



GOVERNMENT OF ODISHA

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BOARD OF REVENUE, ODISHA**

**(Containing important Decisions of the Board of Revenue, Odisha
and the High Court and O.A.T. of Odisha and important Orders and
circulars of Government.)**

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FOREWORD

Land administration is one of the most crucial aspects of governance. Any educational institution or medical facility or sports complex or industrial project requires land. Rights over common lands have been recognised in various laws. Competing claims over the limited resource of land demand a transparent and accountable mechanism for effective governance.

Disputes over land need to be adjudicated in a timely manner. Various branches of revenue administration need to adopt modern technology to furnish accurate and timely responses to the concerned Courts, to enable timely decisions. Every pending case threatens the ease of doing business and has huge economic cost. The poor and vulnerable have a high dependency on the use of common property resources for their livelihoods, which need to be protected by the revenue officials as per appropriate provisions of law.

This volume is the third of the series that has been revived in 2018. It covers some of the notable Orders. It has notes indicating updated citations on lease of Government land, principles of resjudicata and on adverse possession. It is hoped that this will be of immense help in enriching the knowledge base among practicing advocates, Government officers, training institutions and all stakeholders. This in turn should help in timely adjudication of unresolved land related cases.

Suggestions for improvement are welcome.

16.02.2022
Cuttack

G.V.V. Sarma
Member,
Board of Revenue, Odisha, Cuttack

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R.P Case No. 831 of 2013

(Previously numbered as OSS Case No.57 of 2012)

Decided on 02.11.2021

(Order by Shri G.V.V.Sarma, I.A.S,
Member, Board of Revenue, Odisha, Cuttack)

Sri Gourang Prasad Parija ... **Petitioner**

-Versus-

State of Odisha represented through Collector, Khurda & others ... **Opp. Parties**

For the petitioner ... Mr. J. Pradhan, Advocate
who has been disengaged by the petitioner to conduct the revision case himself .
For Opp. Party No. 1 to 3 ... Mr. S. K. Routray,
Addl. Standing Counsel

For Opp. Party No. 4 to 6 ... None

DECISION

1. This revision case has been filed under Section 15(b) of the O.S.S Act, 1958 for correction of Hal R.O.R. of the suit land mentioned below which has been finally published on 21.03.1989.

SCHEDULE OF PROPERTY

Dist.- Khordha, Tahasil-Bhubaneswar, Mouza-Bhubaneswar Sahar, Unit No. 36, Rajarani, Hal Khata No. 51, Hal Plot No. 1208/1612, Area Ac. 0.093 dec. which is corresponding to Sabik Khata No. 506, Sabik Plot No. 1208/1603, Sabik Plot No. 3889/8 and 3892/41, Area Ac. 0.093 dec. of Sabik Mouza : West Baragada, Sub Plot No. 3889/A, Kisam-Puratan Patita, bounded by East-Manjushree Patnaik, West Road, South- Road and North- Plot No. 3889/6.

2. The petitioner states to have purchased the above suit land vide RSD No.6803 dtd. 20.08.1985 from Smt. Urmibala Mookharjee, W/o- Sri Satyabrata Mookharjee, of 3A, Lovelock Street, Calcutta-700019 who was represented through her son as her Power of Attorney holder namely Sri Soumendranath Mookharjee, S/o- Sri Satyabrata Mookharjee, of same address on the basis of POA No. 5/102 dtd. 14.08.1985 executed before Bimal Kumar Banarjee, the Notary having Regd. No.145/80, C.M.M Court Compound, 2, Bankshall Street, Calcutta-700001. The petitioner has claimed to remain in possession over the suit land since the date of his purchase. The petitioner has filed the certified copy of the above mentioned regd. sale deed bearing RSD No.6803 dtd. 20.08.1985 in support of his claim. The petitioner has stated that during the last current settlement operation in the area he had failed to produce his sale deed before the settlement authorities due to his lack

of awareness about the settlement operation and he been staying outside of Khurda district for which reason the hal ROR of the schedule property is said to have been erroneously prepared and finally published by the settlement authorities in the name of his vendor Urmibala Mookhharjee (whose name is mentioned in the impugned Hal Khata No.51 as Urmilabala Mookharjee) , W/o- Sri Satyabrata Mookhharjee in 'Stitiban' status (Certified copy of the said impugned Hal ROR has been filed). The petitioner has filed a copy of death certificate of his vendor Urmibala Mookhharjee issued by Kolkata Municipal Corporation wherein the date of her death is mentioned as 07.02.2002. The petitioner states to have made her legal heirs as O.P. Nos. 4 to 6 in this case who are said to have succeeded to the interest of the vendor. By having assailed the above impugned Hal ROR in the present revision the petitioner has sought for recording of the hal schedule property in his favour with deletion of the name of hal recorded tenant (vendor) from the Hal ROR of the schedule property on the strength of his relied upon R.S.D and his possession over the suit land.

3. Notice has been deemed sufficient to the private O.P. Nos. 4 to 6 through registered post. However, no one has appeared on behalf of the O.P. Nos. 4 to 6 during hearing of the present case. There is also no written objection filed on behalf of the O.P. Nos. 4 to 6 against the claim made by the petitioner in this case. The learned Advocate for the petitioner has been heard in the matter in presence of the learned Addl. Standing Counsel for the State who represented the O.P. Nos. 1 to 3. Gone through the documents filed by the petitioner and the para-wise report on the suit land submitted by the concerned Settlement Authorities which are kept in the case record

4. The sabik & hal record status of the suit land submitted by the Asst. Settlement Officer of Addl-Sub-Collector, Puri (Settlement) in the para-wise report is seen to corroborate with the hal status submitted by the petitioner in the present revision. However, in the case record it was seen that the petitioner had not submitted any copy of said GPA document executed by Urmibala Mookharjee, W/o- Sri Satyabrata Mookhharjee in favour of her son Sri Soumendranath Mookharjee, S/o- Sri Satyabrata Mookharjee who had sold the suit land to the present petitioner as the Power of Attorney holder of Urmibala Mookharjee through RSD No.6803 dtd. 20.08.1985.

5. The petitioner has appeared in person in this Court proceedings and stated that Sri Soumendranath Mookharjee, S/o- Sri Satyabrata Mookharjee, the Power of Attorney holder of Urmibala Mookharjee, W/o- Sri Satyabrata Mookhharjee is also one of the legal heir of Urmibala Mookharjee who had executed the RSD No.6803 dtd. 20.08.1985 in favour of the petitioner in the office of the D.S.R, Khurda on the basis of POA No. 5/102 dtd. 14.08.1985 executed before Bimal Kumar Banarjee, the Notary having Regd. No.145/80, C.M.M Court Compound, 2, Bankshall Street, Calcutta-700001, West Bengal. The petitioner in his written submission has however submitted that the said G.P.A document which was executed in favour of Sri Soumendranath Mookharjee, S/o- Sri Satyabrata Mookharjee is presently missing

and for which the petitioner is unable to produce the same before this court. The petitioner has however produced the Affidavit sworn by Satya Brata Mookherjee and Soumendranath Mookherjee (present O.P. Nos. 4 & 5) before the Metropolitan Magistrate (1st) Class, Kolkata alongwith an Affidavit sworn by Soumitra Mookherjee (present O.P. No.6) before the Notary Public, New Delhi wherein the said Opp. Parties have stated in the affidavits that they have no objection if the vendee of the schedule property namely Gouranga Prasad Parija (the present petitioner) be recorded as tenant by deleting the name of the recorded tenant, Smt. Urmibala Mookherjee.

6. During hearing of the present case the learned Addl. Standing Counsel for the State had raised objection regarding the non-production of GPA document bearing POA No. 5/102 dtd. 14.08.1985 by the petitioner. He further challenged the said document as worth not to be considered, the same being not a registered document. He stated that as per Sec. 17 of the Registration Act, documents pertaining to transfer of immovable property with more than Rs.100 /- require to be mandatorily registered. In reply the petitioner had stated that earlier the lands which were auctioned/ sold at Kolkata Metropolitan City the G.P.A documents were not all registered. Although one week time had been given to the petitioner he could not submit any further evidence in support of his above statement.

7. It is noted that Section 17 (1)(g) regarding Power of Attorney document was inserted only in Odisha Amendment Act 8 of 2002 to the Registration Act, 1908. Further, the point regarding value being Rs.100 or more is in Sub-section 1(b) of Sec.17 of the Registration Act. However, Section 17(2) clarifies that nothing in clauses (b) and (c) of Sub-section (1) applies to categories of documents at (i) to (xii). The exemption at (v) reads, “ any document other than the documents specified in Sub-section (1A) not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest of the value of one hundred rupees and upwards to or in immovable property, but merely creating a right to obtain another document which will when executed, create, declare, assign, limit or extinguish any such right, title or interest; “. Thus it is clear that registration of Power of attorney document was not mandatory before 2002. In the instant case, the Power of attorney document was claimed to be executed in 1985.

8. It is further noted that the Power of attorney holder Soumendranath Mookherjee has signed the affidavit on 18.08.2021 which is placed in the case record.

9. In view of the above, benefit of doubt needs to be given to the petitioner, in the absence of anything contrary and in due consideration of the affidavit signed by Satyabrata Mookherjee and Soumendranath Mookherjee and separate affidavit signed by Soumitra Mookherjee.

10. It is therefore ordered that the revision petition is allowed in favour of the petitioner.

11. As such, the Tahasildar, Bhubaneswar is directed to delete Hal Plot No. 1208/1612, Area Ac. 0.093 dec. from Hal Khata No.51 of suit Mouza-Bhubaneswar Sahar, Unit No. 36, Rajarani and record the same in favour of the present petitioner Sri Gourang Prasad Parija, S/o- Late Narayan Prasad Parija in 'Stitiban' status.

12. Send copy of the order to the Tahasildar, Bhubaneswar for necessary compliance.

13. Original/Certified Copy of documents filed be returned to the petitioner by keeping Photo Copy of the same in the case record.

Pronounced the order in the open court to-day i.e. on the 2nd day of November, 2021.

Sd/-
Member,
Board of Revenue, Odisha, Cuttack.

O.S.S Case No. 225 of 2018.

Decided on 14.12.2021

(Order by Shri G.V.V.Sarma, I.A.S,
Member, Board of Revenue, Odisha, Cuttack)

Buddhadeb Dutta Petitioner
-Versus-

State of Odisha represented through Collector, Khurda & others ... **Opp. Parties**

For Petitioner ... None

(As petitioner himself conducted the revision)

For O.P. No.1 to 3 ... Mr. S.K Routray, Addl. Standing Counsel.

DECISION

1. This Revision Petition has been filed Under Section 15(b) of the Orissa Survey & Settlement Act, 1958 for correction of Hal R-O-R of the suit land mentioned below which has been finally published on 21.11.2013.

SCHEDULE OF PROPERTY

Mouza- Andharua, P.S-Chandaka, Tahasil- Bhubaneswar, Dist- Khurda bearing Sabik Khata No.645/318, Sabik Plot No.2682/2977/3039/4071, Area Ac.0.070 dec., corresponding to Hal Khata No.2876, Hal Plot No.7419, Area Ac.0.070 dec. (Hect.0.0283).

2. The case of the petitioner in brief is that originally the Sabik Plot No.2682 of Mouza- Andharua belonged to Government which is said to have stood recorded in 'Anabadi' Khata. One Nibas Nahak, S/o- Ghana Nahak, by caste- Adivasi (Sch.Tribe) is said to have been granted a piece of land out of the above suit sabik plot No.2682 by the Government on the basis of order passed by the Tahasildar,

Bhubaneswar in Wasteland Lease Case No.618/1959-60. Accordingly, the sabik ROR had been mutated and the Mutation Khata No.645/27 in respect of Mutation Plot No.2682/2977/3039, area Ac.0.900 dec. under 'Dakhal Satwa Sunya' status with Kism- 'Baje Fasal-III' which is said to have been issued in favour of the aforesaid lessee Nibas Nahak, S/o- Ghana Nahak on dated.01.10.1970 (Certified copy of the said mutation khata has been filed). After the expiry of about 20 years from the date of lease, the lessee Nibas Nahak, S/o- Ghana Nahak for his legal necessities in order to transfer his leasehold land area of Ac.0.900 dec. is said to have applied for necessary permission U/s 22 of the OLR Act and thereupon to have obtained the required permission from the Revenue Officer, Bhubaneswar in Misc. Case No.354/1989 and communicated vide D.R.No.807 dated 10.09.1990 to sell the same in favour of one Sangram Kishore Nanda, S/o- Banabihari Nanda (Certified copy of the said permission order document in Misc. Case No.354/1989 has been filed). Thereafter, the original lessee Nibas Nahak, S/o- Ghana Nahak is said to have sold his aforesaid leasehold land of an area Ac.0.900 dec. to Sangram Kishore Nanda, S/o- Banabihari Nanda through R.S.D No.10133 dated 19.12.1990 (True certified copy of the said regd. sale deed has been filed). After purchase, Sangram Kishore Nanda is said to have got his above purchased area mutated in his favour on the basis of order passed by the Tahasildar, Bhubaneswar in Mutation Case No.1661 of 1991 and the Sabik Mutation Plot No.2682/2977/3039, area Ac.0.900 dec., kism-Baje Fasl-III from Khata No.645/27 is said to have been recorded in his name under Mutation Khata No.645/242 (Certified copy of the said mutation khata alongwith certified copy of order proceedings in Mutation Case No.1661/1991 have been filed). While Sangram Kishore Nanda was in possession of his above purchased land he is said to have sold an area of Ac.0.070 dec. out of Ac.0.900 dec. of Sabik Mutation Plot No.2682/2977/3039 under Mutation Khata No.645/242 of Mouza- Andharua to the present petitioner Buddhadeb Dutta vide R.S.D No.1828 dtd. 08.06.1993 by having delivered to him the sold area as per the sketch map attached with the said Regd. sale deed (the said original R.S.D No.1828 dtd. 08.06.1993 has been filed). After purchase the petitioner states that his above purchased area had also been mutated in his favour by the Tahasildar, Bhubaneswar vide his order dtd.10.07.1995 passed in Mutation Case No.2703 of 1994 and basing on which the Mutation Khata No.645/318 with Sabik Mutation Plot No.2682/2977/3039 /4071, area Ac.0.070 dec. with kism- 'Baje Fasal-III' is said to have been prepared in the name of present petitioner after the same area had been deleted from Mutation Khata No.645/242 of the petitioner's vendor (Certified copy of the order proceedings in Mutation Case No.2703/1994 and certified copy of said Mutation Khata No.645/318 alongwith certified copy of sketch map of the purchased land of the petitioner have been filed). The petitioner states to have paid rent of his above recorded land from 1994-95 to 2013-14 (Copies of the said rent receipts have been filed). During the Khanapuri stage of settlement operation on the basis of order passed in Yaddast No.7419 the suit Hal Plot No.7419, Area Ac.0.070 dec. (Hect.0.0283) is said to have been initially prepared by the settlement authorities in the name of the present petitioner and the

draft ROR vide Khata No.2272 for the suit Hal Plot No.7419, Area Ac.0.070 dec. with kism-'Taila' is claimed by the petitioner to have been rightly prepared in his name (Certified copy of Yaddast No.7419 and the draft Khata No.2272 of suit Mouza have been filed). However, subsequently, on the basis of suo-moto Rent Objection case bearing No.7472/3416 of 2013 filed by the Government against the present petitioner, the Asst. Settlement Officer is said to have disposed of the said objection case behind the back of the present petitioner in a stereotype order arbitrarily by reversing the earlier allowed order passed in Yaddast No.7419 (Certified copy of order dated 15.07.2013 of the Asst. Settlement Officer passed in the said suo-moto Objection case No.7472/3416 of 2013 has been filed). The petitioner has alleged that the Asst. Settlement Officer in his order passed in the above suo-moto objection case has illegally ignored and nullified the lease granted by the Tahasildar in favour of the original lessee Nibas Nahak, S/o- Ghana Nahak in Waste land Lease Case No.618 of 1959-60 without authority to do so. Thereby the order passed by the Asst. Settlement Officer in the above suo-moto objection case to record the case land in 'Jungle' kism under 'Abad Jogya Anabadi' khata of the State Government behind the back of the present petitioner is claimed wrong and illegal. The petitioner has contended that as he was never given any notice nor he had any knowledge about the said order passed by the Asst. Settlement Officer in the above suo-moto objection case he could not prefer any appeal in challenging the said order. Now as the hal ROR of the suit land has been finally published under Government 'Anabadi' khata bearing Hal Khata No.2876 with 'Jungle' kism (the certified copy of the said impugned Hal ROR alongwith hal & sabik correlation of suit Hal Plot No.7419 have been filed) the petitioner has preferred the present revision by assailing the same and has sought the correction of the said impugned Hal ROR in recording the suit land in his favour with kism 'Baje Fasal-III' under 'Stitiban' status on the strength of his purchase and possession.

3. The sabik & hal status of the suit land submitted in the para-wise report by the Cuttack Major Settlement authorities and also in the status report furnished by the Addl. Tahasildar, Bhubaneswar are seen to corroborate with the sabik & hal status stated in the revision petition. Further on perusal of the certified copy of order dated 15.07.2013 of the Asst. Settlement Officer in the Suo-moto Objection Case No.7472/3416 of 2013 which has been submitted by the petitioner it reveals that the learned Asst. Settlement Officer in allowing the aforesaid appeal has made the following observations, that *"It has come to the notice that a lot of irregularities have been made in the Tahasil level in different lease cases. Recently a lease case has come to the notice of the Government which was sanctioned in the year 1966, but the form used for this purpose was printed out in Governement Press in the year 1969. The Hon'ble High Court of Odisha in their order dated 29.01.1996 in O.J.C Case No.9449 of 1993 also observed that the irregularities have been done in respect of lease cases in the Bhubaneswar Tahasil level and directed the State Governement to enquire into the lease cases by an officer in the rank of Secretary. In the present*

case no party has filed any documents to prove that the lease case in respect of suit plot has been scrutinized. Hence, the court thought it proper not to record the Government land in favour of private individual. The affected parties have scope to appeal before the appellate authority to prove the genuineness of their claims." The aforesaid order passed by the learned Asst. Settlement Officer however is seen not a conclusive order as no where it has been stated that the concerned Tahasil records and verification regarding whether the principles under the *O.J.C Case No.9449 of 1993 of the Hon'ble High Court in Sarat Chandra Sahoo's case* had been followed in the lease of the land in the Wasteland Lease Case No.618/1959-60.

4. Heard the petitioner in presence of the Additional Standing Counsel who had opposed on the ground that on the basis of order passed in the Wasteland lease case the scheduled land was recorded as 'Dakhal Swatwa Shunya' which indicates that what was given by the Government by lease was only permission to possess. A right to transfer was never available to the lessee. Therefore, transfer by the lessee through R.S.D was illegal.

5. The following issues are framed.

- (1) Was the Government land leased out in 1970 with a clear stipulation that transfer was not possible under any circumstances?
- (2) Was the scheduled land resumed by the Government through due process ?
- (3) Did the Assistant Settlement Officer err in recording the land in favour of G.A Department?
- (4) Did the lease character of the Government land change to Sthitiban Status ?
- (5) Whether the kism of the suit hal plot has been rightly recorded as kism 'Jungle' in the hal ROR ?

6. It is seen from the documents filed by the petitioner that on the basis of the Wasteland Lease Case No.618/1959-60 the leased scheduled land was recorded in favour of Nibas Nahak, S/o- Ghana Nahak as 'Dakhal Swatwa Shunya'. It is relevant that as per Section 6-A of the OLR Act, 1060 the transfer by a raiyat of any land settled with him for agriculture purposes under a permanent lease from Government shall be void, if it is made within a period of ten years from the date of such settlement without obtaining the prior permission of the Revenue Officer. Even though the word 'Settlement' is used in the application form for lease, it must be noted that what it implies is 'Settlement under lease', because it is a conditional transfer. Leased land of this nature cannot be considered to be 'permanent lease'. Therefore, there is no evidence to indicate that Section 6-A of OLR Act is attracted in the instant lease matter. It is also noted that permission U/s.22(1)(4) of OLR Act governs only alienation

of land belonging to an S.T or S.C person. It does not address the issue of terms of a conditional lease granted as per approved lease principles or under O.G.L.S Act. Thus, it is clear that there is no automatic provision in the law, by which a lease-hold land becomes free hold on its own, after ten years, without any fresh consideration. Government can bring in a policy by which such transferable right can consciously be given to a lessee against some consideration of payment of premium/fee at notified rates to permit such change of classification from 'Dakhal Swatwa Sunya' to 'freehold' i.e. with alienable rights. In the instant case, the transfer happened much later than ten years. But, there is nothing on record to indicate that the lessee had sought the permission of the Government for transfer or that any competent authority in the Government had permitted such sale.

7. In this context, it is necessary to note that Hon'ble High Court has laid down certain principles governing resumption of leased land in 2005 (II) OLR 77, Smt Sandhyarani Rout and others vs State of Odisha and others. In the said judgement, it was mentioned that ***the authorised office can resume any land settled by him if he has reasons to believe that the person with whom the land was settled has used it for any purpose other than that for which it was settled. Even though there is no specific provision in Section 3-B of the Act to give opportunity of hearing to the present owner of the land in a proceeding under the said Section for resumption of lease, but according to us, any person who may be directly affected by any order passed by the authority under the above section 3-B has a right to be heard before final decision of resumption of the lease is taken by the authority.***

8. In this context, it is relevant to note that Survey and Settlement process as per 1958 Act does not create any new rights or extinguish any existing rights. Therefore, notwithstanding the contents of Section 23 of the Odisha Government booklet titled "rayati jami record kariba pranali o satwasatwa niyamabali" published in 1990, such Government lease land in the undivided districts of Cuttack, Puri and Balasore cannot automatically be recorded by the settlement authorities as 'sthitiban', considering the fact that in the instant case, the scheduled land was Government land that was consciously leased out in Wasteland Lease Case No.618/1959-60 and thus the principles of the said booklet, which deals with historical relationship between tenants, land lords and different kinds of intermediaries would not apply to the instant case.

9. In view of the above, the first question as framed in Para 6 above is answered in the negative. It is open for the Government to bring out a scheme whereby such lease hold land can be changed to freehold, by appropriate collection of revenue by way of fee as per rates to be notified. The second question is answered in the negative, as there is no report from the lower revenue field officials regarding resumption of the said leasehold land. The A.D.M, Bhubaneswar in his report vide letter No.2349/Judl., dtd. 21.08.2019 has submitted that on verification of registers

and records available in his office it is found that there is no revision case instituted in respect of W.L. Case No.618/1959-60. The third question is answered in the affirmative, as the settlement authorities lack the jurisdiction to disregard a valid lease, in the absence of record to indicate cancellation of the lease or resumption by the Government. The fourth question is answered in the negative, as nowhere did the revision petitioner produce any documentary proof to indicate permission by the competent authority to change the classification to "Sthitiban". The fifth question is answered in the negative, based on the report furnished by the D.F.O, Chandaka Wildlife Division, Bhubaneswar who vide his Letter No.6643/3F, dtd. 01.11.2018 has submitted that the suit Hal Plot No.7419 under Khata No.2876 of Mouza-Andharua with its kism recorded as 'Bada Jungle' in the hal settlement ROR is not coming within Chandaka-Dampara Wildlife Sanctuary or its Eco-Sensitive Zone. He has further submitted that the suit land is not coming under District Level Committee report filed before the Hon'ble Supreme Court of India as regards to forest land in connection with extent of forest land in Writ Petition (Civil) No.202/95 in the matter between T.N. Godavarman Thirumulkalpad -vrs- Union of India & others. It is also reported that there is no natural vegetation and presence of wild-life over the land at present .

10. In view of the foregoing analysis, the revision is partially allowed. Tahasildar, Bhubaneswar is directed to correct the Record of Rights by recording the suit Hal Plot No.7419, Area Ac.0.070 dec. in favour of the present revision petitioner Buddhadeb Dutta, S/o- Chittaranjan Dutta with its kism as 'Baje Fasal-III' as per the sabik kism recorded earlier in favour of the original lessee instead of kism 'Jungle' (Bada Jungle) by deducting the same from Hal Khata No.2876 as indicated in the field report of the Tahasildar. However, it cannot be with 'sthitiban' status. It has to be as per the lease-hold status i.e. non-transferable and non-heritable, till the Government brings out any scheme to address such intending applicants through appropriate notification.

11. Send copy of the order to the Tahasildar, Bhubaneswar for necessary compliance.

12. Original/Certified copies of documents filed be returned to the petitioner by keeping a set of photocopies of the same in the case record.

13. Copy of this Order be forwarded to Principal Secretary, Revenue and Disaster Management Department for appropriate action.

Pronounced the order in the open court today i.e. on the 14th day of December, 2021.

Sd /-
Member,
Board of Revenue, Odisha, Cuttack

CONSOLIDATION REVISION PETITION No. 08 of 2015

(Under Section-37(1) of the OCH & PFL Act, 1972)

Decided on 23.06.2021

(Order by Shri Madhu Sudan Padhi, I.A.S,
Commissioner, Land Records & Settlement, Odisha, Cuttack)

Sk. Shoeib Ali ...

Petitioner

-Versus-

Sri Brundaban Jew Thakur Bije Raghunathpur,
Marfat Adhikari Baman Charan

Dash (Deceased) & others

... **Opp. Parties**

Counsel for Petitioners - Mr. B. Mohapatra, Advocate & Associates
Counsel for O.P. No. 2,3, & 4 - Mr.R.K. Mohapatra, Advocate & Associates
Counsel for O.P. No. 5 - Mr.B.K. Parida, Addl. Standing Counsel

DECISION

In Revision Petition No.08/2015 filed U/s 37(1) of the OCH & PFL Act, 1972 (shortly called as the Act) relating to Mouza- Raghunathpur, P.S. Binjharpur, Dist. Jajpur, the petitioner, Sk. Shoeib Ali has prayed for deleting the name of the Opposite Parties from Chaka Khata No.248 consisting of Chaka No.1 (Chaka Plot No.9 and Non-Consolidation Plot No.10) for an Area of Ac.0.48 dec corresponding to Sabik Khata No.7, Plot No.125 on the basis of of three RSD Nos. 861, 862 and 863 respectively.

2. The Consolidation Revision Case was filed within the stipulated period.

3. The Addl. Standing Counsel for Opp. Party No.5 is present and the learned Advocate for the other Opp. Parties is present and heard. The learned Counsel for the petitioners is absent on repeated call. Hence, they are set ex-parte.

4. A report dated 13.12.2018 submitted by Inspector of Endowments, Ramesh Kumar Singh on behalf of Addl. Asst. Commissioner of Endowments, Cuttack and report of the Addl. Sub-Collector, Consolidation dated 26.06.2020 has been received.

5. Gone through the contention of the petition, para-wise report of Inspector of Endowments(on behalf of Addl. Asst. Commissioner of Endowments, Cuttack), report of the Addl. Sub-Collector, Consolidation dated 26.06.2020, the documents filed by both the Petitioner and the Opp. Parties and the written notes of argument submitted by both the parties.

On perusal of the report of the Addl. Sub-Collector, Consolidation vide letter No.285 dated 26.06.2020 it is seen that there is a mis-match in the schedule of land mentioned in the plaint copy and Sabik records.

On scrutiny of the RSD dated 18.03.1969, it is seen that the same was executed by Sri Brundaban Jew Thakur Bije Nijgaon Marfat Adhikari Kanhu Charan Dash in favour of one lilahi Bux for an area of Ac.0.47 dec from Sabik Plot No.125 under Sabik Khata No.7, subsequently, on perusal of the Deed No.4680 dated 02.05.1972 it is evident that lilahi Baux had Transacted the same Area of Ac.0.48 dec from Sabik plot No.125 under Sabik Khata No.7 under Stithiban status in favour of Sri Brundaban Jew Thakur Bije Nijgaon Marfat Adhikari Baban Charan Dash S/o Adhikari Kanhu Charan Dash.

Perused the RSD Nos. 861, 862, 863 submitted by the Petitioner and the Opp. Parties. It is seen that all the three RSDs have been executed by Sri Baban Charan Dash for transaction of an Area of Ac.0.07 dec, Ac.0.20 dec and Ac.0.20 dec (totaling to an Area of Ac.0.47 decs) respectively for Sabik Plot No.125 under Sabik Khata No.7.

On perusal of the report submitted by the Inspector of Endowments, on behalf of Addl. Asst. Commissioner of Endowments, Cuttack, it is ascertained that Deity Sri Brundaban Jew Thakur is a Public religious institution bearing index No. 53 BC/101C and being a Public Deity, the Odisha Hindu Religious Endowment Act is applicable. The report further submits that in case of public religious institution before alienating any property the permission U/S-19 of OHRE Act has to be obtained from the Commissioner of Endowments and in the instant case, such permission has neither been obtained nor same has been submitted. Further, the report contends that the RSDs executed by the trustee are illegal in the eye of law as the Deity is a perpetual minor whose land should be safeguarded in his own interest and that the present RoR should not be interfered with.

6. It is also pertinent to mention here that the provisions of Section-19 of the Odisha Hindu Religious Endowment Act, 1939 provide that Lands belonging to the Deity cannot be subjected to alienation in violation of statutory requirement- Deity's property can be transferred by sale, exchange, mortgage etc with prior permission of the Endowment Commissioner only when such transfer is necessary or beneficial to the institution. Before transferring the Deity's property by above means, either of the two conditions is to be satisfied i.e (i) there must be necessity to sell the Deity's property, or (ii) such sale must be beneficial to the deity: as per ratio of Hon'ble High Court of Odisha in case of **Niranjan Mekap & Ors.v. State of Orissa & Ors; 2015(II) OLR 311.**

The written notes of argument submitted by the O.P contend that the transfer made by Baban Charan Dash was neither genuine nor executed for the benefit of the Deity nor was such transfer made with the prior permission of the Endowment Commissioner.

7. It is also noteworthy to mention here that in the instant case, the Opp. Parties have submitted an Order dated 23.12.83 of the Commissioner of Endowments wherein permission for alienation of Ac.4.75 dec of land belonging to Sri Brundaban Chandra Thakur has been granted. It is, however revealed, that the permission

granted is for the schedule of land which comes under Sabik Khata No.16 and not under Sabik Khata No.7 (the Sabik corresponding Khata as contended in the plaint). On perusal of the rent receipts by the Opp.Parties it is also ascertained that the petitioner has been paying rent till date.

Subsequently, it is seen that the Khata No.248 was published in the year 21.04.1999 which stood recorded in the name of Sri Brundaban Jew Thakur Bije Nijgaon Marfat Adhikari Baban Charan Dash S/o Adhikari Kanhu Charan Dash and Gourahari Dash S/o MadhuSudan Dash. The Second part Land Register submitted by the Opp.Parties substantiates the same.

Hence, although this Court is not competent to adjudicate on the voidability of the the executed RSDs, it is prima-facie evident from the reports submitted by the Inspector of Endowments, on behalf of Addl. Asst. Commissioner of Endowments, Cuttack, that since the suit land belongs to the Deity who is a perpetual minor, the interests of the Deity land cannot be compromised with. Moreover, in the absence of permission of the Endowment Commissioner regarding alienation of the Deity land, the prayer of the Petitioner cannot be entertained. Therefore, it is concluded that the RoR No.248 remain recorded in the names of Sri Brundaban Jew Thakur Bije Nijgaon Marfat Adhikari Baban Charan Dash S/o Adhikari Kanhu Charan Dash and Gourahari Dash S/o MadhuSudan Dash.

8. Resultantly, the Revision Petition is dismissed.

Pronounced the order in the open Court to-day, the 23rd day of June, 2021.

Send the copy of this order to the Addl. Sub-Collector-cum-C.O, Jajpur and Tahasildar, Binjharpur for the needful.

Sd/-
Commissioner,
Land Records & Settlement, Odisha, Cuttack.

CONSOLIDATION REVISION PETITION No. 470 of 2003

(Under Section-36 of the OCH & PFL Act, 1972)

Decided on 27.12.2021

(Order by Shri Madhu Sudan Padhi, I.A.S,
Commissioner, Land Records & Settlement, Odisha, Cuttack)

Sanatan Mishra & others ... **Petitioners**
-Versus-
SLaxmidhar Bal & others ... **Opp. Parties**

Counsel for Petitioners - Mr. P. K. Routray, Advocate & Associates
Counsel for O.P. No. 1 - Mr. C. Ananda Rao, Advocate & Associates
Counsel for O.P. No. 2 - Mr.B.K. Parida, Addl. Standing Counsel

DECISION

In obedience to order dated 21.07.2016 of Hon'ble High Court in W.P. (C) No.11154 of 2016, the Revision Case Nos. 470/2003 and 476/2003 respectively, are being taken up for hearing on merit.

In Consolidation Revision Petition No.470/03 and 476/03 filed U/s 36 of the O. C. H. & P.F.L. Act, 1972 (shortly called as the Act) relating to village-Chheliapada, P.S Dharmasala, Dist. Jajpur, the Petitioners, Sanatan Mishra and others have prayed for setting aside the impugned order of the Deputy Director and for exclusive recording of the land in the name of the Petitioners.

Both the above Consolidation Revision Cases are clubbed together for analogous hearing and for passing a common order since the nature of claim in both the above cases are on the basis of the same Sabik records, entitlement and genealogy and pertains to appeal against the same order passed by the Deputy Director.

2. The learned Counsel for the petitioner and learned Addl. Standing Counsel for the Opp. Party No.2 (State) are present and heard. Learned Counsel for Opp. Party No.1(a) to 1(e) is absent on the dates of hearing on repeated calls despite receipt of notice. Hence, the order is set ex-parte.

3. Gone through the contention of the petition and documents on record and the written notes of argument filed by the Counsel on behalf of the Opp. Party and the written notes of argument submitted by the Counsel for the Petitioner.

4. On perusal of the order dated 30.04.1993 passed in Appeal Case No.17/92 and 18/92 in the Court of Deputy Director, Consolidation of Holdings, Range-I, Cuttack filed against the order of the C.O dated 24.02.1992, it was ascertained that the suit Hal Plot No. 193 Ac.1.42 and Hal Plot No. 188/481 Ac.0.02 dec which corresponds to Sabik Plot No. 88 under Sabik Khata No.9 (in 1911 settlement) stood recorded in the names of Gopi Mohanty, Dinabandhu Mohanty, S/o Kelu Charan Mohanty, Chami Bewa W/o Paramananda Mohanty with note of Sikkim possession in the name of Dai Bal under Khata No. 46. Further, the successors-in-interest (of the Sabik recorded tenants) have sold the suit land to the Appellants (Sanatan Mishra & others) vide R.S.D No. 193 dated 12.01.1940 and R.S.D.No.4076 dated 02.11.1948.

It is also ascertained that Appellants (namely Sanatan Mishra & others) in the Appeal case No.17/92 and 18/92 filed before the Deputy Director, Consolidation of Holdings, Range-1, Cuttack, have prayed to partition the suit land among themselves and enhance the L.R area from Ac.1.44 to Ac.1.54 dec as per Sabik Area. On the other hand the Respondent (Nrusingha Bal) had claimed vide Objection case No.19/91 to record him as Sikkim tenant against the suit land as he is the successor of the Sabik Sikkim tenant Dai Bala.

The following findings have been derived from the order passed by the Learned Deputy Director, Consolidation of Holdings, Range-I, Cuttack.

- A. The Counsel for the Appellants (i.e Sanatan Mishra and others) had argued that the Sabik Sikkim tenant of the suit land, Dai Bal, died in the year 1920 and the suit land automatically reverted back to the Landlord, (Gopi Mohanty and others), and , after the death of the Land-lord, their successor-in-interest sold the land to Krushna Ch. Mishra vide RSD No.193 dtd.12.01.1940 and Dinabandhu Mishra vide RSD No.4076 dated 02.11.1946. The aforesaid RSDs and the rent receipts of the suit property since purchase were also produced. Also, the said property was mutated in their favour according to purchase and they have been paying rent from the date of purchase.
- B. That, during the consolidation Operation the learned Counsel for the Appellant further argued that their being no custom regarding heritability of Sikkim tenancy the same would not devolve on the successors of the Sikkim tenant and cited the decision reported in 1973-I, CWR, page 878. He also stated that, the under-raiyats (Sikkim raiyats) is neither heritable nor transferable referring to the decision reported in 1972-II CWR page 15 and also cited the section 4(5) of the OLR Act and accordingly argued to record 2/3rd interest of the suit property in favour of the appellant No.1 & 2 (i.e Sanatan Mishra and Pitabasha Mishra) and 1/3rd interest of the suit property in favour of Appellant No.3 (i.e Dinabandhu Mishra).
- C. The Counsel for the Respondent, on the other hand, argued that they have been ignored to be recorded as Sikkim tenant of the suit land for which they (the Respondent Nrusingha Bal) had filed objection case No. 19/91 to be recorded as Sikkim tenant against the suit land.
- D. The Counsel for the Respondent also argued that the abolition of Sikkim Jagirdar right can be adjudicated by the Revenue Authorities under the OLR Act and Consolidation Authorities have been vested with the powers to reflect such right in the ROR following the Sabik ROR. Further, the Sikkim Jagirdar right cannot be transferable, and accordingly the transaction made by the Sabik recorded tenant cannot be taken into consideration. The Sikkim Jagirdar status as recorded in the Sabik ROR came under the definition of Intermediary provided in section 8(2) and (3) of OEAA Act and automatically should have been recorded in the name of Respondent No.1.

On the basis of the arguments submitted above, the Deputy Director conclusively held:

- I. That, the Sabik recorded tenants have transferred the right, title and interest vide the aforesaid RSDs in favour of the appellants and hence the transferees have been rightly recorded as Malik of the suit property. But since the suit land was recorded in Sabik Sikkim Khata No.46 in favour of Dai Bal, the predecessor of the present Respondents, as

Sikkim tenant, the L.R record should have been prepared with the Sikkim note of possession in the name of the respondent and also the Sikkim Khata under the Malik Khata should have been prepared **since the Sikkim status is inheritable**. But this has not been done during the preparation of L.R.

- II. That, the learned lower court allowing the claim of the objection case No. 19/91 has regularized the said mistake which had occurred during L.R stage. Thus, the lower court has rightly ordered to record the suit land in favour of the respondents as Sikkim tenant under the recorded tenants/ transferees of the deeds referred to above.
- III. As regards the claim of partition of the suit land between the recorded tenants/ appellants, the partition cannot be made as the suit land was recorded in Sikkim Khata No.46 and the same cannot be partitioned between Malik raiyats. The claim for enhancement of area of the suit land from Ac.1.44 dec to Ac.1.54 dec also merits no consideration as the parties are in possession over the area in the field recorded in the L.R record as per findings of the lower court.

With this, the Deputy Director, Consolidation of Holdings, Range-1, Cuttack also disallowed the appeal of the Appellants.

5. On perusal of the order dated 24.02.1992 passed by the Consolidation Officer, in Objection Case No. 21/91 tagged with Objection Case No.19/91 the following findings have been ascertained:

- A. That the Appellants namely (Sanatan Mishra, Pitambar Mishra S/o Krushna Chandra Mishra, Dinabandhu Mishra S/o Bhagabat Mishra) had claimed for **partition** of L.R. Plot No. 193 and 188/481 (under Hal Khata No.78) and **enhancement of area** from Ac. 1.44dec to Ac.1.54 dec.
- B. That, in the case No. 19/91, the objector Nrushingha Bal, S/o Dhadi Bal had claimed for preparation of Sikkim Khata in his name against Hal Plot Nos.193 and 188/481.
- C. That, the Amin had conducted enquiry and reported that the objectors/ Appellants in the Objection Case No.21/91 i.e. Sanatana Mishra and Others were in possession of Ac.1.44 dec in both the plots, hence, no enhancement in area was required.
- D. That, regarding partition of L.R.Plot it has been stated that against the Sabik Khata recorded in the names of Gopi Mohanty, Dinabandhu Mohanty S/o Kalei Mohanty, Ajit Singh, Chanda Bewa W/o Paramananda Mohanty, there was a Sikkim Khata No.46 in the name of Dai Bal S/O Kelu Bal. Also, the Jamabandi No.12 and 13 was

opened in the name of Krushna Ch. Mishra S/o Bhagabat Mishra for Ac.1.02.7 links and Jamabandi No. 14 was opened in the name of Dinabandhu Mishra S/o Bhagabat Mishra for Ac.0.51.3 links. During the L.R stage, the L.R plots have been recorded in the name of Sanatan Mishra and others, over looking the Sikkim rights of Dai Bal.

Under such circumstances, the order passed by the Consolidation Officer held that :-

- (i) Where there are Sikkim tenants against the suit plots no claim for partition by the Malik Raiyat can be entertained.
- (ii) The objector (Sanatana Mishra) and others could not show how the Sikkim right has been abolished from the disputed plots.
- (iii) Only the Revenue Officer has jurisdiction to abolish the Sikkim and not the Consolidation Authorities.

Hence, while the claim of objector in case No. 19/91 was allowed as genuine and it was held its Sikkim right will continue (no Malik raiyats can partition the disputed plots), the claim of the objectors in case No.21/91 was disallowed and the claim of NrusinghaBal in case No.19/91 was allowed.

6. On perusal of the Amin report dtd.22.01.1992, it is ascertained that two different Jamabandis for Sabik Khata No.9 and 9/2 have been opened in favour of Krushna Chandra Mishra and Dinabandhu Mishra for and both of them are possessing the same jointly.

Also perused the RSD No.193 dtd.12.01.1940 wherein Panu Mohanty S/o Gopi Mohanty and Shyam Sundar Mohanty S/o Dinabandhu Mohanty have transacted suit property of an Area of Ac.1.02 dec 7 kadi from Sabik Plot No.88 under Sabik Khata No.9 to Vendee Krushna Chandra Mishra. Further, it is also seen that vide RSD No.4076 dtd.02.11.1948 Vendor Chaitanya Das S/o Gopi Das has transacted the suit land to Dinabandhu Mishra. (On going through the recital of the RSD it is revealed that Sabik Recorded Tenant Chanda Bewa had gifted suit land consisting of Ac.0.51 dec 3 kadi from Sabik Plot No.88 under Sabik Khata No.9/2 to Chaitanya Das and subsequently Chaitanya Das has sold the same to Dinabandhu Mishra).

Also perused the rent receipts for the years 1966-67, 1967-68, 1968-69, 1974-75, 1975-76, 1976-77, 1977-78, 1978-79, 1980-81, 1982-83, 1983-84, 1984-85, 1986-87, 1987-88 which show that the purchasers of the suit land have been paying rent.

7. Conclusively, on the perusal of the Orders passed by the Learned Deputy Director and Consolidation Officer above, the following findings have been ascertained:

It is seen that the Respondent has relied on the provisions of Section 8(2) and (3) of the OEA Act. The provisions of Section 8(2) and (3) lay down that

Section-8(2) "any person who immediately before the date of coming into force of the Odisha Estates Abolition (Amendment) Act 13 of 1986 held land under the Government for rendering service as a village servant by whatever name called shall from the date of coming into force of the said Act be discharged from the conditions of such service and the land shall be settled with him with occupancy right in such rent as may be determined by the Collector in the prescribed manner".

Section 8(3) "Any person who immediately before the date of vesting held land under an Intermediary on favourable terms for personal service rendered by him to such intermediary shall, from the date of vesting be discharged from the conditions of such service and the land may be settled with him in such manner and under such terms and conditions as may be prescribed".

On scrutiny of the above provisions it is evident that Section-8(2) and (3) of the OEA Act, 1951 are not applicable to the instant case. The aforementioned provisions are applicable to the Ex-intermediary lands wherein after the abolition of estate, the land held by the Ex-Intermediary vests in the State free of all encumbrances and such Intermediary shall cease to have any interest in such estate other than the interests expressly saved by or under the provisions of the OEA Act.

Hence, the provisions of the aforesaid section are not relevant to this instant case as the suit land does not belong to the Ex-intermediary moreover, the Sikkim Tenants are the "**under-raiyats**" as defined within the ambit of **Section-4** of the Odisha Tenancy Act, 1913. "*The under-raiyat is a tenant holding whether immediately or mediately under raiyat- The rights and liabilities of under-raiyats are enumerated in Sections 56 and 57 of the Act which constitute the entire chapter VIII- Statutorily under-raiyati rights are not heritable and transferable and the Act doesn't contain any specific provision conferring such rights as in the case of occupancy rights*" : **94 (2002) CLT 792.**

Also, while the Order passed by the Consolidation Officer holds that where there are Sikkim tenants against the suit plots no claim for partition by the Malik Raiyat can be entertained. The said finding would have been justified as long as the Sabik Recorded tenant was the owner of the Suit property. Once the suit property has been alienated and transferred vide Registered Sale Deed, the said proposition is no longer credible. Further, the Learned Deputy Director, on the other hand has held that the Sikkim land is inheritable without delving into the details of the Amendment made thereto.

The Petitioner has relied on the citations wherein the Sikkim status is neither heritable nor transferable. The same can be derived from the provisions of Section 4(1)(i) of OLR Act, 1960 which provide that,

“...subject to the provisions of Sub-Sections (5) to (8) persons who are in personal cultivation of any land and recorded as sub-tenants or under raiyats in respect of such land in the record of rights under any law in force in any part of the State and their successors-in-interest”.

Herein, it is ascertained that as per the amendment made in **Orissa Act 29 of 1976** the words “and their successors-in-interest” shall be and shall be deemed always to have been added at the end. It is clear that prior to Odisha Act No.29 of 1976 the word “**successors-in-interest**” was not there to the existing provisions of Section 4 of the Odisha Land Reforms Act, 1960.

Further, the amendment to Section 4(1)(h), states, insertion of the words “successors-in-interest” by Act 29 of 1976- whether prospective or retrospective. Held, the amendment is prospective **57(1984) CLT 442**.

It is now convenient to lean on the provisions of the Section 4 (5) of the OLR Act, 1960 as relied by the Petitioner wherein, it has been categorically stated as follows:-

“Section-4 (5) The Revenue Officer, on an application in that behalf in the prescribed form and manner [by the sub-tenant or under Raiyat or the successor-in-interest], as the case may be, referred to in Clause(i) of Sub-section (1) made not later than ninety days from the commencement of this Act or within such further period not exceeding thirty days as such officer in his discretion allows, may, after such enquiry as may be necessary, by order declare such sub-tenant or under raiyats[or successor-in-interest to be a raiyats in respect of the land referred to in the said clause with effect from the beginning of the next following date of the order]:

Provided that any such sub-tenant or under-raiyat who has failed to make an application within the said period , may make such application within ninety days from the date of commencement of the Odisha Land Reforms(Amendment) Act, 1966(Act 8 of 1967):

Provided further that any such sub-tenant or under-raiyat who has failed to make such application within any of the periods specified in this sub-section may make an application within a period of two years from the commencement of Odisha Land Reforms(Amendment) Act, 1973 (President’s Act 17 of 1973):

Provided further that any such application made after the expiry of the period specified in this sub-section and before the aforesaid date shall, for all purposes , be treated as an application filed within the period of limitation:

Provided further that an application under this sub-section may be made-

- (a) *in the case of sub-tenants and under-raiyat who have been recorded in the record-of-rights on or after the 1st day of October, 1965 within two years from the date of commencement of the Odisha land reforms (Second Amendment) Act, 1975 or the date of final publication of the record of the record-of-rights, whichever is later : and*
- (b) *in the case of the successor-in-interest of any recorded sub-tenant or recorded under-raiyat, within two years from the date of commencement of the said Act or the date of the sub-tenant or under-raiyat , whichever is later.”*

Thus, the aforesaid provision lays down that an under-raiyat needs to apply to the Revenue Officer in order to be declared as an under-raiyat and retain his status as such. In the instant case, it is seen that no such application has been made by the Sikkim tenant or his successors thereafter to reclaim their status as that of Sikkim raiyat, to the Revenue officer at any point of time.

It is also evident from the aforesaid provisions that successors-in-interest were not included in the ambit of Sikkim tenant previously. The same can also be derived from the following case law:

“ the Sikkim tenant or his successors could not acquire the right of occupancy over the land prior to the amendment in Odisha Act X of 1946 - The successors of the Sabik recorded Sikkim tenant could not acquire the right of the Sikkim tenancy over the land as the Sikkim right was not heritable during the year”: 2002(I) OLR(BOR) 31

As regards the heritability of the Sikkim Tenant, it has been clearly held that “Sikkim tenancy is not heritable, when he dies, the possession of son is not that of Sikkim Tenant : **Champabati Bewa v Kanhu Mallick: Vol 33(1991) OJD 154(Civil)**. Also, it has been held that “Sikkim Tenant is an under-raiyat. Sikkim Tenancy is neither heritable nor transferable. Successors of the Tenant cannot claim title and bring any suit for eviction “: Relied on Natabar Pandey V. Sri Pareswar Dev & others: OJC. No.4349 of 2002 disposed on 30.10.2002. Contrary view not accepted: **SubalBaliarsingh V. ChanchalaBewa : 2004(I) CLR 215:2003(Supp) OLR(NOC)919.**

It is also evident that the Opp. Parties have not challenged the fact that the Sikkim tenant Dai Bal had died in the year 1920. Nor, has the Respondent raised any objection while the RSDs were executed in the year 1940 and 1948 respectively. They have filed an Objection case bearing No.19/91 in the year 1991, which is after a lapse of about 50 years from the time when the first RSD was executed. The

Petitioners on the other hand has been a bonafide purchaser, the Jamabandi has also been opened in their favour, they have been paying rent continuously and that Petitioners are also in possession over the suit land. Had the Sikkim tenancy been heritable and transferable from the early times , the aforesaid case laws would not have existed in the first place. Moreover, it is also ascertained that the heritability clause has been introduced vide the word “successor-in-interest” vide an Amendment through the **Orissa Act 29 of 1976**. Hence, it can safely be assumed that prior to such an amendment the Sikkim tenancy was not heritable. Also, the reliance of the Respondent on Section 8(2) and 8(3) of the OEA Act is rendered infructuous and unrelated to the case matter as this does not pertain to an Ex-Intermediary land.

Also, it is well ascertained that if the RSDs have been duly executed, it establishes that the Petitioners are vested with the Right, title and Interest to possess the suit land **free from all encumbrances**. If the execution of RSD is held to be credible, it is deemed that Sikkim tenancy is no longer valid and the same stands voluntarily forfeited. Moreover, with the death of the actual tenant and with no custom regarding heritability, the suit land should have vested with the purchasers free from all encumbrances. However, the Deputy Director has inaccurately comprehended all these aspects and passed his orders.

As regards enhancement of area, it is seen that the Deputy Director had observed that the purchasers of the suit land were in possession of an area of Ac.1.44 dec. and hence the area as per their possession may be recorded accordingly. Regarding partition, the petitioners may approach appropriate forum under Section 19(1)(c) of OLR Act, 1960.

8. Thus, it is evident that the orders passed by the learned Consolidation Officer and Deputy Director, Range -1 are inappropriately comprehended and suffer from errors of improper application of law. The orders of the Deputy Director, Consolidation of Holdings, Range-1, Cuttack are hereby set aside and the prayer of the petitioners is accordingly allowed partially on the aforementioned grounds as per the provisions of law.

9. Resultantly, the Consolidation Revision Case is partially allowed.

Pronounced the order in the open Court to-day, the 22nd day of December, 2021.

Send copy of the order to Deputy Director, Consolidation of Holdings, Range-I, Cuttack / Addl. Sub-Collector-cum-Consolidation Officer, Dharmasala / Tahasildar, Dharmasala.

Sd/-
Commissioner,
Land Records & Settlement, Odisha, Cuttack.

Case No. 536 of 2017

(Under Section 37(2) of the O.C.H & P.F.L Act, 1972)

Decided on 03.11.2020(Order by Shri Sashadhar Nayak, O.A.S(S.S.),
Director, Consolidation, Odisha, Cuttack)

Bikasha Chandra Sinha and Others..... Petitioners.

-Versus-

State of Odisha and others Opp. Parties

1. Bereft of its unnecessary details, the factual matrix of the case in a nutshell is that this Revision case No.536/2017 has been instituted on the basis of the petition filed by Bikasha Chandra Sinha and others U/s 37(2) of O.C.H. PFL. Act for recording LR Khata no.520, Containing 47 Plots for an area of 170.20 dec in the Mouza-Sipasurubali under Puri district in the name of the petitioners.

2. The Advocate for the petitioner pleaded that the suit land corresponded to 1928 settlement as follows .

SCHEDULE

Mouza	Khata No.	Plot.	Area
Sipasurubal	70	159	Ac. 38.74.
		85	<u>Ac.131.46</u>
Total-			170.20 decimal

The above khata was under Touzi number 269 as is evident from R.O.R of 1928.

3. The Advocate for the petitioners has further pleaded that the suit land corresponded to the M.S Khata No.23, 27, 37, 40, 48, 51, 60, 62,65, 2, 12, 102, 111, 117, 74, 88 appertaining to an area of 170.20 dec under different plots as noticed at "B" of the plaint Copy which further corresponded to L R khata no-520 under Consolidation .

4. It is pleaded by the Advocate for the petitioners that suit land corresponded to the Khata No. 70 under 1928 settlement, Containing the plot no.85 for an area of 202-72 decimal, in balikuda Kissam and plot no.159 for an area of 38.74 dec, in Puratan Patita Kissam . These two Plots under Khata No.70 of 1928 settlement were anabadi land and the suit land was recorded in pre sabik khata no-70 containing plot no-85 Ac.202.72 decimal and plot no-159 ac.38.74 decimal in the name of Zamindar M.C.Sihna,with S.K.Mahammad Asgar as Sub-Proprietor, under touzi no,269.

5. While the position was thus Rani Harshamukhi Dasi,the Executrix Eastate of late Raja M.C. Sinha, as plaintiff filed O.S. No.20/1928 in the Court of the Sub-

Judge, Cuttack impleading intermediary Sk. Mohamood Asgar, as defendant No.1 and Secretary of State for India in Council as Defendant No.2 inter alia claiming the Schedule lands in her favour.

6. In the aforesaid suit, the defendant No.2 was set-exparte and the suit was decreed on 16-1-1930 in favour of the plaintiff Rani Harsamukhi Dasi in terms of compromise between the plaintiff and defendant No.1 and the suit was dismissed against the defendant No.2. In the said suit it was ordered that the defendant No.2 would get his actual cost amounting to Rs.27/-2 annas which has already been paid by the plaintiff Rani Harshamukhi Dasi to defendant.

So on the basis of aforesaid Decree passed in O.S.No.20/1928, Rani Harshamukhi Dasi became the title holder of the pre - sabik plot No.159A38.74 and Pre- sabik plot No.85 (Part)Ac 131.46 for total area of Ac.170.20 Dec under Pre- sabik Khata No.70 . The advocate for the petitioner has averred that due to O.S.NO-20/1928 filed in the court of Sub-Judge, Cuttack, indefeasible title has occurred to the petitioners for recording the scheduled property in the names of the petitioners in sthithiban status in different khata. But the suit land has been recorded in Government khata in consolidation under L.R.khata no-520, containing 47 plots such as: 695,692,691,686,685,683,677,675,664,663,674,673,672,671,669,670, 668, 666, 667, 692, 680, 696, 706, 691, 690, 588, 589, 522, 515, 589,503,504,507,508,511,514,516,517,558,559,560,561,513,511,584,550,549, Which are mentioned in Scheduled "C" of the plaint pertaining an area Ac.159.596 dec . So, on the basis of the above O.S. Case no-20/1928, the Advocate for the petitioner claims that the title of the land belongs to the petitioners as successors of Rani Harsamukhi Dashi . He has given the genealogy of Rani Harshamukhi Dashi in the plaint.

7. The Advocate for the petitioner has submitted the written notes of argument which is tagged to the Case record. The Addl. Standing-Counsel submitted a written statement that these are the Government land ;so the suit land cannot be recorded in the name of the petitioner. It has been rightly recorded in Government khata.

8. Decision in 1985(1) O.L.R page 464 has been cited by the Advocate for the petitioner , wherein the Hon'ble High court of Orissa has held that concluded judgments and decree of civil court could not be questioned by consolidation Authority. They shouldn't interpret in a manner, so as to take away their intended effect.

9. So it has been argued that the petitioners being successors of late Rani Harsamukhi Dasi became exclusive owners over the suit scheduled properties and have acquired prima facie title coupled with possession for recording the suit schedule properties in the names of the petitioners in stitiban status.

10. Verified the documents. Also verified the report of the Addl.Sub-Collector Puri. In 1930 Settlement it was recorded in the name of Kumar Bimal Chandra Sinha, represented by Mrs.Harsamukhi Dasi and it was an Anabadi land. The kism was

balikuda and Puratana Patita and it was not cultivable .So it was not deemed to be in possession by the petitioner,as intermediary .

11. Shaikh Mahamad Esgar was Madhya Satwadhikari .Before Independence zamindari prevailed in Odisha. Because of presence of zamindaries and intermediaries ,the tenant was not under direct contact of state. For bringing the raiyats with director control and contact the State ,the Zamindari was abolished in Odisha with passing of the O.E.A Act 1951 .This Act defined intermediary as follows."Intermediary' with reference to any estate means a proprietor, sub-proprietor, landlord, land holder, malguzar, thikadar, gaontia, tenure holder, under-tenure holder and includes an inamdar, a jagirdar, Zamindar, Illaquedar, Khorposhdar, Parganadar, Sarbarakar and Maufidar including the ruler of an Indian State merged with the State of Orissa and all other holders or owners of interest in land between the raiyat and the State".

12. Intermediary interest is defined as an estate or any rights or interest therein held or owned by or vested in an intermediary.

'Significantly , as the above definitions would show,an 'intermediary and an intermediary interest covered all the holders or owners of interest in land between the state and the 'Raiyat' i.e the actual cultivator or tiller of the soil. This is in line with the object and purpose of the 1951 Act i.e. to establish a direct relationship between the filler and the state, and to abolish all intermediary interests, by whatever name called.

13. Raiyat is the actual tiller of or the soil and is defined in section 2(n) as Raiyat means any person holding the land for the purpose of cultivation and who has acquired the right of occupancy according to the tenancy law or rules for the time being in force in that area or in the absence of such law or rules, the custom prevalent in that area.

14. Section 3 of the act empowers the state to declare, by notification, that the estate specified in the notification has passed to and become vested in the state free from all encumbrance .In similar vein, Section 3A empowers the state to declare by notification that the intermediary interests of all intermediaries or a class of intermediaries in the whole or part of the estate have passed to and become vested in the state free from all encumbrances.

15. Upon a notification being issued under the provisions of section 3,3A or 4 of the Act, the entire estate vests in the State free from encumbrances and the intermediary ceases to have any interest in such estate other than the interest expressly saved under the Act.

16. The section 5 of the Orissa Estate Abolition Act ,1951 stated that "Notwithstanding anything contained in any other law for the time being in force or in any contract, on the publication of the notification under sub-section (1) of Section 3, xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

- (a) Subject to the subsequent provisions of this Chapter the entire estate including all communal lands and porambokes, other non-raiyati lands, waste lands, trees, orchards, pasture lands, forests, mines and minerals (whether discovered or undiscovered, or whether being worked or not, inclusive of rights in respect of any lease of mines and minerals) quarries, rivers and streams, tanks and other irrigation works, water channels, fisheries, ferries, hats and bazaars and buildings or structures together with the land on which they stand shall vest absolutely in the State Government free from all encumbrances and such Intermediary shall cease to have any interest in such estate other than the interest expressly saved by or under the provisions of this Act:

17. Further by Revenue Department Notification number 13699-EA-1-ND-1/74/R published in Extraordinary Gazette No-371 dated 18.03.1974, the Government of Orissa notified that the intermediary interest of all intermediaries in respect of all estates other than those which have vested in the state have passed to and become vested in the state free from all encumbrances. Additional Standing counsel has produced the Xerox copy of the O.J.C. no.191/1956 between Kumar Bimal Chandra Sihna and others Vrs. State of Odisha wherein it has been mentioned that the Touzi no.269 was vested to state under section 3 of O.E.A. Act on 23rd August, 1953. If name of any intermediary was left in notification, it is deemed to have been completely vested to Government w.e.f.18.03.1974.

18. However, section 6(a) and section 7(a) of O.E.A Act made some exemption for intermediaries / Zamindaris / Sub-Proprietors. U/S-6(a) of O.E.A. Act, the land which was used for homestead or kutchery purpose by intermediary could be settled with him to fair and equitable rent. Similarly, U/S 7(1) of O.E.A Act, the land which is used by intermediary for agricultural purpose could be settled with him for fair and equitable rent. In terms of Sub-section (1) of section 7 only the land used for cultivation and horticultural purpose which were in khas possession of an intermediary on the date of such vesting would be conceived. The khas possession has been defined in section 2(1) which too means land used for agriculture and horticulture purposes. The possession of an intermediary of any land used for agricultural or horticulture purposes means possession of such intermediary by cultivating such land or carrying horticultural operation there on himself with his own stock or by his own servants or by hired labour or by hired stock.

19. Honble High court in case between Odisha Vrs. Nityanand Satpathy reported in 96(2003)CLT 721 held that for the purpose of talking benefit of the provision of Section 7(1)(a) of the Act, the intermediary must be in cultivating possession of the said land either by himself, with his own stock or by his own servants or by hired labour or with hired stock. Here the land was anabadi land and waste land, the land

being not used either for cultivation or for horticulture purpose on the date of vesting. So it did not attract the provisions of clause (a) of Sub-section (1) of Section 7 of the Act , for settlement of suit land with intermediary.

20. Thus nature and character of land being wasteland was not evidently in cultivation or possession of the intermediary .It is clear that the suit land was not under cultivation by the predecessor of the present petitioner ,who were recorded as intermediary. As per record of right published in 1928 ,the disputed land is classified as Anabadi land i.e uncultivated. The land is further defined in the record of rights as Balikuda .It was not in possession of any body. Obviously he being the intermediary under the Act, the rights and liabilities of such intermediary would stand extinguished under the Act. Anabadi and waste land, in terms of section 5 of the O.E.A. Act , was vested to Government free from all encumbrance . Section 5 provides for the consequences of the vesting of an estate in the state in terms whereof all the rights of the nature specified therein shall stand transferred to the state. As vesting takes place free from all encumbrances, the intermediaries ceased to have any rights there under. The land must be deemed to have vested in the state Government under section 5 of the Act, the intermediaries although might not have physically dispossessed, but they would be deemed to go out of possession and it was open to the state to exercise its right of possession.

21. The suit land was anabadi .The scope of settlement of anabadi land with ex-zamindar didn't exist. It has neither in his khas possession nor it was agricultural land. So the ex intermediary possibly has not preferred any clam of settlement before the proper forum i.e. O.E.A.Collector Puri. So the land in question is Government land .Recording this suit land in Government khata by consolidation authority is not improper. There is no illegality and irregularity in such recording by consolidation authority.

22. The petitioner of the advocate claims that in the suit 1928, the title of the predecessor of the petitioner was confirmed. In that suit, it was order against the sub-proprietor which existed in 1928. i.e Zamindars and Sub-proprietor etc, who were called intermediaries in land . They became extinct with passing of O.E.A Act and blanket notification .The state became the absolute owner of Anabadi land. The suit of 1928 shall have no application in the context of abolition of Zamidari and all intermediaries under O.E.A.Act, 1951. In view of foregoing facts and circumstances ,the revision petition is devoid of merits and is dropped .The claim of petitioner is disallowed, being devoid of any merit.

Sd/-
Director,
Consolidation, Odisha, Cuttack

REVISION PETITION NO. 799 OF 2015

(Under Section 15(b) of the O.S. & S. Act, 1958)

Decided on 24.02.2021

(Order by Shri Nihar Ranjan Dash
Additional Commissioner,
Settlement and Consolidation, Cuttack)

Sushanta Kumar Das Petitioner

-Versus-

Mirza Siraj Uddin & others Opp. parties

Counsel for the Petitioner : Mr. S.K. Nayak
Counsel for the Opp. Parties : Absent

ORDER

This case is taken up today.

The learned Counsel for the Petitioner and Addl. Standing Counsel for the State are present.

Heard the learned Counsel for the petitioner filed this Revision Petition U/s. 15(b) of the O.S. & S. Act, 1958 which was disposed of on 19.07.2017. The petitioner being aggrieved by the order dated 19.07.2017 had filed a writ petition before the Hon'ble High Court vide W.P. (c) No. 22375 of 2018 which was disposed of by the Hon'ble High Court vide order dated 30.01.2019 and remitted back to this court for de novo hearing. The delay was condoned considering the petition filed U/s. 5 of the limitation Act, 1963. Notice was issued and duly served to all the Opp. Parties by following due procedure and news paper publication. In respond the Opp. Party No.1 to 3 neither appeared nor filed any objection in three consecutive hearing dates.

The claim of the Petitioner is connected in this revision for correction of Hal Record-of-Right by recording the name of Petitioner along with the name of father of Opp. Party No.1 & 2 with 50% share OR 8 anna share each which appertains to Hal Khata No. 160 of Mouza – Cuttack Sahar, Unit No.22 Mirkamalpatna, P.S.- Mangalabag, Town/Dist.- Cuttack on basis of Sabik recorded tenant as recorded in the year 1931 Sabik Record-of-Right. The Hal R.O.R. has been finally published on 08.01.1999.

On verification of documents of Sabik ROR-159, Hal ROR-160, RSD No. 3591 dated. 06.09.1940, RSD No.2505 dated 29.05.1985, RSD No. 3400 dtd,03.08.1988, RSD No.1348 dated. 24.02.2006, certified copies of Settlement documents, Plot Index, a statement of 24 Nos. of Hal plot and a statement of 20

Nos. of RSD and submissions made by the learned counsel for the petitioner, it is revealed that the ancestor of petitioner, namely Kartik Das, S/o- Giridhari Das and another Bata Prusty, S/o Kesari Prusty had jointly owned a patch of land as right, title holder having 50% share each out of measuring an area Ac.2.073 dec. appertaining to Sabik Plot Nos.553, 554, 555, 556, 560, 561, and 562 under Sabik Khata No.159 in Sabik Mouza -Mirkamalpatna, Sabik P.S.-Cuttack, Thana No.205, Dist.-Cuttack. The learned Counsel for the Petitioner contended that both of those recorded Sabik tenants, for their legal necessity, jointly sold four numbers of Sabik Plots bearing Sabik Plot No. 553, 554, 555 and 556 measuring an area Ac.0.461 out of total area Ac.2.073 dec. in the year 1934 to one Natabar Mohanty whose successor having possession on the same. The rest three numbers of Sabik Plots bearing plot No.560, Plot No.561, and Plot No.562, measuring area Ac.1.612 dec. remained with Kartik Das and Bata Prusty jointly having 50% share each. But Bata Prusty, though was a co-owner having 50% share over those 3 Sabik Plots, had illegally and fraudulently sold 75% of the total area out of those 3 Sabik Plots to one Mirza Ajit Uddin vide RSD No.3951 dtd.06.09.1940 without partition and without consent of another Sabik recorded tenant Kartika Das who was in possession over his 50% share during his life time and after his death his successor is continuing on the same, thereby such sale which was not enforceable in law and Mirza Ajit Uddin could not mutate his purchased land in the office of Tahasildar, Cuttack during his life time even passing 45 years from the date of his purchased.

The Counsel of the Petitioner has also submitted that neither Kartik Das nor his successor, the petitioner has sold / transferred the properties belongs to Sabik Plot No. 560, 561 and 562 to anybody at any time as on date But after death of Mirza Ajit Uddin his son Mirza Jalil Uddin again Illegally and fraudulently sold and transferred entire 100% area measuring an area Ac.1.612 dec. of aforesaid 3 Sabik plots bearing Plot No.560, Plot No.561 and Plot No.562 under Sabik Khata No.159 including 50% share of Kartik Das to 22 persons during the middle session of Hal Settlement operation of the year 1985. Subsequently in the Hal Settlement the areas of said three Sabik plots have been recorded in favour of 22 persons including late father and sister of Opp. Party No.1 & 2 by the Settlement authority as illegally.

The learned Counsel for the Petitioner has contended by confining on Plot No.561 area Ac.0.067 dec. and Plot No.562 area Ac.1.350 dec. total area Ac.1.417 dec. as recorded under Sabik Khata No.159 as because these 2 Sabik plots are corresponded to the disputed Hal Properties and also stated by submitting two statement of 24 Nos. of Hal plot and 20 Nos. of RSD that after death of Mirza Ajit Uddin his son Mirza Jalil Uddin on the basis of RSD No.3951 dtd.06.09.1940 and during the period of Hal Settlement has Illegally and fraudulently sold and transferred entire 100% area measuring an area Ac.1.417 dec. of Sabik plot No.561 and 562 under Sabik Khata No.159 including 50% share of Kartik Das to 21 persons and transferred balance area in his name by converting into 24 plots including RSD No.2505 dated 29.05.1985 which is even beyond the area covered under the

fraudulent sale deed dt.06.09.1940 and behind back of the petitioner who is the successor of Kartik Das.

The learned Counsel for the Petitioner has also contended that in spite of two illegal successive sales made by Bata Prusty and son of his vendee namely Mirza Jallil Uddin were illegal and not enforceable in law and even though the sabik records were not mutated in favour of the purchasers still during settlement operation, the concerned field level staff and Officers of Hal Settlement without verifying the sabik records and without giving the opportunity to the present petitioner changed the ROR and created 24 nos. of Hal Plots in favour of the of 22 persons including late father of Opp. Party No.1 & 2. The RSD No.2505 dated 29.05.1985 executed in favour of one Goura Chandra Gantayat without any partition and without knowledge of petitioner. After knowing the illegalities, Goura Chandra Gantayat sold the same to one Gokulananda Bhanja vide RSD No. 3400 dtd,03.08.1988 and then Gokulananda Bhanja sold to Opp. party No.3 namely Mamata Satpathy vide RSD No.1348 dtd.24.02.2006 which is converted in Hal Khata No. 616/672, Hal Plot No.758/3033, area Ac.0.055 decimals illegally and the petitioner having the possession over the afore said Hal plots as on date for which the petitioner has approached to this court with a prayer for correction of Hal ROR by incorporating his name along with the opposite party No.1 & 2 as right title holder in respect of the suit property.

The counsel for the petitioner has submitted that no other case is pending before any court in respect of this suit plot. Mirza Ajit Uddin had purchased only un-divided share of Bata Prusty out of the suit property. He had never purchased the share of Kartik Das out of the joint property for which Mirza Ajit Uddin and his son Mirza Jalil Uddin was not entitled to deal or sale the share of Bata Prusty without seeking partition and separation of the share of Kartik Das.

Further when the land acquired by Bata Prusty and Kartik Das was a joint property therefore before sale of the exclusive share of Bata Prusty, Mirza Jalil Uddin had to go for partition before sale. In this regard the petitioner placed reliance on a decision of the Hon'ble Apex Court reported in AIR 2009 SC 2735 and of the Hon'ble High Court of Odisha reported in 2015 (II) ILR- CUT- 344. In view of the above settled position of law the sale and Delivery of possession given by Jalil Uddin son of Mirza Ajit Uddin without consent of Kartik Das or his successors including the petitioner is illegal and not enforceable in law and the sale deed executed in favour of the Opp. Party No.1 or her vendor are not binding on the petitioner.

The petitioner has placed 3 decisions during submission of his written note of argument from which one decision reported in A. I. R. 2009 SC 2735, the Hon'ble Supreme Court has been pleased to held that:

- (i) A purchaser cannot have better title than what his vendor had.
- (ii) An undivided share of co-sharer may be a subject matter of sale but possession cannot be handed over to the vender unless the property is

partitioned by metes and bounds amicable and through mutual settlement or by a decree of the court.

- (iii) where the purchaser had purchased only undivided share in the suit property he could not own and claim for more than the share of the vender in the property nor he could not claim possession in respect of the entire property. He cannot claim relief on the ground of equity, as he himself is responsible for his act in purchasing undivided share in a part of the suit property without the knowledge and consent of the co-share.

The counsel of petitioner has also placed another reported 2015 (II) ILR-CUT -344, the Hon'ble High Court, Orissa has been pleased to held that:

- (i) Para-7: Law is well settled that where a coparcener takes definite share in the property, he is owner of that share and as such he can alienate the same by sale or mortgage.
- (ii) while permits to sale his/her undivided interest with the joint family property. But this is however subject to the condition that the purchaser without the consent of his other coparcener cannot create possession except however he has a right to sue for partition.

The counsel of petitioner has also placed another reported in A. I. R. 1961 Punjab 528. (Sant Ram Nagina Ram vrs. Daya Ram Nagina Ram). In the above cited decision their Lordships after referring catena of earlier judgments have been pleased to hold that:

- (i) A co-owner has an interest in the whole property and also in every parcel of it,
- (ii) Possession of the joint family property by one co-owner, is in the eyes of law, possession of all even if all but one are actually out of possession.

The counsel for the petitioner has filed a copy of the Sabik ROR-159 in Sabik Mouza- Mirkamalpatna, Sabik P.S.-Cuttack, Thana No.205, Dist.-Cuttack from which it is clear that both Kartik Das, S/o- Giridhari Das and Bata Prusty, S/o- Kesari Prusty were co-owner. There is no mention in the Sabik ROR about the shares of each of them. In absence of any document this court has no other way than to accept the submission of the petitioner that both Kartik Das and Bata Prusty were having equal share over the aforesaid Sabik land.

Law is well settled that a litigant should not suffer and deletion of his name from the ROR is quite illegal and unjustified if he is otherwise a lawful owner and right title holder. This court, U/s – 15(b) of the O.S.& S. Act, 1958 has the ample authority to examine as to whether the entries incorporated in the impugned Hal ROR is correct or not and in case there is any omission or wrong recording therein then direction can be issued for correction of Hal ROR. Accordingly this court proceeded to examine the case of the petitioner.

The admitted case is that the petitioner has no grievance in respect of other plots except the area Ac.1.417 dec. belongs to Sabik plot No.561 and 562 under Sabik Khata No.159, one co-owner Bata Prusty, without due partition or consent of another share holder Kartik Das, had alone sold 75 % area measuring Ac.1.062 dec. 7.5 kadi to Mirza Ajit Uddin through RSD No.3951 dated 06.09.1940 though he was only entitled to 50% share. The petitioner has submitted that as the above sale was not enforceable in law therefore the aforesaid sale was not given effect and no mutation was made.

The petitioner has filed a copy of the sale deed dtd.06.09.1940 through which Bata Prusty sold the land to Mirza Ajit Uddin. It is revealed from such sale deed that Bata Prusty had sold the undivided joint property beyond his share without consent of another share holder Kartik Das and without partition by metes and bound, therefore such sale was neither acceptable in law nor valid for further sale.

Further from the documents such as statement showing the name of 22 numbers of purchaser and other relevant documents it is revealed that after death of Mirza Ajit Uddin his son Mirza Jalil Uddin had sold the entire area, even beyond the area covered under RSD dated 06.09.1940. So the sale made by Mirza Jalil Uddin also is not legal and enforceable in law.

It is settled in law that a purchaser of an immovable property cannot have better title than that of his vendor. When the sale deed dtd.06.09.1940 does not disclose as to how the vendor of Mirza Ajit Uddin got more than 50 % share and how his son Mirza Jalil Uddin sold 100% area belongs to Sabik plot No.561 and 562 beyond the area involved in the RSD dated 06.09.1940 though his late father Mirza Ajity Uddin had purchased only share of interest from Bata Prusty.

After scrutiny of the Sabik ROR, RSD dtd.06.-09.1940 and the area sold by Mirza Jali Uddin it is clear that both Bata Prusty and Mirza Jalil Uddin had sold area beyond their respective right, title and entitlements. The right, title interest and possession of Kartik Das from Sabik plot No.561 and 562 has never passed away or transferred in favour of anybody at any time.

Law is well settled that till the properties are partitioned by metes and bounds every co-owner has a right over every inch of the joint property. Transfer of immovable property by one of co-owners legally competent and is valid to the extent of his share only but not beyond the extent of his share.

As there is no material before this Court which shows any partition between Kartik Das and Bata Prusty in respect of the Sabik Plots and when there is absence of consent of Kartik Das or his successor/petitioner in the sale deed executed on dtd.06.09.1940 and subsequently by Mirza Jalil Uddin in favour of different persons for which it cannot be accepted that the share of Kartik Das has been extinguished in any manner over the suit property and therefore the publication of Hal ROR deleting the name of Kartik Das or of this petitioner as his successor is legal and justified.

Considering the submission of parties, after perusing the materials on record and discussion on law aspects, it is observed that, the claim of the Petitioner is genuine one. Thus, the revision is allowed and the Tahasildar, Cuttack Sadar is directed to record the name of petitioner alongwith the legal heirs of late Mirza Jalil Uddin the existing recorded tenant after verifying the original relevant documents, conducting field enquiry, Hal - Sabik co-relation with following due procedure.

SCHEDULE OF LAND

Mouza- Cuttack Sadar Unit No.22 Mirkamalpatna, P.S.- Mangalabag, District- Cuttack of Hal Settlement Khata No.160, Hal Plot No.758 area Ac.0.052 dec., Hal Plot No.758/1765 area Ac.0.020 dec., Hal Plot No.758/1749 area Ac.0.095 dec. and Hal Khata No.616/1749, Hal Plot No.758/3033 area Ac.0.055 dec. which corresponds to Sabik Plot No.561, area Ac.0.067 dec. (P) and Sabik Plot No. 562, "Sarada", area Ac.1.350 dec. (P) total area Ac.1.417dec. under Sabik Settlement Khata No.159.

Pronounced the order today.

Sd/-
Additional Commissioner,
Settlement and Consolidation, Cuttack

R.C. Case No. 65 of 2020

Decided on 02.03.2021

(Order by Smt. Sanjita Das, O.A.S(SAG),
Land Reforms Commissioner, Odisha, Cuttack)

I

Smt. Sobharani Choudhury ...	Petitioner.
-Vrs-	
State of Odisha & another ...	Opp. Parties

Mr. A. R.Swainh ...	Adv. for the petitioner
Addl. Standing Counsel ...	For the State(O.P.No.1)
Mr. J.P. Das ...	Adv. for the O.P.No.2

ORDER

This case was taken up to-day. Learned Counsel for the petitioner was absent. Both the learned Counsels for the State(O.P.No.1) and O.P. No.2 were present.

Heard. The petitioner has filed this petition U/s.37 (1) of the O.C.H & P.F.L Act, 1972 for correction of R.O.R in her favour as per purchase through R.S.D. No976, dated 07.08.2006. Went through the case record. The petitioner filed the relevant documents in support of her claim.

The learned counsel for the O.P.No.2 appeared by filing memo along with Vakalatanama and copy of the R.O.R submitted that the said unit has been finally published u/s.13(4) of the O.C.H and P.F.L Act, 1972.

On verification of documents it is revealed that the R.O.R of the said unit has been finally published u/s.13(4) of the O.C.H and P.F.L Act, 1972. But the petitioner has filed this revision petition u/s.37 (1) of the O.C.H & P.F.L. Act, 1972 which is not maintainable under Section 37(1) of the Act. Section 13 subsection (4) of the Act says that –

“(4) Where in respect of any village an order is published under Sub-Section (1) of Section 5 at any time after the publication of the map and land register under sub-section (1), the map and the record-of-rights prepared on the basis of such land register shall, for all intents and purposes, be deemed to have been prepared under the Odisha Survey and Settlement Act, 1958(Odisha Act, 3 of 1959)”

The law is well settled that after publication of R.O.R. u/s. 13(4) of the O.C.H & P.F.L Act any error/ mistake should be rectified by filing Revision u/s.15 (b) of the O.S. & S Act, 1958. Hence, this revision is disallowed on the ground of maintainability. The petitioner is at liberty to file the case under appropriate Section.

Accordingly, the case is disposed of.

Pronounced in the open Court on this day of 2nd March,2021.

Sd/-

Land Reforms Commissioner, Odisha

SRP Case No. 96 of 2020

Decided on 04.03.2021

(Order by Smt. Sanjita Das, O.A.S(SAG),
Land Reforms Commissioner, Odisha, Cuttack)

Bhubaneswar Dash and others	...	Petitioners.
	-Vrs-	
Jogesh Chandra Dash	...	Opp. Party
Mr.B. Dash	...	Adv. for the petitioners

ORDER

This case was taken up to-day. Both the learned Counsel for the petitioner and State were present. The Opp. Party in person was present.

Went through the case record. The petitioners have filed the Limitation petition u/ s.5 of the Limitation Act, 1962 for condonation of delay. Accordingly, the delay is condoned.

In this revision, the Advocate for the petitioners contended that the suit land was the ancestral property of the parties situated in Mouza / P.S./ Tahasil: Tirtol, Dist.-Jagatsinghpur which stands recorded in the names of petitioners and Opp. Parties in the Consolidation ROR published U/s.13(4) of the O.C.H & P.F.L Act. 1972 on dt. 04.03.2014 pertaining to Hal Consolidation Khata No.62, Plot No.1394, Ac.0.08 dec, Plot No. 1521,Ac.0.09 dec., Plot No. 1533, Ac.0.12 dec., Plot No 1625, Ac.0.07 dec. in total Ac.0.36 dec. The petitioners have pleaded to correct the ROR in their name exclusively as per their family mutual settlement.

The Opp. Party appeared by filing ' No objection' and stated that his name has been wrongly recorded in the R.O.R. the R.O.R be corrected as per family mutual settlement in the name of the petitioners only.

On verification, it is seen that the Consolidation ROR published U/s.13(4) of the O.C.H & P.F.L Act. 1972 has been wrongly recorded both in the name of the petitioners and Opp. Party instead of petitioners. The Opp. Party vide his ' No Objection' has stated that the said property be recorded in the name of the petitioners exclusively by deleting his name as per their family settlement as the name has been recorded inadvertently in the R.O.R. Since there is no scope for the Tahasildar to correct the ROR, the petitioners prayed before this Court to correct the same.

In view of this, Tahasildar, Jagatsinghpur is directed to correct the ROR as per their family settlement only after proper field enquiry and verification of the related documents of the case following due procedure of law.

SCHEDULE OF THE LAND

Mouza / P.S./ Tahasil: Tirtol, Dist.-Jagatsinghpur
Hal Consolidation Khata No.62, Plot No.1394, Ac.0.08 dec, Plot No. 1521,Ac.0.09 dec., Plot No. 1533, Ac.0.12 dec., Plot No 1625, Ac.0.07 dec. in total Ac.0.36 dec.

Accordingly, the case is disposed of.

Pronounced in the open Court on this day of 4th March, 2021.

Sd/-

Land Reforms Commissioner, Odisha

RP Case No. 77 of 2020

Decided on 11.01.2022

(Order by Smt. Sanjita Das, O.A.S(SAG),
Land Reforms Commissioner, Odisha, Cuttack)
Balunkeswar Sahoo and 05 others .. Petitioners

-Vrs-

State of Odisha represented through
Commissioner-Cum-Secretary, Revenue and D.M Deptt.,
Govt. of Odisha & others ... Opp. Parties.

Mr. H.K. Ratsingh	...	Adv. for the petitioner
Sri S. K. Swain	...	Adv. for the O.P.No.7
Addl. Standing Counsel	...	For the State.

ORDER

This case was taken up to-day for hearing following the guide line of COVID-19.

The learned counsels for the petitioners learned Counsel for Opp. Party No.7 and learned Addl. Standing Counsel for the State (O.P. No. 1 to 6 & 8, 9) were present.

The petitioners have filed this petition U/s.37 (1) of the O.C.H & P.F.L Act, 1972 for correction of Hal Consolidation ROR in respect of the schedule land.

Heard. The learned Counsel for the petitioners submitted that “ the name of Upendranath Panda be set aside / deleted from the Hal R.O.R of Plot No. 462, Khata No.74 and same be corrected as per Sabik ROR of Plot No.331, Khata No.571 as mentioned in the Schedule or be corrected / recorded in the name of Government under Srbasadharana Khata for the public purpose or communal purpose and any consequential order be passed for recovery / restoration of Sarbasadharana **ANABADI** land “**JALASAYA**” for the communal use of the general public and villagers/ inhabitants of village Talapada”.

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On the other hand the Counsel for the Opp. Party No.7 submitted that “ the Sabik Plot No.331 an area Ac.1.86 decs, under Sabik Anabadi Khata No.571 of Mouza – Talapada, P.S. Tirtol, Dist: Cuttack with the status “**NIJOT**”, Kisam – “**Ganda**” originally belongs to Shree Gopinath Jew Thakur, the private deity represented through its marfatdar Raghunath Choudhury, the grandfather of the O.P. No.7 and other co-sharers and accordingly the same has been recorded in the Sabik R.O.R through the kisam recorded as “**Ganda**” but in course of time the nature and character of the suit land has been changed due to erosion of earth and so also natural process and extension of Taladanda Canal, which lost its original character and becomes a highland with full of wild bushes and there being a partition in between the said recorded co-sharers, the suit land was exclusively allotted with Raghunath Choudhury. Raghunath Choudhury leased out the schedule land to Upendra Panda and Rabindranath Choudhury on receipt of Salami, rent etc. After delivery of possession they had started cultivation and raising crops regularly and converted the same to a homestead land. After abolition of Estate in the year 1956, basing in the Ekpada and physical possession and perusing the relevant records, the State of Odisha settled the land in the name of Upendranath Pand under the Provision of O.E.A. Act. Though the land was leased out both Upendranath Panda and Rabindranath Choudhury who are jointly paid rent, salami etc. and got the possession but Rabindranath Choudhury being minor by then, the Ekpada was

submitted in the name of Upendranath Panda on which the OEA Collector settled the land alone in his name though in fact both Upendranath Panda and Rabindranath were co-tenants. The Tahasildar, Kujanga transferred the suit land in favour of Sailo G.P. and recommended to Sub-Divisional Officer, Jagatsinghpur to cancel the lease granted by Ex-proprietor in a proceeding U/s.5 (i) of the OEA Act, the same was challenged by Rabindranath Choudhury, in the same proceeding it has been held that the lease granted by the Ex-proprietor is genuine and valid and cancel the transfer made by the Tahasildar, Kujanga. Against the said order Sailo G.P challenged the same before the A.D.M by filing an Appeal wherein A.D.M upheld the possession of Rabindranath Choudhury as tenant over the suit land. Due to dissensions between Upendranath Panda and Rabindranath Choudhury there was a Regd. Partition Deed was made between them vide Regd. Partition Deed No.1377, dated 29.05.1986 and both are allotted Ac.0.93 decs, subsequently Upendranath Panda transferred his share in favour of Rabindranath Choudhury vide Regd. Sale Deed No.1811, dated 08.07.1986, since then the father of O.P.No.7 became absolute owner in possession. Thereafter villagers of Balidihi, Bhaliapatna, Talapada, Barundi, Sailo, Teramanpur had filed a suit bearing T.S. No.277 of 1986 before the Munsif, Jagatsinghpur for declaration of their communal right over the same land and filed a Misc. Case bearing No.269 of 1986 U/O 39, Rules 1 & 2 or C.P.C for temporary injunction against the Rabindranath Choudhury which was dismissed on 05.01.1987 and the suit was also dismissed on 19.02.1988. Though the suit land being recorded in the name of Upendranath Panda and Rabindranath Choudhury, the father of O.P.No.7 filed a Consolidation Revision U/s. 37(2) of the Act, and the Director, Consolidation vide order dated 29.07.2016 directed to the Tahasildar, Kujanga to delete the name of Upendranath Panda from Consolidation Khata No.74 of village-Talapada and in its place insert the name of Rabindranath Choudhury. Further, some villagers of Talapada filed a Civil Suit bearing No. T.S. No.98 of 2001 / T.S. No.260 of 1996 claiming their right over the suit land which was dismissed. Against the said order of learned Munsif the villagers challenged the same before the Addl. District Judge, Jagatsinghpur who dismissed the Appeal vide RFA No.63 of 2015. Admitting the title and possession of Rabindranath Choudhury over the suit land the villagers of Talapada namely Rabindranath Sahoo and Nrusingha Charan Sahoo purchased an area Ac.0.16 decs, from him vide Regd. Sale Deed No.986, dated 12.05.1989 and now possessing the same. So, now the petitioners who are the villagers/inhabitants of Village Talapada cannot be said that the suit land is a communal land.

The Addl. Standing Counsel representing the State submits that the land in question is a Govt. land as per 1930 R.O.R. having classification “**GONDA**”. Upendranath Panda and Rabindranath Choudhury in connivance with the Consolidation Authorities managed to record the name of Upendranath Panda in finally published Consolidation ROR and subsequently the said Rabindranath Choudhury managed to get the same from Upendranath Panda by way of Regd. Partition Deed and Registered Sale Deed. In the mean while, some portions of the

Plot No.462 have been alienated and different bata plots generated out of Plot No.462 under Consolidation Khata No.74 which is illegal and unlawful. It is settled principle of law that the land which is “Gonda” and “Jalasaya” in classification can’t be settled in favour of any private individual, hence prayed to record the area of bata plots generated from Plot No.462 in Govt. Anabadi Khata.

Went through the available documents along with written note of submissions and arguments advanced by the parties concerned, the following observations are made.

In mouza – Talapada, Sabik Plot No.331, Ac.1.860 decs, Kisam – Gonda stood recorded under Sabik Anabadi (Rakshit) Khata No.571 as per finally published C.S. R.O.R in the year 1930. Sabik Plot 331 under Sabik Khata No. 571 corresponds to Hal Plot No.462 under Hal Khata No.74. Hal Plot No.462, Ac.1.840 decs, Kisam – Jalasaya – II under Hal Khata No.74 stands recorded in the name of Upendranath Panda, S/o Brundaban Panda as per finally published Consolidation ROR in the year 1987. The Plot No.462 has been originated out of L.R. Plot No. 484 and Ass. Consolidation Officer in Objection Case No.225/6911(A) U/s.15 (1) of O.C.H and P.F.L Act, 1972 has passed order to record the L.R. Plot No.484, Ac.1.840 decs, Kisam- Jalasaya – II in the name of Upendra Nath Panda on the basis of Jamabandi and the rent receipt bearing No. P4 636122, dt. 29.12.1985 produced by the Objector. It is mentioned in the order sheet that since the Govt. has realized rent Rs. 373/- from Upendranath Panda with all the arrear dues, there is no doubt in settlement of the land in favour of the objector.

Admittedly, except the interest of raiyat, the other interests held by intermediary before date of vesting stood ceases and the land stood vested absolutely in the State Govt. free from all encumbrances. Accordingly, Sabik Plot No.331 of the Mouza – Talapada under Kujanga Tahasil stood vested in the State. The Opp. Party No.7 claims that the land in question has been settled U/s. 5(i) of the OEA Act. However, on order dated.14.12.2021 the Opp. Party No.7 was asked to submit the certified copy of the order passed U/s.5 (i) of the OEA Act. But he failed to submit the same. That apart, any settlement by the OEA collector u/s.5 (i) needs to be confirmed by the Board of Revenue. The proviso U/s.5 (i) reads as follows:

“Provided that in case where the Collector decides not to set aside any such settlement, lease or transfer he shall refer the case to the Board of Revenue for confirmation of the settlement, lease or transfer and the orders passed by the Board of Revenue in this behalf shall be final.”

In the instant case, the claim of the Opp. Party No.7 is that the Govt. Plot No.331 was settled through Sec. 5 (i) of the O.E.A Act, is without any documentary evidence. This establishes that after vesting, the Govt. Plot No.331 was never settled in favour of any private person. Thus, under questionable circumstances, the rent

has been collected vide R.R. No. P4 636122, date 29.12.1985. Law is well settled that the Tahasildar is competent to collect the rent only after settlement of land. It is crystal clear that Plot No.331 was not settled but rent was realized by the Tahasildar, which is beyond jurisdiction.

“In case of State of Orissa Vrs. Brundaban Sharma (1995) Supp.(3)SCC 249 it is held that “ the collection of land revenue or rent otherwise is in regular course of duty. It does not operate as recognition of pre-existing right, title and interest of land. “The collection of rent by the Tahasildar in respect of Plot No.331 is administrative in nature and not quasi-judicial. In case of Dwarka Prasad Agarwal(D) by LRS Vrs. B.D. Agarwal and others reported in (2003) 6 SCC 230 that “ an order without jurisdiction is a nullity. Any order passed or action taken pursuant there to or in furtherance thereof would also be nullities.” In view of above principles of law, Rent receipt No. P4 636122, dt. 29.12.1985 lacks legal force.”

Now the question looms large whether a rent receipt obtained from the Manijanga R.I Office under Kujanga Tahasil is sufficient to claim title in respect of Plot No.331? The Asst. Consolidation Officer has passed order relying upon the rent receipt. A thorough reading of entire matter indicates that the Asst. Consolidation Officer has over stepped his jurisdiction and passed the order to record the L.R Plot No.484 Ac.1.840 dec, in the name of Upendranath Panda, S/o Brundaban Panda. Consequently, Plot No.462, Ac.1.840 dec, Kisam – Jalasaya-II under Khata No.74 was recorded in the name of Upendranath Panda, S/o Brundaban Panda as per finally published Consolidation R.O.R. in the year 1987. The preparation of record of rights by Asst. Consolidation Officer relying upon a mere rent receipt is not sustainable in eye of law. He had taken no attempt to examine the genesis and prognosis of aforesaid rent receipt and Jamabandi. It can't be disputed that the rent receipt dated 29.12.1985 is certainly a force but on thorough examination of documents and in legal parlance, it is viewed that the collection of rent is without authority.

“In case of Suraj Bhan Vrs. Financial Commissioner (2007) 6 SCC 186, it is observed and held by the Supreme Court that an entry in Revenue Records does not confer title on a person whose name appears in Record of Rights. Entries in the Revenue Records or Jamabandi have only “fiscal purpose”. i.e. payment of land revenue, and no ownership is conferred on the basis of such entries. Similar view has been expressed in the case of Suman Verma Vrs. Union of India(2004), 12 SCC 58, Faqrudin Vrs. Tajuddin, (2008) 8 SCC 12, Rajinder Singh Vrs. State of J & K,(2008)9 SCC 368, Municipal Corporation Aurangabad Vrs. State of Maharastra, (2015) 16 SCC 689, T Ravi Vrs. B Chinna Narasimha, (2017) 7 SCC 342, Bhimabai Mahadeo Kambekar Vrs. Arthur Import & Export Co.(2019) 3 SCC 191, Prahalad Pradhan Vrs. Sonu Kumar (2019) 10 SCC 259 and Ajit Kaur Vrs. Darshan Singh (2019) 13 SCC 70”.

The available records reveal that the ownership of Plot No.331 has been discussed in different Revenue Courts, Civil Court and Hon'ble High Court. But the fundamental principles of law involved in manner of recording has been lost sight of. The Opp. Party No.7, has taken the stand that plot No.331 recorded in Anabadi (Rakshit) Khata in the year 1930 was settled in the name of Upendranath Panda U/s. 5(i) of OEA Act. ***But significantly, the so claimed settlement U/s.5(i) of OEA Act has never been raised nor challenged in any Court of law.***

Beyond any doubt it is observed that the order passed by the Asst. Consolidation Officer is without jurisdiction and bad in law. It is settled legal proposition that if an order is bad since its inception it does not get sanctified at a later stage. A subsequent action or development cannot validate an action which is not lawful at its inception, for the reason that illegality strikes at the root of the order. It would be ironical to permit a person to rely upon a law, in violation of which he has obtained the benefits.

“In Mangal Prasad Tameli(dead) by LRs-Vrs. Narvadeswar Mishra(dead) by LRs and others, (2005) 3 SCC 422, it was held that if an order at the initial stage is bad in law, then all further proceedings consequent there to will be non est and have to be necessarily set aside”.

The available papers on record confirm that neither the land in question i.e. Sabik plot No.331 has been settled U/s.5 (i) of the O.E.A Proceedings nor the matter was referred to the Board of Revenue for confirmation. So, the settlement of Govt. land in favour of Upendranath Panda lacks legal sanctity. In the State of Orissa Vrs. Harapriya Bisoi, it was observed by the Supreme Court of India as under –

“In Brundaban’s case this Court held that even in a case where the OEA Collector “decides not to set aside the lease, he should have referred the case to the Board of Revenue. The object of conferment of such power on the Board of Revenue appears to be to prevent collusive or fraudulent acts or actions on the part of the intermediaries and lower level officers to defeat the object of the Act.” This Court further held that even if the OEA Collector decides that a lease was purposed to have been granted before 1.1.1946 and is not liable to be set aside, without reference of confirmation by the Board of Revenue, such lease would not attain finality and non est in the eye of law. A non est order is a void order and it confers no title and its validity can be questioned or invalidity be set up on any proceeding or at any stage.”

The moot question is how a public property will be used by a private person without having a lawful flow of title. The declaration of title can't be granted in the absence of established truth in flow of title. Documentary evidences confirm that Panda had no flow of title. The manner of recording of a Govt. land in favour of a private person has never been examined properly by the Court of law. It is a fact that the land in question has never been settled U/s.5(i) and the so called recorded

tenant Upendranath Panda has availed the benefits by suppressing the material documents.

“The court in Bhaurao Dagdu Paralkar Vrs. State of Maharashtra (2005) 7 SCC 605 held that: “Suppression of material document would also amount to a fraud on the Court. Although negligence is not a fraud but it can be evidence on fraud.” Also Hamza Haji Vrs. State of Kerala & another, AIR 2006 SC 3028, it is observed that : “No Court will allow itself to be used as an instrument of fraud and no court, by the application of rules of evidence or procedure, can allow its eyes to be closed to the fact that it is being used as an instrument of fraud. The basic principle is that a party who secures the judgment by taking recourse to fraud should not be enabled to enjoy the fruits thereof”.

This matter has come across different stages of litigation, though the issues were not alike. At the same time the Opp. Party No.7 has never preferred to produce all the required vital documents.

“In S.P. Chengalvaraya Naidu(dead) by L.Rs Vrs. Jagannath (dead) by LRs & others: AIR 1994 SC 853, the Apex Court commenced the verdict with following words:

“It is settled position of law that a judgement or decree obtained by playing fraud on the Court is a nullity and non est in the eye of law. Such a judgment / decree by the first court or by the highest court has to be treated a nullity by every court, whether superior or inferior. It can be challenged in any court even in collateral proceedings”. Their Lordships stated: “The courts of law are meant for imparting justice between the parties. One who comes to the court must come with clean hands. We have no hesitation to say that a person, whose case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of litigation.” Further observed “A litigant, who approaches the Court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as the opposite party.”

The Kisam of Sabik Govt. Plot No.331 stands recorded “**Gonda**” which corresponds to the Hal Plot No.462 as **Jalasaya**. As per report of the Addl. Sub-Collector, Jagatsinghpur the nature and character of Plot No.331 is “**Gonda**” but has been recorded in the name of Upendranath Panda S/o Brundaban Panda in HAL ROR having kisam **Jalasaya**. Now the questions arises how “**Gonda**” means a water reservoir can be recorded in the name of a private person?

“ Hon’ble Supreme Court in case of Hinchlal Tiwari Vrs. Kamala Devi and others, in Civil Appeal Case No.4787 2001 have held that “ a pond exists and the area covered by varies in the rainy season. In such a case no part of it could have been allotted to anybody for construction for house building or any allied purposes. It is important to notice that the materials resources of the community like forests, tanks, ponds, hillock, mountain etc are nature’s bounty. They maintain ecological balance. They need to be protected for a proper healthy environment which enables people to enjoy the quality of life which is the essence of the guaranteed right under Article 21 of the Constitution. In the aforesaid judgment order was passed to vacate the allotted Govt. land and take away the constructed materials on the said land”.

The Govt. Plot No.331 with kism **Gonda** (water reservoir) was no doubt in the use of community. Its recording in the name of private person with hal Plot No.462 and subsequent sale transaction into pieces, then change of kism and construction activities thereon is not permissible in the eye of law, as per above observations by the Hon’ble Apex Court.

Keeping these in view, this Court has every reason to order that recording of plot No. 462, Ac. 1.840 decs, under Khata No.74 in the name of Upendranath Panda is illegal and hence declared null and void. Consequently, the subsequent transfer as detailed below relating to said plot No.462 and recoding thereof in the name of Upendranath Panda in different Bata Plots is also declared illegal and void as well.

Khata No.	Plot No.	Kisam	Area(in decimals)
74	462	Jalasaya-II	Ac.0.4800
	462/2267	Jalasaya-II	Ac.0.2000
	462/2269	Jalasaya-II	Ac.0.2300
755/9	462/2264	Jalasaya-II	Ac.0.2500
755/16	462/2265	Jalasaya-II	Ac.0.0800
755/27	462/2266	Jalasaya-II	Ac.0.0400
755/28	462/2268	Jalasaya-II	Ac.0.1200
755/32	462/2272	Gharabari	Ac.0.0800
755/42	462/2275	(8 (i) permission has not been obtained)	
		Gharabari	Ac.0.0900
755/220	462/2348	(8 (i) permission has not been obtained)	
		Jalasaya-II	Ac.0.1100
755/243	462/2365	Jalasaya-II	Ac.0.1200
755/313	462/2417	Jalasaya-II	Ac.0.0400
(tenant name is not mentioned in the ROR)			
Total area:			Ac.1.840 dec.

Considering the rival contentions of both the parties coupled with materials based on record, it is ordered that all the Bata Plots generated from the Plot No.462 and the present available area thereon with Plot No.462 be recorded with “**Abada**

Jogya Anabadi Khata” and accordingly the name of Upendranath Panda be deleted from the tenant column of Khata No.74. The Tahasildar Kujanga is here by directed to implement the order immediately in order to protect the interest of the State.

The revision petition stands disposed of.

SCHEDULE OF LAND

Mouza – Talapada, Tahasil – Kujanga, P.S. Tirtol, Dist: Jagatsinghpur.

Hal Consolidation Khata No.74, area of Ac.1.84 decs, corresponding to Sabik Khata No.571(Anabadi), Plot No.331, Touzi No.7489, 8106, 8107, 8109, 8110, 8111., Kisam Ganda, area of Ac.1.86 decs.

Pronounced in the open Court on this day of 11th January, 2022.

Sd/-

Land Reforms Commissioner, Odisha

Misc. Case No.09/2020

(Arising Out of REVISION PETITION No.423/2017)

Decided on 10.03.2021

(Order by Smt. Sanjita Das, O.A.S(SAG),
Commissioner, Consolidation,Odisha, Cuttack.)

Asit Kumar Panda & Others Petitioners

-Versus-

Narahari Panda and another Opp. Parties

Counsel for the Petitioners: - Mr. M. Mohanty

Counsel for the Opp. Party: -

DECISION

1.0. In the Misc. Case No.09/2020 filed by the present petitioners arising out of Revision Petition No.423/2017 filed U/s 15(b) of the O.S. &S. Act, 1958 relating to Vill.-Olaver, PS-Rajkanika, Dist-Kendrapara the Petitioners Asit Kumar Panda & Others have prayed to recall the order dt.03.07.2019 passed by this Court.

2.0. The petitioners in the Misc. Case No.09/2020 was the Opp. Parties in this Revision Petition. The Commissioner, Consolidation has passed the order considering the available documents on record and nature of relief prayed for by the Petitioners.

3.0. The learned Counsel for the Petitioners and Addl. Standing Counsel for the State were present and Opp. Parties in the Misc. Case were absent. In the course of hearing Counsel for the present petitioner submitted that the same case is pending

before the learned Civil Judge, Senior Division, Pattamundai vide Civil Suit No.615/2015. Hence, this Court has no power to adjudicate the same on merit.

Accordingly this case is disposed of.

Pronounced the order in the open court today.

Sd/-
Commissioner,
Consolidation, Odisha, Cuttack

OSS Case No. 539 OF 2015

Decided on 13.08.2020

(Order by Sri Chandramani Badnayak, OAS (SAG),
Addl. Commissioner, Addl. Revisional Court No. III, Bhubaneswar)

Anwar Khan & another	....	....	....	Petitioners
-Versus-				
Tahasildar, Jatni & others	....	....	....	Opp. Parties

Counsel for the Petitioners: - Mr. Laxmidhar Biswal, Advocate

Counsel for the Opp. Party: - Mr. Himansu Choudhry,
Addl. Standing Counsel

Decision/Orders Passed

1. This revision petition has filed by Anwar Khan & Akbar Khan, Both are S/O-Samsur Khan under section 15(b) of the Odisha Survey & Settlement Act, 1958 for correction of Hal ROR of the suit land mentioned below which has already been finally published on 25.10.2013 as per Hal Settlement operation.

Schedule of Property

Mouza- Gramadihi, P.S.- Chandaka, Tahasil- Jatni, Dist. – Khurda,
Sabik Khata No. 17, Sabik Plot No. - 77, Area Ac.0.90dec. out of Total area Ac.0.103dec. which is corresponding to Hal Khata No- 209, Hal Plot No- 213, Area H0.417 .

2. The Case of the Petitioner is that the scheduled land in question was stood recorded originally in the name of Kalika Majhi, S/O- Saita Majhi in the Sabik Khata No. 17, Sabik Plot No. 77 involving area Ac.0.103dec. under Kisam Bari in the village Gramadihi as per 1962 Sabik Settlement. This plot is corresponding to Hal Khata No. 209, Hal Plot no. 213 involving area H0.0417under Kisam Gharabari in the village Gramadihi as per Hal Settlement which has been finally published on dt. 25.10.2013. In the Hal record the recorded tenants have been changed and the suit land has been recorded in the name of Sudhir Majhi, Rudrasen Majhi, Sita Majhi and Pramila Majhi as the successor as per status report of the Taahsildar Jatni on dt. 12.07.2019

as well as PWR of A.S.O. Record Room, Cuttack on dt. 16.08.2019. On the other hand, the above recorded tenants have sold the suit property to the present Petitioner vide R.S.D. no. 11121303854 dt. 20.05.2013 (Ac.0.090dec. out of Ac.0.103dec.) and the Petitioner could not be able to produce the above sale deed before the Settlement authority for spot mutation. As a result of which, the suit property has been recorded usually in the name of the Hal recorded tenant. This Court has considered the prayer of the present Petitioner and above R.S.D. on merit by observing all the Court formalities in the legal procedure.

3. Under the above circumstances, verified the original sale deed and Sabik-Hal records, PWRs submitted by the Settlement Office, Status report of the Tahsildar Jatni and field possession report of the R.I. Cancapada along with the sketch map etc. connecting land records. This Court has also issued sufficient notices to the Opposite parties. The OP no. 2, OP no. 3 and OP no. 4 have appeared in the Court and admitted about the transfer of the land through execution of the sale deed on dt. 12.03.2020. They have also submitted their affidavits regarding "No objection views" due to sale deed. In the view of the above facts & documentary proofs, this Court feels that there is no dispute at all between the Vendors and Vendee. It is a clean case of mutation. Hence, the revision is allowed as per section 15(b) of the OSS Act, 1958 in favour of the present Petitioners.

4. The Tahsildar, Jatni is directed to correct the Hal record of rights (ROR) in the name of the petitioners as per land schedule mentioned in the R.S.D. no. 11121303854 dt. 20.05.2013.

5. The Settlement Officer, Cuttack is directed to correct the Hal record of rights (ROR) in the original khatian copy accordingly in the name of the Petitioners as per land schedule mentioned in the R.S.D. no. 11121303854 dt. 20.05.2013.

6. Send the copy of this Order along with the copy of R.S.D. no. 11121303854 dt. 20.05.2013 to the Tahasildar Jatni / Settlement Officer Cuttack for necessary compliance within a period of a month of receiving the copy of this Order.

7. Original copy of documents filed, be returned to the Petitioner by proper acknowledgement in the case record, by keeping photo copies of the same in the case record.

8. The compliance, along with this Order be send to Deputy Secretary (Judicial), Board of Revenue, Odisha, Cuttack for favour of kind information of the Hon'ble Member, Board of Revenue, Odisha, Cuttack.

9. Pronounced the Order in the open Court today i.e. on the 13th August, 2020.

Sd/-
Addl. Commissioner,
Addl. Revisional Court, Bhubaneswar.

RP Case No. 630 OF 2015

Decided on 22.10.2020

(Order by Sri Chandramani Badnayak, OAS (SAG),
Addl. Commissioner, Addl. Revisional Court No. III, Bhubaneswar)

Sumit Rayguru Petitioner
-Versus-
State of Odisha Through Collector Khordha Opp. Party

For Petitioner : Mr. Rabi Shankar Rath, Advocate
For Opposite Party : Mr. Himansu Choudhry,
Addl. Standing Counsel

Decision/Orders Passed

1. This revision petition has filed by Sumit Rayguru, S/O - Sri Badriprasad Rayguru under section 15(b) of the Odisha Survey & Settlement Act, 1958 for correction of Hal ROR of the suit land mentioned below which has already been finally published on 14.11.2013 as per Hal Settlement operation.

Schedule of Property

Mouza- Ghatikia, Tahasil – Bhubaneswar, Dist.- Khurda, Sabik Khata No. 443, Sabik Plot No. - 203, corresponding to Rev. Plot no. 52 which is corresponding to Hal Khata No- 1844, Hal Plot No- 7009.

2. The Case of the Petitioner is that the scheduled land in question is related to a lease land allotted by the G.A. Deptt., Govt. of Odisha. With reference to G.A. Deptt. allotment letter no. 7160 dtd.23.04.1992, letter no. 7117 dtd. 09.04.1999 and subsequent letter no. 9628 dtd. 04.06.1999 by Additional Secretary to govt. G.A.Deptt. & Ex-Officio Director of Estate of G.A. Deptt. and the petitioner was asked to execute a conveyance deed to this effect. Accordingly, conveyance deed was executed on dt. 12.07.1999 between the present petitioner and the Additional Secretary to govt. G.A.Deptt. & Ex-Officio Director of Estate of G.A. Deptt. followed by conversion of the land to free hold. Besides, as per letter no. 713 dtd. 09.04.1999 of the Land Officer of G.A. Department to the Tahasildar, Bhubaneswar, the ground rent of the land was fixed at Rs.16.90paise for the land with Kisam as Gharabari.

On the other hand, during the Settlement operation, they issued notice on Dt.17.12.2007 for verification of documents and issued the PARCHA after thorough verification of the documents in favour of the Petitioner Sumit Rayguru. The details of the PARCHA is "Mouza- Ghatikia, P.S. Chandaka, P.S. no.50, Tahasil-Bhubaneswar, Dist. Khurda, Revised plot no. 709, Khatian Sl. No. 1358, Kisam-Gharabari, Area 55decimals" and on 10.04.2014 they distributed Patta, where the Kisam of the land was reclassified as Patita in the Patta although it was Gharabari in the PARCHA & especially when the plots were distributed by non-other than GA department under housing schemes. They did not consider and adhere the valid

documents of the govt. of Odisha, G.A. department and harass the Petitioner who had purchased free hold land. As per PWR of the Settlement Office, the Kisam of the land as per Hal record is also reported as Kisam- Patita. However, the Settlement authorities have wrongly mentioned the Kisam of the land as "Patita" instead of "Gharabari" before final publication of RoR under section 15(b) of the OSS Act, 1958.

3. Under the above circumstances, verified the original Conveyance deed dtd. 12.07.1999, Sabik-Hal records, PWR submitted by the Settlement Office, field possession report of the Tahasildar Bhubaneswar, Status report & Clearance report of the G.A. Deptt. supplied to this Court on dt. 01.06.2020, registered lease deed of G.A. Deptt. vide no. 3470 dt. 24.08.1999 etc. In the view of the above facts and documentary proofs, the Court feels that there is no dispute at all between the successor of the Vendors and the Vendee and it is a clean case of mutation. Hence, the revision is allowed as per section 15(b) of the Odisha Survey & Settlement Act, 1958 in favour of the present Petitioner.

4. The Tahasildar, Bhubaneswar and the Settlement Officer, Cuttack are directed to correct the Hal record of rights (ROR) in the name of the petitioner Sumit Rayguru, S/O - Sri Badriprasad Rayguru separately as per land schedule mentioned in the registered lease deed of G.A. Deptt. vide no. 3470 dt. 24.08.1999, Conveyance deed executed on dt.12.07.1999 and G.A. Deptt. letter no. 7129 dt. 09.04.1999.

5. Send the Copy of this Order along with the copy of registered lease deed of G.A. Deptt. vide no. 3470 dt. 24.08.1999, Conveyance deed executed on dt.12.07.1999 to the Settlement Officer, Cuttack for necessary compliance/rectification within a period of a month of receiving the copy of this Order.

6. Send the Copy of this Order along with the copy of registered lease deed of G.A. Deptt. vide no. 3470 dt. 24.08.1999, Conveyance deed executed on dt.12.07.1999 to the Tahasildar Bhubaneswar to issue the ROR in favour of Sumit Rayguru, S/O - Sri Badriprasad Rayguru separately with reference to G.A. Deptt. letter no. 7129 dt. 09.04.1999.

7. Original copy of documents filed, be returned to the Petitioner by proper acknowledgement in the case record, by keeping photo copies of the same in the case record.

8. The compliance, along with this Order be send to Deputy Secretary (Judicial), Board of Revenue, Odisha, Cuttack for favour of kind information of the Hon'ble Member, Board of Revenue, Odisha, Cuttack.

9. Pronounced the Order in the open Court today i.e. on the 22nd October 2020.

Sd/-
Addl. Commissioner,
Addl. Revisional Court, Bhubaneswar.

OSS Case No. 591 OF 2019**Decided on 16.04.2021**

(Order by Sri Pratap Chandra Rout, OAS (SAG),
Addl. Commissioner, Addl. Revisional Court No. II, Bhubaneswar)

Dillip Kumar Patra Petitioner
-Versus-
Lakshmipriya Dutta & others Opp. Parties

For Petitioner : Mr. A Rout, Advocate & Associates
For Opposite Party No. 1 to 10 : None
For Opposite Party No. 11 : Mr. S. K. Dash,
Addl. Standing Counsel

ORDER

The counsel for the petitioner had filed one petition U/s-15 (b) of O.S & S Act., 1958 to prepare the Hal ROR in the name of petitioner separately by virtue of R.S.D as well as physical possession of the petitioner in the field.

SCHEDULE OF PROPERTY

Mouza- Bhubaneswar Sahar Unit 39 Gadakana, Tahsil- Bhubaneswar,
PS- New Capital, Dist- Khurda.

Sabik Khata No.	Plot No.	Area
791	3597	Ac.1.257 dec. out of Ac.1.410 dec
Hal Khata No.	Plot No.	Area
1035	6849	

Basing on the aforesaid petition of the petitioner one O.S.S. Case had been registered vide O.S.S case No. 591/2019 and notices have been issued to all opposite parties by Regd. Post. In spite of service of notice, the opposite party 1, 2, 4a, 4b, 6, 7, 8, 9 & 10 did not turn up for which they had been set ex-parte. In response to notice opposite party 3 & 5 appear in this case and stated the suit plot record in the name of petitioner as per his purchased from R.S.D. The Additional Standing Counsel Mr. S. K Das is present for State. Thus this case heard in presence of the counsel for the petitioner, opposite party No. 3 & 5 and The Additional Standing Counsel.

The Hal ROR of Mouza Gadakana had been finally published on 22.07.2014 and the revision petition had been filed on 22.04.2019. So The counsel for the petitioner had filed one petition U/s 5 of Indian limitation Act, 1963 for condonation of delay as there was delay in filing this revision case. The delay had been condoned on consideration of the limitation petition and the case had been admitted.

The counsel for the petitioner had submitted the Certified copy of Sabik ROR bearing Khata No. 791 Sabik Plot No. 3597 of Mouza Gadakana which stands

recorded in the name of Manmath Dutta S/o- Jugal Kishore Dutta, Certified copy of Hal ROR bearing Khata No.1035 Plot No. 6849 of Mouza- Gadakana Ps NewCapital which stands recorded in the name of Chandra churd Dutta, Bijay Kishore Dutta, Sailendra Kishore Dutta, Nimai Kishore Dutta, Sankar Dutta, Debajani Dutta, Sunanda Dutta, LakshmiPriya Dutta & Mohan Kumar Sahoo, original R.S.D No. 1081114524 dated 03.06.2011 and Hal to Sabik co-relation in support of his claim.

The Averment of the counsel for the petitioner is that after the death of Sabik recorded tenant his legal heirs namely LakshmiPriya Dutta W/o- Late Manmath Kishore Dutta, Chandra churd Dutta, Sailendra Kishore Dutta, Nimai Kishore Dutta, Sankar Dutta all are S/o- Manmath Kishore Dutta, Sibani Dutta W/o- Late Bijay Kumar Dutta, Sidhanta Dutta (Minor) S/o- Late Bijay Kumar Dutta represented through its mother guardian Sibani Dutta, Mrs. Debajani Dey W/o- Dipak Kumar Dey & Mrs. Sunanda Dutta W/o- Sri Rasmi Ranjan Dutta both are D/o- Late Manmath Kishore Dutta had transferred with an area of Ac.1.257 dec out of Ac.1.410 dec from Sabik Plot No. 3597 under Sabik Khata No.791 of Mouza Gadakana in favour of petitioner Narayan Agencies and Estates PVT. LTD. through its M.D Sri Dillip Kumar Patra S/o- Late Suru Patra of Plot NO. 228, Bapuji Nagar, Ps- Capital, Bhubaneswar, Dist- Khurda vide R.S.D No. 1081114524 dated 03.06.2011.

Para-wise report has been received from ASO, Cuttack. As per report and Hal Sabik co-relation the Sabik Khata No. 791 containing Sabik Plot No. 3597(p) & Sabik Plot No. 3595 (p) of Mouza- Gadakan Ps- New Capital is corresponding to Hal Khata No. 1035 containing Hal plot No. 6849 area Ac.2.404 dec of Mouza Bhubaneswar Sahar Unit- 39 Gadakana Ps- New Capital.

Field inquiry report received from Tahasildar, Bhubaneswar which reveals that the petitioner is in peaceful possession over an area Ac.1.257 dec (as per his trace map attached) in Hal Plot No. 6849 with under Hal Khata No. 1035 of Mouza Bhubaneswar Sahar Unit- 39 Gadakan Ps- New Capital as per purchased from Sabik Plot No. 3597 under Sabik Khata No. 791.

Gone through the case record and documents filed by the counsel for the petitioner. From the above, it is clear that the title has rightly been transferred in the name of the petitioner; the petitioner has acquired right, title and interest over the suit land by virtue of RSD and possession.

In view of the above the claim of the petitioner in the petition merit consideration. Hence I am inclined to allow the Revision petition in favour of the petitioner

The Tahasildar, Bhubaneswar is directed to record with an area of Ac. 1.257 dec. out of Ac.2.405 dec (As per Sketch map attached R.S.D) from Hal Plot No. 6849 under Hal Khata No. 1035 of Mouza Bhubaneswar Sahar Unit- 39 Gadakan Ps- New Capital by creating separate Khata & plot in favour of present petitioner following due process of law.

True copy of order may be sent to Tahasildar, Bhubaneswar with a separate letter for information and necessary action.

Order pronounced in the open court today the 16th day of April 2021.

Sd/-
Addl. Commissioner,
Addl. Revisional Court, Bhubaneswar

RP Case No. 2303 OF 2014

Decided on 09.06.2021

(Order by Sri Pratap Chandra Rout, OAS (SAG),
Addl. Commissioner, Addl. Revisional Court No. II, Bhubaneswar)

Smt. Bidyulata Mallick Petitioner
-Versus-
Tahasildar, Bhubaneswar & another Opp. Parties

For Petitioner : Mr. D. K. Tripathy, Advocate

For Opposite Parties : Mr. S. K. Dash,
Addl. Standing Counsel

ORDER

The petitioner had filed one petition U/s-15 (b) of O.S & S Act., 1958 with prayer to extract the reduce area of the suit plot and to correct the name of the petitioner as 'Bidyulata Mallick' in place of 'Bidyutlata Mallick' as per the R.S.D.

SCHEDULE OF PROPERTY

Mouza- Bhubaneswar Sahar, Unti No. 17 Nayapalli, Tahsil- Bhubaneswar,
PS- NewCapital, Dist. Khurda.

Sabik Khata No.	Sabik Plot No.	Area
81	1138	Ac.0.082 dec out of Ac.0.104 dec out of Ac.0.150 dec
Hal Khat No.	Hal Plot No.	Area
1771	298/3345298/3346	Ac.0.068 dec Ac.0.005 dec

Basing on the aforesaid petition of the petitioner one R.P. Case had been registered vide R.P case No. 2303/2014 and notices have been issued to opposite parties. The Additional Standing Counsel Mr. S. K Dash is represented for the State (Op. 1 & 2). Thus this case heard in presence of the counsel for the petitioner and the Additional Standing Counsel for the State.

The Hal ROR of Mouza Nayapalli had been finally published on 22.07.2014 and the revision petition had been filed on 17.12.2014.

The Counsel for the petitioner had submitted the certified copy of Sabik ROR bearing Khata No. 81 Sabik Plot No. 1138 of Mouza- Nayapalli Ps- New Capital which stands recorded in the name of Golakha Bhoi S/o- Baja Bhoi, certified copy of Hal ROR bearing Khata No.1771 Hal Plot No. 298/3345 Ac.0.068 dec & 298/3346 Ac.0.005 dec of Mouza- Nayapalli Ps- NewCapital which stands recorded in the name of Bidyutlata Mallick W/o- Muralidhar Mallick, Photo copy of R.S.D No. 12081 dated 27.12.1982, Photo copy of R.S.D No. 6382 dated 03.08.1985, Photo copy of R.S.D No. 3861 dated 29.05.1991, original R.S.D No. 4338 dated 30.07.1999 and Sabik to Hal Co-relation in support of his claim.

The averment of the counsel for the petitioner is that, the original Sabik recorded tenant Golakha Bhoi S/o- Baja Bhoi had transferred area of Ac.0.104 dec out of Ac.0.150 dec from Sabik Plot No. 1138 under Sabik Khata No. 81 of Mouza Nayapalli Ps- New Capital in favour of Kishore Chandra Mallick vide R.S.D No. 12081 dated 27.12.1982.

Subsequently, after the death of Kishore Chandra Mallick had transferred area of Ac.0.083 dec out of Ac.0.104 dec total out of Ac.0.150 dec from Sabik Plot No. 1138 under Sabik Khata No. 81 of Mouza Nayapalli Ps NewCapital in favour of Prahallad Singh S/o- Hadibandhu Singh vide R.S.D No. 6382 dated 03.08.1985.

Again Prahallad Singh S/o- Hadibandhu Singh had transferred area of Ac.0.082 dec out of Ac.0.104 dec total out of Ac.0.150 dec from Sabik Plot No. 1138 under Sabik Khata No. 81 of Mouza Nayapalli Ps NewCapital in favour of Bhubaneswari Maharana W/o- Harihar Maharana vide R.S.D No. 3861 dated 29.05.1991.

Subsequently, Bhubaneswari Maharana W/o- Harihar Maharana had transferred the same suit land in favour of present petitioner Bidyulata Mallick W/o- Muralidhar Mallick of Hasura Po- Andalipatana Ps- Rahama Dist- Jagatsinghapur vide R.S.D No. 4338 dated 30.07.1999.

In last settlement operation the Hal ROR prepared in the name of Bidyutlata Mallick bearing Hal khata No. 1771 Hal Plot No. 298/3345 area Ac.0.068 dec & Hal Plot No. 298/3346 area Ac.0.005 dec total area Ac.0.073 dec in place of Ac.0.082 dec as per purchase.

Para-wise report has been received from ASO, Cuttack. As per report and Sabik Hal co-relation the Sabik Plot No. 1138 under Sabik Khata No. 81 of Mouza- Nayapalli Ps- New Capital is corresponding to Hal plot No. 298/3345 area Ac.0.068 dec & Hal Plot No. 298/3346 area Ac.0.005 dec under Hal Khata No. 1771 of Mouza Nayapalli Ps- New Capital.

Field enquiry Status report received from Tahasildar, Bhubaneswar which is furnished by Revenue Inspector Capital - II. As per field verification report, the real area of Hal Plot No. 298/3345 is Ac.0.071 instead of Ac.0.068 dec & real area of Hal Plot No. 298/3346 is Ac.0.011 dec instead of Ac.0.005 dec where the petitioner is in possession over the land.

On perusal of the case record and available documents, I am of the opinion that the claim of petitioner merits consideration. Hence I am inclined to allow the prayer of the petitioner.

The Tahasildar, Bhubaneswar is directed to enhance the area of Hal Plot No. 298/3345 from Ac.0.068 to Ac.0.071 dec & Hal Plot No. 298/3346 from Ac.0.005 to Ac.0.011 dec in Hal Khata No. 1771 of Mouza Nayapalli Ps- NewCapital and change the name of petitioner 'Bidylata Mallick' in place of 'Bidyulata Mallick' following due process of law.

True copy of order may be sent to Tahasildar, Bhubaneswar with a separate letter for information and necessary action.

Order pronounced in the open court today the 09th day of June 2021.

Sd/-

Addl. Commissioner,
Addl. Revisional Court, Bhubaneswar

OSS Case No. 2967 OF 2016

Decided on 07.06.2021

(Order by Sri Biswanath Sahu, OAS (SAG),
Addl. Commissioner, Addl. Revisional Court No. I, Bhubaneswar)

Sri Bikash Ranjan Sahoo Petitioner

-Versus-

Ambika Ray & others Opp. Parties

For Petitioner : Mr. U. Barik, Advocate

For Opposite Party No. 1 : None

For Opposite Party No. 2 & 3 : Mr. Jagannath Rath,
Standing Counsel

C.R is taken up today.

Heard the Counsel for the petitioner Mr. Udhav Barik and Sri Jagannath Rath, Standing Counsel for O.P. No. 2 & 3. Petition under section 5 of the Limitation Act, 1963 for condonation of delay in filing the revision is taken up today. The grounds

taken therein in the limitation petition will be considered along with the merit of this case. Case is admitted.

On consent of both the parties this revision case is taken up today for consideration on merit.

The scheduled land is as follows :-

SCHEDULED OF LAND

Hal Mouza- Gothapatna, P.S- Chaandaka No.47, Tahasil-Bhubaneswar, Dist-Khordha, Hal Khata No. 441 Hal Plot No. 1223 Ac.0.100 dec., Hal Plot No. 1224 Ac.0.100 dec., Hal Plot No. 1225 Ac. 0.100 dec., Hal Plot No. 1226 Ac.0.100 dec and Hal Plot No. 1197 Ac. 1.070 dec.

Sabik Mouza- Gothapatna, Sabik Khata No. 134, Sabik Plot No. 46, Ac. 2.690 dec.

Mutation Khata No. 134/640, Mutation Plot No. 46/1034 Ac. 0.699 dec. (Purchased area Ac.0.699 dec)

The fact of the case as per the Revision petition are as follows:-

1. That, the land in question of Mouza-Gothapatna under Bhubaneswar Tahasil bearing Hal Khata No. 441 Hal Plot No. 1223, Ac.0.100 dec, Plot No.1224 Ac.0.100 dec, Plot No. 1225 Ac.0.100 dec., Plot No. 1226 Ac.0.100 dec., Plot No. 1197 Ac.1.070 dec corresponding to Sabik Khata No. 134 Plot No. 46 Ac.2.690 dec of land is the subject matter of the present proceeding / suit which comes under the jurisdiction of the Hon'ble Court. The Hal R.O.R & the Sabik R.O.R. are annexed as Annexure- 1 & 2 of this revision.

2. That the brief history of the case is that the suit property which is morefully described in the scheduled in the scheduled below in sabik i.e. Sabik Khata No. 134 Sabik Plot No. 46 Ac.2.690 dec. of land of Mouza-Gothapatna was stood recorded in the name of Bhimsen Das, S/o Jadumani Das. The said Bhimsen Das being the absolute rightful owner in peaceful possession over the suit land and he , for meeting of legal necessity sold an area of Ac.0.699 dec. of land. Out of Ac.2.690 deccc of land from sabik Plot No. 46 of Sabik Khata No. 134 infavour of Nrusingha Charan Samantray S/o:- Dhruba Charana Samantray and Ashok kumar Samantray, S/o Baidhar Samantray by executing one deed of sale vide RSD No. 6855 dtd. 08.08.86 and delivered possession with the knowledge of whole world and all concerned. It is stated that after purchase the above named purchasers mutated the purchased land in their favour and accordingly a new Batta Khata and Batta Plot vide Khata No. 176/140 and Batta Plot No. 46/1034 with area Ac. 0.699 dec. of land was created / opened in their names.

3. That stated that both the above named purchasers namely Nrusingha Charan Samantray and Ashok Kumar Samaantray being the owners in peaceful possession they for meeting of legal necessity made it into small sub-plots and thereafter sold

the above area of Ac.0.699 dec. of land of Sabik Plot No. 46/1034 in favour of five purchasers in five numbers of Regd. Sale Deeds i.e. an area of Ac.0.200 dec. out of Ac.0.699 dec. of Sabik Plot No. 46/1034 with sketch map coloured in red in favour of Sukirti Mohanty, D/o Dwaarikanath Mohanty vide R.S.D. No. 1023 dtd. 20.02.2001, an area of Ac. Ac.0.100 dec. out of Ac.0.699 dec. of Sabik Plot No. 46/1034 with sketch map coloured in Red marked as sub-plot No. 3 in favour of Aloka Mohanty, S/o Nirmala Chandra Mohanty vide R.S.D. No. 1024 dtd. 20.02.2001 an area of Ac. 0.099 dec. out of Ac.0.699 dec of sabik Plot No. 46/1034 with sketch map coloured in Red marked as Sub-Plot No.4 in favour of Debi Prasad Mohanty, S/o Kulamani Mohanty vide R.S.D. No. 1025 dtd. 20.02.2001 an area of Ac. 0.200 dec out of Ac. 0.699 dec. from sabik Plot No. 46/1034 with sketch map coloured in Red in favour of Prakirti Mohanty, D/o Dwarrikanath Mohanty vide R.S.D. No. 1026 dtd. 20.02.2001 and an area of Ac.0.100 dec out of Ac.0.699 dec. from sabik Plot No. 46/1034 with sketch map coloured in Red in favour of Himanshu Sekhar Pradhan, S/o Dhruba Charan Samantray vide R.S.D. No. 1231 dtd. 28.02.2001 and delivered possession. It is crystal cleared from the above transactions that the recorded tenant namely Nrusingha Charan Samantray and Ashok Kumar Samantray have sold their entire purchased area Ac..0.699 dec. of land infavour of the above five purchasers in five numbers of Regd. Sale Deeds.

4. That stated after passing of some days the above named purchaser Himanshu Sekhar Pradhan, S/o Dhruba Charan Samantray for meeting of legal necessity sold his purchased area Ac. 0.100 dec. of land of Sabik Plot No. 46/1034 in favour of Pramod Kumar Tripathy, S/o Gangadhar Tripathy vide R.S.D. No. 3743 dtd. 19.08.2002.

5. That stated that the other rest four purchasers for meeting of their legal necessity and benefit in one day sold their purchased area i.e. Sukirti Mohanty, D/o Dwarikanath Mohanty sold Ac. 0.200 dec of land of Sabik Plot No. 46/1034 in favour of Bikash Ranjan Sahoo, S/o Sasadhar Sahoo vide R.S.D. No. 3583 dtd. 12.05.2006, Aloka Mohanty, S/o Nirmal Chandra Mohanty through his G.P.A. Holder sold his Ac.0.100 dec of land of Sabik Plot No. 46/1034 infavour of Bikas Ranjan Sahoo, S/o Sasadhar Sahoo vide R.S.D. No. 3585 dtd. 12.05.2006 i.e. Prakirti Mohanty, D/o Dwarikanath Mohanty sold her Ac.0.200 dec of land of Sabik Plot No. 46/1034 in favour of Bikash Ranjan Sahoo, S/o Sasadhar Sahoo vide R.S.D No. 3584 dtd. 12.05.2006,Devi Prasad Mohanty S/o-Kulamani Mohanty sold Ac.0.99 decimals vide R.S.D No.3577 dtd. 12.05.2006 and delivered possession. It is crystal clear from the above four numbers of transactions that the purchaser Bikash Ranjan Sahoo, S/o Sasadhar Sahoo purchased an area Ac. 0.599 dec of land from the above 4 numbers of vendors who purchased the same from the recorded tenant in one day in 4 numbers of Regd. Sale Deeds. It is stated that again the said Bikash Ranjan Sahoo, S/o Sasadhar Sahoo purchased the rest area of Ac.0.100 dec of land of Sabik Plot No. 46/1034 from Pramod Kumar Tripathy, S/o Gangadhar Tripathy vide R.S.D. No. 8003 dtd. 14.09.2007 who purchased the same from Himanshu Sekhar

Pradhan, S/o Dhruva Charan Samantray who purchased the same from the recorded tenant Nrusingha Charan Samantray and Ashok Kumar Samantray. It is very much clear from the above transactions that the petitioner Bikash Ranjan Sahoo, S/o Sasadhar Sahoo has all in total purchased the area of Ac.0.699 dec of land of sabik Plot No. 46/1034 in 5 numbers of Regd. Sale Deeds and got delivery of possession. Since the date of purchase till today the petitioner has been in peaceful possession over the suit schedule land without interruption or facing any trouble from any corner. The R.S.D. No. 6855 dtd. 08.08.1986, R.S.D. No. 1023 dtd. 20.02.2001, R.S.D. No. 1024 dtd. 20.02.2001, R.S.D. No. 1025 dtd. 20.02.2001, R.S.D. No. 1026 dtd. 20.02.2001, R.S.D. No. 1231 dtd. 28.02.2001, R.S.D. No. 3743 dtd. 19.08.2002, R.S.D. No. 3583 dtd. 12.05.2006, R.S.D. No. 3585 dtd. 12.05.2006, R.S.D. No. 3577 dtd. 12.05.2006, R.S.D. No. 3584 dtd. 12.05.2006, R.S.D. No. 8003 dtd. 14.09.2007 are annexed herewith as **Annexure- 3 to 14**.

6. That, during current settlement operation the petitioner for recording of the purchased area of Ac.0.699 dec. of land in his favour filed one objection case vide No. 2653/12 before the officer-in-camp i.e. A.S.O. who passed order for present field possession regarding the possession of the parties in field. It is stated that as per order of A.S.O. the Amin deputed spot visit, submitted his report stating therein that the petitioner has been in possession of the purchased area of Ac.0.699 dec. of land in field and further submitted his report to prepare record for Hal Plot No. 1223, 1224, 1225, 1226 and 1197 in his favour as per purchase.

7. That stated that however the Learned A.S.O. after going through the Amin report regarding possession of the petitioner alongwith being satisfied on flow of title on sale deeds assured the petitioner to prepare the record for the suit land in his favour correctly and accordingly passed order that the transfer of the property in favour of the objector is legal. The learned A.S.O has also passed order that as the petitioner is found in possession over the suit land as per Amin report the prayer for mutation of the petitioner / objector is allowed.

8. That stated that even though order was passed by the A.S.O. the same was not complied by the order complying staffs and accordingly the Hal Plot No. 1223, 1224, 1225, 1226 and 1197 has again been prepared / recorded and published in the name of the original sabik recorded tenant namely Bhimsen Das, S/o Jadumani Das. Hence the settlement authorities without honouring and complying the order passed by the A.S.O by the order complying staffs in objection case is wrong, illegal, baseless, contrary to law and liable to be set-aside.

9. That, at the time of distribution of Hal R.O.R. the petitioner being deprived of getting his patta inquired about the matter then and then it is brought to his knowledge from settlement people that though order was passed to prepare the Hal record in his favour / name basing upon the order in objection case No. 2653/2012 the same was not complied by the order complying staffs and accordingly his land has now

been recorded in his vendor's vendor name i.e. in the name of Bhimsen Das, S/o Jadumani Das the original Sabik recorded tenant. Thus the matrix of event leads to this case.

10. That stated that as per purchased and possession the petitioner is entitled to get his purchased area of Ac.0.699 dec of land from 5 Hal Plots i.e. the area of Ac.0.100 dec of Hal Plot No. 1223, the full area Ac.0.100 dec. of Hal Plot No. 1224, the area of Ac.0.100 dec. of Hal Plot No. 1225, the area of Ac.0.100 dec. of Hal Plot No. 1226, and the rest area of Ac.0.299 dec. of land from Hal Plot No. 1197. The petitioner getting such information from Settlement people at first approached the Tahasildar to mutate the case land in his favour who refused to do for want of jurisdiction. The petitioner getting no result in Tahasildar Office collected documents and accordingly files this revision. The present revision filed by the petitioner is barred by general and special principle of law of limitation and for condonation of delay has filed a separate petition and for condonation of delay has filed a separate petition in accompany with this revision.

11. That, the present Opp. Party No.1 has been arrayed as Opp. Party to this case being the LRS of the Hal recorded tenant the deceased Bhimsen Das, S/o Jadumani Das. She has no manner any right, title and interest over the suit land as the suit land was sold the by her father in favour of the petitioner. Hence her name / father's name is required to be deleted from the suit land.

The prayer of the petitioner in the revision is as follows:-

12. Your honour may graciously be pleased to admit the revision, call for LCR and after hearing from both the parties allow the claims of the petitioner mentioned above also as follows;

Pass order to record the suit land i.e. the full area of Hal Plot No. 1223, 1224, 1225, 1226 and an area of Ac.0.299 dec. out of Ac.1.070 dec. of land from Hal Plot No. 1197 in the name of the petitioner in a separate R.O.R. on the basis of Regd. Sale Deed and longstanding possession.

13. Heard the learned Counsel for the petitioner and the Standing Counsel. Gone through the documents and reports available in the case record. Perused the Sabik and Hal status submitted by the Assistant Settlement Officer, Record Room, Cuttack and the field enquiry report of Tahasildar, Bhubaneswar. It is seen that the petitioner Bikash Ranjan Sahoo having purchased the case land from the recorded owner has in fact stepped into the shoes of the vendor U/s 54 of the T.P. Act. The petitioner is also found to be in peaceful possession over the case land as revealed from the status report submitted by the Tahasildar, Bhubaneswar. The flow of title of the case land is established in favour of the petitioner. The suit land therefore, needs to be recorded exclusively in favor of the petitioner over the purchased area of the case land in a separate Hal Khata under 'Sthitiban' status.

It is seen that the Learned ASO has rightly passed order basing on the Amin's report in his objection case no 2653/12. But the order complying staff have failed to comply the order of ASO.

14. Hence the revision is allowed in favor of the petitioner.

15. The Tahasildar Bhubaneswar is directed to record the suit land i.e. the full area of Hal Plot No.1223, Ac.0.100 dec, Plot No.1224 Ac.0.100 dec, Plot No. 1225 Ac.0.100 dec., Plot No. 1226 Ac.0.100 dec and an area of Ac.0.299 dec. out of Ac.1.070 dec. of land from Hal Plot No. 1197 in the name of the petitioner in a separate R.O.R. on the basis of Regd. Sale Deed and longstanding possession.

16. Send a copy of the order to the Tahasildar, Bhubaneswar for necessary compliance within a period of 2 (two) months from the date of receipt of the copy of the order.

17. Original/Certified copy of documents filed if any be returned to the petitioner by keeping photocopy of the same in the case record.

Pronounced the Order in the open court today i.e. on the 7th day of June , 2021

Sd/-

Addl. Commissioner,
Addl. Revisional Court, Bhubaneswar

RP Case No. 313 OF 2017

Decided on 28.09.2021

(Order by Secretary to Revenue Divisional Commissioner (C.D.), Cuttack)

Pramod Kumar Panda Petitioner

-Versus-

Krutibasa Giri & others Opp. Parties &
Proforma Opposite Parties

ORDER

This case is put up today through virtual mode. The Petitioner has prayed U/S- 15(b) of OS&S Act, 1958 to direct the Tahasildar, Saraskana for recording the suit land in favour of the Petitioner as per purchase and possession.

Schedule of Land

Mauza- Sankucha P.S.-Jharpokharia Tahasil- Saraskana Dist- Mayurbhanj
Sabik Khata- 202/4/193 Sabak Plot- 51/2177 Area- Ac 0.33 dec out of Ac 0.63 dec
Sabak Plot- 51 Area- Ac 0.30 dec out of Ac 0.45 dec
Total- Ac 0.63 dec

Hal Khata- 370 Hal Plot- 45 Kissam- Sarada III Area- Ac 0.67dec

Perused the petition for condonation of delay in filing this revision petition. The delay is hereby condoned and the revision petition is admitted. Notice duly

served. S.R. back. The Advocate for the Petitioner is Present. The OPs are absent on call & notice.

As per the Petition the learned Counsel for the Petitioner contended that suit hal plot No. 45 correspond to Sabik Plot No. 51 part and Sabik Plot No. 51/2177 part. The Sabik Plots stood recorded in favour of Sadhu Charan Giri S/O- Atanga Giri. Vide Registered Exchange Deed No. 629 dt 01.03.1956, Suresh Chandra Panda S/O- Trilochan Panda, Chittaranjan Panda S/O- Girish Chandra Panda, Manoranjan Panda (minor Mother guardian Labanya Dibya W/O- Girish Chandra Panda) as first party and Sadhu Charan Giri S/O- Atangai Giri as second party. The first party got the "Kha" land schedule of second party i.e. Sabik Khata No. 202/4/193 Sabik Plot No. 51 Area- Ac 0.50 dec and Sabik Plot No. 51/1177 Area- Ac 0.43 dec of Mauza- Sankucha. The Sabik Plot 51/2177 was wrongly recorded as 51/1177 which is of area- Ac 0.16 dec only. As per Partition Deed executed vide No. 634 dt 01.03.1956, Suresh Chandra Panda S/O- Trilochan Panda being the first party got Sabik Plot No. 51 & 51/2177 in his share. The present Petitioner along with Proforma OP No.s 8 to 10 purchased the suit land from Suresh Chandra Panda S/O- Trilochan Panda vide RSD No. 1278 dt 01.03.1978. During Hal Settlement Operation the Settlement Authorities have erroneously recorded the corresponding Hal Plot in favour of Sudam Giri (deceased father of OP NO. 1 & 2) and Bhubaneswar Giri (deceased father of OP No. 3 to 6) S/O- Prahallad Giri. Hence this revision case is filed for correction of R.o.R.

While verifying the case record it is found that the documents relied by the Petitioner are copy of Registered Exchange Deed No. 629 dt 01.03.1956, Registered Partition Deed No. 634 dt 01.03.1956, RSD No. 1278 dt 01.03.1978, Hal Khata No. 370, Plot index of Sabik Plot 51, 51/1177 & 51/2177 Mauza- Sankucha. While going through the RSD No. 1278 dt 01.03.1978, it is ascertained that Pramod Kumar Panda, Pradip Kumar Panda, Pradyumna Panda, Pranaya Kumar Panda all S/O- Antaryami Panda (Petitioner and Proforma OPs) Caste- Brahmin of Sankucha have purchased the suit land measuring Ac 0.63 dec (Total) from Suresh Chandra Panda S/O- Trilochan Panda Caste- Brahmin of Sankucha mentioning the Sabik Khata No. 202/4/193, Sabik Plot No. 51 & 51/2177. As per Sabik records the Sabik Khata No. 202/4/193 was recorded in favour of Sudam Chandra Giri S/O- Atanga Giri of Sankucha. As per the Petitioner's written notes, it is seen that Sabik RT had exchanged the suit land (Sabik Plot No. 51 & 51/2177 wrongly written as 51/1177) with Suresh Chandra Panda S/O- Trilochan Panda, Chittaranjan Panda S/O- Girish Chandra Panda, Manoranjan Panda (minor Mother guardian Labanya Dibya W/O- Girish Chandra Panda) vide Registered Exchange Deed No. 629 dt 01.03.1956. As per the Sabik Khata No. 93/4/83, Sabik Plot No. 1177 (Ac 0.16 dec) is recorded in favour of Naran Deo & others. It seems as if Plot No. 51/2177 has been wrongly written as 51/1177 due to clerical error. Again vide Registered Partition Deed No. 634 dt 01.03.1956, the suit plot fell with the share of Suresh Chandra Panda S/O- Trilochan Panda. The Sabik Plot No. 51 & 51/2177 Sabik Khata No. 202/4/193

correspond to Hal Plot No. 54 Hal Khata No. 370 of Mauza- Sankucha. On verification the Hal Khata 370 is recorded in favour of Sudam Giri (deceased father of OP NO. 1 & 2) and Bhubaneswar Giri (deceased father of OP No. 3 to 6) S/O- Prahallad Giri. The Tahsildar, Saraskana has also confirmed the discussed Hal Sabik Correlation as above vide Letter No. 209 dt 19.01.2021. He has also reported that Petitioner, Proforma OPs & Prativa Das, Shephali Mohapatra D/O- Antarjyami Panda are in possession of the suit plot.

The flow of right, title and interest from vendor to vendees is justified on basis of the furnished RSD & other executed Registered Deeds. The OPs have also not raised any objection to the claim of the Petitioner. Hence the prayer of the Petitioner is allowed.

In consideration of the above facts and circumstances stated above, the Tahasildar, Saraskana is directed to record the suit land in favour of Petitioner and Proforma OPs as per purchase and possession in a separate Khata and correct the ROR accordingly. The orders above has to be carried out within a period of three months from the date of receiving this order.

Order pronounced in the open Court today.

Accordingly, this case is disposed of.

Sd/-

Secretary to RDC

RP Case No. 251 OF 2017

Decided on 21.09.2021

(Order by Secretary to Revenue Divisional Commissioner (C.D.), Cuttack)

Rabinarayan Das Petitioner

-Versus-

Upendra Mohanta & others Opp. Parties

ORDER

This case is put up today through virtual mode. The Petitioner has prayed U/S- 15(b) of OS&S Act, 1958 to direct the Tahasildar, Betnoti for correcting the ROR of the suit land in favour of the Petitioner on the strength of purchase & possession.

Schedule of Land

Mauza- Santara P.S.-Baisinga Tahasil- Betnoti Dist- Mayurbhanj

Sabik Khata- 205 Sabak Plot- 910 Area- Ac 1.50 dec

Hal Khata- 329 Hal Plot- 1107 Kissam- S.A.J.S I Area- Ac 1.26dec

Perused the petition for condonation of delay in filing this revision petition. The delay is hereby condoned and the revision petition is admitted. Notice duly served. S.R. back. The Advocate for the Petitioner and OP are absent. The case is decided on merit of the petition.

As per Petition the learned Counsel for the Petitioner contended that the suit land was purchased by Petitioner as Marfatdar of Sri Sr Laxminarayan Bije Jugupur from Radhakrushna Mohapatra S/O- Rama Chandra Mohapatra (father of OP No. 5 to 8 & husband of OP No. 9) vide RSD No. 213 dt 25.02.2000 mentioning Sabik Khata No. 205 Sabik Plot No. 910 Area- Ac 1.50 dec. The Petitioner has approached the Hon'ble High Court vide WP (C) No. 20846/2016 in which it was ordered that the Petitioner may take resort of a proceeding under the OSS Act, 1958. During Consolidation Operation all landed properties of Rama Chandra Mohapatra are partitioned among all three legal heirs Radhakrushna, Harishchandra and Achyutananda (OP No. 3 & 4). The suit land was recorded in favour of Harishchandra Mohapatra S/O- Lt Rama Chandra Mohapatra (OP No. 4) vide Hal Khata No. 329 Hal Plot No 1107. Hence, this revision case is filed for correction of R.o.R.

While verifying the case record it is found that the documents relied by the Petitioner are copy of RSD No. 213 dt 25.02.2000, plot index of Sabik Plot- 910, Hal Khata No. 329 Mauza- Santara. While going through the RSD No. 213 dt 25.02.2000, it is ascertained that Radhakrushna Mohapatra S/O- Rama Chandra Mohapatra Caste- Brahmin of Santara had sold the suit land of area- Ac 1.50 dec in favour of Petitioner as Marfatdar of Sri Sri Laxminarayan Bije Jugupur Caste- Napita of Jugupura bearing Sabak Plot No. 910 Sabak Khata No. 205. As per the Hal Sabik Co-relation Sabik Plot No. 910 correspond to Hal Plot No. 1107 of Mauza- Santara. The Hal Plot No. 1107 is also recorded in favour of OP No. 4. The Tahasildar, Betnoti has confirmed the above Hal Sabik Co-relation and reported that the Petitioner is in possession of the suit land vide Letter No. 2318 dt 11.06.2021.

The Petitioner has legally purchased the suit land through a valid RSD much prior to the partition of the landed properties. The flow of right, title and interest from vendor to vendee is thus justified on basis of the RSD. The OPs have also not raised any objection to the claim of the Petitioner. Hence the prayer of the Petitioner is allowed to an extent of Ac 1.26 dec (as prayed) from Hal Plot No. 1107.

In consideration of the above facts, circumstances & observations stated above, the Tahasildar, Betnoti is directed to record the suit land in favour of the Petitioner in a separate Khata as per purchase and possession & correct the ROR accordingly within a period of three months from the date of receiving this order.

Order pronounced in the open Court today.

Accordingly, this case is disposed of.

Sd/-
Secretary to RDC

RP Case No. 121 OF 2019

Decided on 31.08.2021

(Order by Secretary to Revenue Divisional Commissioner (C.D.), Cuttack)

Rai Mohan Mohanta & another Petitioner

-Versus-

Settlement Officer, Balasore & others Opp. Parties

ORDER

This case is put up today through virtual mode. The Petitioner has prayed U/ S- 15(b) of OS&S Act, 1958 to direct the Tahasildar, Kuliana for correcting the ROR of the suit land in favour of the Petitioners on the strength of purchase & possession.

Schedule of Land

Mauza- Kanjia P.S.- Kuliana Tahasil- Kuliana Dist- Mayurbhanj

Sabik Khata- 68 Sabak Plot- 261 Area- Ac 0.10 dec

Sabak Plot- 262/713 Area- Ac 0.07 dec

Sabak Plot- 262/714 Area- Ac 0.23 dec

Sabak Plot- 275/718 Area- Ac 0.24 dec

Sabak Plot- 285/711 Area- Ac 0.04 dec

Sabak Plot- 286/715 Area- Ac 0.09 dec

Sabak Plot- 289 Area- Ac 0.27 dec

Total- Ac 1.04 dec

Hal Khata- 13 Hal Plot- 692 Area- Ac 0.12 dec

Hal Plot- 690 Area- Ac 0.06 dec

Hal Plot- 721 Area- Ac 0.21 dec

Hal Plot- 698 Area- Ac 0.26 dec

Hal Plot- 703 Area- Ac 0.04 dec

Hal Plot- 710 Area- Ac 0.08 dec

Hal Plot- 712 Area- Ac 0.21 dec

Total- Ac 0.98 dec

Perused the petition for condonation of delay in filing this revision petition. The delay is hereby condoned and the revision petition is admitted. Notice duly

served. S.R. back. The Advocate for the Petitioners is present. The OPs are absent on call & notice.

The learned Counsel for the Petitioner contended that the suit land was purchased by Petitioners from Gobinda Chandra Pal Babu S/O- Lt Nanda Pal Babu (father of OP No. 3) vide RSD No. 213 dt 23.01.1984 mentioning Sabak Khata No. 68 Sabak Plot No. 261, 262/713, 262/714, 275/718, 285/711, 286/715 & 289 Total Area- Ac 1.04 dec. During Settlement Operation the suit land was recorded in favour of the vendor, vide Hal ROR No. 13 Hal Plot No. 692, 690, 721, 698, 703, 710 & 712 Total Area- Ac 0.98 dec. Hence, this revision case is filed for correction of R.o.R.

While verifying the case record it is found that the documents relied by the Petitioner are copy of RSD No. 213 dt 23.01.1984, plot index of Sabik Plot- 261, 262/713, 262/714, 275/718, 285/711, 286/715 & 289, Hal Khata No. 13 Mauza- Kanjia. While going through the RSD No. 213 dt 23.01.1984, it is ascertained that Gobinda Chandra Pal Babu S/O- Lt Nanda Pal Babu (father of OP No. 3) Caste- Khatriya of Satapautia had sold the suit land in favour of Petitioners Rai Mohan Mohanta & Dhrubaraj Mohanta Caste- Kudumi of Kanjia bearing Sabak Plot No. 261, 262/713, 262/714, 275/718, 285/711, 286/715 & 289 Sabak Khata No. 68. As per the Hal Sabik Co-relation the Sabik Plot No. 261, 262/713, 262/714, 275/718, 285/711, 286/715 & 289 Sabik Khata No. 68 correspond to Hal Plot No. 692, 690, 721, 698, 703, 710 & 712 Hal ROR No. 13 of Mauza- Kanjia. It is also seen that the Hal R.o.R. No. 13 stands recorded in the name of vendor. The Tahasildar, Kuliana vide Letter No. 1292/2021 dt 13.05.2021 has confirmed the above Hal Sabik Co-relation and reported that the Petitioners are in possession of the suit land.

The flow of right, title and interest from vendor to vendees is justified. The OPs have also not raised any objection to the claim of the Petitioners. Hence the prayer of the Petitioner is allowed for total area of Ac 0.98 dec.

In consideration of the above facts and circumstances stated above, the Tahasildar, Kuliana is directed to record the suit lands in favour of the Petitioners in a separate Khata as per purchase and possession accordingly within a period of three months from the date of receiving this order.

Order pronounced in the open Court today.

Accordingly, this case is disposed of.

Sd/-
Secretary to RDC

R.C. Case No. 134 to 150 of 2013

Decided on 06.08.2021

(Order by Revenue Divisional Commissioner (C.D.), Cuttack)

Padmalochan Barik & others Petitioner
-Versus-
Madhusudan Barik & others Opp. Parties

ORDER

These cases having common subject matter and parties were heard in the lower court analogously, are put up today through virtual mode. The revision case no.s 134 to 150 of 2013 are heard and taken up together for final order. The Petitioners have prayed U/S- 36 of OCH & PFL Act, 1972 (shortly referred as 'Act') to call for the LCR from the court below and after hearing, may set aside the order passed by lower court.

Schedule of Land

Mauza- Bhalia P.S.- Betnoti Tehsil- Betnoti Dist- Mayurbhanj

LR Khata No. 261 LR Plot No. 1475, 1457, 1459, 1188, 1189, 1459, 1454, 1459/1961, 1602, 1451, 1462, 773, 1361, 1451, 1455, 1459

LR Khata No. 350 LR Plot No. 728/2100

LR Khata No. 352 LR Plot No. 485

LR Khata No. 355

LR Khata No. 357 LR Plot No. 1609/2133, 728/2101, 398/2009

LR Khata No.358 LR Plot No.1393, 1393/2010, 1398/2007, 1398/2024, 1398/2006

LR Khata No. 359 LR Plot No. 1399

LR Khata No. 360 LR Plot No. 1399/2005, 1459/2022

LR Khata No. 361 LR Plot No. 1400, 1400/2126, 1412/2125, 1459/2128

The legal representative of the petitioner is present today. SR is back and the opposite parties are also present on call.

The learned Counsel for the petitioners contended that they have preferred this revision against order dated 30.03.2013 of the Court of Deputy Director of Consolidation of Holding, Baripada in Consolidation Appeal No. 64/2001 (B). The petitioners are the sons, daughters, nephew of the aforesaid RT Madhusudan Barik (OP No. 1). The plots in question are the ancestral properties of one Durga Prasad Barik. After death of him, his only son Madhusudan Barik (OP No. 1) addicted with Ganja & anti social persons have sold the ancestral properties of the petitioners without any necessity and knowledge of the petitioners. The petitioners have filed the objection before the Consolidation Officer at Betnoti, which has not been

considered with merit and facts. The petitioners have filed an appeal before the Deputy Director Consolidation of Holding, Baripada who had passed the order on 30.03.2013. The petitioners have challenged the impugned order of the lower court on basis of following grounds:

- 1) The learned lower court has not considered the case properly and passed the order abruptly.
- 2) The order passed by the lower court is one sided, arbitrary, wrong & against the principle of law and equity.
- 3) That the lower court has not properly considered the ground no. 1 on Durga Prasad Barik being the common ancestor of the petitioners and respondents. As per Hindu law (Succession Act 1954) the petitioners entitled to get share of their ancestral property. But the lower court without verifying documents has dismissed the appeal illegally.
- 4) The lower court has not considered the issue properly. As per section 271 (3) & (4) of the Hindu Law (Mulla) limitation against an elder son who was a major at the date of alienation by father/ co sharers does not put a bar against younger son who was then a minor and bring a suit for setting aside the alienation.
- 5) The lower court has also not considered the issue no. 3 U/S 244 (Hindu Law) Mulla, as per the decision on AIR 2004 (Karnataka 450).

Hence the petitioners pray to call for LCR from the court below and after hearing both the sides may set aside the order passed by the lower court.

The Respondents No. 2 to 9 & 15 to 41 have also submitted their WNA challenging the petition of the petitioners and stated that originally 22 appeals filed U/S- 12 of the Act against the order passed by Consolidation Officer, Baisinga, Dt 03.07.2001. A common order was passed by the learned Deputy Director Consolidation of Holding, Baripada in his order dt 30.03.2013. It is an admitted fact that the land in dispute originally belong to one Durga Prasad Barik, who had two wives. He had two sons named as Madhusudan and Dinabandhu through his second wife Srimati. While Dinabandhu died without any issue, the other son Madhusudan sold the suit lands to the OPs through RSDs.

The disputes raised by the petitioners are that the sons & daughters of Madhusudan claim that he has no absolute title over the property left by Durga Prasad as they accrue their share under Hindu Succession Act 1956 as Durga Prasad has died in 1961. Secondly Madhusudan Barik was addicted to Ganja and Opium and there was no legal necessities to sale the suit lands to the OPs.

On the other side the OPs claim that the petitioners are not entitled to any share of land left by Durga Prasad who had died in 1955 by which the Hindu

Succession Act 1956 had not come into force. The petitioners have no locus standi to file the revision cases. Secondly the son of Durga Prasad namely Madhusudan was not addicted to Ganja or Opium and has sold the lands for necessity and the OPs are bona fide purchasers of the suit lands acquiring full right, title and interest over them respectively.

In a detailed discussion the learned Consolidation Officer has given his view vide order dt 03.07.2001 that “ Basing on the above discussion of law, facts, examination of witnesses, arguments, filling of documents and perusal of them, I am of the view that all purchasers have proved sale deeds, possession, rent receipts and they have proved that they are the real purchasers of the land in question. In case of all other purchasers, the purchasers and in their behalf close relatives have been examined in the given case. “

In the conclusion the learned Consolidation Officer has given his findings that every purchaser is a bona fide purchasers for consideration and is in possession over the purchased land since the date of his/her purchase and thereby acquiring right, title and interest over the land by virtue of respective sale deeds and alternatively each has acquired the right, title and interest over the land by way of adverse possession for possession more than 12 years peacefully, openly and to the knowledge of all including the objector.

Basing on the above conclusion of the Consolidation Officer in the case, the Deputy Director Consolidation of Holding, Baripada has submitted his views vide order dt 30.03.2013 that “ On detail perusal of the case records I am come to the findings that there are so many purchasers purchased the lands from Madhusudan Barik (respondent No. 1 in all the Appeals) and are in peaceful possession since the date of purchase with knowledge of all.

Secondly, regarding the period of death of RT Durga Prasad Barik, his son Madhusudan Barik (respondent No. 1) himself clearly stated in the RSD No. 2709 dt 10.12.1973 that his father Durga Prasad Barik died 18 years back. Accordingly it can be concluded that late Durga Prasad Barik the father of Madhusudan Barik (respondent No. 1) died before the Hindu Succession Act 1956 come into force. Hence as per law, the daughters of deceased Durga Prasad Barik are not entitled to succeed to the property left by him as the Hindu Succession Act 1956 came in to force with effect from 17.06.1956.

Hence in careful consideration in my opinion the learned Consolidation Officer in his observation in the impugned order has analysed the matter taking into consideration of the cases. He has discussed in details in respect of all the cases correctly. The appellants have not brought forth any justification in favour of their claims. The learned Consolidation Officer, Baisinga has discussed the cases at length in all the issues along with points and answered them correctly and has passed the judicious order as per u/s 11 of the Act.

Therefore, in the circumstances contentious of the appellants are not convincing for intervention in the impugned order. In the result the appeals bearing No. 64/01 (B) to 85/01/ (B) are disallowed and the learned lower court order is upheld accordingly. “

Perused the LCRs and gone through the detailed order of Deputy Director Consolidation & Holding, Baripada and other documents in the case record. He and the Consolidation Officer, Baisinga have heard the matter at length giving due opportunity to both the parties to represent their respective arguments along with examining the witnesses. The petitioners have submitted five grounds in justification to their submissions. After going through the case records of lower courts I opine that both the Consolidation Officer, Baisinga & Deputy Director Consolidation of Holding, Baripada have heard the parties at length with examining the witnesses wherever it is required. This counters the first two grounds submitted by the petitioners.

Regarding the rest grounds of the petitioners, it is opined that Madhusudan Barik has sold the case lands to the Opposite Parties through various Registered Sale Deeds. In this regard it is to be emphasized that once a sale deed is registered under Registration Act, 1908, the sale deed remains valid in the eye of law unless and until the same is termed void/ cancelled by the competent forum. The petitioners have not challenged the Registered Sale Deeds in any appropriate forum for which the deeds stand valid boiling down to the conclusion that the transactions carried out by Madhusudan Barik are genuine.

The purchasers/OPs are also in peaceful possession over the suit lands since the purchase without any objection from any side.

Secondly, Madhusudan Barik has committed in the RSD No. 2709 dt 10.12.1973 that his father who is Durga Prasad Barik has died 18 years before concluding his year of death to be 1954/55. Hence Madhusudan Barik being the Karta inherits the right, title and interest over the parental properties of his father excluding the daughters as per the Hindu Succession Act 1956.

Therefore in the instant cases I find that both Consolidation Officer, Baisinga and Deputy Director Consolidation of Holding, Baripada have rightly deliberated the matter taking into consideration all the facts submitted by both the parties. They have judiciously passed the orders after discussing all the relevant factors u/s 11 & 12 of the Act.

So the order of Deputy Director Consolidation of Holding, Baripada is upheld and the Revision Case No.s 134 to 150 of 2013 are dismissed lacking merit.

Order pronounced in the open Court today.

Accordingly, this cases are disposed of.

Sd/-

Revenue Divisional Commissioner

S.R.P. Case No. 07 OF 2018

Decided on 28.05.2019

(Order by Shri Manish Agarwal, IAS,
Collector and District Magistrate, Malkangiri)

Smt. Mohinibai Jain Petitioner
-Versus-
Tahasildar, Malkangiri & another Opp. Parties

For the Petitioner ... Sri R.K. Patra, Advocate
For the Opposite party ... None

JUDGMENT

The revision petition has been filed by the petitioner U/S 15 (b) of the Orissa Survey & Settlement Act, 1958 (in short OSS Act.) being aggrieved by the order passed by the Addl. Sub-Collector-Cu,- Charge Officer, Settlement Officer, Jeypore.

The Claim of the petitioner is that she has got landed property stands recorded in her name in Mouza- Malkangiri vide Khata No. 532 to an extent of Hc. 0.004. But, during the last settlement operation her name has been wrongly recorded as Mohini Bai Charadia, W/o- Rawalmal Charadia instead of Mohini Bai Jain, W/o- Rawalmal Jain, so the petitioner is put to severe hardship.

In support of her claim, the petitioner has filed the following documents,

1. Copy of ROR of Khata No. 532 of Malkangiri Mouza with name recorded as Mohini Bai Charadia, W/o- Rawalmal Charadia Caste Jain of Malkangiri.
2. Copy of ROR of Khata No. 994/2095 of Mouza Malkangiri with name recorded as Mohini Bai Jain, W/o- Rawalmal Jain, Caste Jain of Malkangiri.
3. Copy of Voter Identify card bearing No. OR13/086/101222 with name Mohini Bai Jain, W/o- Rawalmal Jain.

The Addl. Sub-Collector, Settlement Officer, Jeypore has submitted the Parawise Comments vide Letter No. 93, dated 03.02.2017 of his office and the Tahasildar, Malkangiri has submitted the field enquiry report vide Letter No. 3108, dated 12.11.2018 of his office.

Heard the learned advocate for the petitioner. Perused the documents filed by the petitioner and the PWC submitted by the respondent No. 02 as well as the

field enquiry report submitted by the respondent No. 01. The matter is taken up for decision basing on the documents available & hearing.

FINDINGS

In this context, it is seen that under section 15 of OSS Act, 1958, the revisional power may be exercised for revision of any record of right or any portion of a record of right after one year or there after, but not to affect any order passed by the Civil Court under section 42.

The petitioner has filed a revision petition for correction of name in the ROR of Khata No. 532 of Mouza Malkangiri and the suit land falls within the jurisdiction of this Court.

It is revealed from the PWC submitted by the respondent No. 02 and field enquiry report submitted by the respondent No. 01 that during the last settlement operation the name of the petitioner has been incorrectly recorded as Mohini Bai Charadia, W/o- Rawalmal Charadia instead of Mohini Bai Jain, W/o- Rawalmal Jain in ROR of Khata No. 532 of Mouza Malkangiri.

All these lead to the conclusion that the name of the tenant was wrongly recorded as mistake of Settlement authority.

ORDER

Hence, it is ordered that the name entry as Mohini Bai Charadia, W/o- Rawalmal Charadia, the recorded tenant be corrected as Mohini Bai Jain, W/o- Rawalmal Jain in the ROR of Khata No. 532 of Mouza Malkangiri maintained at record room, Tehsil Office, Malkangiri by the Tahasildar, Malkangiri-cum- respondent No. 01 and report compliance within a month.

As the mistake of the settlement authorities in recording name in the ROR is being corrected now, so the concerned ROR copy available at Dist. Record Room, Malkangiri with wrong entry of name be treated as modified for all purposes as that copy is not meant for correction but maintained as a true copy of the record of records, finally published by the Settlement authorities at the time of Publication.

The revision is allowed.

Pronounced in the open Court today i.e. 28.05.2019.

Sd/-
Revisional Authority and Collector,
Malkangiri

S.R.P. Case No. 09 OF 2018

Decided on 22.11.2019

(Order by Shri Manish Agarwal, IAS,
Collector and District Magistrate, Malkangiri)

Sri J. Govinda Rao Petitioner
-Versus-
Tahasildar, Malkangiri & others Opp. Parties

For the Petitioner ... Sri Guru Mohanty, Advocate
For the Opposite party ... None

JUDGMENT

FACTS OF THE CASE :

The revision petition has been filed by the petitioner U/S 15 (b) of the Orissa Survey & Settlement Act, 1958 (in short OSS Act.) being aggrieved by the order passed by the Addl. Sub-Collector-Cum - Charge Officer, Settlement Office, Jeypur.

The Claim of the petitioner is that the petitioner Sri. J.Govinda Rao S/O J. Bhaskar Rao of Malkangiri had purchased a piece of land under Mouza Malkangiri bearing Khata No.337/9 Plot No. 663 measuring Ac 1.62 (Hc 0.656) out of Ac 4.29 with Kisama Paddy I from the respondent Sri J.Maleswar Rao S/O J.S.N.Rao of PR Peta, Jeypur. Dist Koraput vide sale deed no. 623/1994 dated 25.11.1994 and the land measuring Hc 0.365 (Ac 0.92) is under the control and possession of petitioner as per the map enclosed there in. There after the petitioner sold Hc 0.202 (Ac 0.60) of land to one Sri Rava Nagarjuna Gupta and Hc 0.089(Ac 0.20) of land to Sri Bishnu Prasad Mishra aggregating to Hc 0.291 (Ac 0.70) in subsequent dates In the mean time Sri Bishnu Prasad Mishra managed to got his portion of land mutated in his favour. After that, the settlement operation was going on, the land could not be mutated in favour of the petitioner, and the final RoR published in the year of 1997. As per finally published RoR case land of the petitioner corresponding to HAL plot No.2045 under Khata no. 521 (Hal) has been recorded in the name of J. Maleswar Rao.

The petitioner prayed the court to admit the case and allow the revision, so that the case land will be recorded in the name of the petitioner in the ends of justice In support of her claim, the petitioner has filed the following documents,

1. Copy (Certified copy) of RSD No. 623/1994 dated.25.11.1994 in support of purchase of land by the petitioner Sri J. Govinda Rao from the respondent Sri J, Maleswar Rao.,
- 2 Copy of Hal Khata No. 521 of J.Maleswar Rao S/O J.Surinarayana plot No. 2045 to an extent of Hc 1.061 (Ac 2.622).
- 3 Copy of Hal Khata No. 994/176 of Bishnu Prasad Mishra S/O Jagannath bearing plot No. 2045/7006 to an extent of Hc 0.890 (Ac 0.22).

- 4 Copy of yadast issued by the Public Information Officer, Settlement Office, Jeypur

The Revenue Inspector, Malkangiri has submitted the field enquiry report with the counter signature of the Tahasildar vide Letter No. 164, dated 28.05.19 of his office.

Heard the learned advocate who appeared for the petitioner. Perused the documents filed by the petitioner and the field enquiry report submitted by the Tahsildar, Malkangiri. The matter is taken up for decision basing on the documents available & hearing.

FINDINGS

In this context, it is seen that under section 15 of OSS Act, 1958, the revisional power may be exercised for revision of any record of right or any portion of a record of right after one year or there after, but not to affect any order passed by the Civil Court under section 42.

The petitioner has filed a revision petition for recording of land in his favour, which are in Hal Khata 521 of Mouza Malkangiri with plot no. 2045 to an extent Hc 1.061 (Ac. 2.622) and the suit land falls within the jurisdiction of this Court.

It is revealed from the field enquiry report submitted by the Tahsildar, Malkangiri that J. Maleswar Rao S/O Late Suryanarayana Rao had sold the land to the petitioner J.Govinda Rao to an extent of Ac 1.62 out of AC 4.29 vide document No 623/1994 recorded as Plot No. 663 Kisama Paddy I. Than the petitioner sold to both the vendees as Bishnu Prasad Mishra S/O Jagannath Mishra of Mendukuli and R.Nagarjuna Gupta S/O R.Gunnaya Setty to an extent of Ac 0.22 and 0.50 respectively out of Ac 1.62 from plot no. 663 vide document No. 624/1994 and 294/1999 leaving a balance area of Ac 0.90 with the petitioner himself. As compared to Sabik and Hal Map, it is reported that the sabik plot No 663 leads to Hal Plot No. 2045 and the same is recorded in the name of J.Maleswar Rao, who has already sold the land to the petitioner. Now the case land is under peaceful possession of the petitioner to an extent of Hc 0.364 (Ac 0.90).

All these lead to the conclusion that the land purchased by the petitioner has not been recorded in his favour rather the same is taken to the Khata No. 521 of J. Maleswar Rao as mistake of Settlement authority.

ORDER

Hence, it is ordered that let the case land Plot No.2045 for Hc 0.364 (Ac 0.90) out of Hc 1.061 of Khata No. 521 (Hal) in the name of J.Maleswar Rao be recorded in the name of the petitioner J.Govinda Rao The Classification to be recorded as Paddy I and rents payable as per the present prevailing rate. The Tahasildar, Malkangiri to carryout the order with in a month and report compliance.

The revision is allowed.

Pronounced in the open Court today i.e. 22.11.2019.

Sd/-
Revisional Authority and Collector,
Malkangiri

**PRINCIPLE OF RESJUDICATA;
APPLICABLE TO PROCEEDINGS**

Gobinda Chandra Nayak
Senior Standing Counsel
Board of Revenue, Odisha

It is well known that the doctrine of *res-judicata* is codified in Section-11 of the Code of Civil Procedure. Section-11 generally comes into play in relation to civil suits. But apart from the codified law, the doctrine of *res-judicata* or the principle of *theres-judicata* has been applied since long in various other kinds of proceedings and situations by courts in England, India and other countries.

Section-11 of Civil Procedure Code 1908 reads as follows:

“No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court”.

Explanation I... The expression former suit shall denote a suit which has been decided prior to a suit in question whether or not it was instituted prior thereto.

Explanation II... For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.

Explanation III... The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

Explanation IV... Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such.

Explanation V... Any relief claimed in the plaint, which is not expressly granted by the decree, shall for the purposes of this section, be deemed to have been refused.

Explanation VI... Where persons litigate *bona fide* in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating .

Explanation VII... The provisions of this section shall apply to a proceeding for the execution of a decree and references in this section to any suit, issue or former suit shall be construed as references, respectively, to a proceeding for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree.

Explanation VIII... An issue heard and finally decided by a Court of limited jurisdiction, competent to decide such issue, shall operate as *res judicata* in a subsequent suit, notwithstanding that such Court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised.

Res-judicata means “to preserve the effect of first judgment” in gist. Section-11 Civil Procedure Code enables the party to raise the statutory plea of *res-judicata* if the conditions given therein are fulfilled.

The principle embodied in the statute is not so much far from the principle of “estoppel by record”, which the British Courts apply, as one of public policy, based on two maxims derived from Roman jurisprudence:

firstly, *interest reipublice ut sit finis litium*—it concerns the State that there be an end to law suits; and,

secondly, “*nemo debet bis vexari pro una et eadem cause*”—no man should be vexed twice over for the same cause.

The rule of “**constructive res-judicata**” is engrafted in Explanation IV of Section-11 of the Code of Civil Procedure and in many other situations also Principles not only of direct *res-judicata* but of constructive *res-judicata* are also applied, if by any judgment or order any matter in issue has been directly and explicitly decided, the decision operates as *res-judicata* and bars the trial of an identical issue in a subsequent proceedings between the same parties. The Principle of *res-judicata* comes into play when by judgment and order a decision of a particular issue is implicit in it, that is, it must be deemed to have been necessarily decided by implications even then the Principle of *res-judicata* on that issue is directly applicable. When any matter which might and ought to have been made a ground of defence or attack in a former proceeding but was not so made, then such a matter in the eye of law, to avoid multiplicity of litigation and to bring about finality in it, is deemed to have been constructively in issue and, therefore, is taken as decided [See AIR 1978 SC 1283].

The expression “former suit” according to explanation-I of Section - 11, Civil Procedure Code, makes it clear that, if a decision is given before the institution of the proceeding which is sought to be barred by *res judicata*, and that

decision is allowed to become final by operation of law, a bar of *res-judicata* would emerge. This doctrine is similar to the concept of double jeopardy, but in civil law version. This bars a party of a civil suit from suing against the same claim which was already decided by the Court. The origin of *res judicata* couldn't be traced clearly. But, this concept prevails for all the jurisdiction and throughout the world.

India has adopted the principle of *res judicata* in Section-11 of Code of Civil Procedure, 1908 (hereinafter referred to as "C.P.C."). Latin phrase "*Res judicata pro veritate accipitur*," "*a matter adjudged is taken for truth*". As this is for both civil and common law, the case does not hold appeal. In short it is a bar for re-litigation of such cases between the parties. *Res judicata* is known to Hindu law as 'Purva Nyaya' which could be also said as former judgment. The case wouldn't be heard except by way of appeal.

· ***Nemo debet lis vexari pro una et eadem casua*** meaning that no man should be vexed twice for the same cause, ·

Interest republicae ut sit finis litium or that it is in the interest of the State that there should be an end to litigation, and ·

Res judicata pro veritate occipitur meaning that a judicial decision must be accepted as correct. These three maxims play a vital role in the concept of *Res Judicata*.

In Swamy Atmandanda vs. Sri Ramakrishna, Tapovanam [(2005) 10 SCC 51], it was held by the Hon'ble Apex court as follows:

"26. The object and purport of the principle of *res judicata* as contended in Section 11 of the Code of Civil Procedure is to uphold the rule of conclusiveness of judgment, as to the points decided earlier of fact, or of law, or of fact and law, in every subsequent suit between the same parties. Once the matter which was the subject-matter of *lis* stood determined by a competent court, no party thereafter can be permitted to reopen it in a subsequent litigation. Such a rule was brought into the statute-book with a view to bring the litigation to an end so that the other side may not be put to harassment.

27. The principle of *res judicata* envisages that a judgment of a court of concurrent jurisdiction directly upon a point would create a bar as regards a plea, between the same parties in some other matter in another court, where the said plea seeks to raise afresh the very point that was determined in the earlier judgment."

When the material issue has been tried and determined between the same parties in a proper suit by a competent court as to the status of one of them in relation to the other, it cannot be again tried in another suit between them as laid down in Krishna Behari Roy vs. Bunwari Lal Roy reported in [1875 ILR (IC-144)], which is followed the Hon'ble Apex court in the case of Ishwar Dutt Vs. Land Acquisition Collector & Anr. [(2005) 7 SCC 190], wherein the doctrine of 'cause of action estoppel' and 'issue estoppel' has been discussed. It is laid down by the Hon'ble Apex court that if there is an issue between the parties that is decided, the same would operate as a res-judicata between the same parties in the subsequent proceedings

In the case of "Kalinga Mining Corporation v. Union of India reported in **2013 (5) SCC 252** The appellants relied upon some case laws according to which the illegitimate children were entitled under Section 16 of Hindu Marriage Act, 1955 to inherit only the self acquired property of their father whereas the lands in dispute are claimed to be with the family from the time of Kishun father of Bechai and Kanhai.

The Writ Court accepted the submission advanced on behalf of appellants that as per settled law, the principles of res judicata, constructive res judicata and estoppels are applicable to the proceedings under the Act. The Writ Court, however made a distinction between binding nature of even an erroneous judgment between the same parties in respect of same property and the binding nature of such judgment in another proceeding as res judicata when the subsequent proceeding or suit is for a different property.

FOUR ELEMENTS MUST BE PRESENT:

1. Competent jurisdiction shall be present
2. Judgments should be on merits
3. Cause of action should be present
4. The parties in the second action must have been involved in the initial litigation

Hon'ble Supremecourt in the case of '**Rama Chandra Dagde Sonavane(Dead) by LRs& Others vs Vithu Siramahar(Dead by LRs & Others reported in 2009(10) SCC-273** held that :

"Issue deemed to have been decided by implication- Principle of Resjudicata is directly applicable."

However departing from the general application Section-11 of CPC in the case of **State of Maharastra V. Digambar,(1995(4) SCC-683** and in the case of **Surendra Nath Pande vs U.P Co-operative Bank Ltd, ,(2010)**

12 SCC 400, the Supreme court has held that “where the state is a litigant, the principle of Res-judicata strictly does not apply as so much factors are there with State for which the earlier decision could not be challenged before the higher forum.”

However, in subsequent case within **A.B.C Bajaj vs. Union of India(2014) 3 SCC 777**, the Supreme Court departed from their earlier view taken in *Digambar Case* and held that “where conscious decision was taken by the state not to challenge the earlier order, in that case State cannot adopt the pick and choose method. Principle of res-judicata will apply to subsequent proceedings”.

In the case of **Mohanlal Goenka v. Benoy Kishna Mukherjee**, reported in **AIR1953 SC 65**, the Hon’ble Apex court has held that “*23. There is ample authority for the proposition that even an erroneous decision on a question of law operates as ‘res judicata’ between the parties to it. The correctness or otherwise of a judicial decision has no bearing upon the question whether or not it operates as ‘res judicata.’*”

The Hon’ble High Court of Orissa In the case of “**Deputy General Manager(HR) Vs Anup Kumar Panda & Another** Reported in **117(2014)CLT-850 / 2013(Suppl-II)OLR-1063** held that :

“**Section:-11** -Question of applicability of the doctrine of *Res-judicata* is always a mixed question of facts and law- Issue raised between the same parties in an earlier *lis* requiring the factual finding; if adjudicated by a competent court of law having jurisdiction has decide such issue, the same cannot be re-agitated in a subsequent proceeding.”

STATE GOVERNMENT LAND ON LEASE

Jagannath Rath
Standing Counsel
Board of Revenue, Odisha

- 1.** The Orissa Govt. Land Settlement Act, 1962.
- 2.** Sect- 3 of the Act empowers the Govt. to reserve such portions of the land for being used as house-site, communal use, industrial purpose or for any other use.
- 3.** Sect-3 (1) (e) of the Act empowers any officer not below the rank of Tahasildar to dispose of application for settlement of Govt. land in the manner prescribed.
- 4.** Settlement shall be made subject to provisions under Sub-Section 2 and 3 of Sect-3 of the Act i.e. reserving 70% of the land for the SC/ST people of the village and giving priority to the Co-operative farming societies formed by landless agricultural labourers, landless agricultural labourers of the village, ex-serviceman

of the village etc and subject to provisions of Rule-3(5) of the OGLS Rules, 1974 i.e. the proclamation by beat of drum affixing copy of the same at a conspicuous place in the village, a copy of proclamation be published by affixing in the notice Board of the Tahasil office and a copy shall also be sent to the Gram Panchayat in which the land is situated.

5. If question of reservation for SC/ST of the village and the priority of settlement has not been considered and the proclamation has not been published as per Rule-3(5), then the settlement will be quashed by the ADM in revision for violation of mandatory provisions.

Ref:- 71(1991) CLT 786 Nabakishore Das

81 (1996) CLT 513 Sarat Ch. Sahoo

- In the case of Sarat Ch. Sahoo (81 (1996) CLT 513) the Hon'ble Court found that the Tahasildar, Bhubaneswar and the local R.I in collusion with the applicant settled 1 acre of land, recorded as "Thorny Jungle", in favour of the applicant without following the mandatory provision of law and therefore, directed the State Govt. to enquire into the matter through a senior officer in the rank of Secretary and then take necessary administrative actions.

6. Rule-10 of the OGLS Rules, 1983 provides that while settling lands, the terms and conditions of the settlement of lands for purposes, other than agriculture, both in rural and urban areas, shall be fixed as may be determined by the Govt. from time to time.

7. Sub Sect-(4) of Sect-3 of the Act provides that the Khasmahal, Nazul, Gramakanta parambok or Abadi lands will be settled permanently with heritable and transferable right.

8. Rule-5 (c) of the OGLS Rules, 1983 also provides that the settlement of Govt land on lease basis for homestead purpose in the urban areas as mentioned in Sch-VI may be converted to free hold as permanent basis with heritable and transferable rights.

- As per Sch-VI, conversion to free hold is applicable only to lands leased for homestead/residential purpose.

- For conversion to free hold, the lease holder shall apply to the Tahasildar in Form No.1.

- After conversion the ROR will be corrected.

- Appeal lies to RDC against the order of the Tahasildar.

9. Except the above two provisions, there is no other provision in the Act or Rules to settle the Govt. land on permanent basis with heritable and transferable right.

10. Section-3(b) of the Act empowers the authorized officer to resume the settled land if it is used for any purpose other than for which it was settled or the person, other than homestead less person or landless agricultural Labour, has not used the land for a period exceeding 3 years from the date of settlement.

11. However, while granting lease or settling the land the authority should mention the terms and conditions of settlement and also the rights of inheritance and transfer if permissible under law.

- If there is no right of inheritance or transfer, the same should also be mentioned while granting lease or settling the land.

12. While granting lease or settling the land the lease period should also be mentioned and the land should be immediately resumed by the authority after expiry of the said period.

13. If aforesaid steps are taken while granting lease or settling Govt. land, then the same can be protected from illegal selling by the leaseholders.

14. Rule-3(3) of the OGLS Rules, 1983 empowers the authority to grant lease or settle land for Industrial purpose in the urban areas.

- While settling the land for Industrial purpose the same procedure prescribed in the Sub-section 2 and 3 of Sect- 3 of the Act i.e. reservation for SC/ST and priority to persons prescribed therein and publishing the same in a conspicuous area of the village and copy to Gram Panchayat in which the land is situated should be followed.

- While granting lease the authority should clearly mention the purpose of the lease, period of lease and that the lease holder has no right to inherit and transfer the said land.

- The authority also can resume the said land if it is not used for the purpose it was settled or it is used for the purpose other than it was settled.

15. If any authority deviates from the aforesaid rules, the higher authority should take immediate disciplinary action against the errant officers.

16. The Higher Authority should also inspect the records, settling Govt. lands, periodically so as to protect abuse and misuse of the process.

17. Rule-5 (6) of the OGLS Rules, 1983 provides that the Tahasildar shall forward a list of lease granted every month to the Collector for his information.

- This provision is not a mere formality.

- This is one kind of approval of the lease granted. Therefore to protect the Govt. lands from illegal lease, the Collector has also a duty to find out if the lease granted has been properly processed as per law.

18. The Collector should verify the case record to find out if provisions of Sub-Sect-2 and 3 of the Sect-3 of the Act i.e. reservation for SC/ST and priority to the person prescribed has been complied or not. He should also verify if the proclamation

has been done properly or not i.e. publication in a conspicuous place of the village by beat of drum, publication in Notice Board of Tahasildar office and copy served on Gram Panchayat in which the land situates. He should also verify the lease deed if the period of lease, the purpose of lease and the right of inheritance and transfer, if any, has been mentioned or not.

If the aforesaid procedure will be followed and maintain property and also as per the provisions contend under the statute, then only Govt. land can be protected all over the State.

R.P Case No. 12 of 2008

Decided on 24.06.2021

(Order by Sri Subhakanta Mishra, OAS (SS),
Commissioner, Consolidation & Settlement, Odisha, Bhubaneswar)

Baidhar Jena ... **Petitioner**

-Versus-

Padma Charan Panigrahi (Dead) & others ... **Opp. Parties**

For the petitioner	...	Mr. A. K. Moharana, Advocate
For Opp. Party No. 1 to 3	...	None
For Opp. Party No. 4 & 5	...	Mr. B. K. Samantaray, Addl. Standing Counsel

ORDER

The case in brief is that the petitioner had filed one petition **U/S 15(b) of the O.S & S Act 1958** with prayer to record the suit land in favour of Petitioner by creating a separate Khata.

SCHEDULE OF PROPERTY

Mouza: Makundapur, P.S: Begunia, Tahsil: Bolagarh, Dist.:Khordha

HAL Khata No.	Hal Plot No.	Area
195	1721	Ac. 0.505 Dec.
Sabik Khata No.	Sabik Plot No.	Area
259	1414	Ac. 0.505 Dec.

Basing on the aforesaid petition of the petitioner, one R.P. Case had been registered vide R.P. No. 12/2008 and notice had been issued to Opposite Parties by registered post. In-spite of repeated notice none of the O.Ps appeared in the court. Heard the case in presence of the Learned counsel for the petitioner and Addl. Standing counsel for the state.

Petitioner had filed a petition U/S 5 of the Limitation Act for condonation of delay due to delay in filling of this case. The delay condonation petition considered and allowed delay condoned the case is admitted.

The petitioner has submitted Certified Copy of Hal ROR khata No. 195, Certified Copy of Sabik ROR khata No. 259, Original RSD No. 841 Dt: 02-03-1983, Copy of RSD No. 912 Dt: 21-04-1987 and sabik to Hal correlation information in support of their claim.

The Hal ROR bearing Khata No. 195 of Mouza Mukundpur containing Hal plot No. 1721 with an area of Ac. 0.505 dec including other plots stands recorded in the name of Padma Charan Panigrahi S/O Anant Panigrahi by caste Brahman of Vill. Nijgaon.

The Sabik ROR bearing Khata No. 259 of Mouza Mukundpur containing Hal plot No. 1414 with an area of Ac. 0.505 dec including other plots stands recorded in the name of Anant Panigrahi S/O Mahan Panigrahi by caste Brahman of Vill. Nijgaon.

It is seen from RSD No. 841 dt: 02-03-1983 through which Padma Charan Panigrahi S/O Anant Panigrahi by caste Brahman of Vill. Mukundpur had transfer an area of Ac. 0.505 dec bearing sabik plot No. 1414 under sabik khata No. 259 of mouza Mukundpur in favour of Gagan Bihari Panigrahi, Bipin Bihari Panigrahi S/O Shankar Panigrahi by caste Brahmin of Vill. Mukundpur.

Another RSD No. 912 dt: 21-04-1987 through which Gagan Bihari Panigrahi, Bipin Bihari Panigrahi S/O Shankar Panigrahi by caste Brahmin of Vill. Mukundpur had transfer an area of Ac. 0.505 dec bearing sabik plot No. 1414 under sabik khata No. 259 of mouza Mukundpur in favour of Baidhar Jena S/O Jagannath Jenaby caste Khandayat of Vill. Kantabada.

The sabik to Hal correlation information furnished by Tahasildar Begunia Application No. 5 Dt: 02/07/2007 reveals that Sabak Plot No. 1414 under Sabik Khata No. 259 with an area of Ac. 0.505 dec corresponds to Hal plot No. 1721 with an area of Ac. 0.505 dec under Hal Khata No. 58 of mouza Mukundpur.

It is seen from PWR report furnished by ASO, Puri reveals that as per yadast No. 1721 Baidhar Jena has purchased the suit land and in possession but at the time of Settlement operation Baidhar Jena was absent and even on repeated calls he did not appear or file any objection. So ASO has ordered to record the Hal plot 1721 in favour of Padma Charan Panigrahi, Raji Panigrahi S/O Anant Panigrahi, Rupei Panigrahi W/O Anant Panigrahi.

From the above, it is clear that the title has rightly been transferred in favour of the petitioner. The petitioner has acquired right Title & interests over the case land by virtue of valid Registered sale deed and possession.

In view of the above, the claim of the petitioner in this petition merits consideration. Hence, I am inclined to allow the Revision Petition in favour of the petitioner.

Tahsildar, Begunia is directed to verify all the documents and records and conduct field verification and take away an area of Ac. 0.505 dec from Hal Khata No. 195 of mouza Mukundpurbased on the field verification and possession by creating a separate Khata with fixation of rent cess ect following due process of Law.

True copy of the order be sent to Tahsildar Begunia with a separate letter for information and necessary action.

Pronounce the Order in the open Court today i.e., on 24th day of June ,2021.

Sd/-
Commissioner,
C & S, Odisha, Bhubaneswar

R.P Case No. 142 of 2016

Decided on 04.06.2021

(Order by Sri Subhakanta Mishra, OAS (SS),
Commissioner, Consolidation & Settlement, Odisha, Bhubaneswar)

Surendra Maharana & others ... **Petitioners**

-Versus-

Manguli Sahoo & others ... **Opp. Parties**

For the petitioner	...	Mr. U. Barik, Advocate
For Opp. Parties	...	B. Badajena, Advocate
For Opp. Party No. 5 & 6	...	Mr. B. K. Samantaray, Addl. Standing Course

ORDER

The Case is brief is that the Petitioner have filed one R.P. Case No. 142/ 2016 has been filed U/S-15 (b) of the OS&S Act., 1958 with prayer to record the suit land in favour of Petitioner.

SCHEDULE OF PROPERTY

Mouza- Ostapur, Tahasil- Begunia, , PS/Dist. Khordha

Sabik Khata No.	Sabik Plot No.	Area
81	67	Ac.0.556 dec
Hal Khata No.	Hal Plot No.	Area
21	105	Ac.0.270 dec

Basing on the aforesaid petition of the petitioner, one R.P. case had been instituted U/S 15(b) of the O S & S Act.1958 vide R.P. Case No. 142/2016. Notice had been issued to all the OPs. Heard the Revision Petition in presence of Counsel

for the Petitioners and Addl. Standing Counsel for the state was present on behalf of opposite parties.

The Delay condonation Petition is filed by petitioner under U/S 5 (1) of the Limitation Act, which is allowed. Delay condoned and the case is admitted.

Petitioner has submitted certified copy of Sabik Khata No.81 of Mouza-Ostapur, certified copy of Hal Khata No.21 of Mouza- Ostapur, Original R.S.D No.2452 dtd.26.03.1960 and Certified copy of Hal-Sabik Co-relation information in support of their claims.

The Sabik ROR bearing Khata No. 81 of Mouza-Ostapur, containing Plot No. 67 with an area of Ac0.556 dec, including other plots stands recorded in the name of Udayanath Sahoo S/O-Iswar Sahoo of Vill- Nijgaon.

The Hal ROR bearing Khata No.21 of Mouza- Ostapur Containing Plot No. 105 with an area of Ac.0.270 dec, including other plots stands recorded in the name of Udayanath Sahoo S/O-Iswar Sahoo of Vill- Nijgaon.

As per Sabik to Hal Co-relation information furnished by OIC Record Room Tahasil Begunia, it reveals that Sabik Plot No.67 corresponds to Hal Plot No. 105 under Hal Khata No. 21 of Mouza- Ostapur.

Perused the RSD Bearing No.2452 dtd:26.03.1960 vide which Madhu Dahoo S/O- Iswar Sahoo had transferred an area of Ac.0.252 dec pertaining to Sabik Plot No. 67 under Sabik Khata No. 81 of Mouza- Ostapur in favour of Sadhu Maharana S/O- Narayana Maharana of Vill-Ostapur.

Perused Legal Heir certificate of deceased Udayanath @ Madhu Sahoo, the heirs are Manguli Sahoo, Baikuntha Sahoo Both area S/O- Late Madhu Sahoo, Ahalya Biswal, Srimati Biswal both area married daughter of Late Madhu Sahoo.

Manguli Sahoo S/O- Udayanath Sahoo sworn affidavit stating their in that Udayanath Sahoo & Madhu Sahoo is the same and one person.

The Counsel for the petitioner submits that to record the suit land in favour of the petitioners by virtue of Regd. Sale deed and possession.

From the above it is clear that the title has rightly been transferred in favour of the Petitioner, the Petitioners have acquired right, title & interest over the suit land by virtue of purchase through valid Regd. Sale deed.

In view of the above observation, I am inclined to allow the R.P. Case No.142/ 2016 in favour of the petitioner.

Tahasildar, Begunia is directed to conduct field enquiry and take away an area of Ac.0.252 dec pertaining to Hal plot No.105 under Hal Khata No.21 of Mouza-Ostapur and record the same in the name of Petitioners Surendra Maharana, Kulamani Maharana, Both are S/O- Late Sadhu Maharana, Sulochana Moharana, W/O- Late Pranath Maharana, Kartika Mahrana, S/O- Late Pranath Mahanara,

All are of Vill- Ostapur, Po-Kotapala, Ps/Dist-Khordha by creating a separate Khata with fixation of rent & cess etc.

True copy of the order may be sent to the Tahasildar, Begunia, with a separate letter for information and necessary action.

Order pronounced in the open Court to i.e. on 04.06.2021

Sd/-
Commissioner,
C & S, Odisha, Bhubaneswar

R.P Case No. 24 of 2017

Decided on 02.06.2021

(Order by Sri Subhakanta Mishra, OAS (SS),
Commissioner, Consolidation & Settlement, Odisha, Bhubaneswar)

Alekha Behera ... **Petitioner**

-Versus-

Haribandhu Das (Dead) & others ... **Opp. Parties**

For the petitioner	...	Mr. G. K. Nayak, Advocate
For Opp. Parties 1 to 4	...	None
For Opp. Party No. 5 & 6	...	Mr. B. K. Samantaray, Addl. Standing Course

ORDER

The Case is brief is that the Petitioner have filed one R.P. Case No. 24/2017 has been filed U/S-15 (b) of the OS&S Act., 1958 with prayer to record the suit land in favour of Petitioner

SCHEDULE OF PROPERTY

Mouza- Sinduria,PS/Tahasil- Nayagarh, Dist. Nayagarh

SabikKhata No.	Sabik Plot No.	Area
174	373	Ac.0.380dec
Hal Khata No.	Hal Plot No.	Area
965	1248	Ac.0.270dec

Basing on the aforesaid petition of the petitioner, one R.P. case had been instituted U/S 15(b) of the O S & S Act.1958 vide R.P. Case No. 24/2017. Notice had been issued to all the OPs. Heard the Revision Petition in presence of Counsel for the Petitioners and Addl. Standing Counsel for the state was present on behalf of opposite parties 2 & 3.

The Delay condonation Petition is field by petitioner under U/S 5 (1) of the Act, which is allowed. The petitioners have filed all the relevant original documents in support of their claims.

Petitioner has submitted certified copy of Sabik Khata No.174, certified copy of Hal ROR Khata No.965, copy of the R.S.D No.2259 dtd.25.03.1980 and Certified copy of Hal-Sabik Co-relation information in support of his claims.

The Sabik ROR bearing Khata No. 174 of Mouza-Sinduria containing Plot No. 373 with an area of Ac.0.38 dec stands recorded in the name of Bula Das S/O-Gobinda Das by Caste Karana of Vill- Nijgaon.

The Hal ROR bearing Khata No.965 of Mouza- Sinduria containing Plot No. 1248 with an area of Ac.0.270 dec including other plot stands recorded in the name of Haribandhu Das, S/O- Bula Das by Caste- Karan of Vill- Nijgaon.

As per Sabik to Hal Co-relation information furnished by O.I.C record room Nayagarh Tahasil, it reveals that Sabik Plot No.373 corresponds to Hal Plot No. 1248 under Hal Khata No. 965 of Mouza- Sinduria.

Perused the RSD bearing No. 2259 dtd: 25.03.1980 vide which Haribandhu Das S/O- Bula Das by Caste- Karan of Vill- Sinduria had transferred an area of Ac.0.38 dec pertaining to Sabik Plot No. 373 under Sabik Khata No. 174 of Vill. Sinduria in favour of Alekha Behera S/O- Gopal Behera by caste-Gopal of Vill. Sinduria.

The Ops also filed an affidavit stating that, they have no-objection, if the suit land is recorded in favour of petitioner.

From the above it is clear that the title has rightly been transferred in favour of the Petitioner, the Petitioner has acquired right, title & interest over the suit land by virtue of valid Regd. Gift deed.

In view of the above observation, I am inclined to allow the R.P. Case No.24/ 2017 in favour of the petitioner.

Tahasildar, Nayagarh, is directed to conduct field enquiry verify records and Map and possession of the petitioner, correct the area of Hal Plot No. 1248 from Ac.0.270 dec to Ac.0.380 dec and take away Hal plot No.1248 with the enhanced area under Khata No.965 of Mouza-Sinduria and record the same in the name of Petitioner Alekha Behera, S/O-Gopal Behera, At/po-Sinduria, Ps/Dist-Nayagarh by creating a separate Khata with fixation of rent & cess etc. The map may be corrected accordingly.

True copy of the order may be sent to the Tahasildar, Nayagarh, with a separate letter for information and necessary action.

Order pronounced in the open Court to i.e. on 02.06.2021.

Sd/-
Commissioner,
C & S, Odisha, Bhubaneswar

R.P Case No. 163 of 2018

Decided on 09.06.2021

(Order by Sri Subhakanta Mishra, OAS (SS),
Commissioner, Consolidation & Settlement, Odisha, Bhubaneswar)

Dillip Kumar Das ... **Petitioner**

-Versus-

Gobinda Chandra Pradhan & others ... **Opp. Parties**

For the petitioner	...	Mr. J. Pradhan, Advocate
For Opp. Party No. 1 & 2	...	None
For Opp. Party No. 3 & 4	...	Mr. B. K. Samantaray, Addl. Standing Counsel

PRAYER

The case in brief is that the Petitioner had filed one petition u/s 15(b) OS&S Act. 1958 with prayer for record suit land in the name of the Petitioner by deleting the name of the OP No. 1 and issued correct patta.

SCHEDULE OF PROPERTY

Mouza –KandhaNayagarh, Tahasil: Ranpur.Dist. - Nayagarh.

SabikKhataNo.	Plot No.	Area
901	1876/1907	Ac.0.88 dec. out of Ac. 1.00 dec
Hal Khata No.	Plot No.	Area
243	531	Ac. 0.88 dec. out of Ac. 1.00 dec

Basing on the aforesaid petition of the petitioner,one R.P. Case had been registered vide R.P. No. 163/2018 and notice had been issued to Opposite Parties by registered post. In spite of notice, none of the O.P. appeared in the court on repeated calls. Heard the case in presence of Addl. Standing Counsel for the state and Learned Counsel for the petitioner.

The petitioner had filed a petition U/S – 5 of the Indian Limitation Act. With prayer for Condonation of delay in filling of this Revision Petition. The plea taken in this petition for condonation of delay appears to be genuine for which the same had been considered and allowed,delay condonedand the case is admitted.

The Petitioner has submitted Certified Copy of Hal RoR No. 243 of Mouza KandhaNayagarh, Certified Copy of Sabik RoR No. 901 of Mouza

KandhaNayagarh,Original RSD No. 11411200242 dt: 24-02-2012and sabik to Hal correlation information in support of his claim in this petition.

The Hal ROR bearing Khata No. 243 of mouza KandhaNayagarh containing Hal plot No. 531 with an area of Ac. 1.00 dec including other plots stands recorded in the name of Govinda Chandra Pradhan S/O Khali Pradhan by caste Khandayat of Vill. Nijgaon.

The Sabik ROR bearing Khata No. 901 of mouza KandhaNayagarh containing Sabik plot No. 1876/1907 with an area of Ac. 1.00 dec including other plots stands recorded in the name of Govinda Chandra Pradhan S/O Khali Pradhan by caste Khandayat of Vill. KandhaNayagarh.

Perused the RSD No. 11411200242 dt: 24-02-2012 through which Govinda Chandra Pradhan S/O Khali Pradhan by caste Khandayat of Vill. KandhaNayagarhhas transferred an area of Ac. 0.88 dec out of Ac. 1.00 dec pertaining to Sabik Plot No. 1876/1907 under Sabik Khata No. 901 of MouzaKandhaNayagarh andin favour of Dillip Kumar Das S/O KailashChandra Das by caste Rajput of Vill. Kandhanayagarh.

It is seen from Sabik to Hal correlation information furnished by ASO, Record Room, Major Settlement, Cuttack, through Application No. 558 dt: 21-01-2020 that Sabik plot No. 1876/1907 pertaining to Sabik Khata No. 901 of mouza KandhaNayagarh corresponds to Hal plot No. 531 under Hal Khata No. 243 of mouza Kandha Nayagarh.

In view of above, the prayer of the petitioner merits considerations. Hence, I am inclined to allow the Revision Petition No. 163/2018 in favour of the Petitioner.

The Tahasildar Ranpur is directed toverify all the records and documents and take away an area of Ac. 0.88dec pertaining to Hal plot No. 531under Hal khata No. 243 of mouza KandhaNayagarh and create a separate Khata and plot in favour of petitioner Dillip Kumar Das S/O Kailash Chandra Das by caste Rajput of Vill. Kandhanayagarh and fixation of Rent and Cess etc. following due process of Law.

True copy of the order be sent to Tahsildar Ranpur with a separate letter for information and necessary action.

Pronounce the Order in the open Court today i.e., on 9thday of June, 2021.

Sd/-
Commissioner,
C & S, Odisha, Bhubaneswar

O.S.S.A. Revision Case No. 49 of 2017

(Arising out of S.R.P. No. 196/2007 of
Court of the Joint Commissioner, S & C, Berhampur)

Decided on 27.03.2018

(Order by Dr. Ajit Kumar Mishra, OAS (SAG),
Collector, Nabarangpur)

Bidya Randhari & Others ... **Petitioners**

-Versus-

Charge Officer, Jeypore & another ... **Opp. Parties**

ORDER

This case is taken up today. The Advocate for the petitioners is present. Heard the learned Advocate for the Petitioners. Perused the record. The story of the case in gist is as follows-

The case has been originally initiated in the Court of Joint Commissioner, C & S, Berhampur vide **SRP No. 196/2007**, which has been transferred to the Court of the Revenue Divisional Commissioner, SD, Berhampur and re-numbered as **O.S.S.A. Revision Case No.219/2016** and the same has been transferred from the said Court on the strength of receipt of Notification No.23966/RDM dated 21.07.2017 of Government in Revenue & Disaster Management Department, Odisha, Bhubaneswar, wherein the State Government have delegated the powers of Board of Revenue, Odisha under section 6-D, 15 & 25 of the Odisha Survey & Settlement Act, 1958 (Odisha Act 3 of 1959), in favour of the Collector, Nabarangpur to exercise the powers and perform duties under the above provisions in respect of Nabarangpur district for the purpose of early disposal of revision cases.

The instant case has been re-numbered as OSSA Revision case No. **49/2017** in respect of this Court and taken up today.

The prayer of the Petitioner as revealed from perusal of the Revision Petition is that the father of the petitioners possessed the case land prior to settlement, in peaceful and undisputed measuring to an extent of Ac.3.47 pertaining to Sabik Khata No.80, Sabik Plot No.254, 255, 468 & 470 of Auli mouza under Kodinga Tahsil. During Khanapuri, the learned Settlement Authority have passed an impugned order

to record the case land in the AJA Khata bearing Hal Khata No.334, Plot No. 636, 637, 920, 922 under Abada Jagya Anabadi Khata. Accordingly, the Petitioners have prayed to admit the Revision case and to call for the lower Court record and after hearing allow the Revision Petition by setting-aside the impugned ROR in respect of the case land and direct the Tahsildar, Kodinga to record the case land in the name of the petitioners.

From perusal of the Para Wise Report furnished by the Asst. Settlement Officer, Records, Settlement Office, Jeypore vide letter No.6 dated 05.01.2015, it is revealed that the suit sabik plot No.254 Ac.0.60, 255 Ac.0.29, 470 Ac.2.18, 468 Ac.0.21 in total Ac.3.28 under Sabik Khata No.80 corresponding to Hal plot No.636 Ac.0.60, 637 Ac.0.30, 920 Ac.0.21 and 922 Ac.2.36 total Ext.3.47 under Hal Khata No.334 stood recorded in the name of Dhanasingh Randhari s/o Sansai Randhari Caste-Bhatra of same village as naukari Mafi Jagiri (Niskara). During Khanapuri operation, the A.S.O passed orders to record above hal plot No.636, 637, 920 & 922 in the name of sabik Khatadar Dhansingh Randhari s/o Sansai Randhari ,caste-Bhatra of same village vide Yadast No.205.

In course of Rent camp, one suo-moto case was instituted and the learned Asst. Settlement Officer of Rent Case has passed orders vide Rent Case No.740/1991 to record the suit land in Abada Jogya Anabadi Khata as the opposite party of Rent Case, Dhansingh Randhari s/o Sansai Randhari could not produce any document and the Tahsildar has not fixed rent. Since, there was no appeal in the above Draft records, the Addl. Settlement Officer, Jeypore approved the Rent roll on 12.07.1991 and the records have been finally published on 30.07.1991.

In this connection, it is pertinent to mention here that the petitioners in the instant case also could not produce any documents to substantiate their claim and failed to prove their case.

In view of the elaborate discussions made supra, I am of the opinion that the learned Asst. Settlement Officer of Rent Case has rightly passed orders to record the suit land in Abada Jogya Anabadi Khata. Further, I am not convinced with the prayer of the Petitioners and since the present Petitioners have failed to substantiate their claim, I am inclined to order that the Revision Petition filed by the above named Petitioners, being devoid of any merit, is liable to be rejected, so it is rejected.

Order pronounced in the open Court on this day the 27th March, 2018.

Sd/-

Collector, Nabarangpur

O.S.S.A. Revision Case No. 54 of 2017

(Arising out of S.R.P. No. 338/2007 of
Court of the Joint Commissioner,
Settlement & Consolidation, Berhampur)

Decided on 12.06.2018

(Order by Dr. Ajit Kumar Mishra, OAS (SAG),
Collector, Nabarangpur)

Hanu Harijan ... **Petitioner**

-Versus-

Tahasildar, Papadahandi & others ... **Opp. Parties**

ORDER

This case is taken up today.S.R. back. The Advocate for the Petitioner is present and filed hazira. The O.P. No.4 is present and filed hazira. The O.P. No.5 and 6 are absent. Heard the O.P. No.4 and the learned Advocate for the Petitioner. The Government Pleader is present. Perused the record. The story of the case in gist is as follows-

The case has been originally initiated in the Court of Joint Commissioner, C & S, Berhampur vide **SRP No. 338/2007**, which has been transferred to the Court of the Revenue Divisional Commissioner, SD, Berhampur and re-numbered as **O.S.S.A. Revision Case No.226 / 2016** and the same has been transferred from the said Court on the strength of receipt of Notification No.23966/RDM dated 21.07.2017 of Government in Revenue & Disaster Management Department, Odisha, Bhubaneswar, wherein the State Government have delegated the powers of Board of Revenue, Odisha under section 6-D, 15 & 25 of the Odisha Survey & Settlement Act,1958(Odisha Act 3 of 1959), in favour of the Collector, Nabarangpur to exercise the powers and perform duties under the above provisions in respect of Nabarangpur district for the purpose of early disposal of revision cases. The instant case has been re-numbered as OSSA Revision case No.**54/ 2017** in respect of this Court and taken up.

The prayer of the Revision petitioner as reveled from the Revision petition is that the petitioner has filed the revision challenging the illegal and arbitrary record of right prepared by the Settlement authority in the name of Sambaru Paraja S/o Dhana

Paraja, who is the father of the O.P. No.3 to 5 of the suit land though he is neither the owner of the suit land nor in possession of the same. The Petitioner further submits that the grandfather of the petitioner was in possession of the said land by constructing his house over the suit land corresponding to Sabik Khata No.138, Plot No.180 Area Ac.0.22 Kissam-basti of Chandili mouza. During Hal settlement operation, the Settlement authorities have recorded the suit land in the name of Sambaru Paraja S/o Dhana Paraja, who is the father of the O.P. No.3 to 5. Accordingly, the Petitioner has prayed to allow the revision directing the appropriate authorities to correct the Hal ROR of the Khata No.289, Plot No.753 Ac.0.22 in deleting the name of the Sambaru Paraja S/o Dhana Paraja as owner of the suit land and further direct to record the name of the Petitioner as the owner of the suit land. The Petitioner has filed certified copy of Hal ROR of Khata No.289 of Chandili Mouza, Xerox copy of Yadast No.565 of Chandili mouza in support of his claim, but failed to file any documentary evidences relating to his claim of possession over the case land. Hence, it is evident that the Petitioner has got no strict proof of his possession over the case land. The Opposite parties so present during hearing have also failed to file any documentary evidences in support of their claim relating to their possession over the case land. From perusal of the Field Possession Report furnished by the Tahsildar, Papadahandi vide letter No.771 dated 11.06.2018, it is revealed that the case land is recorded in the name of Samaru Paraja D/o Dhana Paraja. But, one Hanu Harijan S/o Haldhar Harijan has been encroaching the land in the same plot.

In view of the elaborate discussions made supra, I am of the opinion that both the parties have failed to file any documentary evidences in support of their claim relating to their possession over the case land. Hence, I am not convinced with the prayer of the Petitioner with regard to recording of the case land in his favour and since the present Petitioner as well as the O.P. No.3 to 5 have failed to substantiate their claim, I am inclined to order that the impugned Hal ROR of Khata No.289, Hal Plot No.753 to an extent of Ac.0.22 of Chandili mouza finally published by Assistant Settlement Officer, Settlement, Jeypore is liable to be set-aside, so it is set-aside and the Revision Petition filed by the above named Petitioner, being devoid of any merit, is liable to be rejected, so it is rejected. The Tahasildar, Papadahandi is directed to correct the Hal ROR of Khata No.289, Hal Plot No.753 to an extent of Ac.0.22 of Chandili mouza and to record the same in Rakhit Khata of Chandili mouza and evict the encroachers from the same land immediately.

Order pronounced in the open Court on this day the 12th June, 2018.

Sd/-

Collector, Nabarangpur

O.S.S.A. Revision Case No. 75 of 2017

(Arising out of S.R.P. No. 178/2007 of
Court of the Joint Commissioner, Settlement & Consolidation, Berhampur)

Decided on 19.06.2018

(Order by Dr. Ajit Kumar Mishra, OAS (SAG),
Collector, Nabarangpur)

Khalli Charan Pradhan ... **Petitioner**

-Versus-

Tahasildar, Jharigam & others ... **Opp. Parties**

ORDER

This case is taken up today.S.R. back duly served on both parties. The learned Advocates for both parties are present and filed hazira. The Government Pleader is present during hearing of the case. Heard the learned Advocates for the Parties. Perused the record. The story of the case in gist is as follows-

The case has been originally initiated in the Court of Joint Commissioner, C & S, Berhampur vide **SRP No.178/2009**, which has been transferred to the Court of the Revenue Divisional Commissioner, SD, Berhampur and re-numbered as **O.S.S.A. Revision Case No.256/2016** and the same has been transferred from the said Court on the strength of receipt of Notification No.23966/RDM dated 21.07.2017 of Government in Revenue & Disaster Management Department, Odisha, Bhubaneswar, wherein the State Government have delegated the powers of Board of Revenue, Odisha under section 6-D, 15 & 25 of the Odisha Survey & Settlement Act, 1958(Odisha Act 3 of 1959), in favour of the Collector, Nabarangpur to exercise the powers and perform duties under the above provisions in respect of Nabarangpur district for the purpose of early disposal of revision cases.

The instant case has been re-numbered as OSSA Revision case No. **75/2017** in respect of this Court and taken up today.

During hearing of the case on 27.03.2017, the learned Advocate for the Opposite Party No.3 submitted that 6 nos. of cases i.e. OSSA Revision Case No.74/2017, 75/2017, 76/2017,77/2017,78/2017 and 79/2017 have been filed by the present petitioner Khalli Charan Pradhan s/o Arakhita Pradhan of village Jharigam against the Opposite Party Chandramani Pradhan s/o late Arakhita Pradhan of village Jharigam and prayed to hear the aforesaid 6 nos. of cases simultaneously . Accordingly, all the aforesaid 6 nos. of cases have been heard simultaneously. Perusal of the aforesaid case records, it is revealed that the Petitioner has filed these cases separately for a single Khata instead of filing separate cases. The

prayer of the Petitioner is that the Petitioner has purchased the case land, but the Settlement Authorities have issued Hal ROR bearing Khata No.31 of Jharigam mouza jointly in the name of the Petitioner and Opposite Party.

The learned Advocate for the Opposite Party No.3 submits that earlier the Opposite Party had filed partition suit before the Civil Court at Nabarangpur and the same was dismissed. Thereafter, the Petitioner has filed a Civil suit before the Civil Court at Umerkote, which is now under subjudice.

On 17.04.2018 and 24.04.2018, the learned Advocates filed copy of judgment in C.S. No.16/2009 passed by the learned Court of Civil Judge(Senior Division), Nabarangpur and plaint copy in C.S. No.13/2016 filed by the present Petitioner in the learned Court of Civil Judge(Senior Division), Umerkote. The learned Advocate for the Opposite Party has argued that since Civil Suit bearing CS No.13/2016 is pending in the learned Court of Civil Judge (Senior Division), Umerkote filed by the same petitioner against the same Opposite Party for the same case land, the present Revision Petition is not maintainable in the eyes of law and accordingly he has prayed to dismiss the Revision.

From perusal of the Revision Petition, it is ascertained that the Petitioner has filed the Revision Petition for Revision of Hal Khata No.31, Hal Plot No. 917 Ext.Ac.0.06 of Jharigam mouza stating that the same co-relates to Sabik Khata No.94/20, Sabik Plot No.209/2002 which has been purchased by the Petitioner vide RSD No.153/1994.

Further, from perusal of the Para Wise Report furnished by the Addl. Sub Collector, Settlement, Jeypore, it is reported that in course of preparation of draft records in Khanapuri stage, the corresponding Hal Plot No.916 Ac.3.36 and 917 Ac.0.06 co-relates to Sabik Plot No.209/2 has been enquired and reported by the Khanapuri Amin vide Yadast No.117 to be under possession of purchaser namely Khalli Charan Pradhan against Plot No.917 and Santilata Choudhury w/o Jenamani Choudhury of the same village against Plot No.916 vide RSD No.153/1994 and 154/1994 respectively. The ASO has disposed of the above Yadast and passed order to record the said plot in the name of Khalli Ch.Pradhan .Accordingly the Hal Khata No.25(now-31) was prepared. The draft records were published for a period of 60 days.The present petitioner has filed an objection petition case No.1185/1998 for correction of Hal Plots . The objection Petition has been disposed of by the ASO and passed order to that to record Hal Plot No.918 in the name of present Petitioner as per possession.Hence, the Hal Plot No.917 is transferred to Hal Khata No.235 in the name of Santilata Choudhury w/o Jenamani Choudhury. As such, the Hal Plot No.917 now exist in Hal Khata No.235 of Jharigam mouza.The said scheduled land has not shown in CS No.13/2016.

Further, it is observed that the petitioner has wrongly filed the instant Revision Petition praying for Revision of Hal Khata No.31 bearing Hal Plot No.917 of Jharigam mouza, whereas Hal Plot No.917 exist in Hal Khata No.235 in the name of Santilata

Choudhury w/o Jenamani Choudhury and the said Hal Khatadar namely Santilata Choudhury has not been impleaded as party to this case.

In view of the elaborate discussions made supra and since the petitioner has wrongly filed the case mentioning wrong schedule of land and the Hal Khatadar of the said land has not been impleaded as a party to the case, I am of the opinion that the Revision Petition filed by the Petitioner is not maintainable in the eye of law. Hence, I am inclined to order that the Revision Petition filed by the above named Petitioner is liable to be rejected, so it is rejected.

Order pronounced in the Open Court on this day the 19th day of June, 2018.

Sd/-
Collector, Nabarangpur

O.S.S.A. Revision Case No. 24 of 2018

Decided on 28.07.2018

(Order by Dr. Ajit Kumar Mishra, OAS (SAG),
Collector, Nabarangpur)

Collector, Nabarangpur on behalf of Abhimanyu Bissoi ... **Petitioner**

-Versus-

Additional Sub-Collector, Settlement, Jeypore & others ... **Opp. Parties**

ORDER

This case is taken up today S.R. back duly served on both parties. The Petitioner is present and filed hazira. The Opposite Party is absent on call in spite of due service of notice, hence he is hereby made ex-parte. Heard the petitioner. Verified the original Sale deed. Perused the record. The story of the case in gist is as follows-

This case has been instituted on the strength of receipt of Notification No.23966/RDM dated 21.07.2017 of Government in Revenue & Disaster Management Department, Odisha, Bhubaneswar, wherein the State Government have delegated the powers of Board of Revenue, Odisha under section 6-D, 15 & 25 of the Odisha Survey & Settlement Act, 1958 (Odisha Act 3 of 1959), in favour of the Collector, Nabarangpur to exercise the powers and perform duties under the above provisions in respect of Nabarangpur district for the purpose of early disposal of revision cases.

In this connection, it is pertinent to mention here that, the land of the Petitioner was acquired in connection with construction of Upper Indravati Hydro Electricity Project Dam. The Government paid compensation to the aforesaid displaced person and out of the said compensation money he has purchased following scheduled

landed property from the vendors on the **Registered Sale Deed bearing No.509/1990** basing on the Sabik ROR-

Mouza	Sabik Khate No.	Sabik Plot No.	Extent
Khuntiaguda	62/75	61	0.16
		62	1.13
		76	<u>0.11</u>
Total			1.40

In the meanwhile settlement operation in respect of the village was completed and final Hal ROR was published. The aforesaid displaced person was not able to appear before the Settlement authorities during Settlement Operation due to his ignorance and illiteracy for which he has been deprived of his right for recording of the purchased case land in his favour.

That, due to the above facts, the landed property purchased by the above named displaced person from the Vendors was again recorded in the name of the Vendors instead of the Vendees by the Settlement authorities during Hal Settlement operation without having any right, title and possession though the landed property was sold by the vendors.

The Indravati Budi AnchaliyaGana Parishad is demanding for mutation of the purchased land in their favour.

Considering the gravity of the case of the above named displaced person, the instant suo-moto Revision case u/s 15(b) of Odisha Survey & Settlement Act, 1958 has been instituted in respect of the following scheduled Hal Khata, which is presently recorded in the name of **Kanhei Sahu S/o PanchananSahu, Caste-Sundivill-Khuntiaguda**—

HAL ROR			
Mouza	Khata No.	Plot No.	Extent
Khuntiaguda	9	180	0.11
		190	1.13
		192	<u>0.16</u>
Total			1.40

The District Sub Registrar, Nabarangpur has supplied certified copy of the Registered sale deed bearing No. **509/1990** Perusal of the said Registered sale deed reveals **Kanhei Sahu S/o late Panchanan Sahu of vill-Khuntiaguda** had sold the case land measuring **Ac.1.40** bearing **Sabik Khata No.62/75, Plot No.61, 72 & 76 of Khuntiaguda mouza** under Tentulikhunti Tahasil of Nabarangpur district to the **Petitioner** after receiving the consideration money from the vendor and the

said vendor had transferred the right, title, interest and possession to the vendee over the case land. During the Hal settlement, the vendee/petitioner due to his ignorance could not able to produce the sale deed before the Settlement authorities, for which the land in question has been recorded in the name of the **Opp.Party**.

The Settlement Officer, Jeypore supplied copies of Yadast, Sabik ROR, Draft Khatian in respect of the case land. From perusal of Registered Sale deed, Yadast, Draft Khatian, it is revealed that the present Petitioner has purchased the case land from the Sabik Khatadar. As such, I am of the opinion that the prayer of the petitioner for recording of ROR in respect of the case land in his favour is genuine.

In view of the above and in order to sort out the problems of the displaced persons and to implement the directions of Hon'ble Human Rights Commission issued in NHRC case No.1131/18/6/2013, I am inclined to allow the revision of the **Hal Khata No.9 , Hal Plot No.180 Ac.0.11, Hal Plot No.190 Ac.1.13 and Hal Plot No.192 Ac.0.16 of Khuntiaguda mouzato** record in the name of the petitioner **Abhimanyu Bissoi S/o Bana Bissoi, village-Khuntiaguda, Caste-Sundi**. The Tahasildar, Tentulikhunti is directed to make necessary corrections of aforesaid Hal ROR in the name of the Petitioner **Abhimanyu Bissoi S/o Bana Bissoi village-Khuntiaguda, Caste-Sundi** and issue ROR accordingly.

Send the extract of orders to the Tahasildar, Tentulikhunti to implement the orders and for taking necessary action. Also, free copy of the extract of orders, be supplied to the Petitioner.

Order pronounced in the open Court on this day the 28th July, 2018.

Sd/-

Collector, Nabarangpur

O.S.S.A. Revision Case No. 318 of 2018

Decided on 31.12.2019

(Order by Dr. Ajit Kumar Mishra, OAS (SAG),
Collector, Nabarangpur)

Sudhir Prasad Sahu ... **Petitioner**

-Versus-

Bhuban Gouda & others ... **Opp. Parties**

ORDER

This case is taken up today on the strength of joint advance petition filed by the learned Advocate for the petitioner and opposite party. The case was initially posted on 09.07.2019 for hearing, but due to strike by the Bar Association, the case could not be taken up on that date. The notices issued to the Opposite parties to appear

in the Court on 09.07.2019 was duly served on them and served copies returned back. The learned Advocate for the Opposite party No.1 to 7 has filed vakalatnama on behalf of the Opposite party No.1 to 7 and also filed affidavit duly affirmed by the said Opposite parties. Heard the learned Advocates for both parties and accepted the Vakalatnama filed by the learned Advocate Sri Ram Prasad Patra on behalf of the O.P.No.1 to 7. Perused the record. The factual matrix of the case in gist is as follows-

The prayer of the petitioner as revealed from the Revision petition is that the petitioner has purchased a piece of land to an extent of Ac.0.52 pertaining to Sabik Khata No.88, Sabik plot No.46 of Nuakote mouza from the Opposite Party No.1 to 7 vide RSD No.374/2013 dated 06.03.2013, which is presently recorded in Hal Settlement Record under Hal Plot No.102 of Hal Khata No.211 in the names of deceased father & grandmother of O.P.No.1. However, the Petitioner could not approach the settlement authorities during Hal Settlement operation since he was away from suit village in order to earn his livelihood. As a result the suit plot has been recorded in the name of deceased father and grandmother of O.P.No.1.

Accordingly, the petitioner preferred this Revision being aggrieved by the impugned final publication of ROR of corresponding Hal Khata No. 211 with Hal Plot No.102, Ac.0.50 of Nuakote mouza under Papadahandi Tahasil.

The Petitioner has filed (1) certified copy of Draft Khatian No.211 of Nuakote mouza (2) Yadast (3) Xerox copies of RSD No.374/2013 (4) Affidavit (5) Certified copy of Sabik Khata No.88 of Nuakote mouza, (6) Certified copy of Hal ROR of Khata No.211 of Nuakote mouza in support of his claim. The opposite Party No.1 to 7 through their Advocate have filed affidavit stating that the petitioner has purchased the case land and in peaceful possession. Further, they have affirmed in the affidavit to the effect that they have no objection for correction of suit land in favour of the petitioner. The ASO, Jeypore has furnished PWR which shows that the Sabik case land co-relates the Hal Khata No.211, Hal plot No.102 of Nuakote mouza, which has been finally published on 21.10.2014.

Further, from perusal of field Possession Report furnished by the Tahasildar, Papadahandi vide letter No.2160 dated 20.12.2019, it is revealed that the Sabik Khata No.88, Sabik Plot No.46 Ac.0.52 of Nuakote mouza co-relates to Hal Khata No.211, Hal Plot No.102 Ac.0.50, which is recorded in Hal Khata in the name of Deba Gouda S/o Durjan Gouda and Tulabati Gouda W/o Durjan Gouda. Further, the Tahasildar, Papadahandi has reported that the Petitioner is in peaceful cultivating possession over the aforesaid Hal Plot to an extent of Ac.0.50 since the date of purchase.

In view of the elaborate discussions made supra, I am convinced with the prayer of the Petitioner and hence, I am inclined to accept the delay condonation Petition and to allow the Revision Petition filed by the Petitioner. The Tahasildar,

Papadahandi is directed to correct the Record of Right in respect of Hal Khata No.211, Hal Plot No.102 Ext. Ac.0.50, Kissam Dangar of Nuakote Mouza in the name of the Revision Petitioner Sudhir Prasad Sahu S/o Saraju Prasad Sahu, Caste-Sundi of village Mudiguda, post-Nuakote and issue ROR to the said Petitioner accordingly.

Send the extract of orders to the Tahasildar, Papadahandi to implement the orders and for taking necessary action. Also, free copy of the extract of orders, be supplied to the Petitioner.

Order pronounced in the Open Court on this day the 31st day of December, 2019.

Sd/-
Collector, Nabarangpur

OSARC No. 1004 of 2016

Decided on 23.03.2019

(Order by Sri T. Ao, I.A.S.
Revenue Divisional Commissioner (SD), Berhampur)

Raj Kumar Behera & others ... **Petitioners**
-Versus-
Asst. Settlement Officer, Phulbani & others ... **Opp. Parties**

For the Petitioner Sri H.C. Maharana, Advocate
For the OPs. Sri Jitendra Ku. Sahu, Advocate

Prayer

Revision Petition filed U/s 15(b) of OS & S Act, 1958 to delete the names of the respondents from Hal Khata No. 23 of Pirikudi Mouza of Khajuripada Tahasil of Kandhamal district.

Contention

The suit lands were recorded in the names of late Dharanidhar Behera, Chandra Sekhar Behera, late Mahendranath Behera and Prafulla Behera who are natural brothers. As per family decision and being purchased by the elder brother late Dharanidhar Behera, the other RTs Chandra Sekhar Behera, late Mahendranath Behera and Prafulla Behera relinquished their right from Sabik Plot No. 164 & 182 of Sabik Khata No. 21 and delivered their possession to late Dharanidhar Behera. Accordingly, the suit lands were mutated in favour of Late Dharanidhar Behera in MC Case No. 232/83 by Tahasildar, Kandhamal. Thereafter the petitioners are in

peaceful possession of the suit lands and are paying rent regularly. During last settlement finalised in the year, 2013 the corresponding Hal Plot No. 200 and 219 of Hal Khata No. 23 of Pirikudi mouza were recorded jointly in the name of the petitioners as well as respondents. Hence the petition to delete the names of respondents from the Hal ROR

Documents enclosed:-

- Copy of ROR No. 23 Published on 18.09.2013.
- Copy of Objection Case No. 311/12 for correct records of Hal Plot No. 200 & 219 of Hal Khata No. 23.
- Copy of application dtd. Nil for filing of objection Case no. 311/2012.
- Copy of Amin enquiry report in objection Case no. 311/12.
- Copy of ROR No. 18 published on 16.02.1975.
- Copy of Rent receipts for Khata No. 18 for the year 2008-09, 2009-10, 2010-11, 2011-12, 2013-14 & 2014-15.
- Copy of ROR No. 21 published on 16.12.1975.
- Certified copy of order sheet of MC No. 232/83.
- Copy of application dtd. 01.03.1983 of Dharanidhar Behera to delete the name of OP No. 4, father of OP No. 5 & 6 and OP No.7 from ROR No.21.
- Copy of application dtd. 29.01.2013 of OP no 4, 5, & 7.
- Copy of Death Certificate dtd. 30.10.2017 of Renuka Behera.
- Copy of Rent receipt for Khata No. 18 for the year, 2008-09, 2009-10, 2010-11, 2011-12, 2014-15 & 2013-14.
- Copy of Death Certificate dtd. 08.12.2015 of late Dharanidhar Behera issued by BMC, Bhubaneswar.
- Copy of Voter Id No. OR/15/104/260215 of Raj Kumar Behera.
- Copy of Voter ID No. MDG1558402 of Rajib Kumar Behera.
- Copy of ROR No. 42 published on 16.05.2014.
- Copy of Notice issued for MC case No.232/1983.
- Copy of ROR No. 441 published on 16.05.2014.
- Copy of ROR No. 21 published on 16.05.2014.
- Copy of ROR No. 11 published on 18.09.2013.
- Copy of ROR No. 23 published on 18.09.2014.
- Copy of ROR No. 22 published on 16.05.2014.

- Copy of ROR No. 47 published on 30.04.2014.
- Copy of report of RI, Gudari dtd. 10.12.2018.
- Copy of Yaddast No. 13 instituted for correct records of Sabik Khata No. 21.
- Statement dtd. 09.12.2017 of Chandra Sekhar Behera.

Land schedule

Sl No.	Mouza	Sabik Khata No.	Sabik Plot No.	Area	Hal Khata No.	Hal Plot No.	Area
1	Pirikudi	21	164	Hc. 0.070R	23	219	Hc. 0.070R
		21	182	Hc. 0.106R	23	200	Hc. 0.106R

Date wise briefing

- On 13.11.2017, the Advocate for the petitioners was present. The respondents were also present. The petitioner Rajib Kumar Behera was also present. The Advocate for the petitioner submitted that Smt. Renuka Behera (mother of the petitioners) died on 30.10.2017. The Advocate for the petitioner was directed to submit death certificate of Smt. Renuka Behera along with her legal heir certificate.
- On 11.12.2017, the Advocate for the petitioners was present and filed death certificate of Smt. Renuka Behera and certified copies of other relevant documents relating to the case. The Advocate for the respondents filed counter claiming that the said relinquishment deed, statement of purchasing the land and mutation proceedings are not sustainable in the eye of the law.

The Tahasildar, Khajuripada was asked to furnish detail property of the petitioners as well as OPs jointly/ individually in the said village and other villagers within the jurisdiction of the Tahasil along with copy of case record of MC No. 232/1983.

- On 10.01.2019, the Advocate for the petitioners was present. Advocate for the respondents was present. The respondent Saroj Kumar Behera, Chandra Sekhar Behera and Prafulla Kumar Behera were present. The petitioner Rajib Kumar Behera was also present in the court. The Advocate for the respondents submitted that the claim of the petitioners regarding purchase of suit land is false and they have no registered documents to substantiate their claim. The suit lands were ancestral properties of all the parties and have never been partitioned. He further claimed that the signatures of Chandra Sekhar Behera, late Mahendranath Behera, Prafulla Behera in case record of M.C. No 232/83 are forged. The Yaddast report dtd.27.06.1998 clearly shows that ASO, Phulbani ordered to record all ancestral lands jointly in the name of late Dharanidhar Behera along with his three natural brothers. According to MC case No.232/83, the father of the petitioners purchased the suit land and it was recorded in the name of the father of the petitioners

on consent of all his natural brothers. All the ancestral properties have been partitioned and all parties are residing on their allotted shares of land. The settlement authorities wrongly recorded the land jointly in the name of the father of the petitioner along with OPs ignoring the order passed in the mutation case.

Both the parties were directed to establish in the court that the mutation case and current settlement were finalised following due Procedure.

- On 17.01.2019, in spite of prior issue of notices, none of the parties were present on call.
- On 24.01.2019, In spite of prior issue of notices, the Advocate for the petitioner was absent on call. The Advocate for the respondents was present. The Advocate for the respondents submitted that the suit properties are their ancestral properties which had never been partitioned and late Dharanidhar Behera was a Govt. servant. He further submitted that as a Govt. servant, late Dharanidhar Behera, if at all he had purchased the land as claimed by the petitioner must have taken permission to purchase the same from his higher authorities. The petitioner should therefore provide documents in that regard.
- On 11.02.2019, the Petitioner Raj Kumar Behera was present and proved his identity vide Voter ID no. OR/15/104260215. The petitioner submitted that Sabik Plot No.164 and 182 were purchased by his late father out of his own income being a Govt. Servant & was in his possession since 1983. The petitioner is asked to submit relevant RSD to prove purchase of the land.
- On 01.03.2019, the Advocate for the petitioner was present. Respondents Prafulla Behera and Chandra Sekhar Behera were present. Petitioners Raj Kumar Behera and Rajib Kumar Behera were also present. The Advocate for the respondents was also present. The Advocate for the petitioner submitted that mutation has been made in the proper way but as the certified copy of the mutation case was not available with them at the time of Settlement, they could not produce the same before the settlement authority. If mutation was not done in a proper way as alleged by the OPs, they could have challenged it in proper forum.

The Advocate for the OPs submitted that in the mutation application, late Dharanidhar Behera mentioned that the suit property is self-acquired. Thus, petitioner is required to prove that the suit land was self-acquired property of late Dharanidhar Behera. In this context the Advocate for the OP cited judgement dtd. 06.09.2017 in Civil appeal Case No. 11220/2017 arising out of SLP (L) No. 5664/2012. He further submitted that the petitioner should produce copy of permission letter of late

Dharanidhar Behera as a Govt. Servant to purchase the suit land under OGSC rules, 1959. The ancestral properties have never been partitioned. The petitioner is required to produce copy of the RSD, copy of payment receipt to the vendor for purchase of suit land. The OP Prafulla Behera present in the court submitted that he along with Brothers Chandra Sekhar Behera & late Mahendra Kumar Behera went to Tahasil Office to sign in the Mutation record.

ORDER

This case was heard for the final time on 23.03.2019. Advocates for the petitioners as well as Advocate for the OPs were present. During deliberation, the Advocate for the petitioners stood on the contention of the revision petition and the Advocate for the OPs stood on the contention of the Counter filed by the opposite parties.

The PWR was submitted by the S.O., Kandhamal vide his letter No. 804 dtd. 28.08.2017 which reveals that

The Sabik Plot No. 27, 158, 164 and 182 under Sabik Khata No. 21 were recorded in the name of Dharanidhar Behera, Chandra Sekhar Behera, Mahendranath Behera and Prafulla Kumar Behera, all are S/o- Balabhadra Behera of vill- Jalanga Padar.

The Petitioners claim that the Sabik Plot No.164 and 182 have been purchased by Dharanidhar Behera and got the plots mutated in his name vide M.C. No. 232/83 dtd 28.04.1983 of Tahasil Office, Kandhamal.

Accordingly, the Tahasil Patta was issued to the purchaser by deleting the names of other three brothers. But during the current settlement operation the Petitioners being the legal heirs of the deceased father Dharanidhar Behera failed to produce Tahasil mutated Patta both in Khanapuri stage and Rent and Appeal stage. As such the plots were kept intact as per the Sabik record.

Also perused the field verification report of the Tahasildar, Khajuripada submitted vide his Letter No.3223 dtd. 19.12.2018 which reveals that:

As per M.C. Case No. 232/83 the following plots of Pirikudi mouza are recorded as under:

- Khata No. 42 area Hc. 0.746R is recorded in the name of Dharanidhar Behera, Chandra Shekhar Behera, Mahendra Behera, Prafulla Kumar Behera (All are s/o- Balabhradra Behera).
- Khata No. 41, area Hc. 0.492R is recorded in the name of Dharanidhara Behera) Khata No. 21, Area Hc. 0.385R is recorded in the name of Chandra Sekhar Behera
- Khata No. 11, Area Hc. 0.412 is recorded in the name of Chandra Sekhar Behera

- Khata No. 23, area Hc. 0.328R is recorded in the name of Dharanidhar Behera, Chandra Sekhar Behera, Mahendra Behera, and Prafulla Behera.
- Khata No. 22, Area Hc. 0.097R is recorded in the name of Dharanidhar Behera
- Khata No. area Hc. 0.127R is recorded in the name of Dharanidhar Behera, Chandra Sekhar Behera, Prafulla Kumar Behera.

The Tahasildar, Khajuripada has further intimated that the suit lands are lying vacant at present.

In the instant case, the petitioners challenged the settlement process conducted in Pirikudi Mouza for settlement of the suit land along with other adjacent lands which was finalised in the year, 2013. They submitted in the plaint that the suit lands were purchased by late Dharanidhar Behera and were wrongly recorded in favour of late Dharanidhar Behera along with his three natural brothers.

As per family decision, the three natural brothers of late Dharanidhar Behera relinquished their right over plot No. 164 and 182 and delivered their possession to their elder brother. Thus, instead of recording the suit lands exclusively in the name of late Dharanidhar Behera, the same have been wrongly recorded in the name of Dharanidhar Behera, Chandra Shekhar Behera, Mahendra Behera, Prafulla Kumar Behera

In the counter filed by the Advocate for the OP No 4 to 7, it is seen that the OPs have contested the veracity of the mutation deed issued by the Tahasildar, Kandhamal in M.C. Case No. 232/83 during hearing in this Court, wherein the Tahasildar, Kandhamal in his order dtd. 18.04.1983 recorded the suit lands in favour of the petitioner. The Advocate for the OPs submitted that if the father of petitioner purchased the said land, the petitioners should intimate the name of vendor to the court along with RSD through which they have purchased the suit lands. Further they urged the court to direct the petitioners to submit the permission letter issued in favour of the father of petitioners by the state Govt. being a Govt. servant. The Advocate for the OPs further submitted that no where in the MC Case record, there is signature of the OPs to prove that they attended the court of the Tahasildar, Kandhamal. Further as per section 17 of Registration Act, 1908, a registered relinquishment deed is mandatory for relinquishment of property by the RTs.

For better appreciation of the case, it is mentioned here that the mutation ROR issued by Tahasildar, Kandhamal in MC case No.232/83 is challenged by the respondent No.4 to 7 of this case and Settlement ROR published on 18.09.2013 is challenged by the Petitioners of this case. On verification of PWR, it is seen that the Settlement authorities cited non-submission of copy of Mutation ROR by the Petitioners during settlement operation as the reason for non-recording of the suit lands in favour of the Petitioners. But Yaddast No.13 filed for correct recording of Hal Plot No. 200 and 219 shows that late Dharanidhar Behera gave his consent for

joint recording of suit Plots in the name of Khata No.21 in the name of himself and his three natural brothers namely: Sri Chandra Sekhar Behera, late Mahendra Behera and Prafulla Kumar Behera.

Filing of Objection case No.311/12 by Dharanidhar Behera before the ASO for recording of Hal Plot No. 200 and 219 in his name clearly disproves the claim of the Petitioners that they were ignorant about the Settlement process.

Similarly on verification of copy of Mutation case record of MC case No.232/83, it is seen that there is no mention of issue of notice to Chandra Sekhar Behera, Mahendra Behera, and Prafulla Behera and their signature is missing in the Mutation case record. Further the signatures of Chandra Sekhar Behera, Mahendra Behera, and Prafulla Behera contained in the application Dtd.29.03.1983 for relinquishment of their shares do not tally with their signatures obtained in the court. Thus, there is prima facie evidence of procedural error committed in disposal of the mutation case. So far as Mutation case is concerned, appellate forum is prescribed in Rule 42 of Mutation Manual. But the respondents have not challenged the orders of Tahasildar in the appropriate forum. Further Tahasildar, Khajuripada has intimated in his field verification report that the land is lying vacant without cultivation.

Though the Court directed the petitioner several times to produce RSD in proof of his purchase of the suit land and also to produce permission letter issued u/r 21 of OGSC Rules, 1959 from competent authority for purchasing the suit land but, he expressed his inability to submit any such document in the court.

In this context summary of orders Dtd.06.09.2017 of the Hon'ble Supreme Court passed in Civil appeal No.11220/2017(arising out of SLP(C) No.5664/2012) filed by Adivappa & others -Vrs-Bhimappa & another is reproduced below which reveals that:

- xxxxx Adivappa - the head of family owned several acres of agricultural land. He died intestate. The dispute started between the two sons of Hanamappa and their uncle-Bhimappa and Aunt-Gundavva after the death of Adivappa and Haamappa. The disputes were regarding ownership and extent of shares held by each of them in the agricultural lands.
- Adivappa and Yamanappa (appellants herein) filed a suit (O.S.No.85 of 2001) against-Bhimappa and Gundavva (respondents herein) and sought declaration and partition in relation to suit properties described in Schedule B, C and D.
- The declaration was sought in relation to the suit properties in schedule B and C that these properties be declared as Plaintiffs self-acquired properties.
- The trial court framed the issues and parties adduced their evidence. By judgement/decreed dated 15.07.2006, the trial court dismissed the suit. It was held that the Plaintiffs failed to prove the suit properties specified in Schedule B and C to be their self-acquired properties. Xxxxxxxx

- The plaintiffs felt aggrieved and filed first appeal before the Karnataka High Court. By impugned judgement; the High Court dismissed the appeal and affirmed the judgement/decreed of the trial court giving rise to filing of this appeal by way of special leave before this court by the plaintiffs. Xxxxxx
- It is a settled principle of law that the initial burden is always on the plaintiff to prove his case by proper pleading and adequate evidence (oral and documentary) in support thereof. The Plaintiffs in this case could not prove with any documentary evidence that the suit properties described in Schedule B and C were their self-acquired properties and that the partition did not take place in respect of Schedule D properties and it continued to remain ancestral in the hands of family members. On the other hand, the defendants were able to prove that the partition took place and was acted upon.
- In order to prove that the suit properties described in Schedule B and C were their self-acquired properties, the plaintiffs could have adduced the best evidence in the form of a sale-deed showing their names as purchasers of the said properties and also could have adduced evidence of payment of sale consideration made by them to the vendee. It was, however, not done.
- Not only that, the Plaintiffs also failed to adduce any other kind of documentary evidence to prove that self-acquisition of the schedule B and C properties nor they were able to prove the sources of its acquisition. Xxxxxxxx
- We have, therefore, no hesitation in upholding the concurrent findings of the two courts, which in our opinion, are based on proper appreciation of oral evidence. Xxxxxxxx
- We have considered this submission but find no merit in the light of what we have held above. At the cost of repetition, we may observe that if the plaintiffs failed to prove their main case set up in the plaint and thereby failed to discharge the burden, we can not accept their any alternative submission which also has no substance.
- In the result, we find no merit in the appeal. It fails and is accordingly dismissed.

This case is similar in many ways to the case of Adivappa & others -Vrs- Bhimappa & another. In this case also Petitioners failed to adduce any evidence in support of purchase of the land and thus the Mutation record automatically invites doubts over its authenticity, or that prescribed procedure was adopted during its disposal.

Findings

- The ROR No. 21 shows that the Sabik RT of the suit land were late Dharanidhar Behera, Chandra Shekhar Behera, Mahendra Behera, Prafulla Kumar Behera.

- The Mutation case record reveals that Sri Chandra Sekhar Behera, late Mahendra Behera and Prafulla Kumara Behera who are OPs in this case have not been noticed to attend the hearing in the court of the Tahasildar, Khajuripada.

Further there is no signature of Sri Chandra Sekhar Behera, late Mahendra Behera and Prafulla Kumar Behera anywhere in the Mutation case record to prove their presence in the court.

- The Signatures of Sri Chandra Sekhar Behera and Prafulla Kumar Behera in application dtd. 29.03.1983 said to have been filed before the court of the Tahasildar, Khajuripada do not tally with the signatures of Sri Chandra Sekhar Behera and Prafulla Kumar Behera recorded in this court. Thus, there is prima facie evidence of procedural irregularity committed during mutation process.
- A verification of the Yaddast No.13 filed for correct recording of Hal Plot No. 200 and 219 Dtd.6.6.1998 shows that late Dharanidhar Behera gave his consent for joint recording of suit Plots in the name of Khata No.21 in the name of himself and his three natural brothers namely: Sri Chandra Sekhar Behera, late Mahendra Behera and Prafulla Kumar Behera.
- The PWR shows that the Petitioners failed to produce mutation ROR during any stage of Settlement.
- Further Objection case No.311/12 shows that the same was filed by Dharanidhar Behera before the ASO for recording of Hal Plot No. 200 and 219 in his name and his signature in the case record shows that he had attended the Court of ASO during hearing. This shows that due opportunity was given to late Dharanidhar Behera and the Petitioners during Settlement process to establish their claim and due to non-submission of any supportive documents, the claim of Dharanidhar Behera to settle the suit Plots in his name could not be entertained.
- Tahasildar, Khajuripada has intimated in his field verification report that the land is lying vacant without cultivation.

As such the revision is disallowed as the Petition has no merit for consideration.

This revision is disposed off accordingly.

Sd/-
Revenue Divisional Commissioner
Southern Division, Berhampur

Settlement Revision Petition No. 52 of 2017**Decided on 30.11.2021**(Order by Sri Pratap Chandra Rout, OAS (SS)
Commissioner Consolidation, Bhubaneswar)Shree Jagannath Mahaprabhu Bije, Puri ... **Petitioner**

-Versus-

Sri Raghunath Jew, Puri & another ... **Opp. Parties**

For the Petitioner	....	Mr. A. P. Mishra, Advocate
For the O.P. No. 1	.....	Mr. S. Das, Advocate
For the O.P. No. 2	.....	Mr. B. C. Mohanty, Standing Counsel

ORDER

This revision has been filed u/s 15(b) of the O.S.S Act, 1958, by Shree Jagannath Mahaprabhu Bije, Puri marfat Temple Managing Committee through Administrator, Shree Jagannath Temple, Puri challenging the impugned Record of Rights in respect of Hal khata No. 191 with an area Ac59.550 dec of village Sankarpur.

The Land Schedule involved in this case is given below :

Mouza-Sanakarpur, P.S- Puri Sadar, P.S.No.93, Tahasil- Puri Sadar, Dist- Puri

Hal Khata No. 191	Plot No.78	Area Ac0.150
	Plot No.1291	Area Ac 2.450
	Plot No.1305	Area Ac7.020
	Plot No.1306	Area Ac0.410
	Plot No.1307	Area Ac1.060
	Plot No.1356	Area Ac0.840
	Plot No.1357	Area Ac6.200
	Plot No.1311	Area Ac17.210
	Plot No.1303	Area Ac8.500
	Plot No.1304	Area Ac0.940
	Plot No.1310	Area Ac5.500
	Plot No.1309	Area Ac8.700
	Plot No.1302	Area Ac0.570

Sabik Khata No.53, Plot No. 254, 255, 257, 259,
255 / 351, 260, 232, 242, 243,
244, 246, 45 and 253

The case of the petitioner Shree Jagannath Mahaprabhu Bije Puri marfat Managing Committee is that the Case Land relates to village Sankarpur under Puri Sadar Tahasil vide hal Consolidation khata No. 191 with an area of Ac.59.55dec corresponding to 1977 Settlement khata No. 53, plot No. 254, 255,257,259,255/351, 260, 232,242,243,244,246,45 and 253. In 1977 ROR the case land stands recorded in the name of Shree Jagannath Mahaprabhu marfat Sankararcharya Bharat Bhusan Tirtha- Swami Guru Madhusudan Tirtha Swami. The Learned Counsel for the petitioner contends that the land has been endowed to Lord Jagannath and the recorded marfatdar is a mere Manager. After enactment of Shree Jagannath Temple Act 1954, the Management of Endowment of the Deity vested with Shree Jagannath Temple Managing Committee as per Section-5 of the said Act and Managing Committee is deemed to be in possession over all the Deity property as per Section 33(1) of the said Act. But in consolidation ROR the case land has been recorded in the name of the O.P No.1 which is claimed illegal and prayer has been made to pass order to record the name of the petitioner Deity in respect of the suit land exclusively.

Learned Counsel for the O.P No.1 in reply to the averments of the petitioner submits that in 1927-28 Record of Rights the suit land was record in the name of one Laxmipriya Devi and the same was transferred by Laxmipriya Devi in favour of Sankararcharya Maharaj. Mahanta Sri Garudadhwaja Ramanuja Das disciple of late Mahanta Falahari Sri Basudeb Ramanuja Das filed O.S No.157 of 1980-I in the Court of Sub- Judge, Puri against Shree Jagannath Mahaprabhu through Mahanta Sri Niranjan Tirtha Swami of Sankararcharya Gobardhan Math, Puri for declaration of right, title and interest and possession in respect of the suit land. The Learned Sub- Judge, Puri pleased to declare the right, title and interest of the plaintiff in respect of the suit land accordingly on the basis of Judgment of Sub- Judge, Puri, the Tahasildar allowed the mutation in favour of the Opp.Party No.1. During Consolidation proceeding the suit land was finally recorded in favour of the Opp. Party No.1. The Opp. Party No.1 has submitted that yet the petitioner has not challenged the said judgment of the learned Sub-Judge, Puri. The Consolidation Authorities have rightly prepared the Record of Rights in favour of the Opp.Party No.1 and prayed to dismiss the revision.

I have considered the rival submission made by the parties and perused the records, there can be no dispute to the settled legal proposition that the land belonging to the Deity cannot be subjected to alienation in violation of the statutory requirement.

It has been observed in the case of Lokesh Patra and another –vrs- Commissioner of Endowment reported in 108(2009)CLT 61 that there can also be no dispute to the settled legal position that the Deity is a juristic perpetual/minor/and disable person and in respect of the property belonging to the minor and a person incapable to cultivate the holdings by reasons of physical disability or infirmity requires

protection. A Deity is covered under both the classes. The manager/trustee/pujari and ultimately the State Authorities are under obligation to protect the interest of such a minor or physically disabled person. The Deity cannot be divested of any title or rights of immovable property in violation of the statutory provisions. The object is laudable and based on public policy.

If any person claims to have acquired any kind of right in the property belonging to the Deity, the transaction is required to be ignored being illegal and the Deity becomes entitled to recover the possession as well as the right, title/interest in the property.

In the present case admittedly the suit land under sabik khata No. 53 of village Sankarpur stands recorded in favour of Shree Jagannath Mahaprabhu Bijee, Puri marfat Sankararcharya Bharat Bhusan Tirtha- Swami Guru Madhusudan Tirtha-Swami Sankararcharya Math, Puri in sabik Record of Rights published in the year 1977. The Learned Advocate for the petitioner has submitted that as per Section-5 of the Shree Jagannath Temple Act, 1954, the Administration and governance of the Temple and its endowments vest with the Temple Managing Committee. In support of his submission the Learned Counsel for the petitioner places his reliance in the case of the Administrator Sri Jagannath Temple Managing Committee –vrs- Siddha Math and others reported in 2016(1) O.L.R (SC)-209 wherein it has been observed that “ Properties and endowments belonging to the Temple vest in the Shri Jagannath Temple Managing Committee”.

As per Section-5 of the Shree Jagannath Temple Act, 1954 and in view of aforesaid decision of the Hon’ble Apex Court, Shree Jagannath Temple Managing Committee can only represent Shree Jagannath Mahaprabhu Bijee, Puri.

The O.P. No.1 has submitted that Mahanta Sri Garudadhawaja Ramanuja Das disciple of late Mahanta Falahari Sri Basudeb Ramanuja Das filed O.S .No. 157 of 1980 -I in the Court of Sub-Judge, Puri in respect of the suit land. The Learned Sub-Judge, Puri pleased to declare the right, title and interest of the said plaintiff in respect of the suit land and yet the petitioner has not challenged the said judgment of the Learned Sub-Judge, Puri. In support of his claim the Opp.Party No.1 filed certified copy of the plaint and judgment passed in O.S. No. 157 of 1980-I. After perusal of the plaint it appears that Mahanta Sri Garudadhawaja Ramanuja Das disciple of late Mahanta Falahari Sri Basudev Ramanuja Das of Jeer Swami Math, Balisahi, Puri has filed O.S. No. 157 Class-I of 1980 against only Defendant Jagannath Mahaprabhu through Mahanta Sri Niranjana Tirtha Swami of Sankararcharya Gobardhan Math, Puri for declaration of his right, title and interest by way of adverse possession in respect of khata No.53 Ac68.96dec including the present suit sabik plot No.254,255,257,259,255/351,260,232,242,243,244,246,45 and 253.

The Learned Advocate appearing for O.P No.1 places his reliance on a decision of our Hon'ble Apex Court in the case of Vasudev Dhanjibhai Modi Vs. Rajabhai Abdul Rehman and Ors reported in AIR 1970 SC 1475 wherein it has been held that; "A Court executing a decree cannot go behind the decree between the parties or their representatives; it must take the decree according to its tenor, and cannot entertain any objection that the decree was incorrect in law or on facts. Until it is set-aside by an appropriate proceeding in appeal or revision, a decree even if it be erroneous is still binding between the parties." Advocate for the O.P No.1 further places his reliance on a decision of Hon'ble High Court of Orissa in case of Parameswar Ray and Ors. Vs. Rameswar Ray reported in 2017(II) OLR 1146 and Shiba Narayan Ray Vs. Radhagobinda Dev Bije Nijigruha and Ors. Reported in 2018(I) CLR (SC) 568 wherein it has been held that; "Until it is set-aside by an appropriate proceeding in appeal or revision, a decree even if it be erroneous is still binding between the parties." In both the said decisions it has been observed that the Civil Court decree is always binding to the parties. In the case at hand it is to be seen whether the present petitioner Shree Jagannath Mahaprabhu Bije, Puri marfat Shree Jagannath Temple Managing Committee is a party to the said suit No. 157 of 1980-I and order passed in the said suit is binding to the present petitioner. After perusal the plaint and judgment of the said O.S. No. 157 of 1980-I, it appears that Mahant Sri Garudadhwaja Ramanuja Das has filed said suit against Shree Jagannath Mahaprabhu through Mahanta Sri Niranjan Tirtha Swami of Gobardhan Math. It is an admitted facts that in 1977 ROR the suit land stands recorded in favour of Sri Jagannath Mahaprabhu Bije,Puri. As per Section-5 of Sri Jagannath Temple Act, endowment of Lord Jagannath vest with Sri Jagannath Temple Managing Committee. As such only Sri Jagannath Temple Managing Committee can represent Sri Jagannath Mahaprabhu in respect of Endowment of Sri Jagannath Mahaprabhu Bije, Puri.

Shree Jagannath Mahaprabhu Bije, Puri or the present petitioner AheJagannath Mahaprabhu Bije, Puri marfat Shree Jagannath Temple Managing Committee has not been made as party in the said O.S. No. 157/80. The Learned Counsel for the petitioner has relied on the decision of our own Hon'ble High Court in a case of Purna Chandra Kodam Singh –vrs- Administrator Shree Jagannath Temple, Puri reported in 2004(1) C.LR-26 wherein it has been observed that; DECREE-Binding nature of Against a person not a party to the suit- Held, the O.P. No.1 not being a party to the suit, the decree passed therein is not binding on it and the same cannot be executed against the O.P No.1". Here, in the case at hand, 1977 (sabik) ROR stands recorded in favour of Shree Jagannath Mahaprabhu Bije, Puri but in the said suit Shree Jagannath Mahaprabhu Bije, Puri has not been made as party though Shree Jagannath Temple Act, 1954 came into force in the year 1960 and as per Section-5 of Shree Jagannath Temple Act Shree Jagannath Mahaprabhu Bije, Puri

marfat Shree Jagannath Temple Managing Committee is a necessary and proper party in the said suit but Mahanta Shree Garudadhwaja Ramanuja Das without impleading the present petitioner Shree Jagannath Mahaprabhu Bije, Puri got an order from the Civil Court by way of adverse possession in respect of Ac68.96dec of land including the suit land. As such the judgment passed in O.S. No. 157/80-1 is not binding to the present petitioner.

Besides, the Hal ROR is prepared in favour of O.P. No.1 who is neither a party in the Civil Court nor the petitioner Shree Jagannath Mahaprabhu Bije, Puri has ever transferred the suit land in favour of O.P. No.1. In absence of any legal document the Lower Settlement Authorities has no jurisdiction to record the suit land i.e.; an area of Ac59.55dec in favour of O.P No.1 which violate Sec-17 of Indian Registration Act. The Opp.Party No.1 has taken a stand that in 1927 Record of Rights the suit land was recorded in favour of Laxmipriya Debi who transferred the suit land in favour of Sankararcharya Maharaj but in the 1977 Record of Rights the suit land is recorded in favour of Shree Jagannath Mahaprabhu. But the O.P. has neither filed nor relied single scrap of paper to establish that Laxmipriya Debi had transferred the suit land in favour of Sankararcharya. The Learned Advocate for the petitioner has submitted that; As per section-13 of the Survey Settlement Act, the Settlement entry is presumed to be correct unless contrary is proved and "if there is dispute between 1927 and 1977 Record of Rights, the Record of Rights published in the year 1977 is presumed to be correct". The learned Advocate appearing for the petitioner places his reliance in the case of Dasarath Singh and others –vrs- Smt. Manvati Dei and others reported in 2006(I) O.L.R.583 wherein O.S.S. Act-Section - 13 their Lordship of our own High Court held that C.P.C. Section-100 Record of Rights 1922 and 1947 Presumption- Presumption of correctness shall be attached to the latter Settlement entry till such presumption is dispelled or rebutted by convincing evidence and wherever there is conflict between the entries made in the previous Settlement Records and subsequent Settlement records, the previous survey entry will not be evidence of the State of things that existed at the time of latter entry and the party challenging the correctness of the latest entry will have to establish that is incorrect.

In above view of the matter the claim of the petitioner in the present case is allowed, impugned R.O.R is set-aside and Tahasildar, Puri is directed to record the suit land in favour of Shree Jagannath Mahaprabhu Bije,Puri marfat Shree Jagannath Temple Managing Committee.

Order Pronounced in the Open Court on this day the 30th November,2021.

Sd/-
Commissioner Consolidation,
Bhubaneswar.

Settlement Revision Petition No. 339 of 2017**Decided on 23.03.2020**(Order by Sri Chandramani Badnayak, OAS (SAG)
Commissioner Consolidation, Bhubaneswar)Prakash Chandra Acharya ... **Petitioner**

-Versus-

State of Odisha represented through
Collector, Puri & others ... **Opp. Parties**

For the Petitioner Mr. Bibhuti Prasad Pattnaik, Advocate

For the Opposite Parties Mr. B. C. Mohanty, Standing Counsel

ORDER**Scheduled of land:-**

Mouza – Biragobindapur		Tahasil – Satyabadi.	
Sabak Khata No.	Sabak plot No.	Area	
1399	228	Ac.0.26dec	
Hal Khata No.	Hal plot No.	Area	
519	421	Ac.0.26dec.	

Heard. Perused the Settlement Revision Petition No. 339/2017 filed U/s 15(b) of the O.S & S Act 1958. The revision case filed by Sri Bibhuti Prasad Pattnaik, the Learned counsel for the Petitioner. The Petitioner's prayer is that-

Prakash Ch. Acharya, S/o Krushna Ch. Acharya, is the Hal recorded tenant of Hal R.O.R No. 519 of mouza Biragobindapur. The Hal plot No. 421 area Ac.0.26dec with Kissama "**Jalasaya – II**", the suit plot stands recorded in the name of the Petitioner. The Hal plot No. 421 of Hal khata No. 519 corresponds to the Sabik plot No. 228 area Ac.0.26dec of Sabik Khata No. 1399 further corresponds to the Pre-Sabik plot No. 254 area Ac.0.26dec of Pre-Sabik khata No. 829 under mouza Biragobindpur. The Petitioner's prayer is that, the suit plot is a paddy land and as per the Pre-Sabik R.O.R No. 829, the Pre-Sabik plot No. 254 with area Ac.0.26dec is under Kissam "**Sarada**" but during the 1977 settlement the same plot wrongly recorded as kissama "**Jalasaya – II**" during Hal Consolidation operation, the kissama of the suit plot recorded as "**Jalasaya – II**" as per the Sabik records which is wrong. The Petitioner has filed this revision for correction of Kissama of Hal plot No. 421 from "**Jalasaya – II to Sarada**" as per the 1927 Pre-Sabik R.O.R.

Examined the S.R.P case record. The Summon is properly served upon the Opposite parties. The Petitioners had filed one petition U/s 5 of the Indian Limitation Act for condonation of delay which was considered and allowed. It is observed from the case record that, the suit land was stands recorded in the name of Sri Sidha

Balaram Deba Bije – Athaise Marfat Trustee Board with Bebandabasta status, which exhibits from the Pre-Sabik R.O.R No. 829 & Sabik R.O.R No. 1399 under mouza Biragobindapur. The Pre-Sabik plot No. 254 area Ac.0.26dec with Kissama “Sarada” corresponds to the Sabik plot No. 228 area Ac.0.26dec with Kissama “Jalasaya-II”. The Petitioner has declared as a Bhag tenant in the suit land i.e Sabik plot No. 228 corresponds to the Hal plot No. 421 vide Order dated 15.04.1992 passes in O.L.R Case No. 10/1992 filed U/s 15(d) of the O.L.R Act. Basing upon the Order the suit land has settled in the name of the Petitioner during Hal Consolidation operation. Accordingly the suit Hal plot 421 with area Ac.0.26dec, Kissama “Jalasaya – II” under Hal R.O.R No. 519 finally published in the name of the Petitioner during 18.12.2013.

Ground of objections:-

- 1) **The Revenue Officer in his Order dated 15.04.1992 passed in O.L.R Case No. 10/1992, declared the Petitioner as a Bhag tenant over the Sabik plot No. 228 of Sabik Khata No. 1399 but the Order is remain silent regarding the kissama of the said plot, where as the Sabik R.O.R finally published on 21.09.1977 speaks as the kissama of the Sabik plot 228 is Jalasaya – II. It is a controversial thing that, how a plot with kissama Jalasaya – II is fit for cultivation.**
- 2) **As against the letter No. 136 / dated 31.01.2020 of this court, the Tahasildar, Satyabadi has not give his field enquiry report regarding the current status of the suit plot but he has simply forwarded the report of the R.I, Satyabadi vide his office letter No.572 / dated 18.02.2020. The R.I, Satyabadi has mentioned in his report that, the measure part of the suit plot filled with bumpy and the same is not used since long. The R.I, Satyabadi has not clearly mentioned in his report that, the suit plot belongs to the agricultural land or a water body but his remarks is seems to be indicates that, the suit plot is belongs to the water body.**
- 3) **The statement of the Petitioner vide Para No. 9, i.e “that infact in field this Petitioner is growing paddy in the disputed land and there is no iota of evidence of Jalasaya” is controversial one as compare to the report of the R.I, Satyabadi.**

Basing upon the above observation, the prayer of the Petitioner to change the kissama of the suit plot i.e Hal plot No.421 of Hal khata No. 519 under mouza Biragobindapur from “Jalasaya – II to Sarada” as per the Pre-Sabik R.O.R No.829 of the said mouza is not maintainable. The Consolidation Authorities are rightly prepared the Hal record. Hence the Revision Petition is disallowed.

Pronounced the Order in the open Court today i.e on 23rd March 2020.

Sd/-
Commissioner Consolidation,
Bhubaneswar.

Revision Case No. 48 of 2018**Decided on 23.03.2020**(Order by Sri Chandramani Badnayak, OAS (SAG)
Commissioner Consolidation, Bhubaneswar)Rama Chandra Mohapatra & others ... **Petitioners**

-Versus-

Sadei Pradhan & others ... **Opp. Parties**

For the Petitioners	....	Mr. Jalandhar Pradhan, Advocate
For the O.P. No. 1 to 4	.....	Mr. Manas KUMar Pattnaik, Advocate
For the O.P. No. 5	.....	Mr. Ambika prasad Mishra, Advocate
For the O.P. No. 6 & 7	....	Mr. B. C. Mohanty, Standing Counsel

ORDER**Scheduled of land:-**

Mouza – Narendrapur		Tahasil – Sakhigopal / Satyabadi.
Sabak Khata No.	Sabak plot No.	Area
01	403	Ac.22.370dec
Hal Khata No.	Hal plot No.	Area
211	109	Ac.5.370dec

Heard. Perused the Revision Case No. 48/2018 filed U/S 37(1) of the O.C.H & P.F.L Act1972. The revision case filed by Sri Jalandhar Pradhan, the Learned Counsel for the Petitioners. The Petitioners' case is that-

The suit land i.e area Ac.5.370dec belongs to the Hal plot No. 109 of Hal khata No. 211 under mouza Narendrapur stands recorded in the name of Bancha Pradhan, S/o Anaa Pradhan, the father of the Opposite Party No. 1 to 3 and the grandfather of the Opposite party No. 4. The suit land corresponds to the Sabik plot No. 403 area Ac.22.370dec of Sabik khata No. 01 and further corresponds to the Pre-Sabik plot No. 339 area Ac.27.440dec of Pre-Sabik khata No. 01 under mouza Narendrapur. The Petitioners are the villagers of Narendrapur and the devotees of Sri Sri Jagannath Mahaprabhu bije Puri filed this revision case for record the suit land in the name of Sri Jagannath Mahaprabhu bije puri because as per the Per-Sabik R.O.R No.1 for the year 1927 & Sabik R.O.R No. 1 for the year 1977 of mouza Narendrapur stands recorded in the name of Sri Jagannath Mahaprabhu Bile Puri Marfat Adhikari Ramakrushna Das, Adhikari Brundaban Das respectively. During

the Consolidation operation, the Hal R.O.R No. 211, Hal plot No. 109 with area Ac.5.370dec prepared wrongly & illegally in the name of the predecessor of the Opposite party No. 1 to 4 which is against the settle principle of law.

Examined the case record. The Petitioners have filed Pre-Sabik R.O.R No. 01 finally published during 25.12.1927, Sabik R.O.R No. 01 finally published during 24.08.1977, Hal R.O.R No. 211 finally published during 23.04.1984 & Plot index for the settlement of their claim.

On scrutiny of the case record it is observed that, the Pre-Sabik plot No. 339 area Ac.27.440dec, Kissam- Jala plot of Pre-Sabik Khata No. 01 finally published during 25.12.1927 under mouza Narendrapur stands recorded in the name of Sri Jagannath Mahaprabhu, Marfat- Adhikari Ramakrushna Das. Similarly the Sabik plot No. 403 area Ac.22.370dec, Kissam- Jala - II of Sabik khata No. 01 finally published during 24.08.1977 under the same mouza stands recorded in the name of Sri Jagannath Mahaprabhu Bije Puri, Marfat- Adhikari Brundaban Das Goswami. During the Consolidation operation the Hal R.O.R No. 211, Hal plot No. 109 area Ac.5.370dec, Kissam- Patita which corresponds to the above Pre-Sabik & Sabik plot of concerned Pre-Sabik & Sabik R.O.R recorded in the name of the predecessor of the Opposite party No. 1 to 4 and finally published during 23.04.1984.

In the above context, some observations of the Hon'ble Supreme Court of India, Judgement dated 16.12.2015 passed in Civil Appeal No. 7729 of 2009 are given below-

- 1. As per Section 5 and 33 of Shri Jagannath Temple Act 1955, all the Endowments of Shri Jagannath Mahaprabhu Bije, Puri vested in the Temple Managing Committee.**
- 2. It is a settled principle of law that, once a property is vested by an Act of legislature to achieve the laudable object, the same cannot be divested by the enactment of any subsequent general law and vest such property under such law.**
- 3. The Notification dated 18.03.1974 issued by the State Government under Section 3(A) of O.E.A Act 1951 in so far as point No. (ii) is concerned, is also quashed by this court, to the extent it applies to the lands and estate of Lord Jagannath Temple at Puri.**

Further, the provision of the Orissa Hindu Religious Endowments Act 1951 so far as it relates to the temple of Lord Jagannath have been repealed by the Section 2 of Shri Jagannath Temple Act 1955. In view of the above alienation of the lands belonging to Lord Jagannath without permission of the authority vested with such power under this Act is illegal.

On the above discussion it is clear that, the preparation of the Hal R.O.R in the name of an individual is illegal & wrong, although the Pre-Sabik R.O.R & the Sabik R.O.R stands recorded in the name of Shri Jagannath Mahaprabhu Bije Puri.

The revision petition is allowed. The Tahasildar, Sakhigopal / Satyabadi is directed to record the suit plot i.e Hal plot No. 109 area Ac.5.370dec under Hal khata No. 211 of mouza Narendrapur in the name of “Shri Jagannath Mahaprabhu Bije Puri Marfat Shri Jagannath Temple Managing Committee” deleting the name of Bancha Pradhan, S/o Anaa Pradhan and the “Kissam of the suit plot corrected to Jalasaya – II from Patita”as per the Sabik R.O.R.

Pronounced the Order in the open Court today i.e on 23rd March 2020.

Sd/-
Commissioner Consolidation,
Bhubaneswar.

Settlement Revision Petition No. 22 of 2016

Decided on 20.11.2021

(Order by Secretary to Revenue Divisional Commissioner,
(Northern Division) Odisha, Sambalpur)

Jugal Kishore Mahakud & another ... **Petitioners**

-Versus-

State of Odisha & others ... **Opp. Parties**

ORDER

This case is filed by the petitioners U/S 15(b) of O.S&S Act,1958 claiming recording of following scheduled of land on the basis of possession and “Pola Kabala” unregistered document.

Sabik Khata-118 Sabik Plot -1252 Ac0.31 dec

Corresponding to

Hal Khata no-478,Plot no- 3142 Ac0.31 dec of Mouza-Kantapal

Notices were duly served to the concerned parties and SR back . Parawise report from the Settlement Officer and Concerned Tahsildar have been received.

It is submitted by the learned Advocate for the petitioner that the father of the petitioners namely Brahmananda Mahakud has purchased the above land on 26.01.1950 vide unregistered document worth of Rupees 160/- (One hundred Sixty)only from one pravakar Samal S/O- Kashi Sasmal and remained in peaceful possession over the case land without any disturbance.He further contended that the settlement authorities vide yaadast no- 3077 had passed order for recording the case plot in the name of the father of the petitioners. But in final ROR, note of forcible possession against the case plot was mentioned in the name of the father of the petitioners. He said it is evident from yaadast that the father of the petitioners was in possession of the case land since the date of purchase.

Learned Advocate further pleaded that the petitioners are in long possession of the case land continuously and consequentially with the knowledge of the opposite party no-3 without any objection. He tried to prove the adverse right of the petitioners over the case land.

The field enquiry report of the Tahsildar concerned is affirmative, so far the possession of the petitioners concerned.

However the learned Advocate vide in para-5 of his written submission has pointed out the provision of law to be followed by the statutory authority for recording the case land in the name of the petitioners.

Law is well settled that a transfer of tangible immovable property of the value of one hundred rupees and upwards can be made only by a registered instrument.

Here the unregistered document basing on which title is claimed is of worth of Rs. 160/- (One hundred sixty). Hence the claim in this revision is totally improbable. The unregistered document exceeding consideration money of one hundred rupees is a clear violation of provision of sec-54 of the Transfer of Property Act.

Apart to above, this court is a revenue court lacks of jurisdiction to consider the title of a person on adverse right if any.

In the above circumstances, the claim of the petitioner is disallowed and the revision is dismissed.

Pronounced in the open court today i.e. 20th Nov., 2021.

Sd/-

Secretary to Revenue Divisional Commissioner
(Northern Division), Sambalpur

Settlement Revision Petition No. 56 of 2020

Decided on 30.09.2021

(Order by Secretary to Revenue Divisional Commissioner,
(Northern Division) Odisha, Sambalpur)

Brajabandhu Sahu ... **Petitioner**

-Versus-

Sudra Behera & others ... **Opp. Parties**

ORDER

The instant revision petition has been filed U/s 15(b) of the O.S. & S Act, 1958 by Brajabandhu Sahu, S/o- Dhobei Sahu, At-Kanakarei, Tah.-Chhendipada,

Dist-Angul claiming for recording of the case land in his name on the basis of registered sale deed. The petitioner has also filed a petition u/s-5 of the Limitation Act, 1963 for condonation of delay in filing this revision with a prayer to condone delay. The prayer of the petitioner is allowed.

Notices issued to the parties have been duly served and S.R. back. No objection has been received.

Heard the petitioner. Perused the relevant documents.

The petitioner stated that he had purchased an area of Ac.1.50 dec. of land from Sabik Plot No.127/197 under sabik Khata No.36/14 of Pirkhaman, Tah-Chhendipada, Dist-Angul from Sudra Behera, S/o-Sukuru Behera vide RSD No.1105 dated 15.05.1998. The above sabik Plot corresponds to Hal Plot No.826 under Hal Khata No.109 of village Pirkhaman, Tahasil-Chhendipada, Dist-Angul. The Sabik Khata No.36/14 of the said village was recorded in the name of Sukuru Behera, father of vendor. The father of the vendor was a lease holder which was granted to him in the year 1975. The above Sabik Khata is recorded in Hal Khata No.109 of the said village in the name of Sudra Behera & another.

The petitioner further submitted that the vendor is co-recorded tenant of hal khata who had sold the case land to the petitioner not beyond the extent of his share and after that the petitioner is in possession over the purchased land since the date of purchase. During the settlement operation, the petitioner produced the sale deed before the settlement authority for recording of the case land in his favour and RoR bearing No.122 was issued in favour of the petitioner. Although the Settlement authority had issued RoR in favour of the petitioner, but did not send the intimation regarding preparation of RoR to the concerned Tahasil Office so also the R.I office for which the RoR has not yet been published in Bhulekh and the petitioner could not pay land revenue to Govt. Hence the present revision.

In order to know the factual aspects of the case land involved in this revision petition. The Settlement Officer, Dhenkanal and the Tahasildar, Chhendipada were asked to submit the parawise comments along with field enquiry report vide letter No.1954/RA(court) dtd 16.05.2020 in respect of the case land.

The Settlement Officer, Dhenkanal vide his letter No.975 dt.29.12.2020 submitted that the total khata in village Pirkhaman, Tah-Chhnedipada, Dist-Angul is 120 and the RoR bearing No.122 as mentioned by the petitioner in his revision petition is without seal and signature of settlement authority.

On perusal of records/documents submitted by the settlement authority, it is revealed that after RoR No.120,122 RoR is there in the land register which is without signature of the authority. On verification of Rent case No.283/2013, it is revealed that the petitioner could not show the sale deed before the authority for which the case land was recorded in the name of O.P.

The Tahasildar, Chhendipada has conducted field enquiry through his Revenue Inspector and submitted report to this court vide letter No.2524 dt.08.06.2020. The report of Tahasildar reveals that the petitioner is in possession of Hal Plot No.826 (Hc.0.6070) under Hal Khata No.109 of village Pirkhaman, Tahasil-Chhendipada, Dist-Angul and using the case land as fish farming right from the date of purchase to till date. The report forms a part of this order.

The above cases were listed for hearing on dated 26.07.2021 at camp court, Angul. The Settlement Officer, Dhenkanal, the Tahasildar, Angul/Chhendipada and Govt. Pleader, Angul were present in the court during the hearing. The settlement authority has produced the settlement operation related documents. After hearing all concerned and perusal of relevant records/documents, the Govt. Pleader, Angul is instructed to give his legal views in the case. The Govt. Pleader, Angul has submitted his legal views on dt.25.08.2021 that the Asst. Settlement Officer, Dhenkanal has not duly followed the procedure maintained in chapter 4 (Rule-32 to 46) of the Act. Sec-34 of the Act is very clear about the grounds on which correction of record of right and map is to be made. The Asst. Settlement officer has not adopted the grounds as mentioned in our own High Court (Odisha) provided in the case of "Harihar Mohapatra and others vrs. Commissioner, land records and settlement and others". Rule-34(e) is to be confined to matters arising after the publication of record of rights and not on the basis of facts existing prior to that (1997(i)OLR-13). He has not maintained the proper procedure and carelessly issued a record of right to the vendee in a wrong manner. Hence this court u/s-15(b) of O.S & S Act, 1958 should interfere and pass necessary order to correct the record of right in favour of the purchaser. This court has already provided sufficient time, scope and opportunities to all parties concerned and heard the matter at length. The vendor has rightly executed the registered sale deeds as he was OBC at the time of registration. Hence the sale transaction and sale deeds of execution was correct and proper. Further, the vendee has also taken physical possession of the lands and utilized and developed the said land towards fish farm. No negative report is available from the side of Tahasildar, Chhendipada. Since no fault is available with the vendee, the record of right and map concerned should be corrected in the name of vendee-petitioner. The views of Govt. Pleader, Angul forms a part of this order.

In view of the above facts and circumstances, the revision is considered and allowed. The Tahasildar, Chhendipada is directed to record the purchased land in favour of the petitioner i.e. Brajabandhu Sahu within three months from the date of receipt of this order.

Pronounced in the open court today i.e. 30 th Sept, 2021.

Sd/-

Secretary to Revenue Divisional Commissioner
(Northern Division), Sambalpur

Land issue of the Displaced persons pertaining to Dadraghati MIP in Parjang Tahasil and Ramial MIP area in Kamakshyanagar Tahasil

(Order by Sri Madhu Sudan Padhi, IAS
Revenue Divisional Commissioner (ND), Sambalpur)

Decided on 25.07.2008

ORDER

Dadaraghati MIP in Parjang Tahasil and Ramial MIP in Kamakshyanagar Tahasil were two medium irrigation project which were implemented in 1970s. The displaced people of these two projects were resettled as per provisions of Rehabilitation Policy for all major and medium irrigation project, 1977. This policy was notified on 20.04.1977.

As per provisions of these policy, displaced person or family were defined as one who was being deprived of livelihood on acquisition of their land. Under the policy, Ac.0.30 of land was to be provided free of cost to each displaced family for house site. Similarly, Ac.3.00 of reclaimed irrigated land or Ac.6.00 of reclaimed unirrigated land were to be provided to each displaced family. Rs.600/- per acre for reclamation of the agriculture land (50% of which was to be released later on) was to be provided to the displaced families.

For Dadaraghati project, 427 families from four villages, namely, Jamunali, Bautinali, Bhejia and Sologaoon were displaced. They were given homestead land in four villages of Parjang Tahasil, namely, Rangathali(140), Domuhani(47), Basulei(182) and Akhupal(02) and three villages in Kamakshyanagar Tahasil, namely, Kantapal(45), Jangu(01) and Khanda(10). However, they were provided agriculture land in nine villages of Parjang Tahasil and five villages of Kamakshyanagar Tahasil. The villages other than the above four villages of Parjang Tahasil are Jharanbahal, Mohanposi, Raijhara, Kadopada and Raghunathpur. Similarly, the villages other than the above three villages of Kamakshyanagar Tahasil are Adhapali and Kandhara. It is to be noted that though house sites have been provided to all the 427 displaced families, agriculture land was provided to 398 families because of difference of eligibility as per provisions of Rehabilitation Policy, 1977.

Under Ramial project, **415 families were displaced in eight villages of Telkoi Tahasil of Keonjhar District(350) and five villages of Kamakshyanagar Tahasil of Dhenkanal District(65).** The affected villages of Keonjhar district are Mundasahi, Sirishpal, Rekuti, Biripal, Gabagoda, Nuagaon, Kaliahata and Bali. Similarly the affected villages of Dhenkanal district are Biripal, Baiganpal, Kantol(Raipal), Mandiapara and Kateni. They were resettled in three villages of Keonjhar District, namely, Rekuti, Ajaypur and Bali and six villages of Kamakshyanagar Tahasil, namely, Kantapal, Kalda, Dangpal, Kankadahad, Kandhara

and Adhapali. Though house site was allotted to 415 families(22 in Keonjhar district and 393 in Dhenkanal District) agriculture land was provided to 388 families(12 in Keonjhar district and 376 in Dhenkanal district) due to differences in eligibility conditions as per provisions of Rehabilitation Policy of 1977.

As these projects were completed in July, 1979 (Dadaraghati) and July, 1980 (Ramial) by impounding of water resulting in submergence, all the displaced families were actually shifted to the rehabilitation colonies by that date. In many cases, forest land was reclaimed by clearing forests and allotting the same to the displaced families by the Tahasildar, Kamakshyanagar. It is to be noted that Parjang Tahasil was created vide Notification No.35826 dt.14.08.1996 and from 1.4.2004, it became a full fledged Tahasil. After allotment and resettlement, Tahasildar, Kamakshyanagar started lease cases for settlement of land allotted to the displaced families. The settlement operation was going on in the area during that time(1975-1984). The facts of rehabilitation of displaced families of these two projects were perhaps not intimated to the settlement authorities. As a result, most of the land allotted to displaced families in Parjang Tahasil and Kamakshyanagar Tahasil both for homestead and agriculture were recorded in government khata, i.e., the status of old(Sabik) records were maintained by the Settlement Authorities in the final publication of ROR in 1984.

Some of these displaced persons who showed the K form RORs to settlement authorities and got the final RORs for their land. For example, 59 out of 83 allottees of Agriculture land in Kankadahad village from among the Ramial project oustees got the final ROR from the Settlement authorities. Similarly, 2 allottees for Homestead and 13 allottees of Agriculture land in Akhupal village were given final ROR by consolidation authorities from among the Dadaraghati Irrigation Project outstees. Tahasildars (both Parjang and Kamakshyanagar) have also given final ROR to some of the K- Form pattadars u/r 34(e) of OSS Rules. For homestead land, 39 allottees in Rangathali village and 90 allottees in Basulei village in Dadraghati project and 306 allottees in Kantapal village under Ramial project were given final ROR by the Tahasildars. Similarly for Agriculture land, Tahasildars have given final ROR to 26 oustees settled in Rangathali, 69 in Basulei, 2 in Jharnabahal, 1 in Rajihara, 2 in Kadapara and one oustees who had been allotted agricultural land in two villages of Rangathali and Basulei in Dadaraghati project.

Taking into account No. of displaced families the allotted land, and with K' form patta (ROR) for homestead and agriculture land and those who have got final ROR for their land, it is seen that **296 allottees of Homestead and 284 allottees of Agriculture land (some of them being common) of Dadraghati project are yet to be issued with final ROR against the K form ROR issued to them.** Similarly, there are 87 allottees of Homestead land and 317 allottees of Agriculture land from amongst the displaced families of Ramial project who are yet to get the final ROR for the land allotted to them as project displaced families.

One of the main reasons for which the allottees could not get their final ROR for the land which were allotted to them and which they have been possessing for last 25 years or more is due to the fact that these lands were recorded by the Settlement authorities as JUNGLE kism (and as other objectionable kisms like Gochar or for Jawans) in Government Khata. As noted earlier, some Tahasildars through mutation proceedings have issued final ROR for some of the project affected persons u/r 34(e) of OSS Rules, 1962. But due to a ratio of Hon'ble High Court, Orissa in OJC- 9621 of 1996, the Govt. of Orissa in Revenue Department had directed vide letter No.2525 dated. 6.5.1999 that the **“Tahasildars were barred to make changes in the ROR – if the cause of action arose before the publication of final ROR by the Settlement/Consolidation Authorities as the legal remedies for such cases were already provided U/S 15, 25 & 42 of the OSS Act,1962”**.

Hence these 637 revision petitions(RP Case No.12/2007 to 666/2007 except 89/07, 90/07 and 589/07 to 602/07) have been filed U/S 15(b) of the OSS Act, 1958 in the Court of the R.D.C,ND, Sambalpur who has been delegated jurisdiction under the OSS Act, 1958. Both Tahasildar, Kamakshyanagar and Tahasildar, Parjang have filed these revision cases and have made the project displaced allottees the opposite parties. They have also filed time petition to condone delay of 23 years considering the plight of these families who have been struggling to get the land allotted to them recorded in their name after losing their home and hearth. The delay is condoned in all the Revision cases. As all cases are similar, one common order is being made for all the cases.

Most of the Rehabilitation sites/colonies for allotting homestead and agriculture land were made by clearing forest and reclaiming forest lands. As these lands recorded as forest kism in Sabik records, the settlement authorities recorded them as 'Jungle' kism in the Hal (current) records and placed them in Government khata. This wrong recording could have been due to either any (or combination of more than one) of the following reasons.

1. During kistwar and khanapuri stage, i.e., the survey stage of the settlement, the forest lands might have not been reclaimed as settlement operation started from 1975 onwards in Kamakshyanagar Tahasil, or,
2. When the reclaimed land allotted to the displaced families, there was a time gap in issue of interim ROR, i.e., K-form patta, for which the same could not be shown to the settlement authorities in right time for recording of land in their names, or,
3. Even if the K-form pattas were issued in time to the project displaced families, they did not show it to settlement thinking that the same record was the final record or rights (ROR), or,
4. The settlement authorities did not take cognizance to the K-form pattas even if these were shown to them.

Whatever may be the reason, a large number of displaced persons resettled in villages away from their home are without ROR of the land, which was allotted to them. Coming to the cases, there are two issues to be decided in these revision cases. They are:

1. Whether the provision of Forest Conservation Act 1980 are attracted to the case lands which are part of these revision petitions ?
2. Whether the OPs or their legal heirs/successors in interest have right, title and interest over the case land ?

Coming to the first issue, the Forest Conservation Act 1980 came into force with effect from 25.10.1980. Section 2 of the Act states that “.....**No State Government or any other authority shall make except with prior approval of the Central Government, any order directing that any forest land or any portion thereof may be used for any Non-forest purposes.....**” Presumably, use of forest land for agriculture and homestead purpose is a non-forest use.

The following sequence of event in construction of these two projects is to be considered to see if the provisions of Forest Conservation Act, 1980 is attracted or not for the case land under the RP Cases:

1. Govt. decided to implement the above two medium irrigation projects in 1973. Government issued declaration for land acquisition vide notification No.64921 dt.21.08.1975.
2. The Rehabilitation Policy for displaced and affected families for all major and medium irrigation project were notified on 20.04.1977.
3. The list of displaced families was finalized in late 1977 as per the provision of this Policy.
4. On 26.04.1978, in the Rehabilitation Advisory Committee Meeting for Dadaraghati MIP, the A.D.M, Dhenkanal informed the members that the rehabilitation work had gone far behind the schedule due to non-clearance of forest growth from the agriculture portion of the rehabilitation area of the Forest Department. DFO, Dhenkanal informed the members that he was unable to proceed with the matter in absence of Government instructions and allotment of funds amounting to Rs.2,58,750/- for the clearance work.
5. In this connection, letter of Shri N.K. Mohapatra, Dy. Secretary to Government, Irrigation & Power Department letter No. 18745 dt.25.5.1978 states that the approval of Government to proposal of Collector, Dhenkanal to clear the existing forest growth from area of 300 acres of land required for resettlement of 80 families to be displaced by Dadaraghati MIP during 1978-79. He had issued this letter with

concurrence of Fisheries and Animal Husbandry Department as per para(5) of the above letter.

6. Government decided to resettle the displaced families in the Gramya Jungle of several villages in the ayacut of the project. It also decided to allot the forest clearance and reclamation work to Orissa Forest Corporation Limited. This was communicated by DFO, Dhenkanal Division to Spl.LAO, Dhenkanal vide letter No.4939 dt.6.11.1978. In this letter, **D.F.O, Dhenkanal has categorically stated that the Government have decided that all forest area relating to Ramial and Dadaraghati Projects will be worked out by the Orissa Forest Corporation.**
7. The reclamation of forest land and allotment of these lands in both these projects continued throughout 1978 and 1979. Allotment of reclamation subsidy @ Rs.900/- for Ac.3.00 of reclaimed agriculture land was done in several phases by the Collector, Dhenkanal through Spl.LA&RO, Dhenkanal.
8. In a subsequent meeting chaired by Chief Secretary, Orissa on 22.01.1979, it was decided to clear balance 1580 acres of forest and allot the reclaimed land to the remaining displaced families of Dadaraghati MIP. In the same meeting, it was also decided to go ahead for forest clearance by the Dadaraghati project authorities departmentally as Forest Corporation was unwilling for bush clearance. However, for Ramial Project, Orissa Forest Corporation agreed to the date line fixed by the Chief Secretary to complete the balance forest clearance work by June, 1979 and hand over the reclaimed land to revenue authorities for allotting to project displaced persons.

The following records were made available to the undersigned to indicate that decision to rehabilitate the displaced families of these two projects were taken much before the commencement of Forest Conservation Act, 1980.

These records also indicate that actual shifting has taken place before 25.10.1980.

1. Rehabilitation Policy for Major and Medium Irrigation Projects dt.20.04.1977.
2. Proceeding of the Rehabilitation Advisory Committee headed by the Collector dt. 26.4.1978 for Dadaraghati MIP.
3. Letter of Dy.Secretary to Government I&P Department, vide Letter No.16745 dt.25. 05.1978.
4. Proceeding of the meeting chaired by the Chief Secretary dt.22.1.1979 relating to Irrigation Projects.

5. Notices to families to take possession of land.
6. Sanction of payment order of reclamation subsidy by Collector, Dhenkanal to project displaced persons.
7. Correspondence of use of vehicles for shifting of displaced families to the Rehabilitation sites from Spl.LA&RO, Dhenkanal to Executive Engineer(Irrigation), Angul Division.
8. Register-1 of Tahasils detailing lease cases for leasing out land in Rehabilitation sites to displaced families.
9. Availability of K- form pattas with the Tahasils (Office copy) as well as with the tenants/ displaced persons(which were presented during hearing of the RP Cases).
10. Various correspondence between Spl.LA&RO and Executive Engineer, Angul Irrigation relating to shifting of displaced person from affected villages to rehabilitation sites.

Subsequently, Government of India in Ministry of Environment and Forest in their letter No.2/3-86 dt.31.7.1986 in para-3(iii) have clarified **that cases in which specific orders of dereservation or diversion of forest areas in connection to any project were issued by State Government prior to 25.10.1980 need not be referred to Central Government.**

Finally, Government of Orissa in Revenue & Disaster Management Department, in their letter No.50298 dt.16.11.2006 addressed to Collector, Dhenkanal have clarified that the government has been pleased to decide that in cases where specific orders of dereservation/ diversion of forest areas were issued by the State Government prior to 25.10.1980, reference to Govt. of India is not needed. In the instant case, the letter No.4939 dt.6.11.1978 of DFO, Dhenkanal indicates that rehabilitation decision with respect of Dadaraghati and Ramial Irrigation Project were taken much prior to 25.10.1980. In the same letter, **the Government have requested the Collector to direct the concerned Tahasildar to file revision petition under Orissa Survey & Settlement Act, 1958 with the Member, Board of Revenue.** As per delegation of powers of Board of Revenue, R.D.C(ND), Sambalpur has been vested with the powers to hear Revision Petitions under OSS Act, 1958 for District of Dhenkanal and Angul. Therefore, the undersigned has the jurisdiction to hear the cases.

I have heard the petitioners in my court at Sambalpur and in camp courts held at Dhenkanal, Kamakshyanagar and Parjang. I have heard all the interested opposite parties/their successors in interest in the camp courts.

I have recorded the deposition of Sri Basant Kumar Mishra, then Spl Land Acquisition & Rehabilitation Officer, Dhenkanal on 17.08.2007. He stated after perusing through 20 old lease case records of Kamakshyanagar Tahasil (2078-2098W/1980) that these case records were initiated based on the allotment order issued by him after complete clearance of forest growth by Orissa Forest Corporation Ltd. on 11.08.1980 in capacity of LA & RO of Dadaraghati and Ramial Irrigation

projects. He has also admitted the signature on the allotment order, the sketch map and memos of sanction order for payment of subsidy towards reclamation of agriculture land to the displaced persons of the above projects on 15.06.1979/ 04.06.1979 / 30.01.1979 / 27.12.1979 and 23.04.1980 (which were shown to him) on behalf of the Collector, Dhenkanal. He has also deposed that he had issued the letter No.315 dt.15.6.1979 to the Executive Engineer, Irrigation Division, Angul to supply vehicles for shifting of displaced families of Dadaraghati Irrigation Project.

Similarly, I also took deposition of Raj Kishore Singh of village Kantapal of Kamakshyanagar on 17.08.2007. He was Secretary of Kantapal UP School in the year 1980. He deposed that project displaced persons from Ramial and Dadaraghati MIPs were settled in his village, i.e., Kantapal. He admits that he had signed in the public notice issued before lease sanction by Tahasildar, Kamakshyanagar. He admits that he knew the then Sarpanch. Sri Bhagaban Singh, Kallia Moharana, Gouranga Moharana and Bauri Moharana, who had signed in the public notice for above lease cases (i.e., 2078-2098W/1980). He admits that 21 families of Goboguda village were settled vide these lease cases.

It is clear from the above sequence of events, available records and depositions that the provisions of Forest Conservation Act, 1980 are not attracted for the case lands where Government decision were taken much before the cut off date, i.e., 25.10.1980 to divert these land for developing resettlement colonies and to allot reclaimed land to displaced families of the two MIPs, namely, Ramial and Dadaraghati.

Regarding other kisams of land (like Gochar, Jawan, etc.), the present ground status needs to be recorded. As these lands were allotted before the Settlement in 1994 as per the Rehabilitation Policy of Government to displaced person, there should be no bar to give final ROR of these land to the allottees as per present status of land.

Second issue is whether the opposite parties/successors in interest have right, title and interest coupled with possession to record the case land in their favour. During hearing on 17.08.2007 at Dhenkanal, one Nakhia Patra, S/o. Sambaria Patra of Kantapal village in RP Case No. 14/2007 submitted three rent receipt which relates to jamabandi number of 37/45 for Ac.3.00 of agriculture land. He had paid rent/cess for the year 1981-82, 1982-83 and 1983-84 vide rent receipt Number 525347, 465921 and 565733 respectively. When I asked as to how he could paid rent in the Tahasil when the land is in Government Khata, he told that till 1984 most of the people have paid rent as per K-form patta. After 1984, when the major settlement record was published, the Tahasil authorities refused to take any rent as the land became recorded in the Government khata. During my hearing in other camp courts, I could see that some of tenants have preserved the old rent receipt, but others have lost them. Thus, the title was given to the tenant, but subsequently extinguished(!) by the final publication of ROR by the settlement authorities(!!!).

The right, title and interest were conferred on the opposite parties by allotment orders and lease cases. As it is a settled principle of law, "ROR neither creates nor extinguishes the right. It has presumptive value". In the instant case, the land was leased out to the OPs as project displaced person as per provisions of the Rehabilitation Policy of Government of Orissa. K-form patta was also issued to them. They also paid rent for the case land for 2-3 years. Due to certain reasons as has been mentioned earlier, the land could not be recorded in their name. But all through, their right continued. It can not be extinguished by mere non recording of the same by the settlement authorities. Regarding possession, during hearing of the cases, I asked this question to each of the opposite parties. Each of them told that he/she is in possession of the case land which was allotted to him/her and have been either cultivating(for agriculture land) or have a house where he/she is staying(for homestead land).

In view of the above decision by Govt. of India and State Government, I am convinced that the cases filed on behalf of the displaced families for the Dadaraghati and Ramial MIPs by Tahasildar, Kamakshyanagar and Tahasildar, Parjang stand on sound footing. I hereby order that these lands be recorded in name of the opposite parties/their legal heirs/successors-in-interest after field verification. The kism of land be recorded as per the present ground status.

It was seen during hearing that final ROR has been issued earlier in four R.P cases, i.e., 167/07, 252/07, 256/07 and 335/07. Hence, there is no need to take any action on these cases. Similarly, it was seen that two R.P cases have been repeatedly filed, i.e., Case No.101/2007 & 112/2007 and Case No.186/2007 & 187/2007. Therefore, it was decided to delete R.P.Case Nos. 112/2007 & 186/2007 and take up the R.P cases 101/2007 & 187/2007. The details of the cases along with name of opposite parties and name of original allottees are annexed in the following Annexures:

Annexure 'A' : 304 RP cases relating to Agriculture land of
Kamakshyanagar Tahasil.

Annexure 'B' : 239 RP Cases relating to Agriculture land of Parjang Tahasil

Annexure 'C' : 234 RP Cases relating to Homestead land of Parjang Tahasil.

The Tahasildars may complete the field enquiry and correct the ROR as per present kism and issue ROR to the tenants within three months from the date of receipt of this order.

This disposes the RP Cases No.12/2007 to 666/2007 (except Sl. No. 89/07, 90/07, 589/07 to 602/07). This order is pronounced in the open Court on 25th Day of July, 2008 at Camp Court held at Angul.

Sd/-25.07.2008
Revenue Divisional Commissioner (ND),
Sambalpur

CRP No. 361 of 2015

Decided on 27.07.2021

(Order by Addl. Commissioner Settlement and Consolidation,
Berhampur, Ganjam)

Smt. Saraswati Parida Petitioner

-Versus-

Subash Chandra Patra Opp. Parties

ORDER

This consolidation revision petition has been filed u/s 37(1) of OCH & PFL Act, 1972 by the petitioner Saraswati Parida challenging the finally published ROR of mouza Bhabinipur published on 23.4.1992 in respect of Hal Khata No. 1090, Plot No 298 which stands recorded in the name of OP No-3&4 under rayati status on the grounds of erroneous recording.

Sri M.Rath, Sri D. Pradeep Patro and Sri Dillip Kumar Tripathy Advocates, Berhampur have filed power on behalf of the petitioner.

The case was registered and notices were issued to the parties concerned through Regd. Post. The notice sent to P.Syamnati Patro,(OP No.3(a) & LR of OP No-3) returned unserved due to insufficient address as seen from the postal remarks. Subsequently, the aforesaid OP No. 3(a) P.Syamnati Patra, wife of late P.Sarathi Patra along with OP No.4, Madan Sahu, s/o Agadhu Sahu who are the recorded tenants have filed affidavit on dtd 17.1.2019 to the effect that they have no objection for issuance of orders to record the suit land in the name of the petitioner, Saraswati Parida. Further, it is found that, the notice sent to V.Kasturi Amma,(OP No-2) has been returned without service with the remarks by the Postman as 'deceased'. In this context, Sri Manoj Kumar Rath, Advocate, Berhampur files Vakalatnama on behalf of one Sri V.Lokanath, son and LR of deceased OP No.2 V.Kasturi Amma. He files a memo along with an affidavit filed by the said V.Lokanath, the LR and son of late V.Kasturi Amma ,OP No.2 declaring thereby his no objection with regard to issuance of order in favour of the petitioner, Smt. Saraswati Parida, in this CRP case. The same have been taken to record.

Although Para wise report was called for from the Addl. Sub-Collector, Consolidation, Berhampur but the same has not been received so far. However, the learned Advocate for the petitioner has filed relevant documents & Draft Khatian & Form No. 27 & 66 indicating sabik-hal correlation to establish the claim of the petitioner. The learned Sr. Standing Counsel submits that, he has no objection if this old case is disposed of on merit basing upon the authenticated copies of the relevant documents in absence of Para wise report.

Heard the learned Advocate for the petitioner & learned Sr. Standing Counsel. Gone through the case record & documents filed by the petitioner.

In this case, the petitioner has claimed to record an area of Aco.041 3/10 dec. from Hal Plot No.298 under hal Khata No1090 of mouza Bhabinipur under Kanisi Tahasil in her favour on the strength of her purchase of the suit land vide RSD No 10611106916/2011 & her peaceful possession thereof.

During hearing of the case the learned Advocate for the petitioner submits that, the petitioner has purchased the suit land from the OP No.1, Subash Chandra Patro under a Regd.Sale Deed No. 10611106916 dtd 5.7.2011. Similarly, Subash Chandra Patra, the vendor of the petitioner i.e OP No. 1 had purchased the said suit land from the OP No.2 under the Regd.Sale Deed No 2367/2008. Prior to that the OP No. 2 had purchased the said suit land from the OP No. 3(a) who is the daughter-in-law & the LR of the recorded tenant namely, Potnuru Raghunath Patro vide RSD No. 1582/1984. The learned Advocate for the petitioner further submits that, the OP No. 4 is no way related in any manner to the suit scheduled property as reveals from the contents of RSD No. 1582/1984 for which he has submitted an affidavit declaring his no objection for recording of the suit land in favour of the petitioner. The learned Advocate for the petitioner further submits that, the petitioner is in peaceful possession over the suit land & enjoying absolute ownership thereof from the date of her purchase.

On verification of the documents filed by the petitioner, it is found that, before final publication of ROR, P.Syamnati Patro, w/o P.Sarathi Patro (who is also the daughter-in-law & LR of deceased Raghunath Patro, the recorded tenant had sold the land measuring to an extent of Aco.240 dec under Sabik Plot No.516 bearing Khata No. 155 in mouza Bhabinipur to Vendi Kasturi Amma, (OP No-2)vide Regd.Sale Deed No. 1582/1984 . Later on the said OP No-2, V. Kasturi Amma , had sold Aco.240 dec. under the same sabik description correlating to Hal Plot 298, in Khata No. 1090 to Subash Chandra Patro,(OP No-1) vide RSD No. 2367/2008 & finally the said Subash Chandra Patro,(OP No.1) has sold Ac0.041 3/10 decimal out of his purchased land under Hal Plot No. 298 bearing Khata No. 1090 to the petitioner vide RSD No. 10611106916/2011.

On examination of the Draft Khatian, as well as Form No 27 & 66 furnished by the petitioner, it is seen that, Sabik survey No.516 corelates to LR Plot No 534 and ultimately corelates to Hal Plot No. 298 which has been purchased by the petitioner.

From the above discussion, it can safely be concluded that, title is flowing from the recorded tenant to the petitioner commencing from pre-final publication. Accordingly, the petitioner has acquired right, title and interest over the suit land by virtue of her purchase through Regd. Sale Deeds as stated supra.

It transpires that, due to non recording of the claim of the intermediary purchaser during consolidation operation, the present recording appears to be erroneous. As stated earlier, the recorded tenant Sri Madan Sahu, OP No.4, and Smt. Potnuru Syamnati Patra, LR of the other recorded tenant, P. Raghunath

Patra,(OP No.3(a)) & Sri V. Lokanath, the LR of deceased V. Kasturi Amma ,(OP No.2) have submitted affidavits separately regarding their no objection for recording of the suit land in favour of the petitioner.

In the instant case, it is noticed that there had been fragmentation of chaka under the above Chaka Plot No. 298 bearing Chaka No. 95 measuring an area of Ac0.041 3/10 out of Ac0.960 effected vide RSD No. 10611106916/2011. But in view of Govt. Notification No. 2728-Legis-33/11/L dtd 8.3.2013 amending thereby Sec.34 of OCH & PFL Act contemplating non applicability of the restricted provisions of fragmentation to the chaka land as contained in Sub-Sec-(1) & (2) of Sec. 34 in the urban area which is covered under the approved master plan/ development plan of the Town Planning /Development Authority, such fragmentation which is seemingly made for homestead purpose assumes no relevance, since, the land in the village in question i.e. Bhabinipur comes under the Berhampur Development Authority, Berhampur as informed vide BDA L.No. 688 dtd 12.6.2013.

Hence, the revision so filed by the petitioner is allowed.

The Tahasildar, Kanisi is directed to take up mutation of the suit land as per the claim preferred by the petitioner treating the above pre-settlement document as a valid transaction observing the prescribed norms and procedures under the Mutation Manual by conducting due field enquiry and satisfying regarding the peaceful possession of the petitioner over the suit land.

Pronounced in the open Court to-day the 27th day of July' 2021.

Sd/-

Addl. Commissioner, S & C, Berhampur

SRP No. 32 of 2015

Decided on 25.06.2021

(Order by Addl. Commissioner Settlement and Consolidation,
Berhampur, Ganjam)

Sandip Mishra Petitioner

-Versus-

Jogendra Sahu (Dead) Represented by LR

Mitu Sahu & others Opp. Parties

ORDER

This revision petition has been filed u/s 15(b) of OS&S Act, 1958 by the petitioner Sandip Mishra challenging the finally published ROR of mouza Nimakhandi published on 11.03.1976 in respect of Hal Khata No 143, Plot No 682 which stands recorded in the name of OP No. 1(a) to (e) i.e. Jogendra Sahu, Bharat Sahu, Siba

Shankar Sahu, Bijaya Chandra Sahu & Manoranjan Sahu, s/o Gopinath Sahu under rayati status on the grounds of erroneous recording.

Sri D.P.Mishra, Advocate files power on behalf of the petitioner along with documents.

The case was registered and notices were issued to the parties concerned through Regd. Post. The notice sent to Mitu Sahu, LR of Jogendra Sahu, OP No-1, as per the revised petition was returned with the remarks by the Postman as “refused to accept”. But subsequently, an affidavit dtd 7.8.2018 has been filed by the said party Sapan Kumar Sahu @ Mitu Sahu stating therein that he has no objection if the suit land is recorded in the name of the petitioner. Similarly, another affidavit has been filed on 7.8.2018 by Ananda Chandra Sahu, survivor of OP No-2, Bhagirathi Sahu who died as a bachelor as per revised petition to the effect that he has no objection in case the land is recorded in favour of the petitioner.

Although para wise report was called for from the S.O., Berhampur but the same has not been received so far. However, the learned Advocate for the petitioner has filed a Letter bearing No. 1593 dtd 27.6.2017 of the S.O., Berhampur obtained under RTI Act along with Form No 37&38 indicating the sabik –hal correlation and the death certificate of Bhagirathi Sahu to establish of his claim. The learned Sr. Standing Counsel submits that he has no objection if this old case is disposed of on merit basing upon the authenticated copies of the relevant documents in absence of para wise report.

Heard the learned Advocate for the petitioner & learned Sr.Standing Counsel & gone through the records.

In this case, the petitioner has claimed to record an area of Ac0.200 dec. from hal Plot No. 682 under Hal Khata No.143 of mouza Nimakhandi in his name on the strength of his purchase vide RSD No 4244/98 & his peaceful possession over the said land.

During hearing of the case, the learned Advocate for the petitioner submits that, just before final publication of ROR, the recorded tenants had sold Ac0.87 5/16 cent to Bhagirathi Sahu s/o late Muralidhar Sahu(OP No-2) under sabik Survey No 472/1 bearing Khata No. 413 of mouza Nimakhandi vide RSD No 638/1975. After death of Bhagirathi Sahu S/o late Muralidhar Sahu who died as a bachelor his brother Ananda Chandra Sahu being his survivor & LR & title holder has sold Ac0.200 dec. to the petitioner under the same sabik description correlating to hal Khata No. 143, Hal Plot No. 682 of mouza Nimakhandi vide RSD No 4244/1998 through the GPA Holder, D. Rajesh Patro vide GPA No. 227/1998.

On perusal of RSD No. 638/1975, it is found that, the recorded tenants along with others had sold an extent of Ac0. 87 5/16 cent out of Sabik Survey No. 472/1 bearing Khata No. 413 in favour of Bhagirathi Sahu s/o Muralidhar Sahu. The said Bhagirathi Sahu died on 15.6.1989 as revealed from the death certificate filed by the petitioner. Since, the said Bhagirathi Sahu died as a bachelor, his brother Ananda Chandra Sahu (OP No-2) being his survivor & LR has transferred an extent of Ac0.200 dec. from Sabik Survey No 472/1 corresponding to Hal Survey No 682/P to the petitioner vide RSD No 4244/1998 through his GPA Holder Daini Rajesh Patro (OP No-3) vide GPA No 227/1998.

It reveals from the information contained in. L. No. 1593 dtd 27.6.2017 of S.O., Berhampur and Form No. 37&38 indicating the sabik hal correlation furnished by the petitioner that Sabik Plot No. 472/1 correlates to Hal Plot No. 682 which has been purchased by the petitioner.

From the above, it can be said that title is flowing from the recorded tenants to the petitioner commencing from per-final publication.

The learned Advocate for the petitioner draws my attention to accentuate that a similar case bearing No. 35/2015 containing the same nature and same schedule of land has been disposed of by this Court vide Order dtd 13.8.2018. On examination of the same, it is found that, in the said case, transaction has been made from the same Khata No. and Plot No. in the same mouza by the same party which has been decided in favour of the concerned petitioner.

As stated earlier the OP No. 1(a) & 2, Sapan Kumar Sahu @ Mitu, s/o Jogendra Sahu and Ananda Chandra Sahu, S/o late Muralidhar Sahu have filed affidavit separately regarding their no objection to record the suit land in favour of the petitioner.

It appears that non filing of the claim by the intermediary purchaser during the settlement operation, has led to such erroneous recording. Hence, the revision so filed by the petitioner is allowed.

The Tahasildar, Kukudakhandi is directed to take up mutation of Ac0.200 dec. from Hal Plot No. 682 bearing Khata No. 143 of mouza Nimakhandi in the name of the petitioner treating the above mentioned pre-settlement document as a valid transaction after verifying the peaceful possession of the petitioner over the claimed plot and observing usual formalities under the Mutation Manual.

Pronounced in the open Court to-day the 25th day of June'2021.

Sd/-

Addl. Commissioner, S & C, Berhampur

CRP No. 130 of 2017

Decided on 26.08.2021

(Order by Addl. Commissioner Settlement and Consolidation,
Berhampur, Ganjam)

Hemant Kumar Patnaik Petitioner

-Versus-

Parbati Prasad Padhy & others Opp. Parties

ORDER

Heard the learned Counsel for the petitioner and the learned Sr. Standing Counsel.

This revision petition has been filed by the petitioner u/s 37(1) of the OCH & PFL Act, 1972 claiming an extent of Ac0.032 decimal from Hal Plot No. 100, Khata No. 772 (Mutation Khatian No. 1290/679) of mouza Dura under Kanisi Tahasil.

Sri S.N. Sahu, Advocate along with other associate Advocates have filed power on behalf of the petitioner.

Submission of the petitioner in this case is that, he has purchased the suit land measuring to an extent of Ac0.032 decimal pertaining to the Hal Plot No. 100, Hal Khatian No. 1290/679 corresponding to Sabik Survey No. 92, Sabik Khata No. 428 of mouza Dura from OP No.1 vide RSD No. 565/1999. The OP No.1 had purchased the said suit land in Sabik Survey No. 92, Sabik Khata No. 428 from the father of OP No.2 vide RSD No. 1626/1995, who being the recorded tenant executed a Power of Attorney vide Document No. 15/1985 in favour of his wife who is also the mother of OP No.2 and the said Attorney (mother of OP No.2) executed the document on behalf of the recorded tenant. The petitioner, claiming the absolute ownership over the scheduled property having peaceful possession thereon has prayed to record the suit land in his favour.

Further, as averred by the petitioner the scheduled land comprising of Plot No. 100 finds place in the Mutated Khatian No. 1290/679 which stands recorded in favour of the OP No.2. The learned Advocate for the petitioner has filed a written note of submission stating therein that while filing this revision case the petitioner had mentioned ROR No. 1290/679, but actually the correct Khatian/ROR No. pertaining to Plot No. 100 was ROR No. 772. To corroborate such claim, the petitioner has filed the certified copy of ROR No. 772. Further contention made by the petitioner is that, the OP No.2 has made separate ROR in his name covering his other properties including the property already sold by his late father to the petitioner as well as to other persons that remained in the said Plot No. 100 being a co-executant of the document No. 1626/1995. So, the petitioner has alleged that the alienated

property involving the Plot No. 100 has wrongly been recorded in the name of OP No. 2 in the Mutated ROR No. 1290/679 by the Tahasildar, Kanisi in a mechanical manner.

The Parawise report as called for has been received from the Addl. Sub-Collector, Berhampur. The learned Advocate for the petitioner has also filed Amin's enquiry report i.e Form No. 27 along with Form No. 34 to substantiate his claim.

Perusal of the documents as relied upon by the petitioner reveals that, transaction of the property has been made citing the Khatian No. 428, Plot No. 92 in the sabik description corresponding to the then Hal Khata No. 1062, Plot No. 110. The relevant Amin Report and Form No. 34 filed by the petitioner indicates that, Sabik ROR No. 428 and Plot No. 92 were in the name of Bhajagobinda Patra and the said sabik Plot No. 92 corelates to the LR Plot No. 110 being finally published as the plot No. 100 of mouza Dura. The Para wise report received from the Addl. Sub-Collector, Consolidation, Berhampur also corroborate this fact indicating correlation of Sabik Plot No. 92 to the LR Plot No. 110 and ultimately to the Hal Plot No. 100.

On perusal of the certified copy of ROR in respect of Khatian No. 772, it is found that Plot No. 100 existed in the said Khata which stands in the name of Bhajagobinda Patra, the father of OP No.2. It appears that at subsequent stage, the said plot No. 100 has been included under the mutated ROR No. 1290/679 from this Khata No. 772 in favour of OPNo.2 which has been mutated by the Tahasildar, Kanisi.

From the above analysis, it can be said that, title has rightly been passed to the present petitioner from the recorded tenant commencing from pre-final publication.

As the sabik hal relation of the schedule land co-exists and the OP No-2 was an executant of the Deed No-1626/1995, the revision is allowed subject to the condition that the petitioner should have in possession over the suit plot No. 100 as per the dimension mentioned in the deed of the year 1999 and involvement of the Hal Plot No. 100 in the mutated Khata No. 1290/679 by the Tahasildar, Kanisi purported to have been made in a mechanical manner as contended by the petitioner without any other genuine reason persisted there. Accordingly, the Tahasildar, Kanisi should verify the possession of the petitioner in confirmity with the field position and mutate the land claimed by the petitioner to the extent of Ac0.032 decimal giving the parties concerned reasonable opportunity of being heard and by observing necessary formalities as per law.

Pronounced in the open Court to-day the 26th day of August' 2021.

Sd/-

Addl. Commissioner, S & C, Berhampur

SRP No. 1111 of 2015**Decided on 22.10.2021**(Order by Dr. Gavali Parag Harshad, I.A.S,
Collector & District Magistrate, Kalahandi)Bikash Ranjan Panigrahi Petitioner
-Versus-

Laxmi Narayan Behera & others Opposite Parties

Advocate for the petitioner Loknath Brahma & Raghunath Hotta

Advocate for the Ops None

Prayer

This revision petition is filed by the petitioner U/S 15(b) of Odisha Survey and Settlement Act, 1958 to correct the RoR and to record an area of Ac.1.62 dec. out of Hal Plot No. 447 & 520 vide Hal Khata No. 186 of Talpadar Mouza of Junagarh Tahasil in his favour.

Contention

The case land was originally recorded in the name of Laxmi Narayan Behera & Biranchi Narayan Behera of village- Talpadar vide Khata No. 1/2. The R.T sold the case land vide Khata No. 1/2 , Plot No. 281, Area- Ac.0.74 dec., Plot No. 369, Ac.0.35 dec., Plot No. 370, Ac.0.17 dec, Plot No. 339, Ac.0.36 dec. (Total Ac.1.62 dec.) to Bikash Ranjan Panigrahi s/o Gyana Banta Panigrahi vide RSD No. 10901001359 dated. 27.07. 2010. In the current settlement operation, the Settlement Authority without considering the RSD No. 10901001359 dated. 27.07.2010, wrongly recorded the following land in the name of Biranchi Narayan Behera s/o Judhista Behera. Hence the petitioner filed this petition to record the case land in his name.

Land Schedule

SI No	Mouza	Sabik Khata No	Sabik Plot No.	Kissam	Area	Hal Khata No	Hal Plot No	Area
1	Talpadar	1/2	281	Berna Khari	0.74	186	447	
			369	Berna Khari	0.35		520	
			370	Kh. Adi	0.17			
			339	Berna Ma	0.36			

Documents enclosed:-

1. Copy of Sabik RoR vide Khata No. 1/2 of Mouza- Talpadar
2. Copy of RSD No. 10901001359 dt. 27..07.2010.

3. Copy of Hal RoR vide Khata No. 186 of Mouza- Talpadar
4. Xerox copy of yadast No. 137 of village- Talpadar.
5. Status report submitted by the Tahasildar, Junagarh
6. PWC submitted by the Addl. Sub-Collector, Settlement.
Tahasildar, Junagarh submitted report attached to the case record.

Findings

1. The sabak Khata No. 1/2 shows that the sabik R.T of suit land is Laxmi Narayan Behera & Biranchi Narayan Behera.
2. The RSD No. 10901001359 dated 27.07.2010 shows that the sabak RT sold the case land vide sabik Khata No. 1/2 , Plot No. 281, Ac.0.74 dec., Plot No. 369, Ac.0.35, Plot No. 370, Ac.0.17, plot No. 339, Ac.0.36 dec to the petitioner Bikash Ranjan Panigrahi.
3. The RoR No. 186 shows that the hal R.T of the suit land is Biranchi Narayan Behera s/o Judhistir Behera.
4. Tahasildar, Junagarh submitted status report, where in it is reported that the petitioner is in possession over the case land vide hal Khata No. 186, Plot No. 447, Ac.0.38, Plot No. 448, Ac.1.20 , Plot No. 520, Ac.0.04 dec.
5. Addl. Sub-Collector, Settlement submitted PWC where in it is reported that the sabik Plot No. 281, 369, 370 & 339 of Mouza- Talpadar was recorded in the name of Laxmi Narayan Behera & Biranchi Narayan Behera. The sabak R.T filed rent case No. 5168/2001 to partition the total land of sabak Khata. As per the order of the settlement officer the total area of sabak Khata have been partitioned and accordingly the hal Khata No. 186 recorded in the name of Biranchi Narayan Behera. The petitioner has not filed rent case to record the case land in his name. Therefore the final RoR was published in the name of Biranchi Narayan Behera vide hal Khata No. 186. The sabak Plot No. 281 & 339 corresponds to hal Plot No. 520 & the sabak Plot No. 369 & 370 corresponds to hal Plot No. 447.
6. Yadast No. 137 of Mouza- Talpadar shows that the sabak Plot No. 281 & 339 corresponds to hal Plot No. 520 & the sabak Plot No. 369 & 370 corresponds to hal Plot No. 447.

ORDER

S/R back after due service. Both parties present on call. The OP Biranchi Narayan Behera stated that he has no objection if the case land would be recorded in the name of the petitioner.

Examined the documents on record. Hal-sabak comparison as well as the present status report of Tahasildar, Junagarh. Also verified the RSD bearing No.

10901001359, dated. 27.07.2010, Ac.0.74 out of sabak plot No. 281, Ac.0.35 out of sabak Plot No. 369, Ac.0.17 out of sabak Plot No. 370 & Ac.0.36 dec. out of sabak Plot No. 339 vide Khata No. 1/2 of Mouza- Talpadar was registered by Laxmi Narayan Behera & Biranchi Narayan Behera of village- Talpadar, PS- Junagarh in favour of the petitioner Bikash Ranjan Panigrahi of village- Talpadar, PS- Junagarh through a registered document of sale. The sabak Plot No. 281 & 339 corresponds to hal Plot No. 520 & the sabak Plot No. 369 & 370 corresponds to hal Plot No. 447 of Mouza- Talpadar. The report of Tahasildar, Junagarh corroborates to the physical possession report of petitioner over the case land. The Settlement Authority would have considered the sale deed and recorded the case land in the name of the petitioner but they do not considered the same.

The petitioner purchase the case land through valid document supported with possession. Thus, the revision is allowed in favour of petitioner with delay condoned, the Tahasildar, Junagarh is directed to treat the above Registered Deed as pre-settlement document and undertake mutation in favour of the petitioner observing all formalities as per mutation Manual and comparing Hal- Sabak RoR and maps.

Pronounced in the open court today the 22nd day of October, 2021

Sd/-

Collector, Kalahandi

SRP No. 114 of 2018

Decided on 23.09.2019

(Order by Dr. Gavali Parag Harshad, I.A.S,
Collector & District Magistrate, Kalahandi)

Chaitanya Majhi Petitioner
-Versus-

Settlement Officer, Sambalpur & another Opposite Parties

Advocate for the petitioner None

Advocate for the Ops None

Prayer

This revision petition is filed by the petitioner U/s 15 of Odisha Survey and Settlement Act, 1958 to correct the ROR and to record an area of Ac.0.18 out of Hal Plot No. 1647 and Ac.0.32 out of Hal Plot No. 1644 (total Ac.0.50) pertaining to Hal Khata No. 406 of Kumjore Mouza of Jaipatna Tahasil in his favour.

Contention

The case land was recorded under Government khata as per 1955-56 settlement. The said land was settled in the name of the petitioner vide Lease case

No. 12/2001 and separate khata No. 124/75 was recorded in the name of the petitioners. Since then the petitioners are in peaceful possession over the case land having right, title and interest. In the current settlement operation during 2013, the settlement authority without considering the RoR/ Lease patta and without verifying the filed as well as the records, wrongly recorded the case land in Govt. Khata. Hence the petitioner filed this petition to record the case land in his name.

Land Schedule

SI No	Mouza	Sabik Khata No	Sabik Plot No.	Kissam	Area	Hal Khata No	Hal Plot No	Area
1.	Kumjore	124/75	813/1153	Att. Ma	Ac.0.50	406	1647 1644	Ac.0.18 <u>Ac.0.32</u> Ac.0.50

Documents enclosed:-

1. Copy of RoR vide khata No. 124/75
2. Yadast copy
3. Para wise report of Addl. Sub-Collector, Bhawanipatna including hal-sabik comparison.

Tahasildar, Jaipatna submitted detailed report on current possession of the case land.

Findings

The ROR No. 124/75 shows that the case land was settled in the name of the petitioner Chaitanya Majhi s/o Dambarudhar Majhi @ Hetu Majhi and Purnami Dei @ Majhi w/o Chaitanya Majhi vide Lease case No. 12/2001.

1. The ROR No. 406 published on 2013 shows that the Hal RT of the suit land is Govt. Of odisha.

ORDER

The case is posted today for hearing. The appellant is present on call.

Examined the documents on record, hal-sabik comparison as well as the present status report of Tahasildar, Jaipatna. Also verified the Sabik RoR & hal RoR. Further examine the report submitted by the Addl. Sub-Collector, Bhawanipatna.

Perused the report of Tahasildar, Jaipatna. The report corroborates to the physical possession report of petitioner over the case land.

Thus, the revision is allowed in favour of the petitioner. Accordingly, the Tahasildar, Jaipatna is directed undertake mutation of Ac.0.18 out of Hal Plot No.

1647and Ac.0.32 out of Hal Plot No. 1644 (total Ac.0.50) pertaining to Hal Khata No. 406 of Kumjore Mouza in favour of Chaitanya Majhi s/o Dambarudhar Majhi @ Hetu Majhi and Purnami Dei @ Majhi w/o Chaitanya Majhi of village/po- Kumjore, PS- Jaipatna, Dist.- Kalahandi observing all formalities as per Mutation Manual.

Pronounced in the open court today the 23rd day of September, 2019.

Sd/-

Collector, Kalahandi

SRP No. 86 of 2015

Decided on 25.11.2019

(Order by Dr. Gavali Parag Harshad, I.A.S,
Collector & District Magistrate, Kalahandi)

Bhairab Naik Petitioner

-Versus-

Charge Officer & others Opposite Parties

Advocate for the petitioner. None

Advocate for the Ops. None

Prayer

This revision petition is filed by the petitioner U/s 15(b) of Odisha Survey and Settlement Act, 1958 to correct the ROR and to record an area of Ac.1.48 dec. out of corresponding hal Khata & Plots of sabak Khata No. 14, Plot No. 162, Ac.0.50 dec., Plot No. 161, Ac.0.29 dec., Plot No. 167, Ac.0.14 dec., Plot No. 168, Ac. 0.23 dec., Plot No. 169, Ac.0.22 dec., Plot No. 193, Ac.0.10 dec. (Total Ac.1.48 dec.) of Dharmagarh Mouza of Dharmagarh Tahasil in his favour.

Contention

The contention of the petitioner is that the sabak Khata No. 14 of Mouza-Dharamgarh was recorded in the name of Arjun Naik. The legal heirs of Arjun Naik filed T.S No. 75/2001 before the Hon'ble Civil Judge, Sr. Division, Dharamgarh for allotment of their respective shares. Accordingly the case land (mentioned in schedule "H" in T.S. No. 75/2001) as indicated below is fallen in to the share of the petitioner and the petitioner is in peaceful possession over the case land. In the current settlement operation during 2013, the settlement authority without verifying the filed as well as the records and without considering the order of Hon'ble Civil Judge, Sr. Division, Dharamgarh in T.S No. 75/2001 wrongly recorded the case land in the name of Arjun Mali(sabak RT) vide Khata No. 58. Hence the petitioner filed this petition to record the case land in his name as per the decree in T.S. No. 75/2001.

Sl No	Mouza	Sabik Khata No	<u>Land Schedule</u>			Area	Hal Khata No	Hal Plot No	Area
			Sabik Plot No.	Kissam	Area				
1	Dharmagarh	14	162	Ber Ma	0.50				
			161	Att. Un	0.29				
			167	Att. Un	0.14				
			168	Bah. Pa	0.23				
			169	Bah. Pa	0.22				
			193	Att Ma	<u>0.10</u>				
								1.48	

Documents enclosed:-

1. Copy of Sabik RoR No. 14 of Mouza- Dharmagarh
2. Copy of Hal RoR No. 58 of Mouza- Gataquda.
3. Copy of order in T.S. No. 75/2001 passed by Civil Judge (Sr. Division), Dharamgarh.
4. PWC submitted by the Addl. Sub-Collector, Settlement, Kalahandi.
5. Report of Tahasildar, Dharmagarh

Tahasildar, Dharamgarh submitted detailed report on current possession of the case land.

The petitioner present on call. OP Paramananda Naik & Sairendri Naik @ Mali also present. The Ops Paramananda Naik & Sairendri Naik @ Mali stated that they have no objection if the case land would be recorded in the name of the petitioner. The petitioner stated that the matter has already been adjudicated by the Civil Court and he prays to pass order as per decree in civil court. The Tahasildar has reported that the petitioner is in possession over the case land vide hal Plot No. 1920, Ac.0.79 dec., plot No. 1920, Ac.0.59 dec. and plot No. 1902, Ac.0.10 dec.

The report of the Addl. Sub-Collector, Settlement, Bhawanipatna reveals that the sabak Plot No. 169 corresponds to hal plot No. 1913, sabak Plots No. 169 & 168 corresponds to hal Plot No. 1914, sabak Plot No. 167 corresponds to hal Plot No. 1916, sabak Plots No. 169, 168, 167, 166, 165, 164, 163, 162, 161, 158 & 159 corresponds to hal Plot No. 1920, sabak Plot No. 161 corresponds to hal Plot No. 1955 & sabak plot No. 178, 179 & 193 corresponds to hal plot No. 1902. As per the order of ASO the hal Plot No. 1913, 1914, 1916, 1920, 1955 & 1902 have been ordered to record in the name of Arjun Mali. One Kadamba Naik filed objection petition vide rent case No. 8443/2003 during attestation Draft Publication and objection hearing camp to record the case land separately basing on the order in T.S No. 75/2001 of Civil Judge, Senior Division, Dharmagarh. As the party remain absent and also not paid the fees, during the inquiry by the Survey Amin, therefore the case land was ordered to record in the name of Sabak R.T.

Heard both the parties. As the Hon'ble Civil Court has already allotted the share of the parties vide T.S. No. 75/2001. The Addl. Sub-Collector, Settlement submitted the hal sabak comparison report where in the sabak Plot No. 162, 161, 167, 168, 169 & 193 involved in TS No. 75/2001 corresponds to hal plot No. 1913, 1914, 1916, 1920, 1955 & 1902. Therefore the revision is allowed. Tahasildar, Dharamgarh is directed to undertake Mutation and to correct the Map and RoR in the name of the petitioner after observing the orders of the Civil Court in T.S No. 75/2001 and taking into the physical possession & observing hal-sabak comparison report of Addl. Sub-Collector, Settlement.

Pronounced in the open court today the 25th day of November, 2021.

Sd/-

Collector, Kalahandi

ON ADVERSE POSSESSION

Jagannath Rath
Standing Counsel

1. **Simple understanding and history of adverse possession:-**

All India Report 2019 Supreme Court page- 3827 Para-2.

- "If a chieftain or a man leaves his house, garden and field and someone else takes possession of his house, garden and field and uses it for three years; if the first owner returns and claims his house, garden and field, it shall not be given to him, but he has taken possession of it and used it shall continue to use it".
- "The possessor who maintains and improves the land has a more valid claim to the land than the owner who never visits or cares for the land and uses it, is of no utility. If a former owner neglects and allows the gradual dissociation between himself and what he is claiming and he knows that someone else is caring by doing acts, the attachment which one develops by caring cannot be easily parted with".

Para- 57- "The adverse possession requires all the three classic requirements to co-exist at the same time, namely nec-vi i.e. adequate in continuity, nec-clam i.e. adequate in publicity and nec- precario i.e. adverse to a competitor, in denial of title and his knowledge.

Para-22- "Adverse possession confers negative and consequential right effected only as somebody else's positive right to access the court is barred by operation of law. Right of the paper owner is extinguished and that competing possessor as he cared for the land, developed it as against the owner of the property who had ignored the property.

2. **Claim of adverse possessions-**

(2004) 10 SCC 779 (Karnatak Board of Wakf –vrs- Govt. of India) referred in 2018 (II) OLR 6 Para-10 (State of Orissa –vrs- Haladhar Barik)

Para-10- "A person who claims adverse possession would show: (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factan of possession was known to the other party, (d) how long his possession has continued and (e) his possession was open and undisturbed.

BLACK LAW DICTIONARY (6th Edition) Says adverse means opposed contrary, in registance or a claim/application or proceeding.

- Adverse possession means a method of title to real property by possession for statutory period. Otherwise it is explain that statute of limitation on the bringing of action for the recovery of lands, title can be acquired to real property by adverse possession. In order to establish title in this manner, there must be prove of non proper missive use which is actual, open, notorious, exclusive and adverse for the statutory period.
- The statutory period have been prescribed under The Limitation Act, 1963 vide Section-27 and Article-64 to 66 and Article – 111 & 112.
- Section – 27 says about extinguishment of right of property.
- Article – 64 to 66 says about possession of immovable property of private person/individuals.
- Article- 111 & 112 says about properties of Govt. which includes State and Central.

WEBSTERS NEW WORLD DICTIONARY

- Adverse means turned Opposite in position
- Possession means possessing or being possessed ownership hold.
- Anything possessed property, wealth, showing or, describing possession.

JUDICIAL DOCTIONARY BY AIYAR'S (9th EDITION)

- Adverse means acting in a contrary direction, opposing claim.
- Claim by two persons of the ownership of certain property.
- Where the property is in the hand of person other than those who claim the same.
- **Adverse possession means:-** possession of property by a person on his behalf or, on behalf of some other person, the true owner having a right to immediate possession. But, if the true owner does not enforce his right within the period prescribed by the law relating to limitation, the possession of the former becomes adverse to the true owner and ripens into ownership.
- To claim successfully the adverse possession vesting title in the possession, the possession must be actual, visible, exclusive, hostile and continued during the statutory period of limitation as explained under The Limitation Act, 1963.

Section 27 and Articles 64 to 66 and Article 111 & 112

- The law of adverse possession in the recent past has been taken care along with Limitation Act, 1963, Section 27 of Article 64 and 66 and Article 111 & 112, by their lordship in Vol. 1, 2014 Supreme Court cases at page 669. In the matter of Gurudwar Sahi –vrs- Grama Panchayat village, Sirthala and another and All India Report 2019 Supreme Court at page 3827, AIR online 2019 Supreme Court (SC) 804.
- While relying on few dozen of Hon'ble Supreme Court decisions along with the decisions of Privy Council, and Queens Bench, their lordship bench given a new dimentation to the law of Adverse Possession.
- Their lordship in 2014 Vol. 1 SCC 669 (Gurudwar Sahib –vrs- Gram Panchayat Sirthala) held that “declaration of ownership of land on the basis of adverse possession cannot be sought by plaintiff- But claim of ownership by adverse possession can be made by way of defense when arrayed/ added as defendant in proceedings against him.
- This law on adverse possession was over ruled by their lordship in AIR 2019 SC 3827, at paragraphs 48, 49 & 50 which are quoted herein below:-

Para- 48 - The statute does not define adverse possession, it is a common law concept, the period of which has been prescribed statutorily under the law of limitation Article 65 as 12 years. Law of limitation does not define the concept of adverse possession nor any where contains a provision that the plaintiff cannot sue based on adverse possession. It only deals with limitation to sue and extinguishment of rights. There may be a case where a person who has perfected his title by virtue of adverse possession is sought to be ousted or has been dispossessed by a forceful entry by the owner or by some other person, his right to obtain possession can be resisted only when the person who is seeking to protect his possession, is able to show that he has also perfected his title by adverse possession for requisite period against such a plaintiff.

Para- 49- Under Article 64 also suit can be filed based on the possessory title. Law never intends a person who has perfected title to be deprived of filing suit under Article 65 to recover possession and to render him remediless. In case of infringement of any other right attracting any other Article such as in case the land is sold away by the owner after the extinguishment of his title, the suit can be filed by a person who has perfected his title by adverse possession to question alienation and attempt of dispossession.

Para-50- Law of adverse possession does not qualify only a defendant for the acquisition of title by way of adverse possession, it

may be perfected by a person who is filing a suit. It only restricts a right of the owner to recover possession before the period of limitation fixed for the extinction of his rights expires. Once right is extinguished another person acquires prescriptive right which cannot be defeated by re-entry by the owner or sub-sequent acknowledgment of his rights. In such a case suit can be filed by a person whose right is sought to be defeated.

- In paragraphs 61 while over ruling the decisions reported in AIR 2014 Vol. 1 SCC 669 and AIR 2017 SC 4472 in the matter of Dharampala (dead) through LRS Punjab wakaf Board, held that these two decisions cannot be said to be laying down the law correctly, thus they are hereby over ruled. Further their lordship held that the plea of acquisition of title by adverse possession can be taken by the plaintiff under Article 65 of The Limitation Act, 1963, and there is no bar under The Limitation Act, 1963 to sue on the aforesaid basis in case of infringement of any right of a plaintiff.
- At present this is all about what I have understood on the law of "Adverse Possession"

RP No. 1808 of 2018

Decided on 18.02.2021

(Order by Addl. Commissioner Consolidation and Settlement, Sambalpur)

Ananda Singhanian and others Petitioners

Vrs.

Abhi Nial and others ----- Opposite Parties

ORDER

Against the refusal by the Tahasildar, Kantabanji to mutate the case land on the ground that the registration of the case land was done as per sabik ROR revision U/s 15 (b) of the O.S.&S. Act, 1958 has been filed by the petitioners on 09.07.2018. After preliminary hearing on submission of the prayer, the case was kept for further hearing on admission on 21.08.2018.

Notice was issued to the opp. parties. Opp. parties No.3 to 9 have appeared through a common counsel and opp. parties No.1 & 2 by another counsel.

The Tahasildar, Kantabanji was directed to submit PWR and fact of possession report and case was posted to 09.11.2018 for filing objection by the opp. parties. The opp. parties have filed objection, challenging the maintainability of the revision petition on ground of delay.

During the pendency of proceeding the petitioners filed 3 Misc. Cases namely for substitution, condonation of delay and amendment petition. The opp. parties were served with copies of the petition and the objections to the same has been filed. All the 3 petitions were allowed on 03.09.2020 on contest. Thereafter a consolidated settlement revision petition was filed replacing Anand Singhania in place of Santosh Agrawal earlier petitioner No.1 who died on 29.04.2020.

Due to ongoing Lawyer's strike, the court work remained suspended from 06.09.2018 to 17.03.2019. The case could not proceed as such till 11.12.2019 and subsequently it was taken up for hearing on 06.01.2020. Advocate for both the parties appeared. The advocate for opp. parties filed written objection and presented his argument in the presence of the advocate for petitioners and case was again posted to 20.01.2020.

The learned Counsel for opp. parties No.1 & 2 filed a petition challenging the maintainability of the revision mainly on the ground of delay it being more than 70 years from the date of execution of sale deed i.e. 1950. During preliminary hearing, itself the limitation petition u/s 5 of the Limitation Act was allowed on merits as it involves the substantive rights of the petitioners over the case land. The substitution and amendment petition filed by the petitioners were also allowed on justifiable grounds. However the maintainability petition filed by the opp. parties was kept to be heard at the time of final hearing.

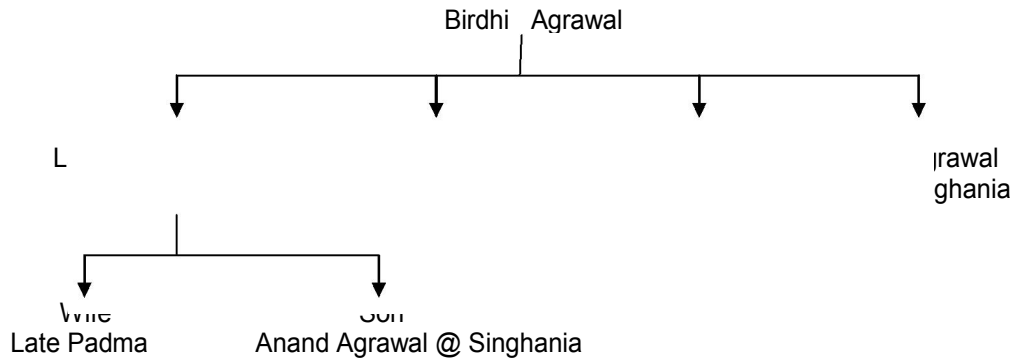
The gist of the petitioners claim is that the petitioners father Ramchandra Birdhi and others had purchased the case land jointly from one Dhanuram Nial, Gadadhar Nial and Nara Nial vide R.S.D. No.442 dt.25.08.1950 for a consideration of Rs.470/- and they are in peaceful possession of the same since then. However as revealed from the prayer, the same could not be mutated due to pre-settlement sale and therefore they took shelter of this revision court for obtaining a direction to the Tahasildar for correction of R.O.R.

All the legal heirs of sabik R.Ts. through their counsel have opposed to the revision on the ground of delay of 43 years and they also claim to have possession over the case land.

Though a report was already called for and submitted by the Tahasildar, Kantabanjhi regarding the present status of land and the genuineness of the sale deed. But, as per the objection raised by opp. parties No.1 & 2 on 15.12.2020 regarding right of ownership of petitioners, a fresh report along with PWR was called for from Tahasildar, Kantabanjhi.

The Tahasildar vide his letter No.95 dated 08.01.2021 has submitted the PWR confirming the genuineness of the sale deed No.442 of 1950 executed in favour of one Ramchandra Sharma and Birdhi Agrawal. He has also confirmed that the present petitioners are legal heirs of late Birdhi Agarwal and they are still in possession of Ac.0.35 dec. out of total Ac.0.38 dec.

The Revenue Inspector, Kantabanjhi in his report has given a genealogy of Birdhi Agrawal after making an enquiry and the same is as under :



While arguing for the opp. parties the learned counsel states that the settlement authority did not take notice of the possession over the case land which was published in the year 1974. The learned counsel for opp. parties has raised doubt over the genuineness of the R.S.D. No.442 dt.25.08.1950.

The learned counsel for opp. parties have vehemently denied the claim of adverse possession by the petitioners over the case land as settlement authority recorded the case land in the name of the legal heirs and successor of the sabik R.Ts.

The learned counsel for opp. parties have further stated that the petitioners did not approach the revision authority within reasonable time and thus they should suffer for their own negligence and laches and thus on the aforesaid points, the learned counsel for opp. parties have argued that the present revision is not maintainable.

The learned counsel for the petitioners argued that the revision prayer may be allowed as it is amply supported by the field enquiry report of the Tahasildar and Revenue Inspector. The Tahsildar, in his report has not only confirmed the genuineness of the sale deed but also clearly stated that the petitioners are in possession of the case land since 1950 uninterruptedly and no claim of ownership having ever been raised or challenged by the opp. parties in any forum till date. The learned counsel for the petitioners has further argued that the opp. parties have never challenged the petitioner's possession over the case land as they being in possession since 1950 and hence by law of adverse possession have created right, title and interest over the case land.

While countering the contentions of the Sr. Counsel for petitioners, the opp. parties counsel has argued that opp. parties are in possession and the petitioners have never challenged the M.S. R.O.R., recorded in the name of legal heirs of the sabik R.Ts. and the same can not be challenged after a gap of 43 years.

The issues emanating from the factual aspects, report of the Tahasildar and Revenue Inspector and contentions of both parties are as follows

Whether R.S.D. is genuine or not?

Whether the present revision is barred by the Act of Limitation?

Whether Tahasildar / Revenue Inspector report is correct?

Whether the legal heirs are barred from claiming right over the case land on the same ground?

Whether the petitioners are in possession of the case land since the date of purchase?

Having dealt with the facts and the gist of objections and counter by the petitioners, the points of law involved in the revision as dealt by the learned counsel of both parties are discussed below.

While opposing the revision prayer, the learned counsel for opp. parties cites decision of the Hon'ble High Court, passed in **WA No.24/2017**, published in **2017(II) ILR-CUT-1240**, wherein the Hon'ble Court held that **"In this case proceeding U/S 15(b) of the Act initiated Having not approached the Revisional Authority within reasonable time are to suffer for their own negligence and laches."**

The learned counsel for opp. parties has further argued that Section 1 , Rule 10 of I.E. Act, the burden lies with the petitioners to prove that they are in possession of the case land in question. He also stated that the Tahasildar is not competent to declare right, title and interest over the case land, if it is disputed.

In his counter to the submission of opp. parties counsel on point of law, the learned Sr. Counsel for petitioners has relied upon the citation of Apex Court on **1998(7) SCC** has held **"Rule of limitation are not meant to destroy the substantive rights of parties"**. Further in **1987(2) 107 SCC , Collector(LA) Vrs Katiji**, the Hon'ble Apex Court held that **"sufficient cause"** in Section 5 of Limitation Act is flexible enough to enable courts to apply the law in a meaningful manner which meets the end of justice. In another decision, the Hon'ble **Apex Court in 2013(12) SCC 649 Esha Bhattacharjee Vrs. Raghunathpur Nafar Academy** has reiterated the principles applicable to an application for condonation of delay. The Hon'ble Court has stressed that there should be a liberal (so as to encapsulate the conception of reasonableness) pragmatic justice-oriented approach. The expression **"sufficient cause" as it appears in the Act must be interpreted and understood in the proper spirit as these terms are elastic enough to be applied liberally in the interest of justice.**

Similarly, the Hon'ble Supreme Court in two landmark judgment i.e. (I) **Peruman Bhagvathy Devswan Vrs. Bhargavi Amma Thr: Lrs on 11th July 2008**

and (II) **Katari Satyanarayan and others Vrs. Koppisathi Subba Rao and others on 8th April 2009** have laid down the principles to be applied while considering application for condonation of delay. Taking clue from the above decisions of the Apex Court, I quote the word (I) **“sufficient cause” in Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice,** (II) **“the decisive factors in condonation of delay is not the “length of delay” but “sufficiency” of a satisfactory explanation”** and (III) **“the extent a degree of leniency to be shown by court depends on the nature of application and facts and circumstances of the case.** In the instant revision case the cause of delay is due to death of Birdhimal who was in custody of the documents and in remained as such untraceable for a long time. The assertion made by the learned Sr. Counsel that the delay is not on account of dilatory tactics deliberate inaction or negligence on the part of the petitioners seems to be convincing and sufficient. Therefore this court takes a lenient view by seeing the nature of facts and circumstances as explained by the petitioners counsel and thus long delay is condoned.

Having heard the learned Counsel, it is my considered view that there was justifiable reasons on the part of the petitioners in not approaching this court earlier. More so, the petitioners does not seem to have suppressed any material fact which goes to show their bonafide and genuineness. Further even if there is some delay in approaching this court for correction of R.O.R., settlement having taken place in 1974 but still then due to efflux of time no valuable right for that matter any right has been occurred in favour of the opp. parties as no documents are forth coming from the side of the opp. parties. Hence I was inclined to allow the limitation petition filed by the petitioners through my order dt.03.09.2020, which even otherwise has not been assailed in the higher forum by the opp. parties if they were ever aggrieved.

The learned counsel for opp. parties further argues that the report of the Tahasildar / Revenue Inspector filed in this revision is not based on spot enquiry. The opp. parties counsel also question the claim of possession over the case land by the petitioners. The Tahasildar / Revenue Inspector do not give the time and date of field visit. The counsel for the opp. parties have argued that the report was submitted by the Revenue Inspector and Tahasildar without giving them a chance of hearing and the same can not be acted upon, it being violation of principle of natural justice. I do not agree with the argument of the learned counsel. I think the Tahasildar, Kantabanji is not required to give an opportunity of hearing before submitting his report to this court. In his reply to the objection of the opp. parties counsel, the petitioners counsel states that the report submitted by the Tahasildar is an independent report, basing on field visit and verification of documents available at their end by collecting information and evidence from the local people and neighborhood. He further argues that the submission of report of Tahasildar to the court is an internal document so as to facilitate the just and fair conclusion. Therefore, Tahasildar was well within his competence and jurisdiction while submitting field

enquiry report to this court regarding status of the case land, without noticing opp. parties. In this regard, the learned counsel for petitioners cites the decision of Hon'ble High Court, published in **2007(1) OLR-595**. In the said decision, her lordship observes that the "**Commissioner, while allowing the revision prayer has called for a field enquiry and status report from Tahasildar and considered all materials on record and passed the order in accordance with law**". Such a view of the Hon'ble Court confirms that the Commissioner has rightly taken in to account the field report of the Tahasildar so as to take a judicious view of the matter.

The learned counsel for opp. parties has stated that the sale deed bearing No.442 dt.25.08.1950 is a fraudulent document which was constructed in order to grab the valuable property of the opp. parties. This has been countered by the learned Sr. Counsel for the petitioners who argues that the sale deed is a genuine document and it has not been challenged even after 70 years and thus it is valued. **As per provision of law, R.S.D. can be challenged within 3 years of its execution.** He further argues that rightly or wrongly, R.O.R. issued in their favour does not mean that the property belongs to them as the title has already passed by virtue of the said R.S.D.

The typographical error of name on the face of the sale deed, corrected and endorse by the registering authority on back side has been dubbed as illegal by the Counsel for the opp. parties. But such view has been countered by the learned Sr. Counsel for the petitioners saying the correction effected on the back side of the document and certified by the Sub-Registrar in change of registration is sufficient to probe that it is genuine and therefore such erroneous argument is devoid of merit.

The learned counsel for opp. parties states that the sabik-hal conversion submitted by the petitioners is not correct. But the Sr. Counsel for petitioners counters it by saying that the same are not good ground for interference by the Hon'ble Court and neither the same are against the settled position of law.

The learned counsel for opp. parties argues that the sabikkhata No.49 recorded in the name of Dhanuram Nial, Gadadhar Nial and one Nara Nial. But the R.S.D. executed does not bear the signature of Dhanuram Nial and therefore it is nonest in the eye of law. But on perusal of the said document, the signature of Dhanuram is clearly visible in the document. Therefore such contention of counsel for opp. parties is not correct.

The learned counsel for opp. parties in his objection states that the present being coparcenary properties having other co-shareor have been sold without consent of other co-R.Ts. and therefore it is invalid and the sale is void in abnatio. The learned Sr. Counsel for petitioners in his rejoinder states that how came the opp. parties have not raised any objection to the sale of a part of case land sold by the co-purchaser Ramchandra Sharma which got mutated in the name of the

purchaser. The R.S.D. without being challenged for so many years in the competent court has reached finality and can not be questioned at this stage.

The learned counsel for opp. parties have objected the revision prayer on the ground that all the legal heirs of the opp. parties have not been impleaded as parties. The learned Sr. Counsel for petitioners refutes this objection as in correct and further states that the O.P. 1&2 have not placed on record any such documents indicating the name of legal heirs of Nara Nial, Bana Nial and if at all there were other legal heirs who were not made parties having not intervened in the matter. Hence such objection is of no consequence.

The other objections raised by the opp. parties counsel has not been answered as those objections as per the Sr. Counsel for the petitioners has been denied. While advancing arguments on points of merits and law, the learned Sr. Counsel for the petitioners and learned Counsel for the opp. parties have relied up on the following citations.

Citations relied upon by the counsel for the petitioners

1. 2003(2) OLR 306
2. 2007(1) OLR 595
3. 2008(2) OLR 385
4. 2011(1) OLR 145
5. 2016(Sup.1) OLR 143
6. 2019(Vol.8) Sup.609
7. WANO 24/2017 Durga Charan Roul v/s Bhagirathi Roul
8. 1998(7)SCC123 N. Balakrishnan v/s M. Krishnamurty
9. 1987(2)SCC 107 Collector(LA) V/s katji
10. 10.2013(12) SCC 649 EshaBhattacharjee v/s RaghunathpurNafar academy

Citation relied upon by the counsel for the opp.parties.

1. W.A. No.24/2017 Durga Charan Roul Vrs. Bhagirathi Roul

This court has taken lead from the decision of Hon'ble Supreme Court on matter of condonation of delay: (I) **Peruman Bhagvathy Devswan Vrs. Bhargavi Amma Thr: Lrs on 11th July 2008** and (II) **Katari Satyanarayan and others Vrs. Koppisathi Subba Rao and others on 8th April 2009.**

After going through the factual aspects, arguments and counter arguments by the respective counsels, the court came to the findings that the sale deed bearing No.442 of 1950 is a genuine document. The reasons stated by the learned Sr. Counsel for the petitioners for filling the revision after a long lapse of 43 years has

some valid reasons “**sufficient cause**” behind it for its acceptance and therefore the delay has been condoned. Moreover the report of Revenue Inspector and Tahasildar confirms the “**settled possession**” of the petitioners over the case land since the date of purchase having boundary on it. This “**settled possession**” of the petitioners over the case land since the date of purchase have got a clear confirmation in Hon’ble **Supreme Court’s decision on Poonam Ram Vrs, MotiramTh:Lrs on 29th January 2019.**

Keeping in view of the above factual description and analysis of law points passed in the decisions of Hon’ble High Court and Supreme Court, I am inclined to allow the revision prayer as there exists a prima facie case in favour of the petitioners.

Accordingly, the Tahasildar ,Kantabanji is directed to correct the R.O.R. in favour of the petitioners and issue corrected ROR in the name of the petitioners.

Order pronounced in the open Court today.

Sd/-

Addl. Commissioner, C & S, Sambalpur

Consolidation Revision Case No. 116 of 2020

Decided on 01.03.2021

(Order by Addl. Commissioner Consolidation and Settlement, Sambalpur)

Rajkumar Beriha Petitioner

Vrs.

Pradeep Kumar Patel ----- Opposite Party

ORDER

The instant Revision Petition has been filed by the learned Sr. Advocate for petitioner U/s 37(1) of the O.C.H.& P.F.L. Act, 1972 on 07.09.2020. The Petitioner claims for recording of the below scheduled land from the hal consolidation R.O.R. by deleting the name of the Opposite party. Further the Learned Advocate for the petitioner has prayed for a Stay of operation of the consolidation R.O.R.

Land Schedule.

<u>Village</u>	<u>M.S.Khata No.</u>	<u>Plot No.</u>	<u>Kisam</u>	<u>Area</u>
Pardhiapali	159/33	125/2188	Patita	Ac.0.30

On preliminary hearing a temporary Stay was granted till appearance of the O.P. The O.P. appeared on 22.9.2020 and Stay was vacated. The case was kept for hearing on admission on 03.10. 2020. It was extended to 05.10.2020 as Saturday was declared holiday by Government.

Heard both of them.

The Learned Advocates for petitioner & O.P. have been asked to file written submission on question of maintainability & admissibility of the case.

On perusal of the revision prayer & written submission and the documents available in the record, the following facts emerge out for deciding as to whether this revision is maintainable or not?

The aforesaid land in question forms a part of land which had been declared ceiling surplus under O.L.R. Act by the Tahasildar-cum- Revenue Officer vide Ceiling Case No.98/1975. And subsequently the said Surplus Land had been distributed to the beneficiaries. The present case-land is one such land sanctioned as ceiling lease in favour of one Rajan Paik vide OLR Lease Case No.10/1984.

After death of Rajan Paik, his son Suresh Paik & his minor sons sold the case-land to one Subash Chandra Mahaling vide Sale Deed No.1472 dated 27.6.1997. Thereafter, Subash Chandra Mahaling through General Power of Attorney Holder, sold the case-land to the present petitioner vide R.S.D. No.11621303304 dated 26.7.2013.

The Opposite Party, Pradeep Kumar Patel purchased Ac.0.60 of land from Plot No.275 of Consolidation Khata No.227 from Santosh Pradhan vide R.S.D. No.11621101774 dated 13.4.2011 which partly corresponds to the case-land. Thereafter, he filed a Revision case bearing No.1677/12 which was allowed by this court and the same got mutated in his name vide Chaka Khata No.228/413 containing Plot No. 275/1859.

A cursory look at the revision prayer reveals that, the Learned Advocate for petitioner advances his argument on question of legality of the sale of the case land by the grandson of original C.S. Lease holder.

He points out that, the sale was done at the back of the real owner. He further argues that, both revision and mutation were allowed in favour of the O.P. without proper inquiry of relevant facts.

The learned Advocate for the petitioner stated that the earlier Revision case No.1677/2012 was totally illegal & void ab initio & not sufficient for passing of title because the vendor did not have valid title to transfer & the case land was already vested to government in Ceiling proceeding.

On the other hand, the Learned Advocate for O.P. has contested in the present revision case and advanced counter on maintainability of the present revision.

He argues that, power conferred under Section 37(1) of O.C.F. & P.F.L. Act is not to recall or set aside previous order but to examine the correctness of the record, prepared by subordinate authority for the purpose of satisfying himself on Law points, irregularities and correctness of the proceedings.

The present Revision suffers from the Law of Limitation as the filing of the present Revision after 08 years without sufficient reasons & convincing explanation of delay.

The Court cannot recall/review or pass any order in R.C.No. 1677/2012 as it is hit by the principle of "res judicata".

The Learned Advocate for O.P. further counters on non-addition of party in previous R.C. No.1677/2012.

The Learned Advocate for O.P. states, the present Revision is not maintainable as it is based on a void document executed by a wrongful person in favour of the petitioner.

Having heard both the Learned Advocates for the Petitioner & O.P. and on perusal of documents filed, this Court feels that, the matter involves in this revision requires to be heard on merit. The argument and citations filed by both parties on question of maintainability shall be taken up while examining the issues and Law points involved in the present revision.

Gist of Written argument & counter argument

1. The learned Advocate for Petitioner, while initiating his argument, states that so far as Right, title and interest of the petitioner is concerned, the cause of action arose from the year 1985 and subsequent date of transfer, i.e., 1997 & 2013 which are after the commencement of consolidation operation and closure of the same. The Section 51 of O.C.H. & P.F.L. Act empowers consolidation authority to decide the Right, title and interest in such area. The O.P. objects that, Section 37(1) does not expressly speak of the matter to be dealt with.

But, the learned Advocate for petitioner argues that, the present revision is well within the provision of Section 37(1) as the ROR prepared by the lower consolidation authority on the basis of sale effected by the grandson of M.S. recorded tenant whose title in respect of the said land has been vested with Government in Ceiling case prior to sale to O.P. Thus, the said transaction is void and therefore, consolidation ROR prepared in the name of O.P. needs to be set aside by this court.

The learned Advocate for OP states that, the present revision is barred by the Act of Limitation as there is a delay of more than 8 years in filing the present revision. The present revision petitioner has not explained sufficient reasoning for delay on filing the revision.

The learned Sr. Advocate for petitioner refutes the same and states that, the provision u/s 37(1) of O.C.H. & P.F.L. Act does not speak of Limitation & taking shelter of this court in filing revision is not barred by limitation.

The learned Advocate for O.P. states that, since the case-land is ceiling surplus & Ceiling lease decided under O.L.R. Act, the present Court lacks jurisdiction to decide the matter.

The learned Sr. Advocate for petitioner states that, the above contention of O.P. is not supported by law. Since the case-land purchased by the petitioner, vide

Sale deed, it is coming within consolidation area & in consolidation area, right, title & interest can be decided by the consolidation authority.

The O.P.'s learned Advocate argues that, since the present court had allowed the revision, involving the case-land vide R.C. No.1677/2012, it cannot review / or recall the said order. In his counter to such an objection, the Advocate for petitioner states that, the order obtained in the said revision was based on suppression of material facts. By that time, the Land was vested to government & the said vendor had no title to transfer.

The learned Advocate for O.P. while objecting to the revision points out that, the persons like Suresh Paik, Santosh Pradhan, Suresh Mahalik, though mentioned in revision prayer being involved in the transaction of case-land haven't been impleaded as party and therefore the revision suffers from serious flaw of non-joinder of necessary parties.

In his reply, the learned Sr. Advocate for petitioner states that, the Revision Case No.1677/2012 was filed with suppression of material facts as the petitioner had got interest in the said property based on registered documents and possession over it.

The learned Advocate for O.P. further alleges that, the petitioner had not approached the court with clean hands. He concealed the material facts and managed to procure justice.

In his reply, the learned Sr. Advocate for petitioner states that, such wild allegation is not supported by facts & Law. He counters it by saying that the O.P. managed to take an order & prepare a document & is guilty of unjust enrichment by not disclosing the right & interest of the petitioner. Therefore such contention by O.P. is totally unjustified.

The learned Advocate for O.P. makes an argument saying that, the present revision is without any basis & it should be rejected. The present revision prayer had not disclosed any cause of action.

It is also pointed out by the learned Advocate for O.P. that, even if Subash Mahaling purchased the case-land since 27.6.1997, he did not challenge the sale deed of O.P. till date & therefore present petitioner has no locus standi to file the present revision challenging the same.

The Advocate for petitioner states that, such contention of the O.P. being false is hereby denied.

The petitioner & the predecessors-in-interest of the petitioner was never debarred from enjoying the case-land till date rather the O.P.'s claim for title over the case-land based on invalid document, executed by the vendor who had no title to pass the same to O.P.

While objecting to the revision, the learned Advocate for O.P. further alleges that, the petitioner's claim over the schedule A land on the basis of void document executed by a wrong person, is illegal.

The Advocate for petitioner denied such contention of the O.P. as false and asked O.P. to prove the same as per law.

The Advocate for O.P. argues that, the revision petition is ambiguous, insufficient, confusing and fabulous one & without legal basis and the petition is self-contradictory basing on vicious grounds.

In his reply, the learned Advocate for petitioner states that, the order obtained by O.P. in R.C. No. 1677/2012 & subsequent correction of ROR is not existing as per law being ab initio void and nullity. The revision prayer cannot be dismissed as per O.P.'s prayer.

The O.P. further argues that, the revision petitioner does not mention the particular of the order passed on which date is under challenge in revision court and it should be dismissed in limine.

In support of his argument, the learned Advocate for O.P. filed memo of citation. In one of the judgements of Hon'ble High Court published in **2009(Sup.II) OLR- 911**, the Hon'ble Court observes that: **"the collusion arrived at by the settlement authorities cannot stand on the way or cannot be treated as 'resjudicata' so far as the proceedings initiated under the Consolidation Act Civil Suit as the case may be, in respect finding with regard to right, title & interest is concerned."** In another judgement, published in **106(2009)CLT 359**, the Hon'ble High Court observes that, **Sale deed- jurisdiction- validity of Consolidation authorities cannot set aside any Regd. Deed- Civil Court alone has jurisdiction.**

In his final written argument, the learned Advocate for O.P. reiterates the same facts concerning the Ceiling case, Lease Case & notification u/s 3(1) of O.C.H. & P.F.L. Act. In para 5 & 6, the learned Advocate for O.P. raise question about the Lease Patta granted in favour of Rajan Paik. The said Rajan Paik is not a landless person & thus he is not entitled for sanction of Lease in his favour. The learned Advocate for O.P. argue that, the village-Pardhiapali was declared Urban area vide Orissa Gazette notification No.207 UD dt. 14th July, 1972 vide Orissa government in Urban Development Department Notification No.6956 dated 5th July, 1962 & notification No.12260-UD dt. 5th July 1969. So, the Lease Patta granted vide Lease case No. 10/1984 dt.26.12.1984 is illegal & void. Further he points out that, no lease can be granted for agricultural purpose in any village which already been notified as urban.

The learned Advocate for O.P. has further brought the fact that, the sale deed executed by Suresh Paik & minor sons is illegal & void as the same has not

been supported by the order of Guardianship Court for sale of minor share as required u/s 8(1) of Hindu Minority & Guardianship Act, 1956.

The learned Advocate for O.P. further submits that, as Section 41 of O.C.H. & P.F.L. Act is already promulgated & all land owners are recorded and issued with Consolidation ROR as token of their possession over it.

The learned Advocate for O.P. files an affidavit sworn in by Suresh Paik which reveals that Sri Suresh Paik has delivered the possession of his land as per M.S.ROR Plot No.125/2188.

In his reply to the above written argument of O.P. dated 11.2.2021, the learned Sr. Advocate for petitioner refutes the argument contained in para 1 to 6 & it is statement without documentary support.

He further says that the Ceiling Surplus/ Ceiling Lease etc disposed of as per provision of O.L.R. Act Rules cannot be questioned by any other authority including the Consolidation Court. The O.L.R. Act is not a suit whereas jurisdiction available with this court is well defined u/s 51 which speak that, the Consolidation authority cannot decide matter for which jurisdiction of other Revenue courts in any other Law is available. The learned Sr. Advocate for petitioner counters that, the above point has not been replied by the O.P. The learned Sr. Advocate for petitioner taking clue from the referred decision of Hon'ble Court, the OLR authority is very much within his jurisdiction of sanction Lease in an area declared urban & therefore the contention of O.P. that OLR Act & Rule does not correct. The urban notification issued u/s 73(C) & it is without any basis.

Similarly while refuting the argument of the O.P. that, the sale executed by Suresh Paik & sons is violating Section 8(1) of Hindu Guardianship & Wards Act, 1956, the Sr. Advocate for petitioner says that, is not applicable as it is self-acquired property of Lessee and after his death, it is only sons and not grandson has ought to transfer. Moreover the sale deed can be challenged within 3 years of obtaining their majority as per article 60 of Limitation Act & if it is not challenged, then it reaches finality.

In his defence, the learned Sr. Advocate for petitioner cites the provision of Section 8 of Succession Act which confers right of succession only on the on y on the son of predeceased son & not on a grandson & provision of Guardianship Act is not applicable. In this connection, this Court is of the view that, the provision of Section-8 of Hindu Succession Act as quoted by the learned Sr. Advocate for petitioner is not applicable in this case.

In his counter to O.P.'s contention that, Civil Court has got jurisdiction where the Officer or the authority has not been empowered to grant the same. The learned Sr. Advocate for petitioner argues that, dragging the issue to Civil Court by the O.P. on the basis Court's decision is without any basis.

Finally, the learned Sr. Advocate for petitioner denied the relevance of the argument & citation in the present revision for non-existence of right of the father of the O.P. at the time of transfer when the said land has already been vested to government.

An analysis of the facts & Law Points, it is clear that, the case is fit case to be heard & disposed of on merit as it involves substantive rights in property within consolidation area. Thus, the contention of O.P. is denied & the case was admitted to be heard on merit.

The learned Advocate for O.Ps have argued that, the revision prayer is hit by the Section (5) of the Limitation Act as there is delay of more than 8 years in filing the present revision.

The learned Sr. Advocate for petitioner in his reply said that, by saying that, the revision prayer is not barred by limitation & the OCH & PFL Act does not specify any time limit and the court can at any time call for & examine any records. The Section 37(1) of OCH & PFL Act confers “unfettered power” & “extraordinary jurisdiction”

Having gone through the above submission of both parties, this Court views that delay in this revision is to be viewed liberally as the substantive issues of right to property is involved & therefore the delay as explained is sufficient & thus condoned.

Both the learned Advocates argue against the validity of sale deeds involved in the earlier revision.

The learned Sr. Advocate for petitioner argues that, the O.P. has got no right, title & interest for the case land & he is not entitled to be recorded in the Consolidation ROR because Santosh Pradhan, the guardian of Consolidation Land holder had no right, title and interest over the said Land as that was vested to government much prior to the execution of sale deed.

On the other hand, the Advocate for O.Ps also argues that, the sale deed executed by Suresh Paik & others vide RSD No.1472 dated 27.6.1997 is also void in-ab-initio as no permission as required u/s 8(1) of Guardianship & Wards Act 1956 has been obtained from the District Judge prior to sale.

From the above arguments, by both the parties, it is clear that, the sale deeds bearing No.1472 dated 27.6.1997 & No.11621303304 dated 26.7.2013 are voidable as both violates the statutory provisions where the sale made by the grandson of C.S. land holder Santosh Pradhan is without title as the said land had already been vested to government & became government land after finalisation of Ceiling Case No.98/75. It violates Section 54 of the T.P. Act. The decision reported in **2013(1) OLR 584, the lordship** after referring to **Section 54 of T.P. Act held: “If the vendor has no subsisting right to convey infavour of a purchaser, then the RSD is inconsequential.”**

In this connection, the decision of Hon'ble Supreme Court passed in **(Gorakhnath Vrs Hari Narayan)** published in AIR-1973 S.C.-2451 is relevant. **The legal position which can be culled out is that, validity of sale deed can also be looked in to by the consolidation authorities, although they do not have jurisdiction to cancel it. They can very well see as to whether deed in question on the basis of which right, title and interest is claimed is a void document, if so then can very well ignore it by declaring it to be ineffective however, if the Legality being pointed out in respect of the document is such that, it would at best be voidable at the instance by the aggrieved party, then in such an event, the Consolidation Courts are bound to give effect to such documents, unless and until it is cancelled by the competent authority, voidable documents cannot be ignored by the Consolidation Courts.**

The citations of the Hon'ble Court referred by the Advocate for the petitioner is valid for taking a view that, the sale deed involved in the revision are voidable & the petitioners as well as O.P. do not have valid title to transfer the case-land in the absence of legal support on point of law.

Similarly in another judgement of Hon'ble High Court published in **107(2009) CLT page 184 para-8**, their Lordship observed that, **" If the vendor acquired no property right in the property in question, he could not, in turn, pass on any better title than what he possessed by virtue of the sale deed in his favour. Any judgement or decree, which is not in conformity with Law, is void & remains inexecutable as it is, defeats the public policy."**In view of the above points of Law as reflected in the decision of Hon'ble High Court, I think, the sale deeds challenged and involved in the present revision are violating the provision of Law & thus, such issues are to be decided by the Competent Civil Court & it cannot be decided in this forum.

The learned Sr. Advocate for revision petitioner in his petition seeks the indulgence of the court to set-aside the earlier order & to record the case-land in favour of the petitioner as the said transaction is not in conformity with the provision of Law.

But the learned Advocate for O.Ps. argue that the revision court cannot review & set-aside its own order. It can be challenged before & set aside by the competent Civil Court or Writ Court.

Since the earlier revision order & present prayer are in collusion and challenge the legality of each one, this can be well decided by the Competent Civil Court.

Another important question raised by the learned Sr. Advocate for O.P. is that the present revision relates to the village- Pardhiapali, where the case-land is situated. The said village has been notified as Urban area. Vide Orissa Gazette Notification No.207/CAD/dt. July 14th, 1972 vide Government in U.D. Department Notification No.6956/LS G dt. 5th July, 1962 & Notification No.12260-UD dt.5th July

1969. Therefore the Ceiling Lease granted vide Lease case No. 10/1984 dated 26.12.1984 is illegal and null & void. In this connection the Advocate for O.P. relies on Hon'ble High Court of Odisha that published in 104(10070) CLT has observed;: "ORISSA GOVT. LAND SETTLEMENT RULES 1963, Rule 6(4) r/ w. Section 51(2) of ORISSA LAND REFORMS ACT, 1960- Area declared as Urban area- **No land in that area to be leased for agricultural purpose.**"

In view of the Hon'ble Court clear and explicit view stated above, the Lease granted in favour of target group is against the provision of Law prevalent at that time.

In this connection, the Tahasil authorities should have been more careful while making distribution of Govt. Land.

The learned Sr. Advocate for petitioner in support of his claim & argument has relied upon the provision of OLR/OCH & PFL Act and the following judgement of Hon'ble High Court & Supreme Court:

Section 45, Section 51(2), 38(A), 38 A(10)(a), 34-A(10)(66), 61, Section-11, Section-3, Section 51 of O.C.H. & P.F.L., section-54 of T.P.Act.

- ◆ 1996(II) OLR page 341(para 12)
- ◆ 107(2009)CLT, page 184, para 8.
- ◆ AIR 1973 SC 2451(GorakhnathDubey-v-Harinarayan Singh)
- ◆ AIR 1983-SC 684 (State of Bihar-v- Sri Radhakrishna Singh)

In opposition, the learned Advocate for O.P. has relied upon the following judgement of Hon'ble High Court & Supreme Court in support of his claim & law points:

Section 3(1), Section(4) of OCH & PFL Act, 1972, Section 8(1) of Hindu Guardianship & Wards Act, 1956 :-

- ◆ 104(2007)CLT 39
- ◆ 1984(I) OLR,887
- ◆ 100(2005) CLT 616
- ◆ Orissa Gazette July 14,1972
- ◆ Affidavit of Suresh Paik dated 13th July.

Having gone through the factual aspects of the case & arguments/ counter-arguments extended by both parties & the points of law relied upon by way of quotation

of provision of Law & judgement of Hon'ble High Court & Supreme Court, it is clear that :

The present revision prayer suffers from following defects such as-

- (i) After 3(1) notification on 30.10.1978 under O.C.H. & P.F.L. Act, 1972 in respect of village- Pardhiapali, how the Revenue authority, i.e., Tahasildar could start lease proceeding in 1984 without permission from government violating the provisions of the said Act and distributing lease patta in Sabk Khata after final publication of ROR under Section 22(2) of the said Act in 01.3.1984?
- (ii) The sale deeds involve in earlier & present revision are voidable in nature because these sale deeds violate the basic principle of Law. The Sale deeds being executed by one Santosh Pradhan in favour of Pradeep Patel is illegal and is voidable. Secondly the sale deed executed by Suresh Paik & the minor sons violates Section 8(1) of Hindu Guardianship & Wards Act, 1956 which is executed without prior permission of District Judge. The same is also voidable because the recital of the deed also speaks that, the sale is made to meet medical expense of father & not for the betterment of minor or family as a whole which also violates the provision of the said Act.
- (iii) Since the Urban Area notification of Mouza- Pardhiapali precedes the sanction of Lease under OLR Act, it violates the Section 73(C) of OLR Act & thus the Lease granted in favour of Rajan Paik is illegal & voidable in nature.

In this connection, the observation of Hon'ble High Court in ***Sarat Chandra Nayak Vrs. Commissioner, Consolidation*** [published in CLT (2005) page 619 to 625] is worth following **on the question of right title and interest and liability depend and hinge on the decision on the connected questions which have to be decided ancillary and incidentally . Sometimes, in order to secure the relief, the suitor has to clear hurdles and impediments standing on the way. Those hurdles may be judgement or order of the court or a document. Solong as the hurdles stand on the way, grant of relief is not possible and permissible. It has to be removed. The Civil Court alone has jurisdiction to set aside judgement or order or a document of transfer..... the jurisdiction to set aside such document, transaction, judgements or decrees which are voidable and need avoidance, vests in the Civil Court but not in the Consolidation authorities.**

- (iv) While analysing the facts & provisions of Law, it is also noticed that, the litigation grow due to communication gaps between Tahasil(Revenue) authorities & Consolidation authorities working at the field level.

Hence, I find the present revision involves complicated question of facts & law and it is purely civil in nature which can be best adjudicated by the Competent Civil Court.

Thus, the case is disposed accordingly.

Pronounced the order in the open court today.

Sd/-

Addl. Commissioner, C & S, Sambalpur