

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 22209 of 2022

<i>Maa Mangala Pidha, Angul</i>		<i>Petitioner</i>
		<i>Mr. P.K. Rath, Advocate</i>
	Vs.	
<i>State of Odisha and others</i>		<i>Opposite parties</i>
		<i>Mr. A.K. Mishra, AGA &</i>
		<i>Mr. D.P. Dhal, Senior Advocate.</i>

CORAM:

DR. JUSTICE B.R. SARANGI

ORDER

30.08.2022

Order No.

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This matter is taken up through hybrid mode.

2. Heard Mr. P.K. Rath, learned counsel for the Petitioner, Mr. A.K. Mishra, learned Additional Government Advocate appearing for Opposite Parties No.1 to 4, and Mr. D.P. Dhal, learned Senior Advocate appearing along with Ms. Ranjita Dhal, learned counsel for Opposite Party No.5.

3. The Petitioner has filed this writ petition seeking to quash the order as well as notice dated 24.08.2022 issued by Opposite Party No.4 under the provisions of OPLE Act in L.E. Case No. 4-68/2021 and 4-69/2021 vide Annexures-1 and 5 respectively and to direct Opposite Party No.4 to settle the land in the name of the Petitioner to the extent "Maa Mangala Pidha" and the "Bhoga Ghara" is in possession since long decade for the benefits of the people of locality, by giving an opportunity of hearing to the parties.

4. Mr. P.K. Rath, learned counsel for the Petitioner contended that the impugned order of eviction passed by the authority is appealable one and such appeal is to be preferred, as prescribed in

the statute, within a period of 30 days, but the notice issued on 24.08.2022 itself requires that steps for eviction shall be taken on 04.09.2022. It is further contended that the form, which is used in the matter of eviction, also prescribes 30 days period for preferring an appeal. But the authority, for the reasons best known, has directed to take steps for eviction on 04.09.2022, without adhering to the provisions of law, depriving the Petitioner of availing 30 days period to prefer an appeal.

5. Mr. A.K. Mishra, learned Additional Government Advocate contended that the entire steps have been taken, pursuant to the direction given by this Court on 25.04.2022 in W.P.(C) No. 9666 of 2022 and W.P.(C) No. 9671 of 2022, wherein this Court, while expressing surprise by the attitude of the Tahasildar in not disposing of the proceeding even after disposal of W.P.(C) No. 14782 of 2021 and CONTC No. 5541 of 2021, directed Opposite Party No.4 to conclude the Encroachment Case registered as L.E. Case Nos. 4-68/2021 and 4-69/2021. It is further contended that in compliance to the aforesaid order of this Court, steps have been taken by giving notice to the parties and the order of eviction has been passed fixing the date of eviction to 04.09.2022. Since the order was passed on 24.08.2022, if the petitioner is aggrieved by such order, it could have approached the appellate authority immediately, instead of approaching this Court in the present writ petition. Thus, the writ petition is not maintainable and the same is liable to be dismissed in limine, for having not exhausted the statutory remedy available by way of appeal.

6. Mr. D. Dhal, learned Senior Advocate appearing for the Opposite Party No.5 contended that since the direction was given in

the aforementioned writ petitions to the Opposite Party no.4 to conclude the L.E. cases within a period of two months, therefore, in compliance of the orders passed by this Court, if the Opposite Party No.4 has passed the order impugned by observing that the Petitioner is in unauthorized occupation of the Government land, in that case, the direction given for eviction on 04.09.2022 cannot be said to be illegal. More so, the Petitioner is well aware that it is in unauthorized occupation of the Government Land and the same has to be vacated, and that the appeal period is prescribed for thirty days, under such circumstance, when the order impugned was passed on 24.08.2022, if the Petitioner is aggrieved by such order, it could have preferred the appeal before the statutory authority, instead of approaching this Court. Therefore, the writ petition merits no consideration and the same is liable to be dismissed.

7. Having heard learned Counsel for the parties and after going through the record, this Court finds that the impugned order of eviction was passed on 24.08.2022 in L.E. Case Nos. 4-68/2021 and 4-69/2021 under Annexure-5. If the orders were passed in W.P.(C) No. 9666 of 2022 and W.P.(C) No. 9671 of 2022 giving direction to Opposite Party No.4 to conclude L.E. Case Nos. 4-68/2021 and 4-69/2021 within two months and in pursuance of such direction of this Court the order impugned was passed by observing that the Petitioner is in unauthorized occupation of the land in question, in that event he has to vacate the said premises. So far as contention with regard to non-grant of 30 days time is concerned, which is the statutory requirement for preferring appeal, this Court is of the considered view that when the Petitioner knew that the order of eviction was passed on 24.08.2022 and the date has been fixed to 04.09.2022, the Petitioner could have immediately rushed to the

appellate authority, instead of approaching this Court. Therefore, it can safely be concluded that the petitioner is making deliberate and intentional attempts not to vacate the government land on some plea or other.

8. In that view of the matter, this Court is not inclined to encourage the Petitioner to remain in unauthorized occupation of the Government land. Since appeal provision is there under the statute and from now also six days are left for filing the appeal, the Petitioner, if so advised, can approach the appellate authority by filing appeal. Thus, the impugned order of eviction, having been passed in compliance of the orders passed by this Court, as indicated above, this Court is not inclined to accede to the prayer made in this writ petition.

9. The writ petition thus stands dismissed.

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(DR. B.R. SARANGI, J.)

