

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No.2359 of 2022

Lokanath Mishra

....

Petitioner(s)

Mr. R.Behera,
Advocate

-versus-

***The Collector-cum- District
Magistrate, Dhenkanal & Anr.***

....

Opposite Party(s)

Mr. U.K. Sahoo,
Additional Standing Counsel

**CORAM:
JUSTICE BISWANATH RATH**

**ORDER
02.02.2022**

Order No.

- 02.
1. This matter is taken up by video conferencing mode.
 2. Heard learned counsel for the Parties.
 3. The Writ Petition involves a challenge to the order passed by the Competent Authorities in exercise of original jurisdiction as well as appellate jurisdiction under the provision of the Orissa Public Premises (Eviction of Unauthorised Occupants) Act, 1972 (in short, the Act, 1972).
 4. Learned counsel for the Petitioner submits that the impugned orders are assailed on the ground that when the provision at Section 4(2)(b) of the Act, 1972 and the Rules therein prescribed for clear seven days' notice in asking the show cause on initiation of any proceeding for eviction, notice to show cause being issued on

21.9.2021 fixing the date of filing show cause to 30.9.2021, such notice having been received by the Petitioner only on 27.9.2021 and there is no clear seven days gap in submitting the response. It is thus contended that the notice for show cause appears to be in contravention of the clear provision in the aforesaid Section. Sri R. Behera, learned counsel for the petitioner while supporting his stand involving a challenge to the impugned order of the original authority and taking this Court to Ground No.2 contended that in spite of such ground being taken in the Appeal, the Appellate Authority did not answer such question and simply concurred the order of the original authority. It is in the above background, Sri Behera learned counsel contended that both the orders become bad being contrary to the provision of law and therefore, needs to be interfered with and set aside. It is further pleaded that even though the petitioner filed show cause on 30.09.2021, the original order was passed on the same date even without affording of opportunity of hearing.

5. Mr.U.K.Sahoo, learned Additional Standing Counsel appearing for the Opposite Parties, however in justification of the impugned order submitted that once the show cause already given on Record and there is consideration of such show cause, it may not be a case of violation of provision of Section 4 of the Act involved herein. Mr. Sahoo however did not dispute to the contention of the Petitioner on the

aspect of deciding eviction matter without affording of opportunity.

Mr. Sahoo, in the circumstance, attempted to support both the impugned orders being passed on consideration of the show cause. Mr. Sahoo further contended that even assuming the Petitioner would have been provided with opportunity of hearing, there was no scope of improvement in any manner, since he had already taken all his pleas in the response to the show cause notice.

6. Considering the rival contentions of the Parties, this Court on the challenge to the impugned orders on violation of the provision at Section 4(2)(b) of the Act here finds, there is no dispute that the notice to the show cause was issued in the original proceeding on 21.9.2021, which appears to have been received by the Petitioner on 24.9.2021. Taking into consideration the allegation of the Petitioner that the notice fixing the date of show cause by 30.9.2021 remains bad for having no clear seven days gap in the submission of the show cause, this Court takes here note of the provision at Section 4(2)(b) of the Act, which reads as hereunder :-

“4. Issue of notice of show cause against order of eviction. - (1) If the Estate Officer is of the opinion that any persons are in unauthorised occupation of any public premises and they should be evicted, the Estate Officer shall issue in the manner hereinafter provided a notice in writing calling upon all persons concerned to show cause why an order of eviction should not be made.

(2) The notice shall –

- (a) specify the grounds on which the order of eviction is proposed to be made; and
- (b) require all persons Concerned, that is to say, all persons who are, or, may be in occupation, of or claim interest in the public premises to show cause, if any, against the proposed order on or before such date as is specified in the notice, being a date not earlier than [seven days] from the date of service thereof.”

Reading the aforesaid provision, this Court finds, for the clear provision indicated herein above, if the Estate Officer is of the opinion that any person is in unauthorised occupation of any public premises and should be evicted, he shall issue notice in writing calling upon the person concerned to show cause as to why the order of eviction should not be made, but however for the clear provision at Sub-Section (2)(b) of the Act, there should be at least clear gap of seven days from the date of service of notice and filing of show cause. It is keeping in view the clear statutory provision, vide Section 4(2)(b) of the Act, for the notice being issued on 21.9.2021 and having been served on the Petitioner here on 24.9.2021 asking such Party to file show cause by 30.9.2021 remain in contravention of the clear statutory provision taken note herein above. Here this Court again finds, even though the Petitioner has taken such clear ground, vide Ground No.ii at Page-41 of the Brief, entire reading the appellate order, this Court nowhere finds, the Appellate Authority has considered the ground made therein. Further looking to the impugned order passed by the original authority,

this Court again finds, the impugned order at Annexure-6 at Page-32 reads as follows :-

“Whereas I, the undersigned satisfied for the reasons recorded below that Sri Loknath Mishra, Retd. Mike Operator, O/o.D1 & DPRO, Dhenkanal are in unauthorised occupation of the public premises i.e. Govt. Qr. No.D/1, Mahisapat, Near Jubuli town High School, Dhenkanal.

Now, therefore, in exercise of the powers conferred on me under Sub-Section (1) of Section 95 of the Orissa Public Premises (Eviction of Unauthorised Occupants) Act, 1972 hereby order this said Sri Lokanath Mishra, Retd. Mike Operator, O/o.D1 & DPRO, Dhenkanal and all persons who may be in occupation of the said premises or any part thereof to vacate the said premises/quarter within fifteen days of the date of publication of this order. In the event of refusal or failure to comply with this order within the period specified above, the said Sri Lokanath Mishra, Retd. Mike Operator, O/o.D1 & DPRO, Dhenkanal and all other persons concerned are liable to be evicted from the said premises, if need be by use of such forces as may be necessary.”

Reading the entire order taken note herein above, this Court nowhere finds, there is any discussion on the claim/opposition of the Petitioner involved herein. For involvement of an eviction proceeding in deciding such matter, for the opinion of this Court, the Competent Authority is not only required to attend to the objection raised by the Petitioner or the Party aggrieved but also is required to give his reasoning in negating such contention thereby allowing an aggrieved party to prefer appeal on the ground available therein.

7. It is in the above background of the matter, this Court finds, there is mechanical disposal of the proceeding, vide Annexure-6 by the original authority. This Court here also finds, there is no consideration of grounds raised by the appellant by the Appellate Authority. It is for the mechanical disposal of serious dispute involving eviction of unauthorised occupants and for the observation made herein above, this Court is inclined to interfere with both the impugned orders at Annexure-6 & 7 and set aside the same. Since the eviction proceeding is required to be freshly adjudicated, this Court remits the matter to the Estate Officer-cum-Sub-Collector, Dhenkanal to re-hear the proceeding involved herein involving the Party and dispose of the same by a lawful order but however considering the objection of the Petitioner claimed to have been submitted on 30.9.2021 and also opportunity of hearing to the Petitioner.

8. With the above observation/direction, the Writ Petition stands disposed of.

9. As restrictions due to resurgence of COVID-19 situation are continuing, learned counsel for the parties may utilize a printout of the order available in the High Court's website, at par with certified copy, subject to attestation by the concerned advocate, in the manner prescribed vide Court's Notice No.4587, dated 25th March, 2020 as

modified by Court's Notice No.4798, dated 15th April, 2021 and Court's Office order circulated vide memo Nos.514 & 515 dated 7th January, 2022.

(Biswanath Rath)
Judge

M.K.Rout

