

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.11971 of 2022

Manorama Swain

.... ***Petitioner(s)***
Mr.T.K.Mishra, Advocate

-versus-

State of Odisha & Ors.

.... ***Opposite Party(s)***
Mr.S.Ghose, AGA

**CORAM:
JUSTICE BISWANATH RATH**

**ORDER
22.06.2022**

Order No.

- 1.
1. Heard learned counsel appearing for the parties.
2. This writ petition involves the following prayer:

“In the circumstances, as stated above, this Hon’ble court may kindly be graciously pleased to issue rule NISI, calling upon the Opp. Parties to show cause as to why the impugned order dated 16.03.2022 passed by the learned Director of Estate, Bhubaneswar in OPP Appeal No.207 of 2021(L) (Annexure-35) confirming the illegal and arbitrary order dated 08.10.2021 passed by the learned Estate Officer G.A. & P.G. Deptt. Bhubaneswar in O.P.P. Case No.05/2011 (L) (Annexure-25) shall not be quashed.

And upon their showing no cause or showing insufficient cause, the said Rule be made absolute and appropriate writs be issued quashing the impugned order dated 16.03.2022 (Annexure-35) and order dated 08.10.2021 (Annexure-25) for the interest of justice, equity and fair play.

And/Or

And pass such or such other order/orders as may be deemed just and proper in the facts and circumstances of the case.

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

3. In first attempt Mr.Mishra, learned counsel for the petitioner taking this Court to the appellate order, challenging the appellate order in two premises; first the order is ex parte being passed behind the back of the petitioner and the appellate authority even did not follow the requirement under the appeal provision in Orissa Public Premises

(Eviction of Unauthorized Occupants) Act, 1972. A submission is made that the Appellate Order suffers on both counts.

4. Heard the submission of Mr.Ghose, learned Additional Government Advocate, who in his opposition submitted that the appellate order remains unassailable for involving concurrent finding by two competent authorities.

5. Considering the ground no.1, on perusal of the appeal order, this Court finds for there is clear recording that the order was passed in absence of the Advocate for the appellant, the order is undisputedly an ex parte one. Further coming to the second ground, the Appellate Authority not in terms of appeal provision as it neither involve the Estate officer nor call for the records from the Estate Officer in OPP Case No.05 of 2021(L) before passing the impugned order. This Court is satisfied with the grounds raised herein. In the process, but however, since the appeal is required fresh disposal in the involvement of the petitioner and strictly in terms of appeal provision, in setting aside the order at Anenxure-35 in Appeal Case No.207 of 2021(L) , this Court remits the matter back to the Director of Estate, Odisha, Bhubaneswar to re-hear the Appeal Case No.207 of 2021(L). Petitioner is directed to bring this order to the notice of the Director of Estate, Odisha, Bhubaneswar on appearing before him on 13.07.2022 and take the date of hearing. The Appellate Authority is also directed to dispose of the appeal strictly in terms of Sub-Section 2 of Section 9 read with Section 11 of the Orissa Public Premises (Eviction of Unauthorized Occupants) Act, 1972.

6. The writ petition stands disposed of with the observation and direction made hereinabove.

(Biswanath Rath)
Judge