vide Letter no.150, dtd. 24.01.2020 with a request to engage the support staff as per admissibility. Copy of Letter no.150 of H&UD Department communicated to OREAT is enclosed herewith and marked as **Annexure-K** for kind perusal of the Hon'ble Court.

8. That, it is humbly submitted that Government has created 22 posts for the learned Tribunal and allowed them to engage 10 retired group-D employees and 3 DEOs on outsourcing basis. This has brought the total no. of all categories of staff created for the Tribunal to 35.

9. That, it is humbly submitted that when the matter stood thus, the learned Tribunal submitted a proposal for creation of 31 additional posts on 20.01.2020 vide their letter no.7, dt.20.01.2020. The proposal was submitted to Finance Department for consideration. Finance Department, in their turn, returned the file on 03.03.2020 with a request to submit status of creation of posts for similar Tribunals in other states for considering the proposal. H&UD Department requested the Tribunal to provide information on posts created for Tribunals in other states vide letter no.358 dt.24.02.2020. Copies of Letter of the Tribunal and the letter of H&UD Department are enclosed herewith and marked as **Annexure-L & M** respectively for kind perusal of the Hon'ble Court.

10. That, it is humbly submitted that the learned Tribunal has also submitted a proposal to enhance

*the consolidated remuneration prescribed by Finance Department for engagement of retired employees to various posts on the grounds that competent and experienced retired High court/Sub-ordinate court staffs would not join the Tribunal at the rates of remuneration prescribed by Finance Department. The proposal has also been submitted to Finance Department for consideration.*

*11. That, it is humbly submitted that in compliance of orders of this Hon'ble Court, a High level meeting under the Chairmanship of Chief Secretary was held on date 06.03.2020. The meeting was attended by Principal Secretary, Finance Department, Principal Secretary, Law Department, Principal Secretary, H&UD Department, Registrar, OREAT and other officials associated with the subject. The status of creation of post for Real Estate Appellate Tribunals of 3 states i.e. Tamil Nadu, Bihar & Madhya Pradesh were examined. It was found that government of Tamil Nadu has created 12 posts, Government of Bihar has created 18 posts and Government of Madhya Pradesh has created 49 posts for their respective Tribunals. After detailed deliberation on matters relating to operationalization of Odisha Real Estate Appellate Tribunal, it was decided that the Principal Secretary, Law Department shall co-ordinate with the Tribunal and shall suggest the requirement of creation of any other posts subject to a maximum of 37 posts. He will have the flexibility of interchanging the already approved posts with the posts which might be considered more relevant. He will also suggest the mode of their engagement. Accordingly, Finance Department will accord approval to the fresh proposal to be submitted by the learned Tribunal. Further, in order to ensure immediate functioning of the Tribunal, Principal Secretary, GA&PG Department shall place on deputation, 15 employees of the erstwhile OAT to OREAT immediately. The proposal of the Tribunal shall be submitted to Finance Department immediately after its receipt. Copy of the proceedings of the meeting is enclosed herewith and marked as **Annexure-N** for kind perusal of the Hon'ble Court.*

12. That, it is humbly submitted that a space, measuring 6626 sq.ft. has been allotted by General Administration & Public Grievance Department at Seventh Floor of A1 Block of Toshali Bhawan, Satya Nagar, Bhubaneswar for establishment of the permanent office of OREAT. Infrastructure Development Corporation of Odisha (IDCO) has been engaged in consultation with Chairperson, OREAT to take up the interior work at Toshali Bhawan. Subsequently, IDCO submitted a detailed plan and estimate for the renovation and internal work for an amount of Rs.6,09,46,500/-. Government had given the Administrative approval to the estimate submitted by IDCO on 29.11.2019. Subsequently, IDCO submitted a revised estimate amounting to Rs.4,59,68,500/- on 07.01.2020, which has also been accorded with administrative approval by the Government on dated 11.02.2020. However, for functioning of the Tribunal during the interim period i.e. till the work of the permanent office is completed by IDCO, an office space measuring about 6158 sqft. At 4<sup>th</sup> floor of Fortune Towers, Bhubaneswar has also been provided for functioning of the Tribunal. In order to accommodate the Tribunal, office of the Odisha Urban Infrastructure Development Fund (OUIDF) has been shifted. This is a fully furnished accommodation with necessary logistics for functioning of the Tribunal. However, IDCO has been requested to do additional furnishing, if any, in consultation with the Tribunal for specific requirement of the Tribunal. It is learnt that IDCO has also completed the additional furnishing.”

The matter was listed on 13.03.2020, on which date this Court in W.P.(C) No. 8158 of 2019 passed the following order:-

“Heard Mr. M. Agarwal, learned counsel for the petitioner and Mr. A.K Parija, learned Advocate General representing the State opposite parties.

*Mr. Parija, learned Advocate General relying on the additional affidavit which he has filed in Court today in W.P.(C) No.11863 of 2019 submits that the Orissa Real Estate Appellate Tribunal (OREAT) has already been established and the Chairman and other members have also been appointed. He further submits that the space measuring about 6626 sq.ft. has already been allocated at 7<sup>th</sup> Floor of Block A1, Toshali Bhawan, Bhubaneswar for establishment of permanent office of OREAT. However, for functioning of the Tribunal during the interim period i.e. till the work of the permanent office is completed by IDCO, space measuring about 6158 sq.ft. at 4<sup>th</sup> Floor in Fortune Towers, Bhubaneswar has also been provided.*

*With regard to posting of the staff, he submits that in order to ensure immediate functioning of the Tribunal, Principal Secretary GA & PG Department shall place on deputation 15 employees of the erstwhile OAT to OREAT immediately. In this background, Mr. Parija prays for short adjournment of the matter.*

*List this matter on 23.03.2020.*

*The opposite party No.1-State is directed to expedite deputation of the staff for immediate functioning of the Tribunal.*

*A free copy of this order be handed over to learned Advocate General of the State.*

This Court on 13.03.2020 passed order in W.P.(C) No. 11863 of 2019 to the following effect:-

*“Additional affidavit filed in Court today is taken on record.*

*Heard learned counsel for the petitioner and Mr. A.K. Parija, learned Advocate General representing the State.*

*In view of the above additional affidavit, list this matter on 23.03.2020 along with W.P.(C) No. 8158 of 2019.*

*Interim order granted earlier will continue till the next date.”*

This Court on 13.03.2020 passed order in W.P.(C) No. 3029 of 2019 to the following effect:-

*“Heard learned counsel for the parties including Mr. A.K. Parija, learned Advocate General. List this matter on 23.03.2020. Interim order granted earlier will continue till the next date.”*

23. In the meantime, three months have lapsed, but the Real Estate Appellate Tribunal has not functioned, which is causing immense difficulties to the litigants. It is pertinent to mention here that a high level committee meeting was held on 06.03.2020 with regard to various requirements to be fulfilled to make the Real Estate Appellate Tribunal functional and for creation of different posts in the appellate tribunal on restructure and with regard to delay in taking steps for absorption of staff in the appellate tribunal from the erstwhile Odisha Administrative Tribunal. So far as giving permission to engage outsourced housekeeping/maintenance agency and security agency for maintenance of the temporary office at

present and permanent office latter on is concerned, the same is still pending for consideration before the government since 06.05.2020. Further, the request of the tribunal dated 30.03.2020 for purchase and supply of office stationary, law books and provide logistic support service for starting of the tribunal at the earliest is also pending and, as such, request for grant of advance money for initial purchase of office stationary articles, law books and journals and office contingency expenses to avoid delay is also pending with the government since 07.05.2020. Above all, the proposal for giving financial autonomy to the Appellate Tribunal is pending with the government since 20.01.2020. Though reminder has already been issued on 05.05.2020, but no effective steps have been taken till date. It clearly indicates the apathetic attitude of the State Government in not allowing the statutory Appellate Tribunal to function in accordance with law, which itself amounts to causing obstruction in course of administration of justice.

24. In the aforesaid premises, this Court is of the considered view that the grievance of the writ petitioners would be meted out in the event Real Estate Appellate Tribunal would be made full functional with the financial autonomy and heads of account by allocating funds from the Real Estate Regulatory Fund as per the budget independently. Keeping all the above aspects in view, this Court deems it just and proper to issue following directions:-

- (1) The State Government is directed to give financial autonomy to the Odisha Real Estate Appellate Tribunal by allocating funds from the Real Estate Regulatory Fund on every year by making suitable budgetary provision along with separate heads of account for smooth management of the said forum, so that it will not cause prejudice to any authority, as the RERA and Real Estate Appellate Tribunal are two separate independent bodies and



discharging their duties as per the provisions contained under the Act, 2016 and Rules framed thereunder.

- (2) The nineteen employees of the erstwhile Odisha Administrative Tribunal, whose services have been deployed for functioning of the Real Estate Appellate Tribunal, should be absorbed in the said cadre as and when the proposal will be submitted by the Tribunal and their salary and financial benefits should be paid from the funds to be allocated in favour of the Real Estate Appellate Tribunal with separate heads of account.
- (3) As per the discussions held on 06.03.2020 in the high level committee meeting that there will be creation of different permanent posts in the Real Estate Appellate Tribunal on restructuring of staffing pattern, as agreed, be done.

- (4) The temporary site allotted in favour of Real Estate Appellate Tribunal to be made ready pending finalization of renovation of the work at the permanent site.
- (5) The renovation work in permanent site should be expedited and completed within a reasonable time

The State-opposite party shall make all endeavour to ensure compliance of each of the directions given above within a period of fifteen days from the date of communication/production of authenticated/certified copy of this judgment so as to enable Real Estate Appellate Tribunal to function smoothly as early as possible in the interest of litigants, as its Chairperson and Members have been appointed long since, failing which it will be construed as contempt of this Court and suo motu contempt proceedings will be initiated against the opposite parties.

25. Before parting with, it is made clear that so far as the interim orders dated 11.07.2019 passed in W.P.(C) No.11863 of 2019 and dated 04.02.2020 passed in W.P.(C) No.3029 of 2020 are concerned, the same are allowed to continue till the State Real Estate Appellate Tribunal starts functioning and appeal is being take up in the said forum. Needless to say, the Odisha Real Estate Appellate Tribunal shall not be influenced by the interim orders passed by this Court while considering the appeal.

26. The writ petitions are accordingly allowed. However, there shall be no order to costs.

.....  
**DR.B.R.SARANGI,**  
**JUDGE**

**Orissa High Court, Cuttack**  
**The 1<sup>st</sup> July, 2020, Ashok/Ajaya/GDS**