IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 31751 of 2022

Bidhyadhar Patra	…..	***Petitioner***
		Mr. A.K. Biswal, Adv.
	Vs.	
State of Odisha and others	…..	***Opposite Parties***
		Mr. A.K. Mishra, AGA

CORAM:

DR. JUSTICE B.R. SARANGI

ORDER

01.12.2022

Order No.
02. This matter is taken up through hybrid mode.

2. Heard Mr. A.K. Biswal, learned counsel for the petitioner and Mr. A.K. Mishra, learned Addl. Government Advocate appearing for the State-opposite parties.

3. The petitioner has filed this writ petition seeking to quash the order dated 02.08.2022 passed by the Sub-Collector, Kaptipada under Annexure-3, by which the appeal preferred by the petitioner has been rejected on the ground that the memorandum of appeal has been filed without incorporating the certified copy of the lower court's order.

4. Mr. A.K. Biswal, learned counsel for the petitioner contended that though against the order dated 02.08.2022, the petitioner filed revision before the Collector, but the Sub-Collector, Kaptipada has not entertained the appeal on the ground that the memorandum of appeal has been filed without incorporating the certified copy of the lower court's order, which cannot sustain in the eye of law.

5. In compliance of the order dated 25.11.2022, Mr. A.K. Mishra, learned Addl. Government Advocate appearing for the State-opposite parties has received instructions and stated that even though the petitioner preferred appeal but the memorandum of appeal does not contain the order impugned. Thereby, the same

was rejected by the authority relying upon Section 14 of the OPLE Act, 1972.

6. Having heard learned counsel for the parties and after going through the records, this Court finds that Section 14 of the OPLE Act provides that every memorandum of appeal shall be accompanied by the decision or order appealed against or by an authenticated copy of the same. As it appears, eviction notice has been issued against the petitioner and, as such, the same emanates from the proceeding of eviction and consequential final steps are being taken for eviction in prescribed Form 'Kha', which itself is appealable. Thereby, the Sub-Collector, Kaptipada has committed gross error apparent on the face of record by passing the order impugned dated 02.08.2022, which cannot be sustained in the eye of law. Accordingly, the order dated 02.08.2022 is liable to be quashed and is hereby quashed. The matter is remitted back to the Sub-Collector, Kaptipada to entertain the memorandum of appeal on the basis of notice of eviction issued to the petitioner and pass appropriate order in accordance with law by affording opportunity of hearing to the parties.

7. The writ petition is accordingly disposed of.

Issue urgent certified copy as per rules.

Ashok

(DR. B.R. SARANGI)
JUDGE