

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.26995 of 2022

Koresa Bibi

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Petitioner

Mr. S.S.K. Nayhak, Advocate

Vs.

***Chairperson, Jajpur
Municipality & Anr.***

.....

Opposite Parties

*Mr. B. Nayak, Advocate
(O.Ps.1 & 2)*

CORAM:

DR. JUSTICE B.R. SARANGI

ORDER

09.12.2022

Order No.

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This matter is taken up through Hybrid mode.

2. Heard Mr. S.S.K. Nayak, learned counsel appearing for the petitioner and Mr. B. Nayak, learned counsel appearing for opposite parties nos.1 & 2.

3. The petitioner has filed this writ petition seeking to quash the order dated 27.09.2022 passed by the Chairperson, Jajpur Municipality in Appeal No.01 of 2022 confirming the demolition order issued by the Executive Officer, jajpur Municipality, Jajpur on 04.07.2022 through letter no.2479 dated 04.07.2022.

4. Mr. S.S.K. Nayak, learned counsel appearing for the petitioner contended that the order of demolition dated 04.07.2022 passed by the Executive Officer, Jajpur Municipality, Jajpur, being appealable, the petitioner preferred Appeal No.01. of 2022 under Section 274 of Odisha Municipal Act, 1950. But, instead of Municipal Council, the Chairperson, Jajpur Municipality, Jajpur,

vide order dated 27.09.2022, dismissed the appeal under Annexure-8, which is without jurisdiction. To substantiate his contentions, he has relied upon the judgment of this Court in ***Susanta Kumar Rout v. Keonjhar Municipality, represented through the Executive officer***, 2016(II) CLR 1167, wherein this Court observed that a Municipality used to be comprises of a Council having Councilors and Chairperson and a vice-Chairperson, and therefore, an appeal under Section 274 of the Orissa Municipal Act being an appeal to the Municipality, the same ought to have been addressed to the Municipal Council and ought to have been decided by Municipal Council itself. By so observing, this Court set aside the order impugned therein which was passed by the Chairperson, as has been done in the present case.

5. Mr. B. Nayak, learned counsel appearing for the opposite parties very fairly contended that the order impugned passed by the Chairperson, Jajpur Municipality, Jajpur, cannot be construed to be the order of the Municipal Council, which is required to be done under the statute.

6. Considering the contentions raised by learned counsel for the parties and after going through the records, since the order impugned dated 27.09.2022 passed by the Chairperson, Jajpur Municipality, Jajpur in Appeal No.01 of 2022 cannot be construed to be the order passed by the Municipal Council in conformity with the provisions contained under Section 274 of the Odisha Municipal Act, 1950, therefore, in view of the ratio decided by this Court in ***Susanta Kumar Rout*** (supra), the order impugned dated 27.09.2022 passed by the Chairperson, Jajpur Municipality, Jajpur

in Appeal No.01 of 2022 cannot be sustained in the eye of law. Accordingly, the same is liable to be quashed and is hereby quashed. Thereby, the matter is remitted back to the Municipal Council for fresh adjudication by affording opportunity of hearing to the petitioner as expeditiously as possible, preferably within a period of six weeks from the date of communication/production of this order.

7. With the above observation and direction, the writ petition stands disposed of.

8. Issue urgent certified copy as per rules.

(DR. B.R. SARANGI)
JUDGE

Alok

