

**IN THE COURT OF THE CIVIL JUDGE (J. D.),
BHUBANESWAR, DISTRICT- KHURDA.**

Present : **Ms. Sujata Priyambada Swain,**
Civil Judge(Jr.Divn.),
Bhubaneswar, Dist-Khurda.

C.S. No. 89/06

M/s Manorama Properties Pvt. Ltd.,
A company incorporated under the
Companies Act, 1956, with its registered
office at Rasulgarh, Bhubaneswar-751010,
PS-Saheed Nagar,
Dist-Khurda, Represented by Shri
Radhanath Kar, 69 years, S/o-Late
Brundaban Kar, Director,
At the same address.

..... Plaintiff

- **Versus** -

1. Manorama Estate Welfare Society, A
society registered under the Society
Registration Act, 1861, and duly
represented by its Secretary, 107-
Rasulgarh, PS-Saheed Nagar, Dist-
Khurda.
2. Madhusudan Sahu, 65, S/o-Late Kalia
Sahu, House No.204, Manorama Estate,
Rasulgarh, Bhubaneswar-751010. PS-
Saheed Nagar,
Dist-Khurda.

..... Defendants

Counsel for the Plaintiff : M/s. M. M. Basu
& Associates, BBSR
Counsel for the Defendants : M/s. A. Parida
& Associates, BBSR

Date of hearing of Argument : **15.09.14**

Date of delivery of Judgment : **27.09.14**

J U D G E M E N T

1. The plaintiff has filed the present suit for confirmation of his title in respect of the suit land as described in white in the sketch map of schedule-I or to such other developments as may be lawfully effected from time to time; declaration of the right of way to the occupants over the suit road and for injunction against the defendants from preventing any lawful user from using the suit road.

2. The plaint averments in brief are as follows:

The suit schedule property constitutes 20 feet wide road within Manorama Estate measuring of an area Ac 1.150 decimals approximately out of the following plots:

Mouza-Govindprasad:

Khata no: Plot No: Road area approx location (in acre):

820	107	0.075 south & east
718	105	0.067 East
718	103	0.030 north
918	65	0.052 west
913	100/2051	0.72 north & east
1057/412	100	0.020 middle
914	99/2105	0.006 middle
75	99	0.005 middle

75	99/1605	0.033 middle and east
818	60	0.036 middle
915	61	0.037 middle
271	62	0.074 road on both side of north and south
717	64	0.060 north
1057/195	70	0.036 middle
912	67	0.033 south
1057/264	80	0.084 south and middle
1057/268	80/2058	0.008 north
585	75 /1907	<u>0.019 north</u>
		Total-Ac 0.747 decimals

Mouza-Bomikhal

<u>Khata no:</u>	<u>Plot No.</u>	<u>Road area approximate location(in acre)</u>
407/318	381/997	0.019 south
352	382	0.131 middle
407/120	383	0.80 middle and east
407/318	389	0.032 south
407/293	390	0.023 west
407/305	391	0.080 middle
407/20	387	0.029 north
407/120	917	<u>0.009 north</u>
		<u>Total- Ac 0.403 decimals</u>
		Grand Total- Ac 1.150 decimals

The plaintiff is a Pvt. Ltd., Company duly incorporated under the Companies Act, 1956 with its registered office at 107-Rasulgarh, Bhubaneswar. The plaintiff's Directors, Radhanath Kar, Manorama Kar and Sambit Kar are residing at the same address. They acquired adjoining properties in their own name or in the names of their relations; later devolving on Radhanath Kar, Manorama Kar and Sambit Kar through inheritance

or transfer. The properties of Radhanth Kar, Manorama Kar and Sambit Kar are centrally located and the price hiked with the efflux of time which prompted them to resort to real estate business forming the plaintiff company. The company started phase wise developments through different schemes like Manorama Estate, sub-dividing a patch of land, on acquisition from the respective owners in small size planned units with approved development plans each connected with 20 feet wide approach roads. The plaintiff also undertook to construct the ground floor on behalf of the respective customers. The plaintiff only transferred the house sites with right of user on the approach road upon each customers except the right of use, the plaintiff did not transfer any other right on the approach road to the customers. The reason being he has invested in patches of land around for further development and future developments are to be connected through the same approach road. All the house sites were marketed soon and all the customers entrusted the plaintiff to build the ground floor of the approved construction. The defendant no.1 on 20.6.2000 acquired house site no.204 measuring an area of Ac 0.040 decimals and another small patch and entrusted the plaintiff with the task to build upon

the house site as per the approved plan through agreement dated 31.8.98, which the plaintiff accomplished. The defendant no.2 without clearing the dues of the plaintiff and without taking delivery of possession entered and undertook further construction encroaching upon adjoining patch and other land of the plaintiff. To look after day today maintenance the Manorama Estate Welfare Society was constituted. The defendant no.1 is the said society represented by its Secretary as per rule 20. With the incorporation of further projects the area of operation of society expanded. Such expansion was accommodated in the bye-law through amendments.

The defendant no.2 was chosen as president of the society. On 28.2.06 the defendant no.2 started blocking the approach road to the latest project of the plaintiff namely "Manorama Residency" on the ground that Manorama Residency is not within the area of operation of defendant no.1. The members of "Manorama Residency" have been included as the members of defendant no.1 through a resolution. The formal amendment has not been carried out till date. The defendant no.1 has received membership fees from the occupants of Manorama Residency, since 2005. The society is supposed to look after and

maintain the 20 feet wide approach road. The approach road is approved by BDA and so also different developments plans submitted by the plaintiff. Several other projects like Manorama Apartment and Manorama Manson have their own development plan connected through the same road. The plaintiff seeks a declaration that the approach road shall be opened for every house for the inmates of Manorama Estate Welfare Society as well as the declaration that it is the private road of the plaintiff. The cause of action for the suit arose on 28.2.06, 6.3.06 and subsequent dates, when the defendant no.2 interfered with the right of way of others. Therefore, the suit may be decreed.

3. On the other hand, the defendants 1 and 2 have made their appearance and have filed their WS in which it is submitted that the suit is not maintainable because of non-joinder of necessary parties – BDA, GA Department of Government of Odisha and BMC. It is denied that the Directors namely Radhanath Kar, Manorama Kar and Sambit Kar have acquired adjoining properties in their own names and the names of their relations, later devolving upon the Directors.

It is asserted that the adjoining lands of the common approach road and the land on which the common approach road is situated giving access to the area of operation of defendant no.1 in Manorama Estate Welfare Society (MEWS), does not belong to the plaintiff. The land on which the common approach road runs from National High Way No.203 to entrance gate of MEWS and lands at both flanks of the common approach road belong to GA Department; of the total land of an area of Ac 0.542 decimals of GA department an area of Ac 0.308 decimals have been shown as *zabar dakhla* of Manorama Kar. It is denied that the plaintiff undertook to construct ground floor on behalf of respective customers. From the copy of the agreement between the plaintiff and defendant no.2, it can be seen that the developer will construct residential building on the land. Approach road means internal roads running within the area of operation of MEWS giving entry and exit of each housing unit and meeting the common approach road on the main gate of MEWS. The width of the common approach road to the area of operation of MEWS and the corner point of the plaintiff's office is hardly 15 feet causing bottle-neck for ingress and egress. The plaintiff has violated the

conditions of the BDA in granting permission u/s.16 (3) of the ODA Act.

Concerning approach road none of the conditions of BDA have been complied with by the plaintiff in his building plan implementation. On 10.5.06 BDA had written a letter to the plaintiff that the internal road and space earmarked for public amenities need to be handed over to the society or gifted /transferred in favour of the BMC. The Director, Radhananth Kar on 9.8.95 passed a resolution in which the plaintiff entrusted the society with the entire premises of the residential complex. The Governing body of the MEWS accepted the responsibility. The area of operation of society covers 136 housing units. The plaintiff being greedy kept adding more areas reserved for open space, parking area etc., chocking the area of operation of MEWS; the plaintiff not only added 64 housing units but also constructed houses beyond the area of operation of MEWS, MEWS was registered on 14.11.95 and the bye-law came into operation on the same day u/s.5 the disputed property which was vested in the trustees before the registration of the society became property of the society. After registration the plaintiff has received full cost for every inch of land from his customers including cost for the common approach

road. Manorama Residency does not fall within the area of operation of MEWS. The plaintiff's Director has forced entry of houses illegally constructed in the area of operation of the society and collected registration fee even after his resignation from the presidency of the MEWS on 15.9.2000. 20 feet wide roads are not the approach roads; they are internal roads within the area of operation of MEWS. The internal roads are exclusively for authorized members of MEWS. It is not conceivable as to how an area of operation lands with infrastructure facilities for $134+2=136$ house units can be stretched beyond its elasticity. The plaintiff is estopped from claiming the suit schedule properties as his private road. The suit is barred u/s. 41 of Specific Relief Act.

4. In view of the above pleadings of the parties the following issues have been framed for adjudication.

Issues

- i) Whether the suit is maintainable?
- ii) Whether the plaintiff has any cause of action to file the suit?
- iii) Whether the plaintiff is entitled to a relief of his title in respect of the sit land?

- iv) Whether the plaintiff is entitled to a relief of declaration that the occupants of the society and persons approved by them shall use the suit road as of right?
 - v) Whether the plaintiff is entitled to a relief of permanent injunction against the defendant from preventing any lawful user from using the suit road?
 - vi) Whether the suit is bad for non-joinder of necessary party?
 - vii) Whether the suit is barred under the provisions of Section 41 of the Specific Relief Act?
 - viii) To what other relief (reliefs) is the plaintiff entitled?
5. In order to substantiate his case the plaintiff has examined himself as the sole witness on his behalf and has proved 16 numbers of documents on his behalf. In order to contradict the plaintiff, the defendant no.1 has not examined any witness, but has proved 8 numbers of documents on his behalf.
6. **Findings:**

For the sake of convenience issue No.(iii), (iv) and (v) shall be taken up consideration together.

Issue No.(iii), (iv) and (v)

- I) An evaluation of the oral evidence adduced reveals as follows:

PW 1, who is the Director of the plaintiff, company reiterates the plaint averments concerning he and his family members acquiring landed properties at Rasulgarh; their floating a company; the plaintiff deciding to undertake development projects phase by phase, initially picking up the Manorama Estate Phase; the plaintiff offering to the prospective purchasers of house sites with right to use common approach road freely and to build upon the house sites. PW 1 states that the plan of the house sites together with proposed developments were placed before BDA for approval. In the late nineties the defendant no.2 approached the plaintiff to purchase a house site and selected house site no.204. It was agreed that the defendant no.2 shall entered into another agreement for receiving possession which the defendant no.2 subsequently did not sign. Besides house site no.204 the defendant no.2 purchased an adjacent vacant

patch of land on 8.9.2000 and 29.9.2000 respectively; two sale deeds were executed in favour of defendant no.2. Contrary to the terms of agreement the defendant no.2 did not officially obtained delivery of possession of the finished development nor any clearance or no objection from the plaintiff. He was found to have entered into possession of the finished construction undertaking further developments, without approval of the BDA. On 27.11.05 resorting to illegal means the defendant no.2 managed to designate himself as the president of defendant no.1. On 13.3.06 the defendant no.2 started interfering with the use of common road. A proceeding was initiated against him u/s.144 Cr. P. C. The suit road has not been alienated to defendant no.1 or anyone else except the granting of the right of use of the approach road by all inhabitants. These are the self acquired properties of the plaintiff except sabik plot no.848 and 843 corresponding to Hal plot 52 and 109 measuring a total area of Ac 0.502 decimals which have been allotted to M/s. Rajadhani Timbers, a sister concerned of the plaintiff. PW 1 proves his affidavit as Ext.1 and his signature on it as Ext.1/a; he proves the original agreement executed between the plaintiff company and the defendant company

as Ext.2; the building approval plan vide permission no.839/BD dated 31.1.04 as Ext.3; the ROR bearing no.820 of Mouza- Govindprasad as Ext.4; the ROR bearing nos. 718, 717, 913, 818 - all of Mouza-Govindprasad as Exts. 5,6,7 and 8 respectively; the RSD no.464 as Ext.9; RSD No.1911 as Ext.10; ROR no.407/179 as Ext.11; rent receipt as Ext.12; RSD no.6565 as Ext.13; the first bye-law of the society as Ext.14; and the amended bye-law as Ext.15.

During cross-examination PW 1 denies knowing the number of phases in which construction is going on and says that construction is still going on. Manorama Estate is a residential complex approved by the BDA in 1993. PW 1 admits that there are two provisions for road i.e. one common approach road and internal connection roads. PW 1 states that common approach road connects to internal roads. RORs of common approach road and internal roads are in his name. Later PW 1 admits that the road connecting from National Highway is not in his name. PW 1 admits in Para 18 of his evidence that letters were written to him by BDA claiming that he has violated the norms of BDA. PW 1 admits that plantation area, open space etc., of first project approved by the BDA are not in existence,

PW 1 admits that internal drainage is not connected to the main drainage of municipality. In Para 22 PW 1 admits that Manorama Estate is one of the projects of his company and an applicant of BDA. PW 1 admits that for each project there must be a common approach road and internal roads. PW 1 admits his application dated 7.8.93 to BDA for approval of his plan as Ext.A; permission letter of the BDA vide letter no.7775 dated 21.10.93 as Ext.B; the plan approved by the BDA as Ext.C; the resolution of the company dated 1.6.93 as Ext.D (marked with objection); the General Power of Attorney executed by them as Ext.E (marked with objection); the approval letter of his first project as Ext.F; the project plan of 24 duplex houses approved by the BDA as Ext.G; the map relating to approved plan of BDA as Ext.H; PW 1 admits that the road shown in Ext.C is not in existence, the plantation area shown vide Ext.C is not physically on the front side, but on the back side; the common approach road shown in Ext.C exists inside the compound wall of his project.

II) An evaluation of the documents submitted reveals the following:

Exts.1 and 1/a are evidence-in-chief and signature of PW 1 respectively.

Ext.2 is the agreement between the plaintiff company and the defendant no.2, Madhusudan Sahoo for sale of duplex house bearing no.204 (phase II). As per the terms of agreement the company is to construct the duplex house on behalf of the purchaser as per approved plan. This is inconsistent with Para 3 of the plaint averment that the plaintiff company undertook to construct ground floor of approved duplex houses on behalf the customers.

Ext.3 is the approved plan of BDA u/s.16 (3) of ODA Act dated 31.1.04. The said approved plan reveals ground floor layout plan, locational map in respect of plot no.106, 1660 and 1661 of Mouza-Govindprasad.

Ext.4 is a settlement ROR of khata no.820 of Mouza-Govindprasad in the name of Radhanath Kar and his wife, Manorama Kar. The said khata consists of plot nos.58 and 107.

Ext.5 is the settlement ROR no.1718 of Mouza-Govindprasad. The said khata is in the name of Manorama Kar and consists of plot nos.105, 51 and 103.

Ext.6 is of khata no.1717 of Mouza-Govindprasad. The recorded owner is Manorama Kar. The said khata consists of plot no.64.

Ext.7 is the ROR of khata no.913 of Mouza-

Govindprasad; the recorded owner is Sambit Kar son of Radhanath Kar; the said khata consists of plot no.100/205.

Ext.8 is the ROR of khata no.818 of Mouza-Govindprasad. The recorded owner is Radhanath Kar; the said khata consists of plot no.60.

Ext.9 is the RSD no.464 dated 28.1.2000; the vendor is Samarendra Nayak, and the vendee is M/s Manorama Property. The land sold constitutes khata no.407/120 of Mouza- Bomikhal constituting of plot no.388 (Ac 0.081 decimals out of an area of Ac 0.152) plot no.387 (Ac 0.069 decimals); plot no.917 (Ac 0.012 decimals out of an area of Ac 0.087 decimals).

Ext.10 is the RSD no.1911 dated 7.4.99; the vendor is Surya Narayan Satpathy, the vendee is Manorama Properties. The land sold is an area of Ac 0.100 decimals out of an area of Ac 0.302 decimals of plot no.383 under khata no.352 of Mouza-Bomikhal.

Ext.11 is the ROR of khata no.407/179; the recorded owner is Surya Narayan Satpathy i.e. the vendor vide Ext.10. The said khata consists of plot no.383 of an area Ac 0.100 decimals.

Ext.12 is a rent receipt in the name of Surya Narayan Satpathy in respect of khata no.407/179.

Ext.13 is the RSD No.6565 dated 11.7.88;

the vendor is Sarbeswar Rout, the vendee is Surya Narayan Satpathy (the vendor vide Ext.10); the land sold is an area of Ac 0.100 decimals out of an area of Ac 0.302 decimals of plot no.383 khata no.352 of Mouza-Bomikhal.

It is pertinent to mention that an evaluation of all the aforementioned RORs which relate to Mouza-Govindprasad reveal that all the khata numbers and plot numbers mentioned in the schedule of the plaint have not been covered by the RORs proved. For example the RORs of khata no.1057/264, 914, 75, 818, 915, 271, 1057/195, 912, 1057/264, 1057/268, 585 of Mouza-Govindprasad have not been proved. Similarly in respect of Mouza- Bomikhal certain RSDs have been proved, but the said RSDs do not cover all the plots as reflected in the schedule of the plaint including plot nos.390, 389, 387 and 381/997. Thus, a comparison of all the sale deeds and RORs proved by the plaintiff with the schedule of the plaint reveal that the plaintiff has not proved any document concerning a number of plots in respect of which the plaintiff has claimed title.

Ext.14 is the bye-law of Manorama Welfare Estate Society in phase-I. The area of operation is stated to be the area of covered under Manorama Estate in Clause 3 It is stated that the society shall

be custodian on behalf of the owners in respect of periphery wall, inside roads, green belts etc.

Ext.15 is the amended bye-law of Manorama Estate.

III) An evaluation of the documents proved on behalf of the defendant and admitted by PW 1 reveals as follows:

Ext.A is the letter to Secretary, BDA by Manorama Properties Pvt. Ltd., for approval of plans and drawings for construction of duplex houses. The concerned letter includes the layout plan for 21 numbers of duplex houses in respect of Mouza-Govindprasad, concerned plotted scheme, and other documents; documents constituting Ext.A bear the seal of Public Information Officer, BDA.

Ext.B is the permission of BDA for construction of 29 numbers of duplex houses.

Ext.C is the concerned map plan approved by the BDA. It is pertinent to mention that at the back of Ext.C it is stated that 100 feet width common approach road was approved by the BDA on 29.10.93 on the false plea of the builder that the approach road belongs to him. The land belongs to GA department under khata no.1072 plot no.52, 109 and 110 of Mouza-Govindprasad. There is reference to GA Department and the

Hon'ble High Court's order in OJC No.1427/98. It is also stated that the builder company has violated the pre-conditions of permission u/s.16(3) of ODA Act. The common approach road of GA department land is less than 25 feet and at some point is less than 17 feet 16 inches as a portion of the builders residential compound and the entire official building has illegally been constructed, on the common approach road. The concerned map reveals an enclosed area with opening to NH 203; a common approach road is shown as adjacent to builders house, MPPL office; certain lands belonging to GA department have been shown as existing within the enclosed area adjacent to the common approach road.

Thus, Ext.C reveals that the plaintiff company has encroached upon the GA Department land, made constructions upon GA department land and has made false representation concerning GA Department land belonging to him. In this respect it is pertinent to mention that PW 1 has admitted in para 23 of his evidence that the common approach road as shown in Ext.C is existing within the compound wall of the project.

Ext. D is a resolution of the meeting of Board of Directors of Manorama Properties dated

1.6.93 in which Radhanath Kar, director is authorized to sign applications for submissions of plans and necessary documents to BDA.

Ext.E is a copy of GPA executed by Radhanath Kar, Manorama Kar, Sambit Kar, Amrita Kar, Sumitra Manjari Kar in favour of Manorama properties Pvt. Ltd., represented by his Director, Radhanath Kar. Certain lands of Mouza-Govindprasad and Bomikhal have been mentioned in the said document.

Ext.F is the approval letters of BDA u/s.16 (3) of ODA Act for construction of duplex house in favour of Manorama properties.

Ext.G is the copy of location plan of proposed apartments at Mouza-Govindprasad. The said map reveals location of different plots including plot 1 to 29.

Ext.H is the approved plan of BDA of the year 1994.

IV) On a careful evaluation of the available evidences and documents on record and submission of the counsels, the following is revealed:

The description of the suit land is indefinite. In the prayer of the plaint the suit land has been described as the white marked portion in the sketch map and such other developments as may

be effected from time to time. Thus, the plaintiff has claimed for relief not only in respect of existing roads, but also in respect of such other roads which may come into existence in future developments. Thus, relief has been claimed in respect of existing and non-existing roads. Further, PW 1, the Director of the plaintiff's company has stated in para 16 of his evidence that he cannot states the number of phases in which construction is going on and construction is still going on. Further, in the schedule of the plaint the road areas in respect of different plots have been mentioned to be approximate areas. Thus, the suit land is not definite.

The plaintiff has claimed for declaration of his title in respect of the suit road which he claims to be 20 feet wide road. The suit road has been described as approach road. In his evidence PW 1 has admitted that there is distinction between common approach road and internal roads; common approach road connects to internal roads. PW 1 has stated that the road connecting from NH was in his name and admits that the road is not in his name. In this respect it is pertinent to mention that vide Ext.C it is stated that the builder made a false plea that 100 feet width common approach road belongs to him. It is stated that as on date the

land belongs to GA Department. There is reference to order dated 16.9.99 of the Hon'ble High Court in OJC No.1427/98. All these indicate that the plaintiff has attempted to create confusion between the common approach road and the internal roads and has claimed title in respect of the suit road which has been described in the plaint as "approach road". Further, Ext.C reveals that land belonging to GA Department has been enclosed within the planned area of the plaintiff company. Further, PW 1, who is the Director of the plaintiff's company has admitted in his evidence that common approach road as shown in Ext.C is existing within the compound wall of the project. All these indicate the attempt of the plaintiff to create confusion concerning the common approach road which belongs to GA department (as per Ext.C) and to obtain a decree in respect of his title with reference to the common approach road.

The plaintiff has not come out with clean hands and his conduct does not seem to be clean. Ext.C along with the admission of PW 1 reveal that the lands which are left for plantation do not exist as shown to be existing vide Ext.C . PW 1 has also admitted that the internal drainage is not connected to the main drainage of municipality as per condition. Thus, Ext.C along with the

admissions of PW 1 reveal that the plaintiff company has violated various conditions and rules of statutory authorities like BDA and BMC.

The plaintiff has claimed for title in respect of a number of plots of Mouza-Govindprasad and Bomikhal, but has failed to prove his title in respect of all the plots shown in the schedule of the plaint. Further, as admitted by the plaintiff company these lands have been used in different phases of developmental project. In the concerned project plots were sold to other purchasers. So, a question arises as to how can a builder/developer claim title in respect of the internal roads of a particular project giving the various purchasers only the right of user of the concerned roads. Once plots of a particular project have been sold how a builder can reserve his title in respect of the common areas such as roads. Further, burden of proof is on the plaintiff to establish that he did not transfer any other right in respect of the internal roads except the right of user to the customers. In this respect the claim of the defendant is that the intention of the plaintiff is to encroach areas reserved for open spaces, plantation etc., and to create large number of plots for sale beyond the number of plots approved in the project. In this respect reference may be made to the bye-law of Manorama Estate

Welfare Society and the amended bye-laws vide Exts.14 and 15. Both the documents state that the society shall be the custodian on behalf of the owners in respect of the inside roads.

The claim of the plaintiff is that the suit road is 20 feet wide. In the sketch map the suit road has been shown in white colour running between different plots. Under the circumstances, the burden of proof is on the plaintiff to establish that internal roads are of 20 feet width uniformly. In this respect it is pertinent to mention that vide Ext.C it is stated that the common approach road is less than 25 feet and at one point, it is less than 17 feet 6 inches. The decrease in width of the common approach road is on account of illegal constructions and encroachments upon GA Department land by the plaintiff as revealed vide Ext.C. When the common approach road is less than 20 feet on account of encroachment and constructions by the plaintiff, it will be difficult for a prudent man to believe that the internal roads are of uniform width of 20 feet as claimed by the plaintiff.

Thus, taking into consideration that the plaintiff has not come out with clean hands, the suit land is not of a definite area, the suit land is not well defined and includes future areas, the plaintiff seems to have intention to grab

Government land, the plaintiff has failed to establish that at any point of time he had title in respect of all the plots which constitute the suit land, the plaintiff has attempted to create a confusion between the common approach road and internal roads of a project – the plaintiff is not entitled to declaration of his title in respect of the suit land as described in the plaint. The plaintiff has prayed for a relief of declaration that the occupants of the society and the persons approved by them shall use the suit road as of right. Admittedly, the occupants of MEWS are entitled to use the common approach road and the internal roads of the housing scheme to which they belong. But, no specific declaration can be made because the suit road is indefinite, with indefinite area and includes present and future roads. As suit road is not specific it is not practically possible to make any declaration with reference to the suit road. Accordingly issue no.(iv) is answered.

The plaintiff has prayed for relief of injunction against the defendant from preventing any lawful user, from using the suit road. “Lawful user” is a vague term if the plaint averments are taken into consideration; this is because the plaintiff has claimed that besides the occupants of MEWS, the occupants of other projects are entitled to use the

suit road. The defendant no.1 is the custodian of the internal roads of the society as per the bye-law. Further, the suit road is not specific and the conduct of the plaintiff is not clean as has already been discussed. Therefore, issue no.(v) is answered in negative.

Issue no.(i), (ii), (vi), (vii) and (viii)

In view of the aforesaid discussions as the suit land is not specific, the suit is not maintainable. The plaintiff has no cause of action to file the suit.

As regards non-joinder of necessary parties the claim of the defendant is that statutory authorities like BDA, BMC and GA Department are necessary parties to the suit. The plaintiff has developed his project in violation of the provisions of ODA Act and Odisha Municipal Act. GA department is a necessary party because the common approach road and the land on both flanks belong to GA department.

In this respect reference may be made to section. 22 (1) of ODA Act, 1992 which reads as "*Subject to the provisions of this Act and rules made thereunder the Authority may make one or more town planning schemes for the area under its jurisdiction or any part thereof*". Further reference may be made to section.22 (3) which reads as "A

town planning scheme may be made in accordance with the provisions of this Act in respect of any land which is in the course of development or is likely to be used for building purposes or is already built upon". Explanation to section.22 (3) reads as "For the purpose of this sub-section the expression "land likely to be used for building purposes" shall include any land likely to be used as, or for the purpose of providing open spaces, roads, streets, parks, pleasure or recreation grounds, parking spaces or for the purpose of executing any work upon or under the land incidental to a town planning scheme, whether in the nature of a building work or not".

As discussed Ext.C reveals that the plaintiff has violated rules of BDA and has encroached upon land belonging to GA Department. The plaintiff has claimed relief in respect of land belonging to GA department. Therefore, GA department is a necessary party to the suit. The roads of the project required approval of the BDA. Whether, the roads have been approved and of what dimensions are the approved roads if any – are matters on which the BDA could have thrown light. It is not known whether the internal roads of the society have been declared as a public road under the provisions of section 251 of OM Act,

1950 or have continued as private roads under the custody of MEWS as per the bye-law of the society. BMC could have thrown light on the matter. In case the internal roads have been declared as a public roads BMC would be a necessary party.

In view of the discussions the suit is barred for non-joinder of necessary and/or proper parties. Accordingly, issue no.(vi) is answered. As regards issue no. (vii) according to section 41(i) of Specific Relief Act an injunction cannot be granted, when the conduct of the plaintiff or his agents has been such as to disentitle him to the assistance of the Court. As already discussed the conduct of the plaintiff is not clean and the plaintiff seems to have made an attempt to encroach upon land belonging to GA department. According issue no. (vii) is answered in positive. Under the circumstances, the plaintiff is not entitled to any other relief. Accordingly, issue no.(viii) is answered.

Order

The suit be and the same is dismissed on contest against the defendants, under the circumstances without any cost.

Advocate's fee be assessed at contested scale.

**Civil Judge (Jr. Divn.)
Bhubaneswar.**

The judgment is dictated, corrected and pronounced by me in the open Court today i.e. on the day of 27th September,2014 under my seal and signature.

**Civil Judge (Jr. Divn.)
Bhubaneswar.**

List of witnesses examined on behalf the plaintiff:

P.W.1 Radhanath Kar.

List of witnesses examined on behalf of the defendants:

Nil

List of documents marked as exhibits on behalf of the Plaintiff:

Ext.1	Evidence in chief in shape of affidavit.
Ext.1/a	Signature of PW 1 on Ext.1.
Ext.2	Agreement executed between the parties.
Ext.3	Approved building plan dated 31.1.04.
Ext.4	ROR bearing khata no.820.
Ext.5	ROR of khata no.718.
Ext.6	ROR of khata no.717.
Ext.7	ROR of khata no.913.
Ext.8	ROR of Khata no.8181.
Ext.9	RSD bearing no.464, dated 7.03.07.
Ext.10	RSD bearing no.1911, dated 7.03.07.
Ext.11	ROR bearing khata no.407/179 of Mouza-Govindprasad.
Ext.12	Rent receipt no.428386.

Ext.13 RSD bearing no.6565, dated 7.03.07
 Ext.14 Bye-law of Manorama Welfare Estate Society in phase-I.

Ext.15 Amended bye-law of Manorama Estate.

List of documents marked as exhibits on behalf of the Defendants:

Ext.A Letter to Secretary, BDA by Manorama Properties Pvt. Ltd.,
 Ext.B The permission of BDA for construction of 29 numbers of duplex houses.
 Ext.C Plan approved by the BDA and the concerned map.
 Ext.D Resolution of the meeting of Board of Directors of Manorama Properties dated 1.6.93.
 Ext.E Copy of GPA executed by Radhanath Kar, Manorama Kar, Sambit Kar, Amrita Kar and Sumitra Manjari Kar in favour of Manorama Properties Pvt. Ltd.
 Ext.F Approval letter of BDA u/s.16 (3) of ODA Act for construction of duplex houses in favour of Manorama Properties.
 Ext.G Copy of location plan of proposed apartment building at Mouza-Govindprasad.
 Ext.H Approved plan of BDA.

