

IN THE HIGH COURT OF ORISSA AT CUTTACK

WP(C) NO.8115 OF 2022

M/s.Sckan India

....

Petitioner

Mr.A.Mishra, Adv.

-versus-

MCL, Sambalpur & ors.

....

Opposite Party(s)

Mr.B.N.Mohanty, Adv.

**CORAM:
JUSTICE BISWANATH RATH**

**Order
No.**

**ORDER
31.3.2022**

1. 1. Heard learned counsel for the Parties.
2. 2. The Writ Petition involves a challenge to Annexure-8, the order passed by the Estate Officer-cum-Project Officer, Ananta OCP, MCL in exercise of power under Sub-Section (1) of Section 5-B of the P.P.(EoU) Act, 1971 (in short, "the Act") in disposal of P.P.E. Case No.01/2022.
3. 3. Mr.A.Mishra, learned counsel for the Petitioner taking this Court to the grounds taken in the Writ Petition contended that there are grounds, which can be considered by this Court. Further there is no dispute to such grounds and they can very well be considered by the statutory Appellate Authority. There is also no dispute at Bar that there is a statutory appeal available.

4. However, there is no dispute by Mr.B.N.Mohanty, learned counsel for the O.Ps. that the Appeal should have been filed within twelve days of the publication appearing to be expiring in the meantime.

5. Mr.Mishra, learned counsel for the Petitioner further argued that finding the nature of direction in disposal of such Application threatening the Petitioner to demolish on its own, unless the Petitioner vacates the disputed site within seven days, it constrained the Petitioner to approach this Court to avoid any damage taking place in the meantime.

6. Considering the submissions made, this Court though finds that while fixing the date of taking so motu action of demolition, the Public Authority should keep in mind the period for the Appeal available under Section 9 of the Act. This Court further finds, the time constraint fixing by the Competent Authority becomes contrary to the statutory provision even. While directing the Competent Authority to remain careful in such restriction in future proceedings, this Court finds, the grounds urged herein can very well be taken up before the Appellate Authority in duly constituted Appeal. Further this Court finds, the Petitioner has bona fide approached the Writ Court and since the Writ Petition is not entertainable at this stage for the statutory remedy of Appeal, this Court while disposing of the

Writ Petition permits the Petitioner to file an appeal along with Applications for condonation of delay for its bona fide approaching the Writ Court so also an Application for interim protection by 7th April, 2022, in which event delay shall be condoned and the Application for interim protection in the Appeal shall also be disposed of at least within one month from the date of its filing giving opportunity of hearing to the Appellant. Till disposal of the Interlocutory Application, in the event there is no eviction of the Petitioner, both the Parties shall maintain status quo in respect of the disputed property.

7. Issue urgent certified copy in course of the day.

M.K.Rout

(*Biswanath Rath*)
Judge