

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No.7375 of 2019

**General Manager, Mahanadi
Coalfields Ltd.**

....

Petitioner(s)

Mr.R.Sharma,
Advocate

-versus-

Madan Bhoi & Anr.

....

Opposite Party(s)

Mr.S.K.Mishra,
Advocate

CORAM:
JUSTICE BISWANATH RATH

ORDER
30.03.2022

Order No.
07.

1. Heard learned counsel for the Parties.

2. The Writ Petition involved the following prayer:-

“In view of the above circumstances it is humbly prayed by the petitioner that this Hon’ble Court may be graciously be pleased to Admit, issue notice and after hearing all the parties declare that the learned A.D.J., Talcher has no power to entertain the Appel U/s. 9 of the P.P. Act, 1971 and quash the order dt.23.2.19 passed in F.A.O. No. 1 of 2019 passed by the learned A.D.J., Talcher under Annexure-2.

And pass any other order/orders your Lordships deem just and proper;

And for which act of kindness, the petitioner as in duty bound shall ever pray.”

3. Submission of parties involves a question to determine by this Court “whether for the provision of Section 9 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 and Additional District Judge undertaking the appeal exercise presently for neither

having ten years standing as District Judge nor have been designated by the District Judge on his behalf to undertake the exercise of appeal is competent to take up this nature of appeal? Considering the submission of the parties, this Court finds the appeal was filed on the file Additional District Judge, Talcher but under Section 9 of the Public Premises Act, 1971.

4. Mr.Sharma, learned counsel for the petitioner challenges the entertainability of the appeal by Additional District Judge, Talcher on two accounts. Per him, neither the Additional District Judge is designated one nor he has ten years standing as District Judge. Mr.Mishra, learned counsel for opposite party on the other hand submits a Judge having ten years judgeship is competent enough to take up such appeal and for the Additional District Judge involved has ten years judgeship is competent enough to take up such appeal. Mr. Mishra accordingly justified entertainability of appeal involved and requested for dismissal of the appeal. This Court here takes into account the provision at Section 9 of Act 1971 which reads as follows:-

“Appeals. - (1) An appeal shall lie from every order of the estate officer made in respect of any public premises under ⁵[section 5 or section 5-B] ⁶[or section 5-C] or section 7 to an appellate officer who shall be the district judge of the district in which the public premises are situate or such other judicial officer in that district of not less than ten years’ standing as the district judge may designate in this behalf.”

Reading the aforesaid provision this Court finds, the appeal involved herein shall lie either before the District Judge or other Judicial Officer in the District with not less than 10 years standing and as the District Judge may designate in this behalf. Even though there is no quarrel as to whether the Additional District Judge has ten years

standing as a Judicial Officer or not but this Court here finds there is no authorization by way of designation to the Additional District Judge, Talcher by the District Judge to take up such appeal. This Court though finds force in submission of Mr. Mishra, learned counsel for the opposite party that it is not necessary that an Additional District Judge with ten years experience can take up such appeal but however for the clear provision at Section 9 of Act 1971, such Officer must have to be designated by the concerned District Judge. The Additional District Judge, Talcher in the circumstance directed to find if this has been designated for such purpose by the District Judge, Angul to continue with such appeal. If there is no such designation being incompetent to undertake such exercise, it has to return the appeal memorandum for its submission before the Competent Court under Section 9 of Act, 1971 for its decision. In the event there is requirement of filing before Competent Court on return of appeal, delay in presenting the appeal in the appropriate Court based on filing of a delay condonation application stating the ground of wrong filing shall be condoned and appeal shall be decided on its own merit.

5. Thus, the Writ Petition stands disposed of.

(Biswanath Rath)
Judge

S.P. Dash