



GOVERNMENT OF ODISHA

**JOURNAL
OF THE
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.)**

VOLUME – II

**CITATION
J.B.R. 2022 (II)**

**PUBLISHED UNDER THE AUTHORITY OF THE BOARD OF
REVENUE, ODISHA, CUTTACK**

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FOREWORD

I am happy to note that the Second Volume of Journal of Board of Revenue is being brought out in 2022.

This volume contains some important judgments of Hon'ble High Court of Orissa and orders of Board of Revenue, Odisha. Notes on Intestate succession, provisions regarding roads, note of jurisdiction on Civil Courts during Settlement operation and after final publication of the RoR and Regulation-2 of 1956 form the technical notes given for dissemination.

It is hoped that this publication will be of use to the Revenue Officers and to the concerned legal professionals. There is no end to learning. It is hoped that this publication will help refresh memory and knowledge base of all concerned, for the protection of land rights of the marginalised community and will help in quality disposal of pending revenue cases at different levels at a faster space.

23.09. 2022
Cuttack

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

INDEX

<u>Sl. No.</u>	<u>Subject Matter</u>	<u>Page No.</u>
1.	W.P.(C) No. 33349 to 33353 of 2011 & W.P.(C) No. 33368 to 33370 of 2011 Asha Hans Petitioner -Vrs- State of Odisha & others Opp. Parties	1 to 5
2.	W.P.(C) No. 6568 of 2008 Sukumari Mohanty & others.... Petitioner -Vrs- State of Odisha & others Opp. Parties	6 to 12
3.	W.P.(C) No. 4843 of 2010 Tarun Kumar Rout Petitioner -Vrs- State of Odisha & others Opp. Parties	12 to 16
4.	Civil Court jurisdiction during settlement operation and after final publication of Record of Rights.	17 to 21
5.	Frequently asked questions on Regulation 2 of 1956	22 to 23
6.	OSS Case No. 49 of 2003 State of Odisha represented through Collector, Puri ... Petitioner -Vrs- Gandhrab Nayak & others Opp. Parties	24 to 30
7.	OSS Case No. 534 to 536 of 2015 Gulchaman Ara & others Petitioners -Vrs.- State of Odisha in the G.A. Department & another ... Opp. Parties	31 to 37
8.	RP Case No. 588 of 2015 Basanti Lata Swain Petitioner -Vrs.- Tahasildar, Bhubaneswar & others ... Opp. Party	37 to 40

9.	Consolidation RC Case No.225 of 2005, 232 to 239 of 2005, 191 & 192 of 2006 Syeda Salma & another	...	Petitioners	
	-Vrs.-			
	Md. Jobber & 107 others	...	Opp. Parties	41 to 51
10.	RP Case No. 403 of 2020 Collector, Jajpur & another	...	Petitioners	
	-Vrs.-			
	Jyotirmayee Nanda & others	...	Opp. Parties	52 to 64
11.	R.P. Case No. 249 of 2019 Iswar Chandra Naik	...	Petitioner	
	-Vrs.-			
	Settlement Officer, Baripada & others	...	Opp. Parties	65 to 66
12.	R.P. Case No. 133 of 2021 Kuldip Kolha	....	Petitioner	
	-Vrs.-			
	Settlement Officer & others	...	Opp. Party	66 to 68
13.	R.P. Case No. 216 of 2021 Sidhartha Das & others	....	Petitioners	
	-Versus-			
	Settlement Officer & others	.....	Opp. Parties	68 to 70
14.	Settlement Revision Petition No.45 of 2017 Jambeswar Sahu & others	....	Petitioner	
	-Versus-			
	Pradeep Kumar & others	.....	Opp. Parties	71 to 72
15.	Settlement Revision Petition No.68 of 2017 Panu Biswal & others	....	Petitioners	
	-Versus-			
	Bijaya Biswal & others	.....	Opp. Parties	72 to 73
16.	Consolidation Revision Petition No. 24 of 2018 Kedar Bhoi @ Das & another	....	Petitioners	
	-Versus-			
	Sanei Bhoi	....	Opp. Party	74 to 78
17.	Settlement Revision Petition No.3861 of 1993 Ramesh Chandra Rout	....	Petitioner	
	-Versus-			
	State	....	Opp. Party	78 to 81

18. Settlement Revision Petition No.24 of 2017
 Jagannath Mahaprabhu Bije, Puri ... Petitioner
 -Versus-
 Prafula Bhoi & others Opp. Parties 82 to 85
19. Revision Case No. 59 of 2019
 Prasanta Kumar Sahoo ... Petitioner
 -Versus-
 Smaran Kumar Sahoo & others ... Opp. Parties
 Suman Priti Darshini & others ... Pro. Opp. Parties 86 to 90
20. Consolidation Revision Case No. 114 of 2015
 Samuel Bisoi & another Petitioners
 -Versus-
 Sephali Bisoi & others Opp. Parties 90 to 92
21. Consolidation Revision Case No. 18 of 2016
 Bhaskar Dixit Petitioner
 -Versus-
 Raghunath Pradhan Opp. Parties 92 to 93
22. Consolidation Revision Case No. 62 of 2003
 Smt. Minakhi Jena Petitioner
 -Versus-
 Tahasildar, Bhubaneswar & others Opp. Parties 93 to 99
23. Revision Petition Case No. 409 of 2020
 Antarjami Pani 7 others Petitioners
 -Versus-
 Sourji Jena Opp. Party 99 to 102
24. SRP No. 279 of 2016
 Smt. Namita Das Petitioner
 -Versus-
 Sri Sri Sri Gopalji Mahaprabhu
 Bije & others Opp. Parties 102 to 106
25. Revision Petition Case No. 152 of 2016
 Srinibas Sundar Das Petitioners
 -Versus-
 State of Odisha & others Opp. Parties 107 to 112

26.	RC Case No. 10 / 2020 Lalita Sahu	....	Petitioner	
	-Versus-			
	State of Odisha & another	....	Opp. Parties	113 to 115
27.	OSS Case No. 2081 of 2016 Anshuman Pani	....	Petitioner	
	-Versus-			
	Tahasildar, Jatni & others	....	Opp. Parties	116 to 118
28.	OSS Case No. 2533 of 2016 Ganguli Panda	....	Petitioner	
	-Versus-			
	Basundhara Estate Developer Represented through its Chairman Smt. Debapriya Bidhar & others	....	Opp. Parties	119 to 121
29.	OSS Case No. 594 of 2019 Gopabandhu Pal	....	Petitioner	
	-Versus-			
	Tahasildar, Bhubaneswar & others	....	Opp. Parties	121 to 123
31.	Revision Case RP 1015 of 2015 Benzfab Technoligies Pvt. Ltd Represented through its Managing Director Sri Susant Pujari	....	Petitioner	
	-Versus-			
	V. chench Rao & others	....	Opp. Parties	
	Bhikari Behera & othrs	....	Intervenor	124 to 128
31.	On Road / Rasta / Street (Private / Public)	...		129 to 130
32.	Intestate succession in India : An overview	...		131 to 133

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) Nos.33349, 33350, 33351,
33352, 33353, 33368, 33369 & 33370 of 2011

Asha Hans Petitioner

Mr. S.C. Mohanty, Advocate

-Versus-

State of Odisha and others ... Opp. Parties

Mr.S.N. Das, ASC

CORAM :
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAİK

ORDER

06.04.2022

Order No.

R.K. Pattanaik, J.

03. 1. Instant writ petitions under Article(s) 226 and 227 of the Constitution of India, 1950 have been filed by the Petitioner assailing the legality and judicial propriety of the impugned order dated 9th May, 2011 (Annexure-3) passed in Lease Revision Case Nos.538, 553, 554, 563, 564, 565, 566 and 567 of 1998 by the learned Additional District Magistrate, Bhubaneswar (OP No.2), who cancelled the leases granted in favour of the original lessees vis-à-vis the lands subsequently transferred in her favour on the grounds inter alia that it is bad in law and therefore, liable to be set aside.
2. Since the parties are same and common question of law is involved, all the writ petitions have been clubbed together for disposal by the following common order.
3. In above the cases, the leases were granted under the provisions of the Orissa Government Land Settlement Act, 1962 (here-in-after referred to as 'the OGLS Act') vide W.L. Case Nos.562, 577, 578, 587, 588, 589, 590 and 591 of 1975. The Petitioner appears to have purchased the leasehold lands either from the lessees or from their vendees and claimed to be in possession of the same ever since the respective purchases made and also mutated her name in the revenue records. In the meantime, suo motu revision proceedings were initiated under Section 7-A(3) of the OGLS Act and the leases in question were cancelled by order dated 30th June 1998. As revealed from the record, the Petitioner, thereafter, challenged the orders of cancellation by approaching this Court in W.P.(C) Nos.2895, 3291, 3293, 3297, 2893, 3292, 3296 and 3295 of 2003 which were disposed of orders under Annexure-2. In the aforesaid cases, this Court set aside the cancellation of leases and directed OP No.2 to provide hearing to the Petitioner in

compliance of 1st proviso to Section 7-A(3) of the OGLS Act. Accordingly, the revision proceedings were restored to file and the Petitioner was provided an opportunity by OP No.2. Finally, by a common order under Annexure-3, OP No.2 cancelled the leases granted in favour of the lessees on the ground of fraud and material irregularities in the procedure followed by the concerned authority. Being aggrieved, the Petitioner approached this Court by contending that the leases could not have been cancelled in view of 2nd proviso to Section 7-A(3) of the OGLS Act.

4. Heard Mr. S.C. Mohanty, learned counsel for the Petitioner and Mr. S.N. Das, learned ASC for the State.

5. Admittedly, the leases were granted in the year 1975 and thereafter, OP No.2 exercising revisional jurisdiction under Section 7-A (3) of the OGLS Act, cancelled it under Annexure-3. While cancelling the leases, OP No.2 examined the lower court case records and detected material irregularities being committed by the then Tahasildar, Bhubaneswar, inasmuch as, the records did not reveal proper enquiries to have been conducted before settling the Government lands. It was noticed by OP No.2 that no public notices were issued inviting objections as by a common Istahar all six applications were dealt with and subsequently, settled with the lessees and that again, without considering the eligibility criteria which was directly in violation of Rule-3 of the OGLS Rules, 1974. That apart, OP No.2, after perusal of field enquiry reports submitted by OP No.3, noticed that income criteria/conditions vis-à-vis the lessees had not been fulfilled. Furthermore, OP No.2 doubted as to if the lessees really belong to a particular community and in that respect, material facts to have been suppressed purposefully in order to avail benefits under the OGLS Act. Besides the above, OP No.2 observed serious violations of the provisions of the Orissa Communal, Forest & Private Lands (Prohibition of Alienation) Act, 1948, while settling the lands in favour of the lessees and ultimately, with a conclusion that fraud has been perpetrated and as due procedures were not followed, rather, brazenly breached, cancelled the leases under Annexure-3.

6. Mr. Mohanty, learned counsel for the Petitioner would contend that the leases were cancelled by OP No.2 in flagrant violation of 2nd proviso to Section 7-A(3) of the OGLS Act which stipulates that no proceeding to be initiated by the revisional authority after expiry of 14 years from the date of the order and therefore, it cannot be sustained in law. In support of such contention, the following decisions of this Court, such as, in Laxmidhar Tarai v. Collector, Puri and another 2018 (II) OLR 1012; Smt. Elley Pattnaik v. State of Orissa 2012 (Supp.-II) OLR 506 and Mr. Purna Ch. Pradhan v. State of Orissa and others 2006 (I) OLR 184 have been cited. It is contended by Mr. Mohanty that the materials on record or the impugned order did not reveal

or speak of any fraud and therefore, cancellation of the leases by OP No.2 is bad in law and thus, liable to be interfered with.

7. On the other hand, Mr. Das, learned ASC contended that fraud was played upon by the lessees and that apart, OP No.2 noticed material irregularities being committed, while settling the lands under the OGLS Act and therefore, impugned order under Annexure-3 was passed and hence, it should not be disturbed. It is contended that any order which has been obtained by perpetrating fraud is a nullity and cannot stand scrutiny of law at any point of time and for that, the provision of limitation would not apply. While contending so, Mr. Das placed reliance on the decisions in *Laxmipriya Tripathy v. State of Orissa and others* in W.P.(C) No.3749 of 2013 decided on 7th August, 2013; and *State of Orissa and others v. Brudaban Sharma* and another 1995 Supp.(3) SCC 249. In the case of *Laxmipriya Tripathy (supra)*, as contended of Mr. Das, this Court declined to interfere in cancellation of lease which was obtained by suppressing material facts and on account of fraud and in absence of any error apparent on the face of record and in *Brudaban Sharma* case, it was held that validity of a nonest order can be questioned in a proceeding at any stage, referring to which, submission is made that the leases have been rightly cancelled and therefore, the impugned order under Annexure-3 should not be tinkered with.

8. Mr. Mohanty contends that irrespective of the irregularities as has been pointed out by OP No.2 in the impugned order under Annexure-3, the leases could not have been cancelled in view of the 2nd proviso to Section 7-A(3) of the OGLS Act which is to the effect that no such proceeding can be initiated after expiry of 14 years from the date of order. Admittedly, the leases are of the year 1975 and subsequently, cancelled in 1998 under Annexure-1 and thereafter, once again confirmed vide Annexure-3 holding that the then Tahasildar, Bhubaneswar failed to conduct enquiries following the procedure under the OGLS Act, while settling the lands in favour of the lessees, besides the fraud which was elicited on examination of the lower court records. Now, the question is, whether with such delay of 23 years, OP No.2 ought to have exercised the jurisdiction under Section 7-A(3) of the OGLS Act, while cancelling the leases?

9. In *Smt. Elley Pattnaik (supra)*, this Court held that cancellation of lease on any of the grounds indicated in Section 7-A(3) of the OGLS Act can only be directed by the revisional authority as per the terms of the provision but within the period of limitation and therein the lease was cancelled after about 25 years which was held not to be justified and accordingly, the order of cancellation was set aside. In *Laxmidhar Tarai* case, this Court after taking note of its decision in *Smt. Elley Pattnaik* was inclined to set aside cancellation of lease notwithstanding the fact that there was a finding on fraud and

procedural irregularities committed by the authority concerned. In so far as the other case in Mr. Purna Ch. Pradhan is concerned, it was not a case of fraud and considering said fact, the Court was inclined to set aside the order of the revisional authority with a conclusion that question of extending period of limitation from the date of detection of fraud does not arise. In fact, the Court in the aforesaid case observed that in case of fraud committed on the authority for obtaining a lease, the date of detection of such fraud would be the relevant date or in other words the starting point for calculation of period of limitation as prescribed in the OGLS Act. Referring to the above decisions, Mr. Mohanty, learned counsel for the Petitioner strongly urged that after expiry of 14 years, any such exercise of power by OP No.2 is prohibited.

10. The citations so relied upon by Mr. Das are, in fact, on distinguishable facts and law. In Laxmipriya Tripathy case, the lease was cancelled for having been granted without following due procedure under the OGLS Act. In other words, on fraud and material irregularities being detected while allowing the lease, the Court in the aforesaid case was of the view that the cancellation order should not be set aside. In that case, the lease was cancelled after about 10 years which was within the period of limitation as prescribed in Section 7-A(3) of the OGLS Act. So it can be said that in the facts and circumstances peculiar to the case, this Court in Laxmipriya Tripathy declined to set aside the order of cancellation of lease which was again an exercise carried within the period of limitation. The decision in Brudaban Sharma (supra), wherein, the Supreme Court held that validity of a nonest order may be questioned or invalidity be set up in any proceeding or at any stage was in relation to the revisional jurisdiction exercisable under Section 38-B of the Orissa Estates Abolition Act, 1951 (in short 'the OEA Act') where no period of limitation has been prescribed. In the above case, the Supreme Court held that even though the impugned order was passed after 27 years since the time the patta was granted by the Tahasildar, the revisional power could still be exercised to invalidate an otherwise nonest order which was passed without obtaining prior confirmation of the Board of Revenue. The above decision as relied upon by Mr. Das is under the OEA Act and as such, no period of limitation is prescribed in Section 38-B of the said Act. But, in the instant case, a period is stipulated in Section 7-A(3) of the OGLS Act which is 14 years from the date of passing of the order on lease by the authority concerned. So, the Court is to examine, whether, despite such a provision carrying limitation, OP No.2 was justified to cancel the leases after 23 years.

11. Of course in Smt. Elley Pattnaik, this Court had concluded that the revisional power under Section 7-A(3) of the OGLS Act may be exercised but within 14 years as per 2nd proviso thereof. In Laxmidhar Tarai, the Court referred to the above case but was inclined to set aside the cancellation of

lease rather on the ground that by such belated action, the poor lessees would suffer. Such a decision was against the backdrop of a finding by the authority concerned regarding violation of provisions OGLS Act and fraud, while settling the leases. In fact, the decision in Laxmidhar Tarai is not an authority on exercise of revisional jurisdiction vis-à-vis 2nd proviso to Section 7-A(3) of the OGLS Act. Rather, the Court, in that case, was conscious of the fact that the leases had been cancelled after 14 years but was inclined to set aside the orders of cancellation on a different ground. In the case of Mr. Purna Ch. Pradhan, this Court even after taking cognizance of Section 7-A(3) 2nd proviso of OGLS Act had to observe that in case of fraud committed for obtaining a lease, the starting point for computation of period of limitation as prescribed would be from the date of its detection.

12. In the case at hand, the suo motu revisional proceedings were initiated in 1998 when the alleged illegalities and fraud were detected by OP No.2. The impugned order under Annexure-3 elaborately details the material irregularities in procedure committed by the then Tahasildar, Bhubaneswar and also the fraud, while granting or obtaining the leases, as the case may be. No proper enquiries stated to have been conducted before grant of the leases. It was not explicit from the records regarding the economical condition of the lessees, who claimed themselves as landless persons. Even, the tribal status vis-à-vis the lessees were in serious doubt as it carries with it a preferential treatment at the time of grant of leases. According to the Court, the leasehold lands could have been settled with landless persons under the OGLS Act instead of being in the hands of the Petitioner, had it been properly dealt with and in accordance with law.

13. Regard being had to the above facts and the circumstances under which the lands were settled with the lessees in clear violation of the provisions of the OGLS Act with the fraud being played upon the authority concerned, who again failed to follow the procedures and as a result, the illegality was committed, the Court is of the considered view that since the fraud was detected in the year 1998 and thereafter, OP No.2 promptly took action and proceeded to cancel the leases, such action cannot be held as unfair and unjustified. In other words, under the facts and circumstances of the present case, in view of serious material irregularities and fraud having been detected by OP No.2 with respect to the alleged leases, rightly the impugned order under Annexure-3 was passed which therefore requires no interference.

14. Accordingly, it is ordered.

15. In the result, the writ petitions stand dismissed.

(R.K. Pattanaik) Judge

(Dr. S. Muralidhar) Chief Justice

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No.6568 of 2008

Sukumari Mohanty and others Petitioners

Mr. S.S. Das, Senior Advocate

-Versus-

State of Odisha and others Opp. Parties

Mr. D.K. Mohanty, AGA

Mr. S. Palit, Senior Advocate

CORAM:

THE CHIEF JUSTICE

JUSTICE R.K. PATTANAİK

DATE OF JUDGMENT :19.04.2022

R.K. Pattanaik, J.

1. Invoking the writ jurisdiction under Article(s) 226 and 227 of the Constitution of India, 1950, the Petitioners have knocked the portals of this Court assailing the impugned order dated 29th July, 1995 (Annexure-11) passed in O.E.A. Revision Case No.16 of 1994 by the learned Member, Board of Revenue, Orissa, Cuttack, namely, OP No.5 for having confirmed order dated 23rd November, 1983 (Annexure-4) passed by the OEA Collector- cum-Tahasildar, Bhubaneswar, namely, OP No.4 in OEA No.66 of 1993 rejecting their predecessor's claim for acceptance of rent as a tenant under the State Government on the ground that the decision is per se illegal, perverse and without jurisdiction.

2. The subject matter of the property is situate over Plot No.258, Khata No.472 corresponding to Sabik Plot No.218 and Khata No.303/21 measuring an area of Ac.5.00 decimals situated in Mouza-Chandrasekharpur in the district of Khurda.

3. The case of the Petitioners in brief is that the schedule property originally belonged to the Kanika State and its ex-Zamindar granted permanent lease in favour of the original tenant on 21st March 1944 and delivered possession to him, who, thereafter, reclaimed and cultivated it. Then, on estate abolition, the subject of Kanika State vested in the Government on 27th December 1952 and at that time, the ex-intermediary submitted an ektopadia recognizing the tenancy in respect of Khata No.302/21 to the office of the Tahasildar, Cuttack which entered the same in the tenant's ledger thereby accepting him as a tenant under the Government. According to the Petitioners, in view of Section 8 (1) of the Orissa Estates Abolition Act, 1951 (here-in-after referred to as 'the OEA Act'), the original tenant had become a tenant under the State Government but the Tahasildar, Cuttack on being moved declined to accept rent from him which led to the filing of OEA Case No.66 of 1983 before

OP No.4 for fixation of rent in respect of the case land but it was rejected on the ground of absence jurisdiction to settle it in his favour since the property had by then been owned by G.A. Department, Government of Orissa. The original tenant after the disposal of OEA Case No.66 of 1983 approached the Additional Tahasildar, Bhubaneswar by filing Mutation Case No.242 of 1991 in respect of the case land as a tenant but again it was rejected and thereafter, Mutation Appeal No.15 of 1992 was filed which also yielded no result. Finally, the original tenant moved OP No.5 challenging the order passed in OEA Case No.66 of 1983 which was though entertained despite delay but was dismissed on the grounds, such as, lease deed not to be admissible for being a non-registered document and that apart, the lease could not be proved and also possession over the property in absence of any note of remark in the settlement record and also due to want of evidence to show cultivation of the land immediately before the date of vesting. As per the Petitioners, when the original tenant produced materials in support of lease and acceptance of tenancy by the State Government after ekpadia was submitted by the ex-intermediary, the impugned decision of OP No.5 concurring the findings of OP No.4 dismissing such claim cannot be sustained.

4. Heard Mr. S.S. Das, learned Senior Advocate for the Petitioners, Mr. D.K. Mohanty, learned AGA for OP Nos. 1, 2, 4 & 5 and Mr. S. Palit, learned Senior Advocate for OP No.3.

5. On the contrary, it is contended that OP No.5 did not commit any error or illegality and rightly held that the lease in favour of the original tenant could not be established nor the possession in respect of the schedule property immediately prior to the date of vesting. It is further contended that the material documents could not satisfy OP No.5 for the purpose of recognizing tenancy and therefore, the impugned order under Annexure-11 suffers from no legal infirmity.

6. Similar is the stand of OP No.3 to the effect that there is no perversity in the impugned decision rendered in OEA Revision Case No.16 of 1994. It is contended that the lease deed dated 21st March, 1944 was not satisfactorily proved and established alleged to have been executed by the Tahasildar of Raja Kanika being authorized by the ex-Zamindar and that apart, the document since unregistered is not admissible in view of Section 49 of the Registration Act, 1908 nor any evidence could be tendered as it is precluded under Section 91 of the Indian Evidence Act, 1882. It is the further contention that the alleged tenant could not also produce rent receipts till the schedule land vested on 27th December 1952 and the rent receipts which were produced prima facie appeared to be manufactured documents, inasmuch as, one is of the year 1943 which is even prior to the execution of the alleged lease. The copy of Jamabandi khatian also found to be not genuine and that apart, the tenant's possession was under serious cloud in view of the settlement record of 1973-74 for the fact that the land was classified as Rakhit and recorded with the State Government. Lastly, on the ground of delay, OP No.3 contended that the schedule land being a part of the estate vested in the Government in 1952 and

the alleged tenant having approached the revenue authority in 1983 almost after a gap of 30 years and for the same, when no plausible explanation was offered, no any ground exists to disturb the impugned order under Annexure-11.

7. Mr. Das, learned senior counsel for the Petitioners contends that as per the scheme of the OEA Act and in view of Section 8(1) of the said Act, the original tenant, who was granted the lease by the ex-intermediary, was accepted as such by the revenue authority, which is revealed from the *Jamabandi* khatian of Kanika State (Annexure-1) and then the tenant ledger in respect of Khata No.303/21 (Annexure-3) and for he having been accepted as a tenant under the Government, OP No.4 was only to accept the rent but it was refused under Annexure-4 and subsequently confirmed vide Annexure-11 which is an illegality and thus, unsustainable in law.

8. In fact, OP No.5 stated to have examined the above documents and concluded that the evidence lacked reliability. Though the lease deed in original was produced, OP No.5 observed that whether the Tahasildar of Kanika Raja had the authority to execute the same in favour of the tenant could not be established. Since the authorization to execute the lease and to accept rent from the alleged tenant on behalf of the ex-intermediary was not clearly forthcoming, OP No.5 was compelled not to accept such a claim of tenancy and besides that refused to accept the lease deed for being unregistered. Except Annexure-1&3, no further evidence was adduced. As a matter of fact, there was considerable delay from the side of the alleged tenant in approaching OP No.4 after about 30 years. Furthermore, no requisition was either made to call for any records for the purpose of satisfying OP No.4 about the lease executed on being duly authorized by ex-intermediary. Referring to Annexure-1&3, it was difficult on the part of OP No.4 and OP No.5 to reach at a conclusion regarding existence of any such lease executed in favour of the tenant. According to the Court, delay defeated the claim of any such lease being in existence. By a deeming fiction under Section 8(1) of the OEA Act, a tenant under the ex-intermediary is treated as one under the Government provided he is in cultivating possession of the demised land immediately prior to the vesting. Law is well settled that the process of confirming tenancy is merely an administrative decision of the OEA authority, inasmuch as, no jurisdiction can be exercised under Section 8(1) of the OEA Act for the purpose of settling any land. In the instant case, albeit a copy of the *Jamabandi* khatian published in the year 1944 was produced and also a portion of tenancy ledger under Annexure-3 but OP No.5 entertained serious doubt with respect to the claim of the tenancy, the details of which are clearly evident from Annexure-11. It was for the original tenant's behalf to cause production of such revenue records in support of the alleged lease but no such step was taken which forced OP No.5 to arrive at a decision to the contrary.

9. Mr. S. Palit placed reliance on a decision in the case of ***Ram Nath Mandal and others v. Jojan Mandal and others AIR 1964 Patna 1*** to contend that the alleged lease was not admissible as it is unregistered. In the decision (*supra*), it is held that under Section 117 of the Transfer of Property Act, 1982 (in short 'the TP Act'),

a lease for agricultural purposes is not necessary to be made by a written document as it may be effected orally but if the transaction of lease is reduced to writing, then, in case where, the lease is for a year to year, or for any term exceeding a year, or reserved by yearly rent, registration would be required under Section 17 of the Registration Act, 1908 and if it is unregistered, the same shall be inadmissible in evidence in view of Section 49 of the said Act and also evidence on the terms of the lease cannot be permitted to be adduced as it is prohibited in view Section 91 of the Indian Evidence Act, 1882. Mr. Das in response contends that Section 117 of the TP Act deals with agricultural lease and for that, the provisions of Chapter V thereof do not apply to it except in so far as the State Government may do so by a notification duly published in the official Gazette declaring all or any of such provisions to be applicable. The present case being an agricultural lease, according to Mr. Das, the lease was not required to be registered compulsorily as it is beyond the purview of Section 107 read with Section 117 of the TP Act. The decision in **Ram Nath Mandal** (supra) received confirmation by a judgment of the Supreme Court in **Sita Maharani v. Chedi Mahato AIR 1955 SC 328** which has also been cited by Mr. S. Palit. Irrespective of the above aspect of the matter, the fact remains, the original tenant did not approach the OEA authority immediately after vesting. If *ekpadia* was submitted and *Jamabandi* khatian recognized tenancy of pre-vesting period, then what prevented the original tenant from approaching the OEA authority for accepting rent from him immediately after the vesting. The present situation, where the very admissibility of the lease deed is being questioned, would have been avoided, had the tenant been prompt in offering the rent. A due process is prescribed in the OEA Act by which the previous tenancy is confirmed by an enquiry which is taken up and rent is accepted at the rate being paid by the tenant to the ex-intermediary. The tenant for reasons best known to him maintained a stony silence for long and with an inordinate delay of about 30 years approached the authority which in turn weakened the prospect of the claim. For having not resorted to the means and mode prescribed in OEA Act to become a tenant under the State post- vesting, it would be quite obvious to doubt the veracity of such claim of the original tenant. Under the above circumstances, the State again questioned the admissibility of the lease deed which is normally raised in civil litigations. Anyhow, the Court in exercise of writ jurisdiction is not inclined to interfere with the decision of OP No.5 at this stage when the tenant did not exhaust the remedy available to him under the OEA Act and approached the authority with considerable and unexplained delay and that too by claiming tenancy based on documents credibility of which has seriously been doubted.

10. Mr. Das cited a decision of this Court in **Rabindra Kumar Das and others v. the Commissioner, Settlement and Consolidation and others 109 (2010) CLT 639** while contending that Annexure-3 could not have been discarded by OP No.5 which was in respect of Khata No.303/21 of Mouza- Chandrasekharapur. In the above decision, it has been held that tenancy ledger if has been prepared, question of its

manipulation cannot be accepted unless it is established by cogent evidence in a competent court more so when, the State is the custodian of such document. There is no quarrel with the above proposition of law as decided in **Rabindra Kumar Das** (supra) but as to the present case, only true copies of the documents were submitted without calling for the originals for the purpose of verification, the reliability of which was doubted. Apart from the fact that there was no further evidence from the side of the tenant in support of the authorization for executing lease of the land on behalf of the ex-intermediary. For having relied upon Annexure- 1&3 and when doubt was entertained on its acceptability and furthermore, in absence of clear and unimpeachable evidence in proof of such lease and also the authority to execute it, in the considered view of the Court, OP No.5 cannot be said to have committed any error or faulted in any way in not accepting the claim of tenancy. If the tenancy ledger had been produced accompanied with the revenue records against the background of ekpadia being issued, it would have been impelled OP No.5 to believe and accept the execution of the alleged lease in 1944.

11. Mr. Das contends that the revenue authority mistakenly registered an OEA case when the tenant had submitted an application for acceptance/fixation of rent. That apart, as further contended, it was for OP No.4 only to accept the rent since by then the tenant had already been recognized in view of Annexure-1&3. But, since the tenant failed to approach the OEA authority in time and that apart, when the creation of lease itself was doubted, under such circumstances, OP No.5 even without rejecting Annexure-1&3 and in absence any additional evidence could not have accepted the claim of tenancy vis-à-vis the original tenant.

12. Besides the above, the revenue records did not show the possession by the original tenant after vesting. Of course, record of right does not create or extinguish title or interest. But anyhow, the possession of the original tenant was not reflected in the record of right of 1973-74. There is also no evidence from the side of the alleged tenant that he was in cultivating possession of the land after the lease was executed and immediately before its vesting in the State Government.

13. As regards Annexure-3, Mr. Das further contends that OP NO.5 could not have discarded it as the same was maintained by the OEA authority which is a statutory body, inasmuch as, a presumption of its correctness is drawn in view of Section(s) 74 and 114 of the Indian Evidence Act, 1882. But, OP No.5, as it appears, seriously doubted the source from which the lease was created and also reliability of Annexure-1&3. Further, it is made to understand that the records of sabik settlement was not available. In such view of the matter, OP No.5 had left with no option except to reject the tenancy claim. In the considered opinion of the Court, had the original tenant approached the OEA authority in time immediately after vesting, situation of the present would have been avoided.

14. Mr. Das cited a decision of this Court in **Pramoda Kumar Sahu and others v. Baidyanath Mishra and others 66 (1988) CLT 432** contending that Annexure-1&3 being more than 30 years old, could not have been discarded. The above decision

is in respect of a sale deed and in that context, it was held that presumption under Section 90 of the Indian Evidence Act, 1882 extends to the execution of it and also the signatures and attestation found therein but not to the truth of the contents. The aforesaid decision is of no relevance in so far as the present case is concerned. Although, Annexure-3 was produced but then OP No.5 was not in a position to accept it for very many reasons. Nevertheless, the tenant except Annexure-1&3 did not submit any other material to substantiate the claim of tenancy with a proof of being in occupation of the property under his cultivating possession.

15. Mr. Palit cited one more decision of the Supreme Court in ***State of Orissa v. Fakir Sethi and others (2015) 1 SCC 466*** wherein one of its earlier decision in ***State of Orissa v. Harpriya Bisoi and others AIR 2009 SC 2991*** has been referred to and it is contended that the original tenant was not found to be in cultivation of the land at the time of vesting of the estate which is one of the requirements of Section 8(1) of the OEA Act. In the aforesaid case, since the tenant, who claimed in possession was found not to be in cultivation of the case land, the desired relief was declined. In the instant case, there is absolutely no evidence of any kind to show and satisfy the Court that the original tenant after the lease, reclaimed the land for the purpose of cultivation and remained in possession of it till the vesting. In view of the settled position of law as laid down in ***Harpriya Bisoi*** (supra), proof of cultivation is essential while claiming tenancy over a property. In the above case, the Supreme Court further highlighted the aspect of obtaining fraudulent titles based on documents like unregistered lease deeds claimed to have been executed by ex-intermediaries. Similarly, in ***Fakir Charan Sethi*** (supra), the Supreme Court took judicial notice of rampant fraud having been perpetrated with unregistered lease deeds and also observed that unless after the lease at the time of vesting, there is no evidence of actual cultivation by the tenant, he cannot avail the benefit under Section 8(1) of the OEA Act. A decision of the Supreme Court in ***State of Orissa v. Nityanand Satpathy and others (2003) 7 SCC 146*** is also cited by Mr. Palit which was in respect of a land stated to be Anabadi having vested in the estate, it was held that the ex-intermediary even though not physically dispossessed on account of such vesting, would be deemed to have been out of possession entitling the State to exercise its right over the same and the land not in khas possession of the ex-intermediary and the same not being used for cultivation or horticultural operation by himself or by his servants or hired labour, settlement under Section 7 of the OEA Act would not be maintainable. It was with respect to a settlement claimed under Section 7 of the OEA Act by the ex-intermediary which was rejected in absence of any proof of khas possession and cultivation of the land by him. As to the instant case, there is also no evidence or proof regarding possession as well cultivation of the case land by the original tenant immediately before the vesting, which is one of the conditions necessary for the purpose of acquiring interest under Section 8(1) of the OEA Act. That apart, no administrative enquiry could be held since the original tenant never approached the OEA authority after the vesting of the estate in 1952. If the tenant had approached asking the authority for acceptance of rent being a tenant

under the ex- intermediary, it would have been enquired into administratively against the background that ekpadia had been submitted. As the law is well settled under Section 8(1) of the OEA Act, the OEA authority does not have any authority either to settle the land in favour of a tenant under the ex-intermediary or fix any rent for the purpose of its collection from him while exercising jurisdiction thereunder but shall have powers only for an enquiry to ascertain the existence of tenancy and accept the fixed rent. In the case of the Petitioners, when ekpadia was claimed to have been submitted and received by the authority from the ex- intermediary, the original tenant should have immediately after vesting of the estate applied for acceptance of rent which he failed to do instead approached after nearly 30 years and therefore, the case also suffers from delay and laches on his part. The explanation for the delay which has been offered and brought on record does not inspire confidence of the Court. Having examined the case from any angle, the Court finds that creation and existence of tenancy could not be satisfactorily established vis-à-vis the original tenant, who approached OP No.4 after about 30 years, which substantially damaged the claim of lease if at all ever executed by the ex-intermediary. For having concluded so, the Court does not find any justifiable reason to disturb the findings of OP No.5 and accordingly, it is ordered.

16. In the result, the writ petition stands dismissed.

(R.K. Pattanaik) Judge

(Dr. S. Muralidhar) Chief Justice

**IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No.4843 of 2010**

Tarun Kumar Rout* *Petitioner

Mr. A.K. Sarangi, Advocate

-Versus-

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

Mr. D.K. Mohanty, AGA

CORAM:

THE CHIEF JUSTICE

JUSTICE R.K. PATTANAİK

DATE OF JUDGMENT:23.03.2022

R.K. Pattanaik, J

1. Impugned order dated 26th December, 2008 (Annexure-4) passed in OEA Revision Case No.110 of 2008 by the learned Member, Board of Revenue, Orissa, Cuttack (O.P.No.4) setting aside order (Annexure-1) of the learned OEA Collector-cum-

Tahasildar, Sukinda (O.P.No.3) passed in OEA Misc. Case No.01 of 1983 has been questioned at the instance of the Petitioner on the grounds inter alia that it is untenable in law and therefore, liable to be quashed in exercise of extra-ordinary jurisdiction of this Court under Article(s) 226 and 227 of the Constitution of India, 1950.

2. As pleaded, the ex-Ruler of Sukinda estate had granted a lease in favour of the Petitioner's father of Ac.2.70 dec. of land in 1945 morefully described in the schedule for the purpose of cultivation. It is claimed that the father of the Petitioner possessed the schedule land and continued to cultivate it with payment of annual rent to the ex-Ruler. Then, it is further pleaded that in the year 1952-53, the Sukinda estate stood vested in the State as per the provisions of the Orissa Estates Abolition Act, 1951 (hereinafter referred to as 'the OEA Act'). It is also claimed that after the death of father, the Petitioner resumed cultivation but later to the vesting, the revenue authority did not take any step to collect rent, but in the meanwhile, the OEA Collector-cum-Tahasildar, Sukinda in OEA Misc. Case No.01 of 1983 settled the tenancy in view of Section 8(1) of the OEA Act and consequently, passed an administrative order vide Annexure-1 and directed to realize all the arrear dues from him since the date of vesting. It has lastly been pleaded that O.P.No.4 without considering the rights of the Petitioner, who succeeded to the tenancy vis-à-vis the schedule land, set aside the above order by invoking revisional jurisdiction under Section 38-B of the OEA Act which is not at all sustainable in law.

3. Heard Mr. A.K. Sarangi, learned counsel for the petitioner and Mr. D.K. Mohanty, learned AGA appearing for the State.

4. Mr. A.K. Sarangi, learned counsel for the Petitioner would contend that O.P.No.4 miserably failed to examine and appreciate the material evidence in its proper perspective which ultimately led to the passing of the impugned order under Annexure-4. As per the contention, the raiyat interest was succeeded by the Petitioner, who continued to possess and cultivate the schedule land, the right, which was duly recognized by the O.P.No.3 under Annexure-1 by an administrative action and was never illegally settled. Mr. A.K. Sarangi placing reliance on copies of the rent receipts (Annexure-2) contended that the Petitioner was in possession at the time of vesting of the estate in 1952-53 which simply received recognition vide Annexure-1 and it cannot therefore be treated as a settlement of the schedule land as has been erroneously concluded by O.P.No.4 under Annexure-4. It is at last contended that when creation of tenancy stands proved and also the possession by the raiyat and thereafter, the Petitioner being a tenant duly recognized in OEA Misc. Case No.01 of 1983, O.P.No.4 ought not to have unsettled it without properly appreciating the materials on record.

5. Per contra, Mr. D.K. Mohanty, learned AGA for the State justified the impugned order under Annexure-4 as in accordance with law by contending that O.P.No.4 did consider the circumstances leading to the unlawful settlement of the schedule land by O.P.No.3, who could not have usurped the jurisdiction, inasmuch as, the tenancy interest was only to be recognized by a legal fiction in the manner contemplated in Section 8(1) of the OEA Act.

6. O.P.No.3 is stated to have recognized tenancy with respect to the schedule land under Annexure-1, which, as per Mr. A.K. Sarangi, does not amount to any settlement but was merely declaring it so originally created in favour of the Petitioner's late father. The possession in respect of the schedule land is sought to be proved through Annexure-2. Mr. D.K. Mohanty, on the contrary, disputed the tenancy right for the reasons elaborately indicated in Annexure-4.

7. Pertinent question is, whether, O.P.No.4 rightly rejected the claim of the Petitioner in the facts and circumstances of the case? In fact, O.P.No.4 entertained serious doubt regarding creation of tenancy by concluding that the report of the RI did not clearly reveal payment of rent in respect of the schedule land by the raiyat to the ex-intermediary continuously from the date of possession as against the fact that such payment was discontinued for about 30 years after the vesting. Again, according to O.P.No.4, no ekpadia or Jamabandi was filed by the ex-intermediary, as is mandated in order to recognize the tenancy rights in terms of Section 8(1) of the OEA Act.

8. Before delving into the subject matter in question, it is indeed profitable to quote the statement of object of the OEA Act which runs as follows:

“An act to provide for the abolition of all the rights, title and interest in land of intermediaries by whatever name known, including the mortgages and leases such interest between the raiyat and the State of Orissa, for vesting in the said State of the said rights, title and interest and to make provision for other matters connected therewith. Whereas in pursuance of the Directive Principles of State Policy laid down by the Constitution of India, it is incumbent on the State to secure economic justice for all and to that end, to secure the ownership and control of all material resources of the community so that they may best subserve the common good, and to prevent the concentration of wealth and means of production to the common detriment.

And whereas in order to enable the State to discharge the above obligation, it is expedient to provide for the abolition of all the rights, title and interest in land of intermediaries by whatever name known, including the mortgages and leases of such interest, between the raiyat and the State of Orissa for vesting in the said State of the said rights, title and interest.”

The above is the intent and purpose of the OEA Act which was brought into force to achieve the stated objective.

9. Being conscious of the law and its objective reproduced herein above, this Court is to now requires to examine the legality and judicial propriety of the order under Annexure-1 passed by O.P.No.3 which has been nullified by OP No.4 vide Annexure-4.

10. Section 8(1) of the OEA Act deals with continuity of tenure of tenants, according to which, any person, who immediately before the vesting of an estate in the State Government was in possession of any holding as a tenant under the intermediary shall, on and from the date of vesting, be deemed to be a tenant of the State

Government and such person shall hold the land in the same right and subject to the same restrictions and liabilities as he was entitled or subject to immediately before the date of vesting. Sub-sections (2) and (3) of Section 8 of the OEA Act are in relation to the respective special rights vis-à-vis holdings possessed by persons as village servants and on account of personal service rendered by them.

11. On a bare reading of Section 8(1) of the OEA Act, it appears that there is no provision for application and any enquiry being contemplated which only by a deeming fiction declares the continuity of tenure of the tenant as it stood before the date of vesting. In other words, no application can be entertained for determination of tenancy rights under Section 8(1) of the OEA Act. Even, the OEA Collector does not have any jurisdiction to adjudicate the competing claims under Section 8(1) of the OEA Act.

12. In *State of Orissa v. Brudaban Sharma 1995 Supp. (3) SCC 249; State of Orissa v. Harapriya Bisoi 2009 AIR SCW 4806; and State of Orissa v. Nityananda Satpathy and others 96 (2003) CLT 721*, it has been emphasized that Section 8(1) of the OEA Act makes no any provision for an application to be furnished and no enquiry is also contemplated which is a provision merely declaratory in nature on the continuity of the tenure of the tenants as it was held immediately before the date of vesting.

13. Admittedly, in the case at hand, after vesting, no rent was collected from the Petitioner, who claimed to possess the schedule land as a successor, he rather submitted an application in the year 1983 almost after 30 years since vesting of the estate for a declaration and settlement of tenancy right with a request to accept rent from him. In the considered opinion of the Court, after such a long lapse of time from the date of vesting, there was no scope for any inquiry by the OEA authority to determine, whether, the Petitioner's father and thereafter, himself were tenants, former being under the ex-intermediary and latter under the State post vesting. In fact, after vesting of the estate, the Tenants Ledger is opened to fix fair and equitable rent. The Petitioner has claimed that after vesting, the revenue authority did not take any attempt to collect rent which, therefore, compelled him to submit such an application under Section 8(1) of the OEA Act for realization of rent. Even though there is no such provision in Section 8(1) of the OEA Act, application of the Petitioner was entertained and thereafter, O.P.No.3 apparently settled the schedule land under Annexure- 1 which, according to this Court, was rightly set aside by OP No.4 exercising jurisdiction under Section 38-B of the OEA Act which empowers the authority either suo motu or on a report from the Collector to call for and examine the record of any proceeding in which the sub-ordinate authority made a decision or passed order under the said Act for the purpose of satisfying itself as to the regularity of such proceeding or correctness of such decision or order.

14. The estate of Sukinda was vested in 1952-53. In fact, the Petitioner was not required to make an application for recognizing their tenancy right. Rather, it was the duty of the OEA Collector-cum-Tahasildar, Sukinda to have the tenancy ledger prepared on the basis of records transferred by the ex- intermediary as per Section

5(j) of the OEA Act. According to OP No.4, all the tenanted lands of ex-estate were assessed to rent and in so far the Petitioner's case is concerned, it was held that the OEA authority did not have the authority to fix rent afresh which proved that it had not been assessed earlier. That apart, it was further held that such non-assessment is shown to have corroborated the fact that no ekpadia in respect of the schedule land was submitted by the ex-intermediary which again suggested that it had not been leased in favour of the Petitioner's father for any purpose of cultivation. Under the above circumstances, OP No.4 appears to have disbelieved the claim of obtaining a Hatapatta in respect of the case land and payment of salami to the ex-intermediary. The genuineness of the Hatapatta and claim of the Petitioner which was based thereon was greatly doubted by OP No.4, besides, for the reason that almost after 30 years of vesting of the estate, the Petitioner approached the OEA authority. The authenticity and veracity of the documents, such as, Hatapatta, rent receipts etc. at such a belated stage, as according to OP No.4, was bound to be shrouded with suspicion. Apart from above, the OEA Collector- cum-Tahasildar, Sukinda is said to have received an undated application from the Petitioner who then called for an R.I. report and thereafter, issued general proclamation inviting objections and finally, settled the schedule land assessing rent, cess and salami recognizing him as a pre-vesting tenant which could have only been confirmed on the basis of the documents transferred by the ex-intermediary of the estate under Section 5(j) of the OEA Act and not otherwise, which finally prompted OP No.4 to hold that such settlement, if permitted to be accomplished would most likely to invite evil consequences and also not be in the public interest. It has also been concluded by OP No.4 that the Petitioner has had the only alternative to approach the civil court to establish his rights. In the aforesaid circumstances, it would not be incorrect to hold that the OEA Collector-cum-Tahasildar, Sukinda without being alive to the settled position of law entertained the application of the Petitioner and essentially settled the schedule land under Section 8(1) of the OEA Act which does not contemplate any such procedure, rather, it simply declares the continuity of tenure of the holdings by the tenants held immediately prior to the vesting duly confirmed by the OEA authority by taking up an administrative enquiry. In view of the above, the Court is not inclined to take a different view than the one expressed and thus, arrives at a final conclusion that the impugned order under Annexure-4 does not deserve to be interfered with.

15. Accordingly, it is ordered.

16. In the result, the writ petition stands dismissed.

(R.K. Pattanaik) Judge

(Dr. S. Muralidhar) Chief Justice

CIVIL COURT JURISDICTION DURING SETTLEMENT OPERATION AND AFTER FINAL PUBLICATION OF RECORD OF RIGHTS.

It is settled position of law that provisions of the Special Act would prevail over the general law. The jurisdiction of Civil Court is ousted if the relief can be granted by the special court conferred with jurisdiction to grant such reliefs

Jurisdiction of Civil Court can be ousted only by some specific provisions of law or by necessary implication sprouting out of statutory provisions.

A DURING SETTLEMENT OPERATION: Whether ongoing Civil proceeding is a bar on the settlement officer to Pass Orders while settlement operation is going on?

Answer: No, ongoing Civil Proceedings is not a bar during the period settlement operation is going on and it will so remain till the final publication of records under Section 6-C, 12-B or 23 as the case may be made.

Rationale for the Answer;

In the above context Section 29 of the OSS Act, 1958 is relevant;

29. [Jurisdiction of Courts. –

(1) All authorities hearing an application, appeal or revision under any of the provisions of this Act shall do so as Revenue Courts.

(2) Save as otherwise provided in this Act when an order has been made under Sections 3, 11, 18 or 36 no Court shall entertain any application or suit in respect of any matter for determining or deciding which provisions made in the Act and all proceedings in respect of any such matter pending on the date, such order is made **shall be stayed till the final publication of records under Section 6-C, 12-B or 23 as the case may be.]**

The Interpretation of the above provision in the present context would be, any proceeding pending in a civil court or for that matter any court including a revenue court, under the provisions of this act, on the date of the order of settlement officer under Sections 3, 11, 18 or 36, shall be stayed till the final publication of records under sections 6-C, 12-B or 23 as the case may be.

However, there shall be no bar to civil proceedings whether pending or instituted during the currency of Settlement operations on which the Revenue Court

lacks jurisdiction viz., the suit for declaration of title, confirmation of possession or in the alternative recovery of possession.

Time and again issues have come up before different Courts about the *jurisdiction* of the Civil Court to entertain suits in the face of the bar provided under special statutes, such as, **O.P.L.E. Act, O.L.R. Act, Survey and Settlement Act** etc. While answering such a question in the case of **Secretary of State v. Mask and Co. reported in AIR 1940 PC 105**, the Privy Council recorded the following observation.

“The exclusion of the *jurisdiction* of the Civil Court is not to be readily inferred but such exclusion must either be explicitly expressed or clearly implied. Even if *jurisdiction* is so excluded, the Civil Courts would have *jurisdiction* to examine into cases where the provisions of the Act have not been complied with, or the statutory Tribunal has not acted in conformity with the fundamental principles of judicial procedures.”

The aforesaid principle was followed in several cases including a Full Bench decision of Orissa High Court in the case of **(F.B.) Magulu Jal and Ors. v. Bhagaban Rai and Ors., 1975 SCC ONLINE ORI 43**. So, the legal position is settled that even on the face of statutory bar in the special enactment and availability of Tribunal for adjudication of disputes relating to such special statutes, Civil Court would have *jurisdiction* where provisions of the Act have not been complied with or the Statutory Tribunal has not acted in conformity with the fundamental principle of judicial procedure.

Even in a case when the Civil Court would have jurisdiction on a finding that the special tribunal has acted beyond the scope of its authority, it cannot substitute its own decision for that of the tribunal but would give a direction to dispose of the case in accordance with law.

But the above decision of the Hon'ble Orissa High Court will only be applicable after the Order of the Settlement officer is made or so as to speak when the cause of action has arisen. Hence, there is no bar when settlement officer is making an order under Sections 3, 11, 18 or 36 of the Orissa Survey & Settlement Act, 1958 during the ongoing Settlement Operations.

B. AFTER FINAL PUBLICATION OF RoR: Settlement Operations Over, Final Publication of Hal RoR is Complete. Revision case is ongoing with Revenue Court but at the same time Civil Proceeding is also ongoing, whether the ongoing civil proceeding is bar on settlement revision proceeding.

Answer: Not necessarily, Doctrine of 'Res Sub Judice' would operate and the Previous suit would operate as a bar on the Subsequent suit.

The trial in the subsequent suit instituted before the Revenue Court or the Civil Court as the case may be, shall be stayed till the previous suit is finally heard and decided.

Rationale for the Answer;

Under Orissa Survey & Settlement Act, 1958, the Revenue Courts have jurisdiction to adjudicate under sections 6-D, 15b and 25 of the OSS Act, 1958.

6D. Revision by Board of Revenue. - The Board of Revenue may, in any case-

(a) of its own motion, at any time after the date of final publication under Section 6-C; or

[(b) on application made within one year from the said date, direct the revision of any survey record or any portion thereof but not so as to affect any order passed by a Civil Court under Section 42:] Provided that no such direction shall be made until reasonable opportunity has been given to the parties concerned to appear and be heard in the matter.]

15. Revision by Board of Revenue. - The Board of Revenue may in any case direct-

(a) of its own motion the revision of any record-of-rights, or any portion of a record-of-rights, at any time after the date of final publication under [Section 12-B] but not so as to affect any order passed by a Civil Court under Section [42];

[(b) on application made within one year from the date of final publication under Section 12-B the revision of record-of-rights or any portion thereof whether within the said period of one year or thereafter but not so as to affect any order passed by a Civil Court under Section 42:] Provided that no such direction shall be made until reasonable opportunity has been given to the parties concerned to appear and be heard in the matter.

25. Revision by the Board of Revenue.-The Board of Revenue may, in any case-

(a) of its own motion, at any time after the date of final publication under [Section 23]; or

[(b) on application made within one year from the said date] direct the revision of the rent so settled, but not so as to affect any order passed by a Civil Court under Section 42: Provided that no such direction shall be made until reasonable opportunity has been given to the parties concerned to appear and be heard in the matter.

32. Power to call for and revise proceedings of Revenue Officers. - The Board of Revenue may call for the record of any Proceeding [any Officer] from whose

decision no appeal lies if such Officer appears to have exercised a jurisdiction not vested in him by law or to have failed to exercise a jurisdiction so vested or while acting in the exercise of his jurisdiction to have contravened some express provision of law affecting the decision on the merits where such contravention has produced a serious miscarriage of justice and the Board of Revenue after hearing the parties if they attend, shall pass such order as it deems fit.

42. Limitation of jurisdiction of Civil Court. –

[(1) No suit shall be brought in any Civil Court in respect of any order directing survey, preparation of record-of-rights or settlement of rent under this Act or in respect of publication, signing or attestation of any record thereunder or any part thereof : Provided that any person aggrieved by any entry in or omission from any record finally published under Sections 6-C, 12-B or 23 in pursuance of Section 36 may, within three years from the date of such publication, institute a suit for relief in a Civil Court having jurisdiction.

(2) When such Court has passed final orders, it shall notify the same to the Collector of the district and all such alterations as may be necessary to give effect to the orders of the said Court shall be made in the records published as aforesaid.]

Conjoint reading of Section 6D, 15, 25 & 42 of the OSS Act, 1958 reveals that the Revisional Jurisdiction under Section 6D, 15 & 25 of the said Act, conferred upon the Revenue Court(s) has also been conferred on the Civil Court under Section 42 of the said Act. The only difference is the aggrieved person can approach the Revenue Court **within one year** after the date of final publication under Section 6C, 12B or 23 in accordance with Section 36, whereas the aggrieved person can approach the Civil Court having Jurisdiction **within a period of three years**.

Concurrent Jurisdiction confers power on multiple courts, tribunals or authorities to adjudicate upon a case, at the same time, over the same subject matter. It essentially provides a choice to the litigant to invoke the Jurisdiction of that court as he feels would be convenient or favourable to him.

In such case the main question arises is whether a person can simultaneously invoke the Jurisdiction of such courts that have concurrent Jurisdiction on a matter, and if not, how will it be decided as to which court should actually adjudicate upon the matter. To answer this conundrum, the focus would have to be placed on the Doctrine of '**Res Sub Judice**' given under section 10 of the Civil Procedure Code, 1908.

Doctrine of "RES SUB JUDICE" Section 10 of CPC.

Section 10 of the CPC **provides for the stay of the suit** where the matter directly and substantially in issue in a suit that was previously instituted and is still

pending between the same parties, litigating under the same title in a court that has the authority to hear and grant the relief sought. It essentially means that the court should not proceed with the matter which is materially in issue in a suit that has been previously instituted in a competent court and has not been finally adjudicated upon.

The object of Section 10 is to prevent courts of concurrent jurisdiction from simultaneously trying two parallel suits between the same parties in respect of the same matter in issue. Also, the object underlying Section 10 is to avoid two parallel trials on the same issue by two courts and to avoid recording of conflicting findings on issues which are directly and substantially in issue in previously instituted suit. The fundamental test to attract Section 10 is, whether on final decision being reached in the previous suit, such decision would operate as *res judicata* in the subsequent suit. (National Institute of Mental Health & Neuro Sciences Vrs C Parameshwara, **2005 AIR SC 242**)

Explanation VIII to Section 11 of CPC “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.”

However, this Doctrine only applies to the **trial** of a suit, or appeals or revisions and not the mere **institution** of the suit.

In view of the above, the trial in the subsequent suit instituted before the Revenue Court or the Civil Court as the case may be, shall be stayed till the previous suit is finally heard and decided.

The action of the Petitioner who preferred to institute the subsequent suit during the continuance of the Previous suit, either in the Revenue Court or in the Civil Court, would be an **exercise in futility** as the proceedings in the subsequent suit shall be stayed till the previous suit is finally heard and decided by the operation of ‘Res Sub Judice’ and once the previously instituted suit is decided it would operate as ‘Res Judicata’ on the subsequent suit.

The views expressed herein above are the views of the Author and are meant for knowledge only and in no way reflect the views of the Board of Revenue.

Gobinda Chandra Nayak
Sr. Standing Counsel
Board of Revenue, Odisha, Cuttack.

Frequently asked questions on Regulation 2 of 1956

G.V.Venugopala Sarma

1. Since Odisha Land Reforms Act, 1960 is an Act and Regulation 2 is only a Regulation, would OLR Act takes precedence ?

— > This question has two incorrect presumptions.

Firstly, it should be noted that Regulation 2 of 1956 i.e. Odisha Scheduled Areas Transfer of Immovable Property (By Scheduled Tribes) Regulation, 1956, was promulgated by Governor of Odisha in exercise of powers under Para 5(2) of the Fifth Schedule of the Constitution of India. The said paragraph reads as follows:

5. Law applicable to Scheduled Areas.—(1) Notwithstanding anything in this Constitution, the Governor may by public notification direct that any particular Act of Parliament or of the Legislature of the State shall not apply to a Scheduled Area or any part thereof in the State or shall apply to a Scheduled Area or any part thereof in the State subject to such exceptions and modifications as he may specify in the notification and any direction given under this sub-paragraph may be given so as to have retrospective effect.

(2) The Governor may make regulations for the peace and good government of any area in a State which is for the time being a Scheduled Area.

In particular and without prejudice to the generality of the foregoing power, such regulations may — (a) prohibit or restrict the transfer of land by or among members of the Scheduled Tribes in such area

.....

....

Therefore, it is clear that this Regulation prevails, “notwithstanding anything in the Constitution”. Thus, the Regulation is the law of the land, in so far as this subject is concerned.

Secondly, there is no contradiction between OLR Act and this Regulation. It needs to be noted that Section 22 of OLR Act deals with restrictions on alienation of land by Scheduled Tribes. It has six Sub-sections. Sub-section 6 (b) is clear that nothing

in this Section shall apply to any transfer by a member of a Scheduled Tribe within a Scheduled area.

Therefore, the answer to the question is “No” on both the counts, in so far as transfer by a member of ST in scheduled area is concerned.

2. A poor ST person in Scheduled area wants to mortgage his land to get loan for enabling higher studies of his son or daughter. Can the competent authority consider the matter with kindness and permit it?

— > The 2002 amendment of the Regulation deleted the phrase “...unless..with the previous consent in writing of the competent authority”. **Therefore, there is no power available now with the competent authority to accord permission.** (Such needy ST persons can explore assistance from other Government schemes available, like Kalinga Sikhya Sathi Yojna that extends loans without collateral security.)

3. A poor ST person in Scheduled area wants to mortgage his land to get loan for enabling medical expenses of family member. Can the competent authority consider the matter with kindness and permit it?

— > The 2002 amendment of the Regulation deleted the phrase “...unless..with the previous consent in writing of the competent authority”. **Therefore, there is no power available now with the competent authority to accord permission.** (Such needy persons can explore the possibility of assistance from Chief Minister’s Relief Fund or from Biju Swasthya Kalyan Yojana.)

4. Rule 3 of OSATIP Rules, 1959 gives elaborate procedure for transfer of land to non-ST persons. It also has Form 1 in which the enquiry officer is required to furnish report. Does it not mean that enquiry has not been waived?

—— > Rule making is a part of the subordinate legislation. A rule cannot be contrary to specific provisions of law. In case any inconsistency arises, the law shall prevail. In this sense, after the Regulation was amended in 2002, both the enquiry and form 1 have become infructuos. It does not really serve any purpose to generate hopes and raise expectations when the power of competent authority to grant permission have ceased. However, a specific legal question has arisen in this regard, which is being looked into at higher level. It is expected that an unambiguous clarification in this regard will soon be issued.

OSS Case No. 49 of 2003

Decided on 26.07.2022

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

State of Orissa represented through Collector, Puri ... **Petitioner**

-Versus-

Gandhrab Nayak & others **Opp. Parties**

For the petitioner	...	Mr. K.K. Das, Standing Counsel
For O.P. No. 2 (a)	...	Mr.N. Satapathy, Adv. & Associates
For O.P. No. 2 (b)	...	Mr.S.P. Satapathy, Adv. & Associates
For other Opp. Parties	...	None.

Referred to :

1. *State of Orissa -Vrs- Nityananda Satapathy and others, 96(2003) CLT 720(S.C.)*
2. *Arjun Samal Vs. Kailash Chandra Kanungo and others, CLT (1974) 294 Vol.40.*
3. *State of Orissa and others Vrs. Harapriya Bisoyi, 2009(II) OLR SC 229.*
4. *S.P. Chengalvaraya Naidu Vrs. Jagannath, 1994 (SCC)(1) 1*
5. *Meghamala & Others Vrs. G. Narasimha Reddy and others, (2010) 8 SCC 383*
6. *State of Orissa and others Vrs. Brundaban Sharma and another, 1995 (Suppl) 3 SCC 249*

DECISION

1. This revision petition has been filed under **Section 32** of the Orissa Survey & Settlement Act, 1958 challenging the order **dated 13.01.1988** passed in **Appeal Case No.1696/1982** by the Additional Settlement Officer, Puri wherein the suit land mentioned below has been recorded in favour of the O.Ps / their predecessors.

SCHEDULE OF PROPERTY

Mouza-Konark, Tahasil- Gop , District : Puri. **As per Sabik Record of Rights** Sabik Khata No. 415, Sabik Plot No. 1604 (P), Area (in Acre) Ac.94.50 dec., Area of suit land Ac.0.06 dec., Kisam Balibanta. **As per Hal (Not Final) Records** Hal Khata No. 145, Hal Plot No. 2105/2858, Area (in Acre) Ac.0.06 dec., Area of suit land Ac.0.06 dec., Kisam : Gharabari

2. Notice to O.Ps are deemed to have been made sufficient. Although vakalatnamas had been filed earlier for some of the O.Ps , however there has been no written objection filed on behalf of the O.Ps in this case. Heard the learned Standing Counsel for the Petitioner (State). Gone through the L.C.R in respect of impugned **Appeal Case No.1696/1982** and the copy of concerned Appeal Case No.1685/1982 wherein a common order dated 13.01.1988 has been passed by the appellate authority in respect of the suit land and other documents available in the case record.

3. In the revision petition, the status of the suit land in Sabik (1927-28) Settlement ROR is stated to be "Anabadi" which belonged to the ex-intermediary. The petitioner has claimed that the suit land has been illegally recorded in favour of the O.Ps/ their predecessors vide the impugned order passed by the Addl. Settlement Officer, Puri.

4. On perusal of the lower court record in **Appeal Case No.1696/1982**, it is seen that the sabik status of suit land was 'Anabadi'. But the Hal (Not-Final) R.O.R for the suit land has been recorded in the names of the O.Ps/ their predecessors vide the impugned order passed by the learned Addl. Settlement Officer, Puri in the above Appeal case which had been filed by the Tahasildar, Nimapara against Gandharba Nayak, S/o- Apariti Nayak (present O.P. No.1). The brief facts mentioned therein by the Settlement Amin is that one Jamabandi No.415/20 in respect of an area Ac.2.00 stood recorded in the name of one Adwait Charan Sahoo. During Bujharat stage of settlement operation one Pradipta Kumar Sahoo had claimed to have got the suit land on 27.01.1968 from Prahallad Sahoo (deceased O.P No.2) , the son of the Jamabandi tenant and accordingly record is said to have been prepared in favour of the said claimant. Thereafter it has been stated that one Kashinath Nayak had purchased an area of Ac.0.12 dec. of land from Pradipta Kumar Sahoo and had thereafter sold the suit land of an area Ac.0.06 dec. vide RSD No.2028, dtd. 28.07.1978 to Gandharba Nayak (present O.P. No.1) and Bauribandhu Nayak. Accordingly order is said to have been passed in Rent Case No.9867 to record the suit land in favour of Gandharba Nayak (present O.P. No.1).

5. As the suit land was recorded as Government land in Sabik R.O.R, it could have gone to private persons only under the appropriate provisions of Orissa Estates Abolition Act, 1951 (hereinafter called the OEAAct, 1951), Orissa Government Land Settlement Act, 1951 (hereinafter called the OGLS Act, 1962), Orissa Land Reforms Act, 1960 (hereinafter called the OLR Act, 1960) and Government Grants Act. The O.P(s) have not submitted a shred of paper how Government land went to their hands.

6. Since the land in question is of communal nature, it cannot be settled under the provisions of Orissa Estates Abolition Act as has been held in the case of State of Orissa Estates Abolition Act as held in the case of State of Orissa – Vrs – Nityananda Satapathy and others reported in 96(2003) CLT 720 (S.C.).

7. Besides in respect of rent if claimed to have been paid, it has been held in a decision of the Hon'ble High Court of Orissa reported in CLT (1974) 294 Vol.40 (in the matter between Arjun Samal Vs. Kailash Chandra Kanungo and others) that "Merely because a party files receipt in support of his claim that he made payment in the name of the person in whose name the record stands, it does not follow that the title of the other party has been acknowledged."

Entries in revenue records are generally accepted on their face value. Court can enquire whether it has been made fraudulently or surreptitiously .

8. The suit land mentioned above which stood in 'Anabadi' status had vested to the state in year 1953-54 free from all encumbrances in accordance with Section 3 of the O.E.A. Act. The aforesaid "Anabadi lands" were neither converted to Nijidakhata Khata of the Ex-intermediary prior to the date of vesting nor they were in possession over the said land. Since the land were recorded in Sabik ROR as "Anabadi", i.e. waste lands, the order, if any, passed in settling the same with Opp. Parties are illegal in consonance with Section 5(i) of the OEA Act, as all waste land are to be vested absolutely with the State free from encumbrances and the intermediary had no interest on such lands. Further Anabadi land cannot be settled with an intermediary u/s 6,7 and 8 of the O.E.A Act. The position of law is discussed as follows:

8.1 As per provision u/s 6 of the OEA Act, 1951, only homestead land of ex-intermediaries and building together with lands on which building stood in the possession of intermediaries and used as factories and mills are to be settled with the intermediaries.

8.2 As per provision u/s 7 of the OEA Act, 1951, only khas possession of the intermediaries used as agricultural and horticultural purposes are to be settled with the intermediaries.

8.3 As per section 8(1) of the OEA Act, 1951, which is the deeming possession, the OEA Collector is not competent to settle the land under this Section.

8.4 As per section 8(3) of the OEA Act, 1951, the land is to be settled with a person who immediately before the date of vesting held land under the intermediary for personal service but the land is not to be settled with the intermediary himself.

8.5 As per provision u/s 5(a) of the OEA Act, 1951, all the waste land "Anabadi" has absolutely been vested to the state free from all encumbrances and the intermediary shall cease to have any interest in such estate other than the interests expressly saved by or under the provisions of this Act.

8.6 In cases where the OEA Collector decides not to set aside any settlement, lease or transfer, he shall refer the case to the Board of Revenue for confirmation in accordance with the 1st provision to Section 5(i) of the O.E.A. Act, 1951 and the orders of Board of Revenue shall be final. The object of conferment of such power on Board of Revenue has been to prevent collusive or fraudulent acts or actions on

the part of the intermediaries and lower level officers to defeat the objects of the Act. This has been held by the Hon'ble Apex Court in State of Orissa and others Vrs. Brundaban Sharma and another reported in 1995(Suppl) 3 SCC 249.

9. In the instant case, no documentary evidence has been brought to the notice of this court either regarding settling of land with the intermediaries or regarding any confirmatory orders of the Board of Revenue u/s 5(i) of the OEA Act, 1951 which is mandatory.

10. Besides, it has been contended by the petitioner that the O.P.(s) have managed to record the suit land in his/their favour on the basis of fraudulent sale/ lease documents in collusion with lower revenue officials and by manipulation of Tahasil records and opening of Tenants ledger in the names of O.P.(s). In this context there are several decisions of the Hon'ble Apex Court which are applicable in the present revision as mentioned below:

The Hon'ble Supreme Court in 2009(II) OLR SC 229 (State of Orissa and others Vrs. Harapriya Bisoyi) has dealt in detail about the effect of fraud from para 32 to 41 which is directly applicable to this case. The same are quoted below-

32. It is necessary to consider the effect of fraud.

33. By "fraud" is meant an intention to deceive; whether it is from any expectation of advantage to the party himself or from the ill will towards the other is immaterial. The expression "fraud" involves two elements, deceit and injury to the person deceived. Injury is something other than economic loss, that is, deprivation of property, whether movable or immovable or of money and it will include and any harm whatever caused to any person in body, mind, reputation or such others. In short, it is a non-economic or non-pecuniary loss. A benefit or advantage to the deceiver, will almost always cause loss or detriment to the deceived. Even in those rare cases where there is a benefit or advantage to the deceiver, but no corresponding loss to the deceived, the second condition is satisfied. (See Dr. Vimal V. Delhi Administration (1963 Supp. 2 SCR 585) and Indian Bank V. Satyam Febres (India) Pvt. Ltd. (1996 (5) (SCC 550).

34. A "fraud" is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. (See S.P. Changanalvaraya Naidu V. Jagannath (1994(1)SCC1).

35. "Fraud" as is well known vitiates every solemn act. Fraud and justice never dwell together. Fraud is a conduct either by letter or words, which includes the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also given reason to claim relief against fraud. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by willfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes

representations, which he knows to be false, and injury ensues there from although the motive from which the representations proceeded may not have been bad. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case, a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including res judicata. (See Ram Chandra Singh V. Savitri Devi and Ors. (2003 (8) SCC 319).

36. “Fraud” and collusion vitiate even the most solemn proceedings in any civilized system of jurisprudence. It is a concept descriptive of human conduct. **xxx xxx xxx**

37. In that case it was observed as follows:-

“Fraud” and collusion vitiate even the most solemn proceedings in any civilized system of jurisprudence. It is a concept descriptive of human conduct. **xxx xxx xxx**

38. This aspect of the matter has been considered by this Court in Roshan Deen V. Preeti Lal (2002 (1) SCC 100) Ram Preeti Yadav V. U.P. Board of High School and Intermediate Education (2003 (8) SCC 311), Ram Chandra Singh’s case (supra) and Ashok Leyland Ltd. V. State of T.N. and Another (2004 (3) SCC 1).

39. Suppression of a material document would also amount to a fraud on the court. (see Gowrishankar V. Joshi Amba Shankar Family Trust (1996(3) SCC 310) and S.P. Chengalvaraya Naidu’s case (supra).

40. “Fraud” is a conduct either by letter or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. Although negligence is not fraud but it can be evidence on fraud; as observed in Ram Preeti Yadav’s case (supra).

41. In Lazarus Estate Ltd. V. Beasley (1956) 1 QB 702, Lord Denning observed at pages 712 & 713, “No judgment of a Court, no order of a Minister can be allowed to stand if it has been obtained by fraud. Fraud unravels everything.” In the same judgment Lord Parker L.J. observed that fraud vitiates all transactions known to the law of however high a degree of solemnity.”

In S.P. Chengalvaraya Naidu Vrs. Jagannath 1994 (SCC)(1) 1 it has been held as follows:-

“Fraud avoids all judicial acts, ecclesiastical or temporal” observed Chief Justice Edward Coke of England about three centuries ago. It is the settled proposition of law that a judgment or decree obtained by playing fraud on the court is a nullity and non est in the eyes of law. Such a judgment/decree by the first court or by the highest court has to be treated as a nullity by every court, whether superior or inferior. It can be challenged in any court even in collateral proceedings.”

The Hon'ble Supreme Court in Meghamala & Others Vrs. G. Narasimha Reddy and others (2010), 8 SCC 383) has held from para 22 to 28 as follows :-

22. In Smt. Shrisht Dhawan Vs. M/s. Shaw Brothers. AIR 1992 SC 1555, it has been held as under :-

“Fraud and collusion vitiate even the most solemn proceedings in any civilised system of jurisprudence. It is a concept descriptive of human conduct.”

23. In United India Insurance Co. Ltd. Vs. Rajendra Singh & Ors. AIR 2000 SC 1165, this court observed that “Fraud and justice never dwell together” (fraus et jus nunquam cohabitant) and it a pristine maxim which has never lost its temper over all these centuries.

24. The ratio laid down by this court in various cases is that dishonesty should not be permitted to bear the fruit and benefit to the persons who played fraud or made misrepresentation and in such circumstances the Court should not perpetuate the fraud. (xxx xxx xxx).

25. Fraud is an intrinsic, collateral act, and fraud of an egregious nature would vitiate the most solemn proceedings of courts of justice. Fraud is an act of deliberate deception with a design to secure something, which is otherwise not due. The expression “fraud” involves two elements, deceit and injury to the person deceived. It is a cheating intended to get an advantage (xxx xxx xxx).

26. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including res judicata. Fraud is proved when it is shown that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly, careless whether it be true or false. Suppression of a material document would also amount to a fraud on the court. (Vide S.P. Chagalvaraya Naidu (supra); Gowrishankar & Anr. Vs. Joshi Amba Shankar Family Trust & Ors. AIR 1996 SC 2202; Ram Chadra Singh Vs. Savitri Devi & Ors. (2003 8 SCC 319; Roshan Deen Vs. Preeti Lal AIR 2002 SC 33; Ram Preeti Yadav Vs. U.P. Board of High School & Intermediate Education AIR 2003 SC 4628; and Ashok Layland Ltd. Vs. State of Family Nadu & Anr. AIR 2004 SC 2836)”.
xx xx xx

28. From the above, it is evident that even in judicial proceedings, once a fraud is proved, all advantages gained by playing fraud can be taken away. In such an eventuality the questions of non-executing of the statutory remedies or statutory bars like doctrine of res judicata are not attracted. Suppression of any material fact/documents amounts to a fraud on the court. Every court has an inherent power to recall its own order obtained by fraud as the order so obtained is non est.” (emphasis laid by this court)

11. Hence the orders passed by the settlement authorities in recording the suit land in the name of the O.P.(s) basing on documents obtained through fraud and in collusion with lower revenue officials are not sustainable in the eyes of law and are liable to be aside.

12. Further, it has been held by the Hon'ble Orissa High Court in Sarbeswar Rath and another Vrs. Consolidation Officer and others reported in 1992 II OLR 362 that " it is not the law that merely because somebody has obtained a sale deed, he has got title to the property as a vendee and his title has to be declared so long as the deed has not been set aside by a competent court of law of the deed is void, no steps need be taken to set it aside. The vendor may not have title to convey. In such a cause, the title deed may be ignored as not worth the paper written on " since the transfer of the suit land under any Act which was admittedly Govt. land has not been established by the O.P.(s), he does not have any right and title on the suit land and hence the transfer of the suit land to others by registered sale deeds are ignored as not worth the paper written on. It is open for the O.P.(s) to take recourse to appropriate courts for taking suitable action against the vendors who sold the suit land to them.

13. The O.P.(s) in this case have not produced necessary confirmation of the Board of Revenue under Section 5(i) of the Act regarding confirmation of prior lease of the Government land by the ex-intermediary, if any. The learned Addl. Settlement Officer, Puri vide his impugned order **13.01.1988** in **Appeal Case No.1696/1982 passed commonly in Appeal Case No.1685/1982** is seen to have wrongly disallowed the above appeal case filed by the Tahasildar, Nimapara by accepting the illegal tenancy of Adwait Kumar Sahoo in absence of necessary confirmation of Board of Revenue U/s 5(i) of the OEA Act, 1951.

14. In view of the points of law discussed above and facts on position, this revision petition is allowed. The order dated **13.01.1988** of the Additional Settlement Officer, Puri passed in in **Appeal Case No.1696/1982 passed commonly in Appeal Case No.1685/1982** in respect of the suit land is set aside.

The Settlement Officer, Cuttack and concerned Additional Sub-Collector, Puri are directed to record the suit land in Government Khata without any note of possession in the Plot remarks column and report compliance to this Court early.

15. Original lower court case records if any be returned to the concerned courts by keeping attested xerox copies thereof. Original documents be returned to the parties if any by keeping attested xerox copies thereof.

16. Free certified copies of the order be forwarded to the concerned Collector, Tahasildar, Settlement Officer, Additional Sub-Collector(Settlement),Puri, Principal Secretary to Government, Revenue and D.M. Department forthwith.

Pronounced the order in the open Court today, i.e. on the 26th day of July,2022.

Sd/-

Member,

Board of Revenue, Odisha, Cuttack.

**OSS Case No. 534 of 2015, OSS Case No. 535 of 2015
and
OSS Case No. 536 of 2015**

Decided on 28.06.2022

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

Gulchaman Ara & others ... **Petitioners**

-Versus-

State of Odisha in the G.A. Department & another **Opp. Parties**

For the petitioners ... Mr. R.R. Mohanty, Adv. & Associates
For Opp. Party No. 1 ... Mr. J. Rath, Special Counsel
For Opp. Party No. 2 ... Mr. R.M. Das, Advocate & Associates

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 22.07.2014.

Schedule of Property

Mouza-Gadkan Bhubaneswar Sahar Unit No. 39, P.S.- New Capital,P.S No. 25, Tahasil- Bhubaneswar, Dist.-Khordha. Pre Sabik Khata No. 918, Plot No. 4047, Area Ac. 5.00 dec. out of Ac. 159.00 dec. (**As per Pre-Sabik ROR finally published on 21.01.1931**),

Corresponding to Sabik Khata No. 1076, Sabik Plot No. **4735/4969**, Kisam- Unnat Jojana Jogya, Area Ac. 5.00 dec. out of Ac.19.580 dec. (**As per 1973-74 published Settlement ROR**).

Further corresponding to **Not final Khata No.3649**, Not- final Plot No. **9446**, Area, Ac. 1.700 dec., Plot No. **9453**, Area Ac. 0.850 dec. Plot No. **9454**, Ac. 0.500 dec. Plot No. **9449 (P)**, Area Ac. 2.000 dec.

Presently, reported to correspond to **Hal Plot No. 9454, Area Ac.0.500 dec.**, Plot No. **9446**, Area, Ac. 1.520 dec., Plot No. **9446/10277**, Area, Ac. 0.150 dec., Plot No. **9453**, Area Ac. 0.850 dec., with their Kisams as 'Unnat Jojana Jogya' under **Hal Khata No. 4689** (G.A. Department), and **Hal Plot No. 9449 (P)**, Area Ac. 2.000 dec. out of Ac.3.125 dec., Kisam-Patita under **Hal Khata No.1 (Utkal University)** (**As per finally published Hal Settlement ROR of 2014**).

2. The case in brief is that, the Ex-Intermediary of Kanika Estate is said to have granted a "Hatapatta" on 03.02.1944 in favour of Sk. Gaffar, the late the father of the original deceased petitioner for an area Ac.5.00 dec. pertaining to the pre-sabik schedule property (A photocopy of the said document wherein the area mentioned in respect of Khata No. 918, Plot No. 4047 (P) mentioned as Ac.5.50 dec. has been filed). Upon vesting of the above estate, a vesting patta is said to have been issued in favour of Sk. Gaffar, the late father of the original deceased petitioner vide Vesting Case No.13/1948. While the matter stood as above, Sk. Gaffar, the father of the original deceased petitioner is said to have expired leaving the original petitioner Sk. Jabar @ Sk. Abdul Jabar alongwith his family members in possession over the suit property. However, in the previous sabik Settlement ROR which was finally published in the year 1973-74 the suit land is said to have been recorded in the name of the State Government under 'Unnata Jojana Jogya' classification . Thereafter, the present deceased petitioner is said to have filed a revision case challenging the aforesaid recording of the suit land in the 1973-74 Settlement ROR before the Revisional authority bearing **Revision Case No.1824 of 1993**. In the aforementioned revision case the revisional court vide order dated 07.07.1993 is said to have directed the Settlement Officer to dispose of the matter by treating the said petition under Section 22(2) of the OSS Act since no appeal had been preferred by the present deceased petitioner (A photocopy of said order passed under Sec.32 by the C.L.R & S, Odisha, Cuttack in R.P. Case No.1824 of 1993 has been filed). After the above direction was passed by the revisional court, the Settlement Officer is said to have initiated an appeal case bearing **Appeal No. 109 of 1993** and the Appellate court after having verified the documents filed by the petitioner is said to have allowed the above appeal vide his order **dated 26.5.1995** in favour of the petitioner Sk. Jabar @ Sk. Abdul Jabar (A copy of the said order has been submitted). However, the above order passed by the Settlement Officer in Appeal Case No.109 of 1993 is said to have not been carried out by the Settlement authorities in the fresh settlement proceedings of the suit mouza which started in 1998 and subsequent fresh settlement operation, the suit land is said to have been divided into three parts in the Not-Final ROR , i.e, i) **Not-Final Hal Plot No.9446, Area Ac.1.700 dec.,** ii) **Not-Final Hal Plot No.9453, Area Ac.0.850 dec. , both under Not-Final Khata No.3649,** and iii) **Not-Final Hal Plot No.9449, Area Ac.3.125 dec. under Not-Final Khata No.3249,** which are said to correspond to portions of **Sabik Plot No.4735/4969** under **Sabik Khata No.1076** of 1973-74 published Settlement ROR. Being aggrieved with the above recordings of three Not-final plots which are alleged to have been wrongly recorded in the above Not-Final khatas, the petitioner is said to have filed 3 (three) nos. of objection cases under Section 21(1) of the OSS Act, 1958 before the Asst. Settlement Officer which were numbered as **Objection Case Nos. 2288 of 2002, 2853 of 2002 and 850 of 2002**. The above 3 (three) nos. of objection cases are said to have been rejected by the Asst. Settlement Officer and challenging the said rejection orders the petitioner is said to have filed 3 (three) nos. of appeal cases under Section 22(2) of the OSS

Act, 1958 before the Settlement Officer, Cuttack which were numbered as **Appeal Case Nos. 455 of 2003, 658 of 2003 and 363 of 2004**. However, the Settlement Officer, Cuttack without considering the earlier dated 26.1995 passed earlier by previous Settlement Officer in Appeal Case No.109 of 1993 had dismissed the above three appeal cases on having mentioned to have heard both parties vide his order **dated 31.08.2006** whereas **the petitioner has claimed in the present revision that he was not present on the above date on 31.08.2006**. Thereafter, the petitioner is said to have filed an application for recall of the above order dated 31.08.2006 before the Settlement Officer, Cuttack which was also rejected by the Settlement Officer on dated 27.12.2007 in common order passed in Appeal Case No.658 of 2003 on the ground that no additional documents were filed by the petitioner alongwith his application for recall to consider his prayer for recalling the previous order passed on 31.08.2006 (Photocopies of orders dated 27.12.2007 passed in the above three appeal cases have been filed). The present petitioners have contended that order passed by the Settlement Officer on 31.08.2006 in the aforesaid 3(three) appeals is wrong and totally opposite to the previous order dated 26.05.1995 passed by previous Settlement Officer in Appeal Case No.109 of 1993 which was in favour of the original petitioner. Besides, as the order dated 26.05.1995 passed earlier in Appeal Case No.109 of 1993 is stated to have not been set-aside or modified to that extent by any court exercising revisional powers under the statute which is said to apply the principle of res-judicata on the Settlement Officer, Cuttack while exercising his appellate powers u/s. 22(2) of the OSS Act in the above 3(three) appeal cases , i.e, Appeal Case Nos. 455 of 2003, 658 of 2003 and 363 of 2004 vide his order dated 31.08.2006 . The present substituted petitioners have contended that the Settlement Officer had not given due opportunity to the Petitioner to present his case nor he was heard at length to throw light on the documents relied upon by him to establish his title and possession over the suit land on the date of hearing. In this matter the Hon'ble Orissa High Court vide their order dated 30.07.2015 in W.P.(C) No.14199 of 2009 is said to have given liberty to the petitioner to prefer revision U/s. 15(b) of the O.S.S Act. Hence, this revision.

3. Notice has been sufficient to the O.P. No.2 as the O.P. No.2 has appeared in this case through its learned advocate. Heard the learned Advocate for the petitioner in presence of the learned Special Counsel who represented the General Administration Department (O.P. No.1) and the learned Advocate representing the Registrar, Utkal University (O.P. No.1). Gone through the documents filed by the petitioner alongwith the status reports on the suit land submitted by the concerned Settlement and Tahasil Authorities and the para-wise report in this matter submitted by the G.A. Department , kept in the case record. As the land schedule and the parties in the three revision cases bearing OSS Case No. 534/2015, 535/2015 and 536/2015 which were analogously heard are identical, a common order is therefore being passed in respect of the above three revision cases.

4. In their para-wise report the Settlement authorities of Cuttack Major Settlement have submitted that the suit hal plots No. 9446, area Ac.1.520 dec., 9453, area Ac.0.850 dec. under Hal Khata No.4689 and Hal Plot No. 9449, area Ac.3.125 dec. under Hal Khata No.1 all correspond to Sabik Plot No. **4735/4969**, Kisam- Unnat Jojana Jogya of suit mouza which corroborates with the sabik & hal status of the suit land stated in the revision petition. Perused the copies of the impugned Hal Khata No.4689 and Khata No.1 , Sabik Khata No.1076 of the suit mouza and the copies of order dtd.07.07.1993 passed in Revision Petition Case No. 1824 of 1993, order dated 26.05.1995 passed in Appeal suit No.109/1993, copy of order dated 27.12.2007 passed commonly in Appeal Case No.658/2003 in respect of the Appeal Case Nos.658/2003, 455/2003 and 363/2004 and the copy of order dated 31.08.2006 passed commonly in Appeal Case No.658/2003 pertaining to the aforesaid three appeal cases which have been submitted by the petitioner in this case.

5. In their Para-wise report the Director of Estates & Ex-Officio Addl. Secretary to Govt., G.A & P.G Department has submitted that the land involved in the matter relates to Hal Plot No.9454, Ac.0.500 dec., Hal Plot No.9446, Ac.1.520 dec., Hal Plot No.9446/10277, Ac.0.150 dec., Hal Plot No.9453, Ac.0.850 dec. with their Kisams- Unnat Jojana Jogya recorded in favour of the G.A. Department vide Hal Khata No.4689, and Hal Plot No.9449, Ac.3.125 dec., Kisam- Patita recorded in favour of Utkal University vide Hal Khata No.1 of suit Mouza- Gadakan, Unit No.39, Bhubaneswar. The above suit hal plots are said to correspond to Sabik Rakhita Khata No.1076, Sabik Plot No.4735/4969, area Ac.5.000 dec. out of total area Ac.19.580 dec., Kisam- Unnat Jojana Jogya as per ROR published on 06.12.1973. Further, the suit land is said to correspond to Pre-sabik Anabadi Khata No.918, Plot No.4047, area Ac.5.00 dec. out of Ac.159.00 dec., kisam- **Jhudi Jungle** as per ROR published on 21.01.1931. The G.A. & P.G. Department has contended that the petitioner should have challenged the impugned Hal ROR in the present revision filed U/s. 15(b) of the OSS Act, 1958 and not the orders passed by the appellate authority which could have been challenged before the appropriate authority U/s. 32 of the OSS Act. Further, as two nos. of hal khata, i.e, Khata No.4689 and Khata No.1 are involved in the revision petition , the petitioner should have filed two no. of revision cases separately in challenging the entries in the above two hal RORs. The Estate of Killa Gadakan is said to have vested in Government free from all encumbrances in view of Notification No.1802 /E.A dated-01.05.1954 which was published by the Revenue Department U/s.3 of the OEA Act, 1951. Therefore, the plea of title to have been accrued to Sk. Gaffar, the deceased father of the petitioner through alleged Vesting Mutation Case No.13/1948 is said unacceptable by the G.A. & P.G. Department. The settlement authorities during settlement operation are said to lack power to adjudicate the genuineness of the unregistered intermediary documents. Further, upon notice of the Government regarding fraudulent claim of title by different persons relating to pre-Sabik Plot No.4047, FIR is said to have been

lodged in Capital Police Station during 2005 and the matter is said now under investigation by the Economic Offence Wings of Odisha Crime Branch. Moreover, the classification of corresponding Pre-sabik Plot No.4047 been recorded as 'Jhati Jungle', the alleged alienation of the said plot or any portion thereof is said to be hit by the restrictive provisions of Section-3 of Odisha Communal Forest and Private Lands (Prohibition of Alienation) Act, 1948. Furthermore, it has been contended by the G.A. & P.G Department that as per Section-17 of the Indian Registration Act, 1908 registration is compulsory in respect of lease of the immovable property from year to year , or for any term exceeding one year and in absence of any registered instrument, the intermediary documents relied upon by the petitioner is said not admissible as evidence as proof of title.

6. The Regsitrar, Utkal University (O.P. No.2) in their written Objection have objected to the claim made by the petitioner by having stated that the petitioner has not specifically mentioned a single allegation against the O.P. No.2 in the present revision. The O.P. No.2 has further contended that the O.P. No.2 was neither a party in the original objection case nor in the appeal cases and also not made a party in the writ petition filed by the petitioner. The suit property is said to relate to Mouza- Gadakana, as per finally published hal ROR whereas the landed property of Utkal University is said to be located in Mouza- Vanivihar, Unit-13, Bhubaneswar. However, from the copy of hal ROR pertaining to Hal Khata No.1 containing suit Hal Plot No. 9449, Kisam- Patita, area Ac.3.125 dec. recorded in favour of Utkal University as filed by the petitioner out of which a portion of area of Ac.2.000 dec. has been claimed by the petitioner the above statement made in their written objection that the present three revision cases do not relate to the ROR recorded in the name of Utkal University (O.P. No.2) is proved incorrect. The O.P. No.2 appears to have overlooked the above fact of one of the suit plot bearing Hal Plot No.9449, with an area Ac.3.125 dec., Kisam- Patita to have been recorded in its favour vide Hal Khata No.1 of the suit Mouza- Gadakan. However, the O.P. No.2 has not conceded to the claim made by the petitioner in the present revision cases in respect of the suit land.

7. On perusal of the certified copy of order **dated 30.07.2015** of the Hon'ble Orissa High Court passed in **W.P.(C) No.14199 of 2009** submitted by the petitioner it reveals that in **Para-10** of the said order the Hon'ble High Court has held that after final publication of the Settlement ROR in the year 1973-74 the petitioner had inappropriately filed the revision case U/s.32 of the O.S.& S Act before the Commissioner of Settlement which was legally not entertainable instead of having challenged the said ROR under appropriate provision of the Act. The Hon'ble High Court has taken the view that the Commissioner of Settlement was however free to treat the said revision case as one under Section 15(b) of the Act and decide the matter finally, whereas he had instead remanded the revision to the Settlement Officer directing him to treat the same as an appeal under Section 22 of the Act,

which had been held as not permissible. Further in first half of **Para-11** of the order passed in above writ case the Hon'ble High Court has made the observation that ***"After such remand by the Commissioner of Settlement the Settlement Officer registered the same as Appeal Case No.109 of 1993. In the meantime, fresh settlement operations in respect of the village in question started in pursuance of the Notifications of 1975 and 1997 issued vide Annexure-D/4 and Annexure-E/4 in which apparently, the disputed land was bifurcated to several plots and admittedly some part of it was recorded in the name of the Utkal University. Apparently, the rent settlement proceeding that started in pursuance of Notification of 1975 did not reach finality and notification for fresh settlement was issued in 1997. Therefore, the order passed in Appeal No.109 of 1993 cannot operate as res-judicata"***. As such in view of the aforementioned findings of the Hon'ble High Court in the above writ case the petitioner cannot make the allegation of operation of res-judicata while disposal of the three appeal cases bearing No. 658/2003, 455/2003 and 363/2004 by the Settlement Officer vide his common order dated 27.12.2007 passed in Appeal Case No.658/2003. Furthermore, as the Hon'ble High Court in the second portion of **Para-11** of their order passed in the above writ case has lastly held that the rejection of the recall petition by the impugned orders is justified and warrants no interference, the petitioner therefore cannot reiterate the issue in seeking to set-aside the said rejection order dated 31.08.2006 passed commonly in Appeal Case No.658/2003 by the Settlement Officer in respect of the above three appeal cases in the present revision.

8. Moreover, the relied upon Vesting Mutation Case No.13/1948 been numbered prior to vesting of the Estate, the vesting which was made in the year 1953-54, the said vesting case is seen improbable and not acceptable. The vesting case if any, in respect of the suit land should have been numbered after the year of vesting. As such, the relied upon "Hatapatta" which is claimed to have been granted by the Ex-Intermediary to the father of the petitioner on 03.02.1944 appears to be a fraudulent and manufactured document as the said recording of vesting patta in favour of Sk. Gaffar, the father of the petitioner vide Vesting Mutation Case No.13/1948 itself is quite improbable prior to the vesting of the estate of Killa-Gadakan which vested in the year 1953-54. Besides, as the classification of the corresponding pre-sabik Plot No.4047 was 'Jhati Jungle' the ex-intermediary had no power to alienate or lease out the Jungle kism land as per the restrictive provisions under Section-3 of the Odisha Communal Forest and Private Lands (Prohibition of Alienation) Act, 1948.

9. Furthermore, although the petitioner had wrongly assailed the orders passed by the Settlement Officer in Appeal Case Nos. 658/2003, 455/2003 and 363/2004 in the present three revision cases filed U/s.15 (b) of the OSS Act bearing OSS Case No.534/2015, 535/2015 and 536/2015, the petitioner has not made the due diligence in giving separate hal schedule property in the present revision cases by examining the land schedule in the above three appeal cases. Hence, in absence

of separate hal schedule property been mentioned by the petitioner in the revision petitions of above three revision cases a common order is passed in respect of the three revision cases, i.e, OSS Case No.534/2015, 535/2015 and 536/2015 with common land schedule.

10. In view of the lawful facts stated above and as per the written counter submitted by the General Administration & P.G Department in their para-wise report stated above , I am not inclined to interfere with the recording of the suit land in the hal settlement ROR . The claim of the petitioner in the present revision is therefore dismissed being devoid of merit.

11. Copy of this order be sent to the Director of Estates-cum-Additional Secretary to Government, G.A. & P.G. Department and to the Registrar, Utkal University, Vani Vihar, Bhubaneswar for their records and future reference.

Pronounced the order in the open court to-day i.e. on the 28th day of June, 2022.

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

RP Case No. 588 of 2015

Decided on 31.05.2022

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

Basanti Lata Swain **Petitioner**

-Versus-

State of Odisha, represented through
The Tahasildar, Bhubaneswar & others**Opp. Parties**

For the petitioner ... Mr. J. Patra, Advocate

For Opp. Party No. 1 ... Mr. S.K. Routray, Addl. Standing Counsel

For Opp. Party No. 2 to 5 ... None

For Opp. Party No. 6 & 7... Mr. D.K. Tripathy, Advocate

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 24.07.2013 .

SCHEDULE OF PROPERTY

Dist.-Khordha, Tahasil-Bhubaneswar, P.S.- Chandaka, Mouza- Anlapatana, Sabik Khata No. 32, Sabik Plot No. 126, total purchased area being Ac.0.216 dec. (wrongly mentioned as area Ac. 0.287 dec.) out of Ac. 0.715 dec. corresponding to Hal Khata No. 208, Hal Plot No. 160, 161 & 162 (Part) which are having areas Ac.0.178 dec., Ac.0.072 dec., and Ac.0.520 dec. respectively out of which petitioner's purchased land is said to relate to an area Ac.0.216 dec.

2. The case in brief is that, the suit sabik property as per 1962 Settlement R.O.R had originally stood recorded in the name of Kanhu Charan Mangaraj, S/o- Mani Mangaraj, Devaraj Jena, S/o- Trinatha Jena and Lingaraj Jena, S/o- Maguni Jena in 'Dakhal Satwa Bisista' status (A copy of the said 1962 Settlement ROR has been filed). However, the petitioner has wrongly mentioned the sabik status as 'Stitiban' in the revision petition. The present petitioner states to have purchased the suit land of an area Ac.0.090 dec. from Ashish Kumar Dash (present O.P. No.2) vide RSD No.2968 dtd. 25.03.2008, and to have purchased an area Ac.0.036 dec. from Sachala Harichandan & Urbashi Pradhan (present O.P. No. 6 & 7), both are daughters of sabik recorded co-sharer namely Late Kanhu Mangaraj vide RSD No.11131011476 dtd. 18.09.2010 and also to have purchased an area Ac.0.090 dec. from other sabik recorded co-sharers Devaraj Jena & others (present O.P. No.3 to 5) vide RSD No. 5093 dtd. 17.05.2008 pertaining to suit Sabik Plot No.126 under Sabik Khata No.32 of suit Mouza- Anlapatana. On the basis of aforementioned 3 (three) nos. of regd. sale deeds (the certified copies of which have been filed) the petitioner has purchased a total area of Ac.0.216 dec. The present O.P. No.2, namely Ashish Kumar Dash, S/o- Krupasindhu Dash is said to have purchased the suit sabik property of an area Ac.0.270 dec. pertaining to suit Sabik Plot No.126 of Sabik Khata No.32 from Devaraj Jena and others vide RSD No.72 dtd. 07.01.2002 (Photo copy of the said sale deed has been filed) out of which he had sold out the said area of Ac.0.090 dec. in favour of the present petitioner. The vendors Devaraj Jena, S/o- Trinath Jena and Surendra Jena, Sadananda Jena, both are S/o- Lingaraj Jena are said to have got the suit property on the basis of an amicable partition among the sabik co-sharers and on basis of succession as revealed from the certified copy of RSD No. 5093 dtd. 17.05.2008 filed by the petitioner. However, in the finally published hal Settlement ROR the suit land is said to have been wrongly recorded in Govt. Abada Jogya Anabadi Khata. The petitioner has submitted the certified copy of the said Hal R.O.R and a copy of Sabik-hal information of the suit land in support of her claim. In the present revision the petitioner has prayed to record the suit land in her favour on the strength of her purchase and possession.

3. Notice has been deemed sufficient to the O.P. No.2 to 7. Although Vakalatnamas had been filed on behalf of O.P. No.6 & 7 during hearing of the case by their learned Advocate however, they have not filed any written objection to the claim made by the petitioner in this case. Besides no one has appeared on behalf

of O.P. No.2 to 5 during hearing of the present case. There is also no written objection filed on behalf of the O.P. No.2 to 5 against the claim made by the petitioner in this case. The O.P. No.1 who is a Govt. official has been represented by the learned Addl. Standing Counsel for the State. Heard the learned Advocate for the petitioner and gone through the documents filed by the petitioner and the reports submitted by the concerned Settlement and the Tahasil Authorities, which are kept in the case record.

4. In the status report submitted by the Addl. Tahasildar, Bhubaneswar it is seen from the attached enquiry report of the R.I, Chandaka that the R.I has reported that the petitioner is in possession over an area of Ac.0.069 dec. out of suit Hal Plot No.160, an area of Ac.0.039 dec. out of suit Hal Plot No.161 and an area of Ac.0.108 dec. out of suit Hal Plot No.162 recorded under suit Hal Khata No.208, with total purchased area being Ac.0.216 dec. on the basis of purchase made by the petitioner through above mentioned 3(three) regd. sale deeds. A sketch map showing the suit land under possession of the present petitioner has also been furnished by the R.I, Chandaka alongwith his report. In the para-wise report submitted by the Asst. Settlement Officer of Cuttack Major Settlement the settlement authorities have submitted that during Khanapuri stage of settlement operation orders are said to have been passed to record the suit Hal Plot No. 160 in favour of one Golap Jena , and to record Hal Plot No. 161 & 162 in terms of sabik particulars. However in subsequent stage of settlement operation the Addl. Sub-Collector- cum Addl. Settlement Officer, Bhubaneswar is said to have passed order in an appeal case bearing Appeal No.1773 of 2013 to record the suit hal plots No. 160, 161 & 162 in Abad Jogy Anabadi Khata of the Govt.

5. On perusal of the certified copy of suit sabik ROR filed by the petitioner and also the sabik status as confirmed in the para-wise report submitted by the Cuttack Settlement authorities the status of Sabik Plot No. 126, Ac. 0.715 dec. under Sabik Khata No. 32 of Mouza- Anlapatana stood recorded as 'Dakhal Satwa Bisista'. However, on perusal of the copies of order dated 14.05.2013 passed in Settlement Appeal Case No.1774 of 2013 filed by the present petitioner whose order had been passed vide order dated 14.05.2013 in another Appeal Case No.1774 of 2013 which was filed by another purchaser the learned Addl. Settlement Officer- cum- Addl. Sub-Collector, Bhubaneswar is seen to have wrongly mentioned the sabik status as 'Dakhal Satwa Sunyo'. Further, it is pertinent to mention here that the as per guidelines of Revenue & Disaster Management Department, Govt. of Odisha vide Notification No. 47582 dtd. 12.10.1990 it has been laid down at Para-23 of "**Rayati Jami Record Kariba Pranali 'o' Satwaa Satwa Niyamabali**" published in Odia language that in respect of such land in undivided districts of Puri, Cuttack and Balasore which are recorded in previous records in terms of Odisha Tenancy Act, 1913 as 'Dakhal Satwa Bisista' or 'Dakhal Satwa Sunyo' in status, the same shall during the current settlement operation be recorded in 'Stitiban' status and in respect

of other areas of the state it shall be recorded in 'Rayati' status. However, in the order dated 14.05.2013 passed in Settlement Appeal Case No.1773 of 2013 the learned Addl. Settlement Officer- cum- Addl. Sub-Collector, Bhubaneswar is seen to have failed to distinguish those lands which had been published as per Odisha Tenancy Act, 1913 and those records which were originally not prepared under the provisions of Odisha Tenancy Act, 1913 but had been prepared at the Tahasil level on the basis of orders passed in lease cases prior to final publication of hal record of rights by the Settlement authorities. In the said order the learned Addl. Settlement Officer- cum- Addl. Sub-Collector, Bhubaneswar while dis-allowing the prayer of the Appellant (i.e, present petitioner) has wrongly taken the view that "As the original status of the suit khata is lease hold of Dakhal Satwa Status the preliminary requirement is whether the lease/status is valid,.....xxx.....xxx.....The lease principles are questioned and the lessees / purchasers cannot substantiate their claims." As such, in view of the points of law discussed above, the said order dated 14.05.2013 passed by the learned Addl. Settlement Officer- cum- Addl. Sub-Collector, Bhubaneswar in recording the present suit hal plots in Govt. A.J.A Khata is liable to be set aside.

6. In view of the discussions made above, documents submitted by the petitioner and from the facts submitted by the concerned Settlement and Tahasil Authorities the petitioner is seen to have a prima-facie claim on the suit land. As such, the revision petition is allowed in favour of the petitioner.

7. The Tahasildar, Bhubaneswar is therefore directed to record the corresponding area in respect of the suit land, the area not exceeding Ac.0.216 dec. mentioned above in the hal schedule of property as per the report furnished by concerned R.I, Chandaka, i.e, an area of Ac.0.069 dec. out of suit Hal Plot No.160, an area of Ac.0.039 dec. out of suit Hal Plot No.161 and an area of Ac.0.108 dec. out of suit Hal Plot No.162 from suit Hal Khata No.208 of Mouza- Anlapatana in favour of the present petitioner in 'Stitiban' status.

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

9. 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 31st day of May, 2022.

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

CONSOLIDATION REVISION CASE NO. 225 of 2005

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

Decided on 09.02.2022

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

Syeda Salma & another ... **Petitioners**

-Versus-

Md. Jober & 107 others ... **Opp. Parties**

Counsel for the Petitioners - Mr. N.P. Parija, Advocate & Associates
Counsel for the Opp. Party No.27,49&52- Mr. B.K. Dagara, Advocate & Associates
Counsel for the Opp. Party No.1 to 3 - Mr. R. Behera, Advocate & Associates
Counsel for the Opp. Party No.104 & 108- Mr. P.K. Nayak, Advocate
Counsel for other Opp. Parties - Mr. S.C. Mishra, Advocate & Associates

CONSOLIDATION REVISION CASE NO. 232 of 2005

Syeda Salma & another ... **Petitioners**

-Versus-

Udaya Kumar Nayak & another ... **Opp. Parties**

Counsel for the Petitioners - Mr. N.P. Parija, Advocate & Associates
Counsel for the Opp. Parties - Mr. D.C. Behera, Advocate

CONSOLIDATION REVISION CASE NO. 233 of 2005

Syeda Salma & another ... **Petitioners**

-Versus-

Maguni Ch. Kar **Opp. Party**

Counsel for the Petitioners - Mr. N.P. Parija, Advocate & Associates
Counsel for the Opp. Party - None

CONSOLIDATION REVISION CASE NO.234 of 2005

Syeda Salma & another ... **Petitioners**

-Versus-

Binod Bihari Panda **Opp. Party**

Counsel for the Petitioners - Mr. N.P. Parija, Advocate & Associates
Counsel for the Opp. Party - Mr. B.K. Dagara, Advocate & Associates

CONSOLIDATION REVISION CASE NO. 235 of 2005

Syeda Salma & another ... **Petitioners**
-Versus-
Bijaya Panda **Opp. Party**
Counsel for the Petitioners - Mr. N.P. Parija, Advocate & Associates
Counsel for the Opp. Party - Mr. B.K. Dagara, Advocate & Associates

CONSOLIDATION REVISION CASE NO. 236 of 2005

Syeda Salma & another ... **Petitioners**
-Versus-
Nirmal Chandra Panda & others **Opp. Parties**
Counsel for the Petitioners - Mr. N.P. Parija, Advocate & Associates
Counsel for the Opp. Parties - Mr. S.C. Panda, Advocate & Associates

CONSOLIDATION REVISION CASE NO. 237 of 2005

Syeda Salma & another ... **Petitioners**
-Versus-
Raghunath Parida & another **Opp. Parties**
Counsel for the Petitioners - Mr. N.P. Parija, Advocate & Associates
Counsel for the Opp. Party No.1 - Mr. D.C. Behera, Advocate

CONSOLIDATION REVISION CASE NO. 238 of 2005

Syeda Salma & another ... **Petitioners**
-Versus-
Samsun Nisa **Opp. Party**
Counsel for the Petitioners - Mr. N.P. Parija, Advocate & Associates
Counsel for the Opp. Party - None

CONSOLIDATION REVISION CASE NO. 239 of 2005

Syeda Salma & another ... **Petitioners**
-Versus-
Balaram Rout **Opp. Party**
Counsel for the Petitioners - Mr. N.P. Parija, Advocate & Associates
Counsel for the Opp. Party - Mr. D.C. Behera, Advocate

CONSOLIDATION REVISION CASE NO. 191 of 2006

Syeda Salma & another ... **Petitioners**
 -Versus-
 Muka Mallick & another **Opp. Parties**
 Counsel for the Petitioners - Mr. N.P. Parija, Advocate & Associates
 Counsel for the Opp. Parties - Mr. S.C. Mishra, Advocate & Associates

CONSOLIDATION REVISION CASE NO. 192 of 2006

Syeda Salma & another ... **Petitioners**
 -Versus-
 Nata Jena & another **Opp. Parties**
 Counsel for the Petitioners - Mr. N.P. Parija, Advocate & Associates
 Counsel for the Opp. Parties - Mr. S.C. Mishra, Advocate & Associates

DECISION

In obedience to order dated 03.01.2014 of Hon'ble High Court in W.P.(C) No.28797 of 2013, the Revision Case No. 225 of 2005 is being taken up for hearing. While hearing of the Revision Case No.225 of 2005, the Counsels of petitioners and Opp. Parties are agreed to tag the other revision cases i.e. R.C. No.232/2005, 233/2005, 234/2005, 235/2005, 236/2005, 237/2005, 238/2005, 239/2005, 191/2006 and 192/2006 for analogous hearing. Accordingly, a common order is passed taking all the revision cases as mentioned above.

In Revision Petition No. 225/2005, 232/2005 to 239/2005 and 191/2006 to 192/2006 filed U/s 37(1) of the OCH & PFL Act, 1972 (shortly called as the Act) relating to village-Choromuhan, P.S. Dharmasala, Dist. Jajpur, the petitioners, Syeda Salma & Syeda Hashma in Consolidation Revision Case No. 225/2005 have prayed for recording an area of Ac.5.25 dec. relating to Consolidation Chaka No.15, Chaka Plot No.166 area Ac.0.26 dec., Plot No.167 area Ac.0.26 dec., Plot No.168 area Ac.0.48 dec., non-consolidation Plot No.211 area Ac.0.30 dec., Chaka No.35, Chaka Plot No.212 area Ac.3.52 dec., non-consolidation Plot No.213 area Ac.0.64 dec., Plot No. 214 area Ac.0.26 dec., Plot No. 215 area Ac.0.33 dec., Plot No. 216 area Ac.0.10 dec., Plot No. 217 area Ac.0.07 dec., Plot No. 218 area Ac.2.29 dec., Plot No. 219 area Ac.0.03 dec., Plot No. 240 area Ac.0.07 dec., Plot No. 270 area Ac.0.21 dec., Plot No. 241 area Ac.0.14 dec., Plot No. 243 area Ac.0.36 dec., Plot No. 245 area Ac.0.06 dec., Plot No. 258 area Ac.0.36 dec., Plot No. 262 area Ac.0.19 dec., Plot No. 272 area Ac.0.29 dec., Plot No. 271 area Ac.0.75 dec., Plot No. 276 area Ac.0.26 dec., Plot No. 317 area Ac.0.09 dec., Plot No. 412 area Ac.0.19 dec., Plot No. 273 area Ac.0.28 dec., Chaka No.171, Consolidation Plot No.763 area Ac.0.26 dec. under Hal Consolidation Khata No.100 finally published on 21.01.1987 in the

name of petitioners in a separate Khata or make a share noting to the tune of 7 annas recording the name of other Opp. Parties deleting the name of Opp. Party No.1 to 3 on the basis of Sabik record and genealogy.

1(a). In Consolidation Revision Case No.232/2005, the petitioners, Syeda Salma & Syeda Hashma have prayed for recording an area Ac.0.48 dec. relating to Chaka No.93, Chaka Plot No.407 of Hal Consolidation Khata No.237 finally published on 21.01.1987 which corresponds to Sabik Plot No.325 under Sabik Khata No.185 in the name of petitioners by deleting the name of Opp. Party on the basis of Sabik record and genealogy.

1(b). In Consolidation Revision Case No.233/2005, the petitioners, Syeda Salma & Syeda Hashma have prayed for recording an area Ac.0.71 dec. relating to Chaka No.86, Chaka Plot No.397 of Hal Consolidation Khata No.225 finally published on 21.01.1987 which corresponds to Sabik Plot No.325 under Sabik Khata No.185 in the name of petitioners by deleting the name of Opp. Party on the basis of Sabik record and genealogy.

1(c). In Consolidation Revision Case No.234/2005, the petitioners, Syeda Salma & Syeda Hashma have prayed for recording an area Ac.0.47 dec. relating to Chaka No.76, Chaka Plot No.387 of Hal Consolidation Khata No.192 finally published on 21.01.1987 which corresponds to Sabik Plot No.290 & 294 under Sabik Khata No.185 in the name of petitioners by deleting the name of Opp. Party on the basis of Sabik record and genealogy.

1(d). In Consolidation Revision Case No.235/2005, the petitioners, Syeda Salma & Syeda Hashma have prayed for recording an area Ac.0.28 dec. relating to Chaka No.94, Chaka Plot No.408 of Hal Consolidation Khata No.195 finally published on 21.01.1987 which corresponds to Sabik Plot No.290 & 293 under Sabik Khata No.185 in the name of petitioners by deleting the name of Opp. Party on the basis of Sabik record and genealogy.

1(e). In Consolidation Revision Case No.236/2005, the petitioners, Syeda Salma & Syeda Hashma have prayed for recording an area Ac.0.23 dec. relating to Chaka No.89, Chaka Plot No.400 of Hal Consolidation Khata No.86 finally published on 21.01.1987 which corresponds to Sabik Plot No.326 under Sabik Khata No.184 in the name of petitioners by deleting the name of Opp. Party on the basis of Sabik record and genealogy.

1(f). In Consolidation Revision Case No.237/2005, the petitioners, Syeda Salma & Syeda Hashma have prayed for recording an area Ac.0.48 dec. relating to Chaka No.169, Chaka Plot No.761 of Hal Consolidation Khata No.245 finally published on 21.01.1987 which corresponds to Sabik Plot No.554 under Sabik Khata No.184 in the name of petitioners by deleting the name of Opp. Party on the basis of Sabik record and genealogy.

1(g). In Consolidation Revision Case No.238/2005, the petitioners, Syeda Salma & Syeda Hashma have prayed for recording an area Ac.0.49 dec. relating to

Chaka No.14, Chaka Plot No.165 of Hal Consolidation Khata No.321/22 which corresponds to Sabik Plot No.249 under Sabik Khata No.184 in the name of petitioners by deleting the name of Opp. Party on the basis of Sabik record and genealogy.

1(h). In Consolidation Revision Case No.239/2005, the petitioners, Syeda Salma & Syeda Hashma have prayed for recording an area Ac.1.03 dec. relating to Chaka No.170, Chaka Plot No.762 of Hal Consolidation Khata No.162 finally published on 21.01.1987 which corresponds to Sabik Plot No.554 & 548 under Sabik Khata No.184 in the name of petitioners by deleting the name of Opp. Party on the basis of Sabik record and genealogy.

1(i). In Consolidation Revision Case No.191/2006, the petitioners, Syeda Salma & Syeda Hashma have prayed for recording an area Ac.0.27 dec. relating to non-consolidation Plot No.269 of Hal Consolidation Khata No.60 finally published on 21.01.1987 in the name of petitioners in separate khata or to record the name of petitioners jointly on the basis of Sabik record and genealogy.

1(j). In Consolidation Revision Case No.192/2006, the petitioners, Syeda Salma & Syeda Hashma have prayed for recording an area Ac.0.27 dec. relating to non-consolidation Plot No.268 of Hal Consolidation Khata No.62 finally published on 21.01.1987 in the name of petitioners exclusively or to record the name of petitioners jointly on the basis of Sabik record and genealogy.

All the above Consolidation Revision Cases are clubbed together for analogous hearing and for passing a common order since the nature of claim in all the above cases are on the basis of the same Sabik record, genealogy and entitlement.

2. The learned Advocate for the petitioners and learned Advocate for Opp. Party (ies) in all the revision cases are present and heard.

3. The learned Counsel for the petitioners in all the revision cases has submitted the following documents to substantiate their claims.

1. Certified copy of RORs of 1900
2. Certified copy of RORs of 1911
3. Details sale by Bazir Ahamad and its connecting documents
4. Details sale by Md. Jobber (son of Bazir) and its connecting documents
5. Details area of Ac.12.05 dec. after sale recorded in Jobber and his brothers along with connecting documents.
6. Lands to be deleted from the parties names given in list.
7. Land purchased by Mullah Md. Ruhul Amin [2 (two) deeds]
8. Written notes of argument
9. Genealogy (with entitlement)

4. The learned Counsel for Opp. Party (ies) No.1 to 3 in Revision Case No.225/2005 has submitted the following documents to substantiate the claim of Opp. Party (ies).

1. Photo copy (certified copy) of Amin Report regarding settlement of name in OEA Lease principle in the name of Saha Bazil Ahemad & Sabera Khatun
2. Old rent receipts in the name of Saha Bazil & Sabera Khatun
3. Rent receipts after issuance of Consolidation ROR
4. Certified copy of status quo order in CMA No.78/2003
5. Certified copy of status quo order in CMA No.79/2003
6. Certified copy of Voter List for the year 1995 & 1999
7. Written note of argument

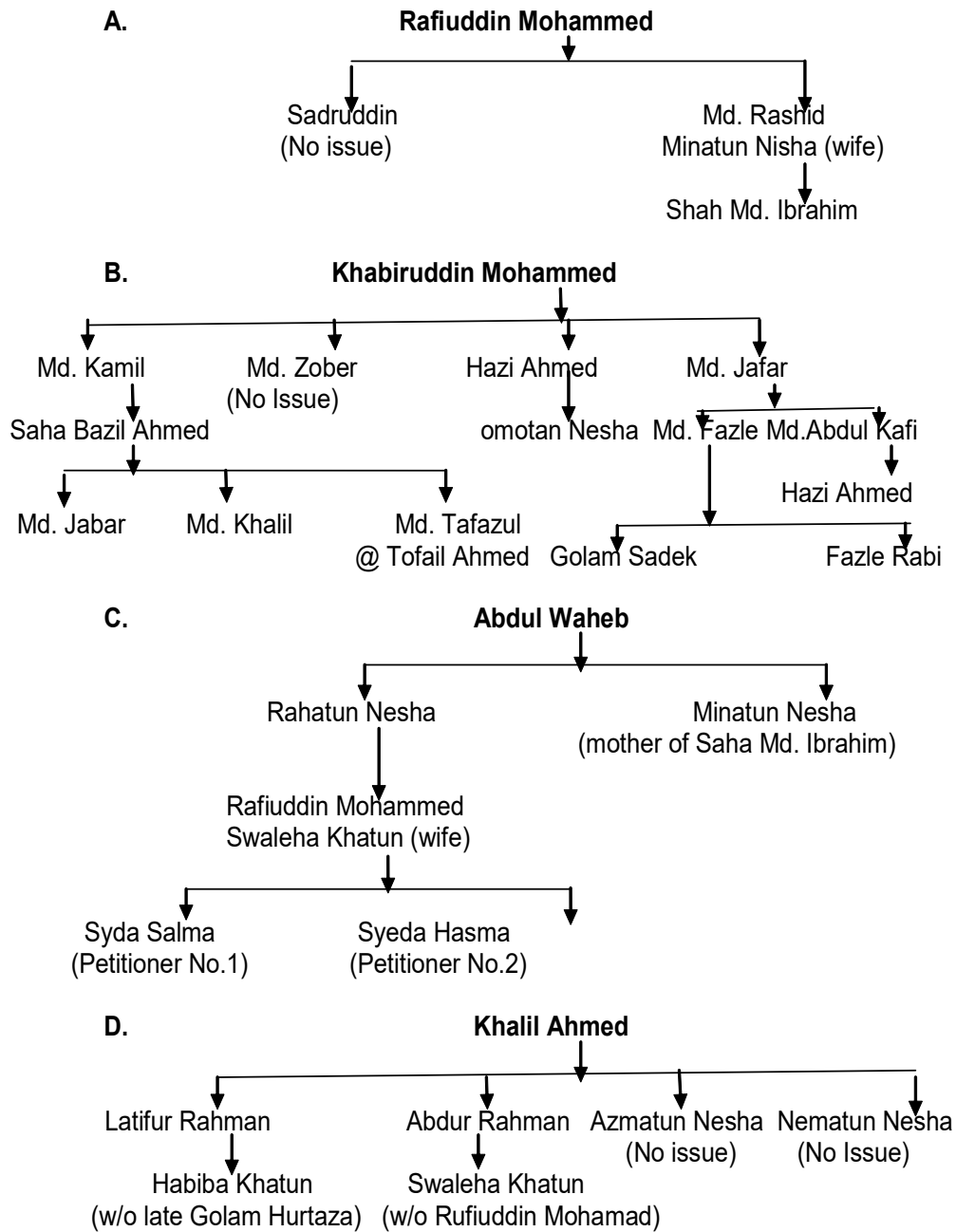
5. The learned Counsel for Opp. Party in Revision Case No.239/2005 has submitted his written notes of submission along with photocopy of Consolidation ROR No.162 and RSD No.8438 dated 16.09.1974 and No.2559 dated 16.04.1977. The learned Counsel for Opp. Parties in Revision Case No.232/2005 has submitted his written notes of submission along with photocopy of ROR No.237. Also, the learned Counsel for Opp. Parties in Revision Case Nos.191 & 192 of 2006 has submitted his written notes of submission.

6. The learned Counsel for petitioners in his written notes of submission has contended that the above revision cases have been filed for entitlement of each branch and the property sold in excess of their share and excess of share of Opp. Parties and those will consider as void deeds in view of the decision reported in 1974 CWR Page-222 and is within the purview of consolidation authorities for adjudication (reported in AIR 1973 SC Page-2451).

According to settlement Record of Rights under Khata No.190/1, 191/1, 192/2 & 193/3 in respect of Mouza-Choramuhan published in the year 1898 stood recorded in the name of common ancestors Saha Basiruddin Mohammad's two wives namely Jinatun Nisha Bibi and Sarat Nisa Bibi, the total area comes to Ac.51.60 dec.

In 1911 settlement, two RORs i.e. Khata No.184 & 185 published on 07.10.1911, an area of Ac.28.35 dec. was recorded in the name of 4 sons i.e. Rafiuddin Mohammad, Khabiruddin Mohammad, Abdul Waheb, Khalil Ahamed and one daughter Salimatun Nisa Bibi of Basiruddin Mohammed and his two wives. Under Mohammedan Law, son is entitled for 2/3rd share and daughter is entitled to 1/3rd share. Accordingly, each of the sons are entitled to Ac.6.30 dec. whereas the daughter entitled to Ac.3.15 dec. Khabiruddin Mohammed is entitled to Ac.6.30 dec. and he having four sons and one son died unmarried and the rest three sons each are entitled to Ac.2.10 dec.

The genealogy of Sabik recorded tenants of Sabik Khata No.184 & 185 are given below:



E. Salimaton Nisha Bibi

Saha Bazil Ahemad (grandson of Sabik recorded tenant Kabiruddin Mohammed sold Ac.7.09 dec. out of Ac.28.38 dec. against his entitlement Ac.2.10 dec. but he has sold Ac.4.99 dec. excess land which is void in eye of law. The consolidation authorities are to ignore those sale deeds which are excess of his share. So, no property is left for his three sons but Mohammed Zober (son of Saha Bazil Ahemad) sold Ac.5.07 dec. again which are void deeds are to be ignored as has been reported in **1973 SC 2151 at Page 215**.

According to genealogy, the branch of Rafiuddin Mohammed will get Ac.6.30 dec. + Ac.3.15 dec. = Ac.9.45 dec. as inherited from branch of Abdul Wahab. Saha Mohammed Ibrahim will get Ac.9.45 dec. The branch of Khalil Ahamad will get Ac.6.30 dec. Azmatun Nisha Bibi will get Ac.2.10 dec. The branch of Abdul Waheb will get Ac.6.30 dec. Rafiuddin Mohammed, the co-sharer who married to Swaleha Katun who comes from Khalil Ahmed. The petitioner No.1 & 2 who are daughters of Rafiuddin Mohamed and Swaleha Khatun will get Ac.3.15 dec. + Ac.2.10 dec.=Ac.5.25 dec. The existing recording in the name of Opp. Party No.1 to 3, sons of Bazil Ahmed is to be deleted (**Ac.12.05 dec.**) from the plots of 166, 167, 168, 211, 212, 213, 214, 215, 216, 217, 218, 219, 240, 241, 243, 245, 125, 258, 262, 270, 271, 272, 273, 276, 317, 412 & 763 and deleted (**Ac.4.28 dec.**) from the Plots of 407, 397, 387, 408, 400, 761, 165, 762, 267, 268 & 269 (total area **Ac.16.33 dec.**). It has been held as reported in **1974 CWR Page 222**.

The Opp. Parties advanced their argument that some of the properties settled under OEA Act intermediaries are to be settled. The law is well settled regarding co-sharer that any settlement in name of one co-sharer it endures to benefit of other co-sharers. So, once settlement under OEA is to be accepted, it will go to all share holders and the share holders will get according to their respective entitlement as per genealogy. It has been held as reported in **37 (1971) CLT 945 & 1974 (40) CLT 564**.

The petitioners humbly submitted that Khabiruddin Mohammed who is only entitled to Ac.6.30 dec., his branch Md. Kamil who is only entitled to Ac.2.10 dec., his son Shah Bazil Ahmed sold Ac.7.09 dec. and Md. Jobar sold Ac.5.07 dec. (total Ac.12.16 dec.) against their share Ac.2.10 dec. of their branch and now recorded Ac.12.16 dec.

7. The learned Counsel for the Opp. Party No.1 to 3 in his written note of submission in R.C. No.225 of 2005 has contended that the genealogy given by the petitioners are not correct. One Saheda Salma and Saheda Hasma have filed this revision against the Opp. Party No.1 to 3 and other 102 Opp. Parties. Most of the Opp. Parties from Opp. Party No.4 to onwards are purchaser from the ancestor of the Opp. Party No.1 to 3.

That the present petitioners were not born even when the lands were vested to the State. The petitioners forefathers had not preferred any objection before the OEA authority or had not claimed their right before the OEA authority under OEA Act

when the lands were settled in the name of Saha Bazil Ahemad & Sabera Khatun (present Opp. Party No.1 to 3) on the basis of their khas possession on the date of vesting. The case u/s 37(1) of the Act filed after long lapse of 45 years by the petitioners.

That the ancestors of the Opp. Party No.1 to 3 were ex-Zamindars in respect of the disputed land i.e. C.S. Khata No.184, 185 and 228. The disputed lands were vested to the State in 1962. The Opp. Party No.1 to 3's parents were in khas possession of the land on the date of vesting. As they were in khas possession as intermediaries, the lands were retained by them (father and mother of the Opp. Party No.1 to 3) on payment of rent as they 'Rayats' having occupancy right as per Section 7 of the OEA Act. Father of Saheda Hasma and Saheda Salma had not filed any claim within stipulated time as per Section 8(A) of the OEA Act. So, the settlement in the name of ancestor of the Opp. Party No.1 to 3 stood final and it cannot be claimed by the petitioners now, after lapse of 45 years in the consolidation proceeding. The father and mother of the Opp. Party No.1 to 3 were paying the rents to the Government and separate Zamabandi had been created in their name. It is stated that Zamabandi No.184 & 185 has been settled in the name of late Bazil Ahmad whereas Zamabandi No.228 had been settled in the name of Sabera Khatun under OEA lease principles. The disputed lands had been settled under OEA lease principles in the name of parents of Opp. Party No.1 to 3. It has also been confirmed u/s 12 of the OCH & PFL Act by the Deputy Director, Consolidation. The decision of the OEA authority shall be respected by the consolidation authority as per Section 51 of the OCH & PFL Act. Therefore, the petitioners case is not at all maintainable u/s 37(1) of the Act. All the revisions u/s 37(1) of the Act are to be rejected. He has also filed citations **OLR (1) 1988 Page-520 to 524 & OLR (11) 1994 Page-528 to 534.**

8. Para-wise reports in respect of Revision Case No.225/2005, 232/2005, 233/2005, 234/2005, 235/2005, 236/2005, 237/2005, 238/2005, 239/2005, 191/2006 & 192/2006 submitted by the Asst. Consolidation Officer (Hqrs), O/o Addl. Sub-Collector, Jajpur Consolidation Office, Dharmasala vide his letter No.33 dated 12.02.2021 have been received.

9. The Asst. Consolidation Officer (Hqrs), Consolidation Office, Dharmasala has reported that the Sabik ROR No.184 status '**Nijchas**' stood recorded in the name of Moulabi Rafiuddin Mohammed, Munsif Hazi Khabiruddin Mohammed, Munsif Saha Abdul Wahal, Munsif Khalil Ahamed, sons of Sahat Sariddin, Malmat Nisha Bibi, wife of Saha Wajruddin Mohammed. He also reported that though total 32 plots are recorded with an area of Ac.18.80 dec. but physically on calculation, it comes to 30 plots with an area of Ac.18.18 dec. Similarly, Sabik Khata No.185 status '**Nijchas**' stood recorded in the name of Moulabi Rafiuddin Mohammed, Hazi Munsif Khabiruddin Mohammed, Munsif Abdul Wehab, Munsif Kharel Ahamed, sons of Basiruddin Ahamed, Sulmat Nisha Bibi, wife of Hadu Munsif Akharuddin Mohammed consisting total 20 plots with an area of Ac.9.58 dec.

Further, he has reported that as per the final Consolidation ROR published on 21.01.1987 Khata No.100 consists of 3 chakas, 26 plots with an area of Ac.12.05 dec. which stands recorded in the names of Mohammed Jobar, Mohammed Khalil, Mohammed Fajul, sons of Mohammed Bijil Ahamed, Caste- Muslim of Nijagaon under Stitiban status but at Tahasil level this Khata has been separated so many different khatas as per orders of different Mutation cases.

10. Gone through the contention of the petitions, written notes of submission filed by the petitioners and Opp. Parties and above documents submitted by the learned Advocate for the petitioner and Opp. Parties in all the consolidation revision cases. Also gone through the report of the ACO (HQ), Consolidation Office, Dharmasala.

On verification of the above records and documents, it is ascertained that the status of Sabik ROR Nos. 184 & 185 published u/s 103A(2) of the Bengal Tenancy Act-VIII of 1885 on 07.10.1911 were "Nijchas" and Hal RORs are "Stitiban". It is ascertained from the certified copies of Sabik ROR No.184 & 185, stood recorded in the name of Maulabi Rafiuddin Mohammed, Munsii Hazi Khabiruddin Mohammed, Munsii Saha Abdul Waheb, Munsii Khalil Ahemad, sons of Saha Basiruddin, Salimati Nisha Bibi, wife of Saha Khabiruddin Mohammed.

Consolidation Hal ROR No.100 stood recorded in the name of Mohammad Jobar, Muhammad Khalil Mohammad, Tafazul, sons of Mohammad Bazil Ahamad to the extent of an area of Ac.12.05 dec. It is revealed from the report of Asst. Consolidation Officer (Hqrs), Consolidation Office, Dharmasala that all other khatas which have challenged by the petitioners in different revision cases also co-relate to Sabik Khata No.184 & 185 and Hal Consolidation Khata No.100.

11. Gone through the written notes of submission filed by the Id. Counsel for the petitioners. It is seen that consolidation RORs published on 21.01.1987 based on area recorded in Sabik Khata No.184 & 185 published on 07.10.1911 has been challenged by the petitioners basing on genealogy and share noting.

The sale of property by the recorded tenants of Hal Khata No.100 could have been challenged by them (i.e. the Sabik recorded tenants / their legal heirs in Sabik Khata No.184 & 185) according to their share before the consolidation authorities but this has not been done. However, the sale transactions made in Consolidation Khata No.100 to other persons prior to consolidation operation who have been mutated the same in their favour have been published in the final ROR on 21.01.1987.

12. On going through the contentions of the Opp. Party No.1 to 3 in their written notes of submission, it is stated that genealogy given by the petitioners are not correct. It is pertinent to mention that any issue arising out of the credibility of genealogy or succession is the subject matter of competent Civil Court. This court lacks jurisdiction to adjudicate matter in respect of genealogy or succession.

13. In the consolidation proceeding as laid down under Section 51 of OCH & PFL Act, 1972 states that;

“Notwithstanding anything contained in any other law for the time being in force, but subject to the provisions contained in clause (3) of Section 4 and sub-section (1) of Section 7-

- (1) all questions relating to right, title, interest and liability in land lying in the consolidation area, except those coming within the jurisdiction of Revenue Courts or authorities under any local law for the time being in force, shall be decided under the provisions of this Act by the appropriate authority during the consolidation operation and;
- (2) no Civil Court shall entertain any suit or proceedings in respect of any matter which an officer or authority empowered under this act is competent to decide.”

14. The petitioners could have raised their objections before the consolidation authority u/s 9(1) of the OCH & PFL Act, 1972 while consolidation work was in operation, however, they have not done the same. Had they raised their objection u/s 9(1) of the said Act, thereafter they could have preferred appeal u/s 12 before the consolidation authority to put forth their grievance but they have refrained from doing so.

15. The consolidation authorities prepared the records accordingly and the record-of-rights under sub-section (1) of Section 22 was published under sub-section (2) of Section 22 in the prescribed manner and the Final Consolidation Scheme came into force from the date of such publication.

16. Consolidation programme is a time bound programme. In the instant case, the chakas have been distributed to the land-owners of the locality and the land-owners have sold the land to other persons and they have also mutated their name in their favour. Hence, it is a fact that the land consolidated could be fragmented if the correction of the record-of-rights is taken up at the belated stage after lapse of long years and the settled position of chakas can be unsettled. The Hal Map of the mouza- Chormuhan would also be changed completely.

17. Under the above provisions of the OCH & PFL Act, 1972 made supra, I am not inclined to interfere the Consolidation ROR No.100 of Mouza-Chormuhan as well as Hal Map of the said mouza. Hence, the prayer of the petitioners in the above revision cases at this belated stage have no merit and liable to be rejected.

18. Resultantly, the Revision Petitions are dismissed.

Pronounced the order in the open Court to-day, the 9th day of February, 2022.

Send the copy of this order to the Tahasildar, Darpan / Addl. Sub-Collector-cum-C.O., Dharmasala.

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

REVISION PETITION No. 403 of 2020

Decided on 08.06.2022

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

State of Odisha represented through

Collector, Jajpur & another ... **Petitioners**

-Versus-

Jyotirmayee Nanda & others ... **Opp. Parties**

Counsel for the Petitioner - Mr. B.K Parida, Standing Counsel

Counsel for the Opp.Parties - Ms. S.L Harichandan, Advocate

DECISION

In Revision Petition No. 403/2020 filed U/s 15(b) of the O.S. & S. Act, 1958 (shortly called as the Act) relating to Mouza-Ankula, P.S, Dist. Jajpur, the Petitioners i.e the State represented through the Collector and the Tahasildar, Jajpur have prayed for restoration of the following suit land to Government Khata, in the interest of the Government and as per Sabik records.

Hal Khata No.	Hal Plot No.	Area	Kisam	L.R Plot No.	Sabik Plot No.
284	1368	0.48	Pala	862	532

2. Considering the available documents on records and nature of relief prayed for by the petitioners, the delay was condoned and the Revision Petition was taken up for hearing on merit.

3. The learned Standing Counsel representing the Petitioners (State) was present and heard. The learned Counsel for the Opp.Parties was also present and heard.

4. Para-wise reports submitted by the Addl. Sub-Collector-cum-Consolidation Officer, Jajpur and Tahasildar, Jajpur have been received.

5. Gone through the contention of the petition, and all other available documents filed by the Petitioners and the Opp.parties.

6. As ascertained from the para-wise report of the Tahasildar, the fact regarding the irregular recording of the Government land, recorded as Nadi in the RoR of Village Ankula published in the year 1928 was reported to the Collector, Jajpur vide L.No.4126 dtd.09.09.2020 for issue of instructions to restore the case land in Hal Plot No.1368 Ac.0.48 kisam Pala under Khata No.244 recorded in the names of Gouranga Nanda, Radhashyam Nanda, Ghanashyam Nanda, Kartik Chandra Nanda, Rama Nanda, all sons and daughters of Baidhar Nanda.

It has also been stated that the Sabik RoR of Village Ankula is not available either in Tahasil office or in District Record Room, Jajpur. However, the register containing the Sabik RoR, copied out by the Consolidation staff for reference during Consolidation Operation, reveals that Sabik Plot No.532 Ac.18.88 stands recorded as Nadi in Anabadi Khata No.325 of Village Ankula. During preparation of land register, although the Asst. Consolidation Officer has directed to record L.R Plot No.862 Ac.0.48 (Final Plot No.1368 Ac.0.48), corresponding to Sabik Plot No.532/1943 Ac.0.48 dec in **Abad Jogya Anabadi Khata**, yet, the Consolidation Officer while disposing the Objection Case No. 4602 of 1999 had directed to record the same in the name of the O.Ps observing therein that Sabik Plot No.532/1943 Ac.0.48 dec stands recorded in the Sabik Khata No.541 in the names of Baidhar Nanda, Daitary Nanda, Maheswar Nanda S/o Chhakadi Nanda and Jamabandi No.742 has been opened in the name of Baidhar Nanda, Daitary Nanda S/o Chhakdi Nanda.

The report further reveals that from the verification of the Sabik Map of Village Ankula, the total no. of plots of this Village on the date of publication during 1928 was **1906**. No supporting record for creation of Sabik Khata No.541, which includes Sabik Plot No.532/1943 Ac.0.48 dec is available in the Tahasil. Further, due to non-availability of the Tenant's Ledger of the village, reported to have been destroyed, the contention that T.L No.742 has been opened in the name of Baidhar Nanda and Maheswar Nanda for Ac.0.48 dec out of Khata No. 541 as observed by the Consolidation Officer in Objection Case No. 4602 of 1999 could not be confirmed. Moreover, after creation of fraction Plot No.532/1943 for an area of Ac.0.48 dec, the area of original Plot No.532 has not been reduced.

Further, the fraction Plots carved out of the original Sabik Plot No.532 have been incorporated in the copy of Sabik RoR in status Stithiban and Dakhal Satwa Bisitha and one fraction Plot i.e Plot No. 532/1946 has been recorded in three Khata i.e Khata No. 539, 549 and 557.

7. On perusal of the parawise report submitted by the **Addl. Sub-Collector-cum-Consolidation Officer** the following has been ascertained:

- i. That, the Sabik RoR No.325 as copied by the Consolidation staff stood recorded in Anabadi status and it had Sabik Plot No.532 Ac.18.88 (Kisam-Nadi) in Village Ankula.
- ii. The Sabik Plot No.532/1943 Ac.0.48 dec, the corresponding Sabik Plot of the case land stands recorded in Sabik Khata No.541 in the name of Baidhar Nanda, Daitari Nanda, Maheswara Nanda S/o Chhakadi Nanda
- iii. That, the L.R Plot No.862 Ac.0.48 (Final Plot No.1368 Ac.0.48) corresponding to Sabik Plot No.532/1943 Ac.0.48 dec has been recorded in the name of the OPs on the strength of the order passed by the Consolidation Officer, Jajpur in Objection Case No.4602/1999 where in it has been observed that Sabik Khata No.541 of Village

Ankula which includes Sabik Plot No.532/1943 Ac.0.48 stands recorded in the name of Baidhar Nanda, Daitari Nanda, Maheswara Nanda S/o Chhakadi Nanda of Ankula and the T.L No.742 of Village Ankula has been opened for Ac.0.48 dec out of Khata No.325 in the name of Baidhar Nanda and Daitary Nanda.

- iv. That, the land records have been prepared during the Consolidation Operations after due verification of the relevant records available in the office and documents submitted by the land owners.
- v. That, no reference has been given in the copy of the Sabik RoR register for creation of the Khata which includes the case land. The Concerned Revenue Authorities did not raise any objection at any stage of the Consolidation in connection with recording the case land in the names of the Ops.

8. The petitioner has submitted the following documents in support of their claim;-

- (i) Letter No. 4126, dated 09.09.2020 of Tahasildar, Jajpur.
- (ii) Notification dated 31.03.2013 of Revenue & D.M. Department.
- (iii) Certified copy of Hal RoR No.244.
- (iv) Photocopies of Amin Report No. 862 and 2669.
- (v) Copy of Sabik ROR published in 1928, copied by Consolidation staff and reference made during preparation of land registers.
- (vi) Objection Case No.4602/1999.
- (vii) Written notes of argument filed by the Standing Counsel.
- (viii) Trace maps of Sabik and Hal.
- (ix) Copy of Judgement Hon'ble Supreme Court passed in Civil Appeal No.2656 of 2009
- (x) L.No.6076 dtd. 08.05.2022 of Collector Jajpur
- (xi) Photocopies of amin reports
- (xii) Counter written notes of argument

9. On perusal of letter No. 4126, dated 09.09.2020, it is ascertained that the Tahasildar, Jajpur has submitted a report to the Collector, Jajpur, regarding irregular recording of Govt. land in favour of private persons wherein the Tahasildar has

stated that the cases regarding creation of the fraction plots out of Sabik plot No.532 are not available in the Tahasil Office. More particularly the tenant ledger of this village Ankula is not available for which the relevant cases for opening of tenant ledger in favour of private persons out of Govt. holdings could not be verified. The following land schedule has been provided therein;-

Sl.No	Khata No.	Plot No.	Kisam	Area (in acre)	Sabik Khata	Sabik Plot	Kisam	Area (In acre)
1.	244	1368	Pala	0.48	325	532	Nadi	18.88
2.	262	1384	Pala	3.92 out of 5.16	325	532	Nadi	18.88
3.	485	1401	Pala	0.38	325	532	Nadi	18.88
4.	316	1376	Pala	0.96	325	532	Nadi	18.88
5.	150	1403	Bagayatll	0.32	325	532	Nadi	18.88
6.	150	1388	Pala	1.30	325	532	Nadi	18.88

10. On perusal of the Notification dtd.31.10.2013 it is ascertained that the State Government had cancelled the order issued by the erstwhile Revenue & Excise Department Notification No. 67852 dtd. 28.10.88, No.36193 dtd. 06.07.1985 under Sub- Section(1) of the Section-3 of the said Act and published in the extra ordinary issue of the Odisha Gazette in respect to the following Villages under Jajpur District.

1. Kuanpur
2. Ankula
3. Jalesarpur

11. On perusal of the photo copy document copied by the Consolidation staff and reference made during preparation of land registers it is ascertained that the Sabik Khata No. 325 was recorded as "Anabadi" and amongst all other plots elaborated therein, the Plot No.532 with an Area of Ac.18.88 was recorded in "Nadi" kissam as Izimile status. It is further seen that a Sabik Khata No.541 in Stithban status has been mentioned bearing Plot No.532/1943 (Kisam- Pala Ac.0.48 dec) in the name of Baidhar Nanda, Daitari Nanda and Maheswari Nanda.

12. Also perused the Photocopies of the Amin report No.862 wherein it has been ascertained that L.R Plot No.862 (p) kisam-Pala corresponds to Sabik Plot No.532/1943 (Kisam- Nadi later changed to Pala) under Sabik Khata No.541 which has been recorded in favour of Baidhar Nanda, Daitari Nanda, Maheswar Nanda. It has also been noted in the Amin report that Jamabandi No.742 for Khata No.325/17 Area Ac.0.48 dec has been opened in favour of Baidhar Nanda and Daitari Nanda.

Finally, it has been ordered by ACO that Plot No.862 Ac.0.48 dec kism Pala be recorded in Abad Jogya Anabadi Khata.

13. The objection case No. 4602/1999 was perused wherein it has been ordered that L.R Plot No. 862 Ac.0.48 be deleted from Hal Khata No. 605 and be recorded in favour of Baidhar Nanda in Stithiban status.

14. On perusal of the Hal RoR No.244 it is seen that the Hal RoR No.244 bearing hal Plot No. 1368 (Kisam- Pala) Ac.0.48 dec stands recorded in favour of Gouranga Nanda, Radhashyam Nanda, Kartik Chandra Nanda, Sarat Chandra Nanda, Rama Nanda S/o Baidhar Nanda in Stithiban status.

15. On super-imposition and scrutiny of the Sabik and the hal trace maps submitted by the petitioner it is seen that there are no fraction Plots of the Sabik Plot No.532 in the Sabik map.

16. The Standing Counsel for the State (Petitioners) has also submitted his written note of argument wherein he has stated the following :

- i. That, the suit land is recorded under "Anabadi" Khata and its kism is "Nadi" as per Sabik settlement records.
- ii. That, the Collector, Jajpur is the competent Authority to file this case as he is not delegated with the Revisional power under the Act.
- iii. That, the Kisam of the suit land in Sabik was Nadi which is communal in nature and hence the same cannot be recorded in favour of private individuals.
- iv. That, the Hon'ble Supreme Court has taken serious view regarding the recording of the Government land in favour of the private individuals by means of fraud in their judgement dtd.20.04.2009 in "State of Odisha Vrs Harapriya Bisoi" reported in **2009(I) CLR SC-1100**.

17. The learned Counsel for the Opp. Parties has submitted the following documents in support of his claim:

1. Written notes of argument.
2. Photocopy of Hal RoR No.244
3. Photocopies of rent receipt
4. Photocopy of Hatapata.
5. Photocopy of Tasdik Niyambali.

18. The Counsel for the Opp. Parties has filed a written objection wherein the following has been stated:

- i. That, though the Petitioner claims that Sabik Khata No.325 which includes Sabik Plot No.532 Ac.18.88 corresponding to Hal Khata No.744 Hal Plot No.1360 Ac.0.48 dec stood recorded in Nadi kism in the 1928 settlement yet no such record is produced by the Petitioner to prove their case. On the contrary it has been admitted to the extent that the record could not be made available in the District Record Room.

- ii. That, the Jamabandi/tenancy ledger was opened on the basis of the “Hatpatta” executed by the ex-intermediary namely Bichanda Charan Nayak S/o Kalicharan Nayak, Gouranga Charan Nayak S/o Bhaskar Charan Samanta Singhar, Jaya Samanta Singhar, Bairagi Charan Nayak S/o Brundaban Charan Nayak.
- iii. That, the suit land settled in the name of the Opp. Parties by opening of Jamabandi by the Tahasildar, Jajpur & rent received on the basis of “Hatpatta” granted by the ex-intermediary, the Settlement authorities have no power to dispute the recording of the land by revisiting the Revenue record created under the OEA Act.
- iv. That, a Chirastai Hatapatta was executed by the ex-intermediary Bichhanda Charan Nayak in favour of Baidhar Nanda with respect to an area of Ac.0.48 dec out of Sabik Plot No.532. He had also granted rent receipt in support of hatapatta. The rent receipt with respect to Khata No.325/3, Plot No.532/1943 area Ac.0.48 dec was granted by Anchal Sasan. From the above records, it was clear that Baidhar Nanda was inducted as a tenant with respect to Sabik Plot under the Sabik Holding No.325 and granted receipt by the ex-intermediary and subsequently the Tahasildar, recognizing him as a Rayat in respect of the land, accepted rent from him by opening Jamabandi and a separate Khatian in his favour with Stithiban Status. Thus, when the case land is Rayati Land and is not vested in the Govt. during the OEA Act, 1951, the Opp. Parties being the legal representative of Baidhar Nanda are to continue as tenant u/s 8(1) of the said Act.
- v. That, the Tasdik Niyambali followed for recording land in Rule.13 states that “Nadipatha” land gained by gradual accretion being in occupation by the tenant for continuous period of 12 years, the same shall be recorded in the name of the tenant. In the instant case the land being gained by gradual accretion from the recess of the river being in occupation of the tenant for more than 12 years under the ex-intermediary is justifiably settle in the name of the father of the Opp Party.
- vi. That, the Provisions of Section 21 of the OLR Act permits recording of land gained from gradual accretion to any holding from the recess of river may ordinarily form such a part of the holding. In the instant Case, the land being gained from recess of the river is rightly possessed by the ex-intermediary and settled in favour of the father of the Opp. Party.
- vii. That, the Govt. Circular No.43209 dated 13.09.1990 states that the genuineness of the Jamabandi cannot be adjudicated by the Settlement Authorities.
- viii. That, when the names are included in the tenant ledger by the Revenue Authorities and the rent accepted from them, there cannot be any doubt

that they were accepted as tenants under the State Govt. Further, when it is held that the right which they have acquired by virtue of acceptance of the rent from them by the Revenue Authority u/s-8(i) of OEAAct cannot be whittled down. 74-(1992) CLT 454 (Manmohan Rout -vrs- State) under the circumstances initiation of proceeding u/s-15(b) of the Act for recording of land in Govt. Khata by reversing the record is not maintainable.

- ix. That, in OJC No.81 of 1991 between Smt. Arati Mukharjee & others -vrs- State of Orissa and others, as reported in Judicial Index No.1039 for the month, Hon'ble High Court in their order dated 22.06.1994 held that OSS Act 1958 Section.15 Revision by Board of Revenue. Scope of Commissioner while exercising Powers under the Provisions of Act is not entitled to go into the question of title and once the Tahasildar has allowed the land to be mutated under Rule.34 of OSS Rules, 1962, in favour of someone and that order has not been assailed in higher forum the same order would be respected by the Commissioner, if the person is found in possession of the land.

19. The petitioners have subsequently submitted a Counter written notes of argument in response to the written arguments filed by the Opp. Parties wherein they have stated the following:

- i. That, the Hal Plot No. 1368 Ac.0.48 dec kizam Pala recorded in Hal Khata No.244 of Village Ankula corresponds to Sabik Plot No. 532 Ac.18.88 recorded in Sabik Anabadi Khata No. 325 as "Nadi" of Village Ankula.
- ii. That, while creating a new holding, reference of the basis of such recording is given for reference of creation of the new holding and necessary correction is made in the original holding period to avoid confusion. In the instant case, since the practice under MTA has been followed, adoption of manipulation of records for personal gain by recording a Government land in a private holding cannot be over looked.
- iii. That, the Jamabandi register of Village Ankula is not available to ascertain as to whether the Jamabandi has been properly opened in the name of the O.Ps with due attestation of the supervising authorities. Hence, opening of Jamabandi in the name of the OPs may not be relied upon.
- iv. That, the case land being Anabadi in status and communal in nature has been recorded in the name of the Opp. Parties by adopting fraudulent means with an intention to grab Government property. Regarding issue of rent receipt for the case land to the Ops, it is submitted that payment of rent receipt cannot be held as a lawful document to establish the right, title and interest of recorded tenant in respect of the land which originally belongs to the Government.

- v. That, in the instant case the suit land has not been settled under the provisions of OLR Act as averred by the O.Ps
 - vi. That, the Sabik Plot No.532 Ac.18.88 dec recorded as “Nadi” admittedly has been recorded in the private holding of the Opp.Parties in violation of the provisions of OEA Act and observation of Hon’ble Apex Court in Civil Appeal No.2656 of 2009 arising out of SLP(C) of 10223 of 2007 as because the classification “Nadi” means a communal land.
20. Based on scrutiny of all the documents on record, reports, written submissions of both the parties and the averments made in the plaint, the following issues are framed:
- 1. Whether communal land or land noted with Nadi Kism in Sabik, can be settled with private persons.
 - 2. Is the Chirasthayi hatpatta a valid document to establish the credibility of the transaction made therein
 - 3. Whether Sabik records and reports are devoid of any incongruencies .
21. The cogent explanation is given here under:
- a. With regard to the first issue, it is relevant to rely on the judgement in **W.P(C) No.4649 of 2005 passed by the Hon’ble High Court in State of Orissa - versus- Baidyanath Jena**. It has been stated therein that

*“... On perusal of the 1929-30 Revision Settlement RoR, it is ascertained that the case land at that time was a **communal** and forest land and the Ex-intermediary was not entitled to under any law or order or regulation in vogue, to lease out the communal land which were burdened with communal rights. Therefore the so-called claim of tenancy, said to have been created by the Ex-intermediary in respect of the communal land should therefore be interpreted to be outside the proprietary rights of the Ex-intermediary and therefore, cannot be accepted on their face value unless and until the contrary is proved by unimpeachable proof that the said documents are genuine and authentic.”*

While the status of the Sabik plot No.532 (under Sabik Khata No.325) is seen to have been recorded as Nadi Kism, law is well settled as per provisions of Section-5(a) of the OEA Act, 1951 ,that, **Nadi** kism cannot be settled with private persons. As per the provisions of the OEA Act, 1951 in Section-5 (a) it has been stipulated that

“ 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, forest, 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 building 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 interests expressly saved by or under the provisions of this Act”.

In this regard, it can be aptly stated that the recording of the suit land (which was in Anabadi status in the Sabik records) in favour of the Opp. Parties by the Consolidation Officer whilst disregarding the order to record the suit land in Abad Jogya Anabadi Khata passed by the ACO in the Amin report is an attempt to defeat the provisions of Section-5 of the OEA Act, 1951.

- b. With regard to the second issue framed, it is pertinent to reply on the guidelines set by the Hon’ble Apex Court. The **Hon’ble Supreme Court in their order dtd.20.04.2009 in Civil Appeal No.2656 of 2009 (Arising out of SLP (C) No.10223 of 2007) in State of Orissa -vrs- Harapriya Bisoi** have observed in Para-23 that

“... the ‘Hatpatta’ on the basis of which Kamala Devi has claimed her title is unregistered document. Section-107 of the Transfer of Property Act, 1882 (in short the T.P Act) read with Section 17 of the Indian Registration Act, (in short the ‘Registration Act’) mandates that the conveyance of title through a written instrument of any immovable property worth more than Rs.100 for a period of one year or more must be registered. If such an instrument is not registered then Section 49 of the Registration Act read with Section 91 of the Indian Evidence Act, 1872 (in short the ‘Evidence Act’) precludes the adducing of any further evidence of the terms and contents of such a document. [See Sri Sita Maharani v Chhedi Mahto (AIR 1955 SC 328). There is a further requirement of registration of the instrument of conveyance/ agricultural lease under Sections 15 and 16 of the Orissa Tenancy Act, 1913 (in short the ‘Tenancy Act’).

It has also been substantiated in **W.P(c) No.4649 of 2005 State – vrs- Baidyanath Jena**, wherein, the Hon’ble High Court of Orissa have stated in Para.14 that

“...the Hatpatta relied upon being non-registered one, is inadmissible in view of the dictum of the Apex Court in Sri Sita Maharani and others V.Cheddi Mahato and others, AIR 1955 SC 328 and in Ram Nath Mandal and

others V. Jojan Mandal and others, AIR 1964 Patna (FB)1.

Hence, while addressing the second issue stated above, it is ascertained that the genuineness of the hatpatta could have been proved, if it would have been produced as per the provisions contained in Section 17(1)(d) of the Registration Act, 1908 and Section 6(i) of the Transfer of Property Act, 1982. However, the Opp. Parties have failed to prove the evidentiary values of such Hatpatta under Section-91 of the Evidence Act. It is settled law that any agricultural land for more than one year or from year to year basis with the fixed rate of rent must be compulsorily registered and if it is not registered under the Registration Act, no title passes. Therefore, no tenancy having been created, such land is vested to the Government free from all encumbrances.

Assuming, that the Ex-intermediary inducted the Opp. parties as genuine on the basis of an unregistered document, Hatpatta, which is inadmissible in evidence as per the decision reported in **AIR 1955 SC page 328 (Sita Maharani V Chhedi Mahato and AIR 1964 Patna, page 1 Ram Nath Mandal and others v. Jojan Mandal and others)** as such, no documentary evidence is filed to show that the person, who signed the so-called unregistered lease deed including the rent receipts was/were specifically authorized to grant such lease or to receive rent for and on behalf of such Ex-intermediary.

It has also been held that "*Entries in Jamabandi, they are not proof of title. Parties have to establish relationship or title to property*". **AIR 1994 SC 227**

Hence, the contentions of the Opp. Parties that they are entitled to the suit land on the basis of Hatapatta and Jamabandi, without showing concrete evidences cannot be the sole basis to decide the right, title and interest of the Opp. Parties on the suit land.

- c. Further, with respect to the third issue, it is pertinent to mention here that ascertained fact is Sabik Khata No.325 bearing Sabik Plot No.532 (Kisam-Nadi) stood recorded in Anabadi Khata. In lieu of principles set in Para-81 of the Odisha Mutation Manual, it has been stipulated that:

"If a plot is sub-divided and formed into more than one plot each plot will be allotted number, the original number being allotted to the Plot retained in the original holding. For instance, if plot number 190 is divided into two parts and the last plot number in the Village is 305, one part of

the Plot number 190 will carry the original number 190 and the other part will be numbered 306. At the bottom of the relevant sheet of the village map, this new number should be shown in red ink as 190/306. In the record of rights this new plot should also be written as 190/306.”

Assuming, that such fraction plot has been created there will be three implications:

- a) The fraction plot should go to newly made Fraction Khata.
- b) The original plot will show a reduced area.
- c) The Sabik map will reflect the newly generated plots.

In the instant case, even though a fraction plot has been created from the the original plot, yet the fraction plot is not recorded in a bata Khata. Subsequently, the original plot has also not shown any reduced area and most importantly the Sabik map does not depict the formation of any new fraction plot. Prima-facie the scheme of events seems to be a post dated mischief.

It is further emphasized in the Tahasildar's report that the fraction Plot No.532/1946 has been recorded in three khatas i.e 539,549 and 557. This clearly depicts the malafide intent to weave a nebulous scheme of events in all probability to conceal the veracity of the actual cause of events.

22. In the above premises, it is apposite to mention here that the irregularity with which the entire scheme of events has unfolded looks unlawful and actionable. There is not a doubt that recording made therein has no clear flow of title or sequences nor fathomable evidences to support the same.

In the above circumstances, it is again relevant to rely on **Para-41 of order dtd.20.04.2009 passed in Civil Appeal No.2656 of 2009 (Arising out of SLP (C) No.10223 of 2007) in State of Orissa -vrs- Harapriya Bisoi** wherein it has been observed that

“In Lazarus Estate Ltd. v. Beasley (1956) 1 QB 702, Lord Denning observed at pages 712 & 713, “No judgement of a Court, no order of a Minister can be allowed to stand if it has been obtained by fraud. Fraud unravels everything”. In the same judgement Lord Parker LJ observed that fraud vitiates all transactions known to the law of however high a degree of solemnity”.

23. On perusal of the report submitted by the petitioner vide letter No.6076 dtd.08.05.2022 it is seen that Sabik Plot No.532 has been recorded as 37 Hal plots out of which 31 hal plots which have been recorded in Government Khata and the

other 6 plots have been recorded in the names of private persons. The classification of land taken into Government Holding has been detailed below.

Sl. No.	Khata No.	Plot No.	Area(In Ac.)
1.	878	1338	0.25
2.	878	1340	0.24
3.	878	1342	0.15
4.	878	1343	0.12
5.	878	1345	0.16
6.	878	1347	0.14
7.	878	1350	0.54
8.	881	1351	0.35
9.	878	1352	0.05
10.	878	1357	0.18
11.	878	1365	0.05
12.	878	1366	0.09
13.	878	1367	0.07
14.	878	1369	0.44
15.	878	1372	0.06
16.	878	1375	0.14
17.	878	1387	0.37
18.	878	1392	0.21
19.	878	1393	0.33
20.	878	1397	0.19
21.	859/111	1398	1.39
22.	878	1399	0.53
23.	878	1400	0.25
24.	878	1402	0.39
25.	878	1404	0.22
26.	859/111	1405	1.14
27.	859/111	1406	0.42
28.	859/111	1408	0.63
29.	878	1409	0.08
30.	859/111	1410	0.12
31.	859/111	1411	0.41

Also, the classification of land taken into private Holding has been detailed below

Sl.No	Khata No.	Plot No.	Area (in acre)
1.	244	1368	0.48
2.	316	1376	0.96
3.	262	1384	3.92 out of 5.16
4.	150	1388	1.30
5.	485	1401	0.38
6.	150	1	403
			0.32

On further verification of the Amin reports, submitted by the petitioner, for hal Plots No.1338, No.1347, No.1375, No.1387, No.1392 No.1393, No.1398, No.1402, No.1405, No.1406, No.1408, No.1409, No.1410 and No.1411, it is seen that, the Sabik Khata No. 325 is recorded in "Anabadi" Khata and the Sabik Plot No.532 Ac.18.88 dec (under Sabik Khata No.325) is recorded as "Nadi" Kisam. Also, on comparison of the Sabik and hal map, it is seen that all the aforesaid plots are contiguous and hence were part of one Sabik Plot i.e Sabik Plot No.532.

Resultantly, in the face of such concrete evidences furnished by the petitioner and the documentary evidences like Amin reports, there arises no dispute regarding the status of the suit land in Sabik Khata No.325 being "Anabadi" and the kisam of Sabik Plot No.532 (under Sabik Khata No.325) being "Nadi".

24. Hence, in the absence of a concrete flow of title, fragile evidences like unregistered hatapatta and an unverified Jamabandi, an ambiguous order of the Consolidation officer and clandestine recording of the fraction plots, this Court finds it prudent, justified and in the best interests of Justice as per law and legal points discussed above, to record the suit land in favour of the Government, back to where it originally belonged.

The Tehsildar, Jajpur is directed to record the suit land in Hal Khata No.244 bearing Hal Plot No.1368 Ac.0.48 dec in Abad Jogya Anabadi Khata as per mutation procedures.

25. Resultantly, the Revision Petition is allowed. The Tehsildar, Jajpur is directed to implement the order as per my above observation following the procedure of mutation within three months from the date of receipt of the order and report compliance.

Pronounced the order in the open Court to-day, the 8th day of June, 2022.

Send the copy of this order to the Collector, Jajpur, Addl.Sub-Collector-cum-Consolidation Officer and Tahasildar, Jajpur for the needful.

Sd/-

Commissioner,
Land Records & Settlement, Odisha, Cuttack.

R.P. No. 249/2019

Decided on 08.04.2022

(Order by Secretary to Revenue Divisional Commissioner (CD), Cuttack)

Iswar Chandra Naik ... Petitioner

-Versus-

Settlement Officer, Baripada & others ... Opposite Parties

ORDER

This case is put up today through virtual & physical mode. The Petitioner had prayed U/S- 15(b) of OS&S Act, 1958 to direct the Tahasildar, Sukruli for correcting the column II of Hal ROR and recording it in favour of the Deity.

Schedule of Land

Mauza- Khiching, P.S.- Raruan, Tahasil- Sukruli, Dist- Mayurbhanj, Sabik Khata No.- 115/1/19, Sabak Plot No.- 156, 372, 696, 697, 713, 826, 837 Total Area Ac2.84dec
Hal Khata No. -151, Hal Plot No. -196, 246, 588, 696, 697, 1164, 1165, 1166, 1168, 1169, 1170, 1171, 1172 & 1173 Total Area Ac2.85dec

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 absent. The OPs are absent on call & notice. Thus the case is decided on basis of merit of the case.

As per the petition the learned Counsel for the Petitioner contended that the Sabik Plot Nos. 156, 372, 696, 697, 713, 826, 837 Sabak Khata No. 115/1/19 correspond to Hal Plot Nos 196, 246, 588, 696, 697, 1164, 1165, 1166, 1168, 1169, 1170, 1171, 1172 & 1173 Hal Khata No. 151 of Mauza- Khiching were recorded in favour of Maa Kichakeswari Thakurani Bije Nijagaon through Kiching Temple Trust, Marfat Gadu Naik, S/O- Dengal Naik, Mandir Chaukia Jagri. Hence, this revision case is filed for correction of column II of the Hal ROR No. 151 in favour of the Deity.

While verifying the case record it is found that the documents relied by the Petitioner are copy of Hal Khata No. 151, Plot index of Sabik Khata No. 115/1/19, Mauza- Khiching. While verifying the Hal ROR No. 151 it is found to be recorded in favour of Petitioner's father Gadu Naik S/O- Dengala Naik Caste- Bhuyan. As per the submitted Plot Index, the Sabik Khata No. 115/1/19 is also found recorded in favour of Gadu Nayak S/O- Dengala Nayak Caste- Bhuyan. The Tahasildar, Sukruli has submitted the field enquiry report vide letter No. 186 Dt. 18.01.2022. He has categorically mentioned that the suit land was recorded in favour of Petitioner's father in Sabik Record. During Settlement Operation it has been recorded in favour of Petitioner's father with Bebandabasta Status under Khata No. 151 Total Area-

Ac 2.85 dec. One OEA Case No. 03/2016 had been initiated for rent and cess fixation of the case land. The Hal Plot No. 196, 246, 588, 696, 697, 1168 & 1173 with an area- Ac 1.72 dec is in physical possession of Iswar Chandra Naik, Santanu Kumar Naik S/O- Gadu Naik and after payment of requisite fees, the suit land had been recorded in favour of Iswar Chandra Naik, Santunu Kumar Naik S/o- Gadu Naik under Khata No. 150/71. The rest Hal Plot Nos.1164, 1165, 1166, 1169, 1170, 1171 & 1172 with area of Ac1.13dec were vested in to Government Khata No. 168 (AJA).

The report of Tahasildar says clearly, as a part of the case record in the case, that wrong recording does not arise. Furtherit reveals that the SabikR.O.R. land is recorded in favour of Petitioner's father in Jagir status. The Petitioner too could not provide any valid documents to justify his claim that the suit land was recorded in favour of the Deity in the pastsabik records. Rather the land was given by Ex- State Land lord towards Mandir ChaukiaJagri to father of the Petitioners, thus the entire Jagir Land was kept recorded in Bebandabast status during last M.S. Settlement. Later on a part of land was recorded in the names of son of LateGadu Naik as per their possession by virtue of succession by settling the Bebandabast land. Besides that other recorded tenent, named Santanu Kumar Naik S/O- Gadu Naik has not been made party in the case.Hence the prayer of the Petitioner seems not justified &could not be established to get the land recorded in the name of Deity.

With reference to the above discussions the prayer of the Petitioners is thus disallowed.

Order pronounced in the open Court today.

Accordingly, this case is disposed of.

Sd/-
Secretary to RDC (CD), Cuttack

R.P. No.133/2021

Decided on 08.04.2022

(Order by Secretary to Revenue Divisional Commissioner (CD), Cuttack)

Kuldip Kolha ... Petitioner

-Versus-

Settlement Officer & others ... Opposite Parties

ORDER

This case is put up today through virtual & physical mode. The Petitioner have prayed U/S- 15(b) of OS&S Act, 1958 to direct the Tahasildar, Bisoil for correction of the Hal ROR in their favourbasing on Sabik Records as scheduled below.

Schedule of Land

Mauza- Badamanada, P.S. - Bisoi, Tahasil- Bisoi, Dist- Mayurbhanj, Sabik Khata No.- 24, Sabak Plot No.- 702, Area- Ac 1.96dec, Hal Khata No.- 130, Hal Plot No.- 828, Area- Ac 2.00 dec

Perused the petition for condonation of delay in filing this revision petition. The delay is hereby condoned and the revision petition is admitted. SR is back. The Advocate for the Petitioner is present. The OPs are absent on call and notice.

The learned Counsel for the Petitioner contended that the suit land was recorded in favour of Tunia Kolha S/O- Kolhu Kolha vide Sabak Khata No. 24, Sabak Plot No. 702, Area- Ac 1.96dec Caste- Kolha. During Settlement Operation the suit land was recorded in favour of Rama Kolha (father of Proforma OP No. 1 & 2) & Masa Kolha (father of Petitioner and Proforma OP No. 3) S/O- Tunia Kolha Caste- Kolha and Health Department, Government of Odisha vide Hal Khata No. 130, Hal Plot No. 828. Hence, this revision case is filed for correction of Hal R.o.R.

While verifying the case record it is found that the documents relied by the Petitioners are copy of Hal Khata No. 130, Plot Index of Sabik Plot No. 702, Mauza- BadaManada. While going through the Plot Index the Sabik Plot No. 702 Sabik Khata No. 24 correspond to Hal Plot No. 828, Hal Khata No. 130 of Mauza- BadaManada. As per the Hal Sabik Co-relation the Sabik Plot No. 702 Sabik Khata No. 24, Area- Ac 1.96 dec is recorded in favour of Tunia Kolha. The plot corresponds to Hal Plot No. 828 Hal Khata No. 130. The Tahasildar, Bisoi has also submitted PWC vide letter no. 201 dt 24.01.2022. He has clearly stated that Hal Plot No. 828, Hal Khata No. 130 is recorded in favour of Rama Kolha, Masa Kolha S/O- Tunia Kolha and possession by Dispensary, Health Department, Govt of Odisha by virtue of verbal Gift. The Kolha brothers are in possession of area Ac 0.275dec out of Ac 2.00 dec. The rest area, at present, is being occupied by CHC, Manada constructing medical buildings and residential quarters.

It can be well inferred from the case that the land in dispute had been gifted verbally to Govt of Odisha for construction of medical facilities to cater the local needs. Accordingly the Medical facilities are running in the locality. It is a fact that the CHC, Manada is in possession of the case land since more than 35 years. The Petitioner and Proforma OPs are in possession of only Ac 0.275dec of suit land. But the PWC report of Tahasildar very clearly says that the suit and stand recorded in the name ancestors of the petitioners since sabik period. It is also fact that the Odisha Scheduled Areas Transfer of Immovable Property Regulation 1956 prevents any transfer of immovable properties of member of a Scheduled Tribe to non-Scheduled Tribe or Govt without following due process of Land Acquisition Act. Though it is fact that CHC, Manada is existing over the suit land permanently, but occupying the same without right Authority & entitlement over the land of a Raiyat is also a misnomer & bad in laws. How right, title & interest on a land of a Scheduled Tribe be taken away & possessed by a Govt Institution. As the land is a Rayati-Sthitiban land

of Petitioner, recorded in his father's & uncle's name, the prayer of the Petitioner is justified to delete the recording of note of possession by CHC Manada. The Tahasildar, Bisoi also concluded in his PWC that the Petitioner is genuine to claim as per Law & suit land is liable to be handed over to them as the Raiyats of the land recorded in GharabariKisham.

On the other hand OPs 1 to 5 have not submitted any valid documents against the claims of Petitioner, rather produced some copy of correspondence among Medical Officer, Manada CHC, Mayurbhanj, CDMO, Mayurbhanj, Addl Secretary to Govt. Health and Family Welfare Dept, Director, Health Services(O), Bhubaneswar, Collector & D.M. Mayurbhanj & Land Acquisition Officer, Mayurbhanj for acquisition of land as per Right to Fair Compensation & Transparency in Land Acquisition, Rehabilitation & Resettlement Act 2013. Thus it proves that the CHC Manada is established on the Raiyati land of Petitioners without valid documents like RSD etc. Accordingly in the eye of law entry of oral Gift to Govt Health Dept for Medical is improper, unjust & illegal. Thus allowed the petition of Petitioner for correction in their above Khata.

With the above observations in respect to the case, the Tahasildar, Bisoi is directed to delete the entry made in favour of Dispensary (i.e. Oral gift to Govt. in health Dept for possession to run Dispensary) in para -2 of the RoR No.130, within a period of three months from receiving this order.

Order pronounced in the open Court today.

Accordingly, this case is disposed of.

Sd/-

Secretary to RDC (CD), Cuttack

R.P. No. 216 / 2021

Decided on 30.04.2022

(Order by Secretary to Revenue Divisional Commissioner (CD), Cuttack)

Sidhartha Das & others ... Petitioners

-Versus-

Settlement Officer & Others ... Opposite Parties

ORDER

This case is put up today through virtual mode. The Petitioners have prayed U/S- 15(b) of OS&S Act, 1958 (here in after referred as Act) to direct the Tahasildar, Baripada for correction of ROR in favour of the Petitioners in strength of Permanent Lease and possession.

Schedule of Land

Mauza- Hemchandrapur, P.S.-Baripada, Tahasil- Baripada, Dist- Mayurbhanj, SabakKhata No.- 57Sabak Plot No.- 320, Hal Khata No.- 38 Hal Plot No.- 913

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 and notice.

As per the petition the learned Counsel for the Petitioners contended that in year 1993, the Board of Trustees of Sri Purna Chandra Mandir trust granted Permanent Lease of the property in question vide deed no. 3849 dt 26.11.1993 as per the term and conditions of deed of Trust dated 14.02.1968. The deity "Sri Gopal Krishna Jew" is the private deity/family deity of Maharani Takat Kumari Devi as per order passed by Sub Judge Baripada in Misc Case No. 3/1 of 1976. The Hal Khata No. 38 Hal Plot No. 913 is recorded in favour of Sri Gopal Krishna Jew Estate Marfat Pradip Chandra Bhanjdeo, Swarup Chandra Bhanjdeo S/O- Pratap Chandra Bhanjdeo. Hence this revision case is filed for correction of ROR.

While verifying the case record it is found that the document relied by the Petitioners is copy of Deed No. 3849 dt 26.11.1993, Deed of Endowment dt 14.02.1968, Hal Khata No. 38, Report of Superintending Inspector of Endowment, RTI Information as to non-existence of deity Sri Gopal Chandra Jew, Order dated 27.01.1977 passed by Subordinate Judge, Baripada, Order Passed by Court of Commissioner of Endowment, Bhubaneswar, Order passed by DLSA, Cuttack, Yadast copy of Mauza- Hemchandrapur. While going through the Deed No. 3849 dt 26.11.1993, it is ascertained that Board of Trustee of Sri Purna Chandra Mandir through President Pramod Chandra Bhanj Deo S/O- Lalsaheb Sarat Chandra Bhanjdeo, Secretary Laxmi Narayan Das S/O- Bhabani Kumar Das, Nirmal Chandra Bhanj Deo S/O- Nalini Chandra Bhanjdeo, Prakash Chandra Bhanj Deo S/O- Nimai Chandra Bhanjdeo of Baripada have leased the suit land (Total Area- Ac 0.36442 dec) to Harekrushna Dash S/O- Bhagaban Dash (father of Petitioners) Caste- Brahmin of Baripada mentioning the Hal Khata No. 38 Hal Plot No. 913. As per the condition of the lease deed, the lessee shall have all the right to sell, alienate or mortgage the lease hold right over the land and can get the land mutated in recognition of the lease hold right. Originally the Sabak suit land was recorded in favour of Maharani Srimati Takat Kumari Devi W/O- Maharaja Sri Purna Chandra Bhanjdeo. This has been reported by ASO, Technical, Baripada, Balasore Mayurbhanj Major Settlement, Baripada vide letter no. 446 dt 04.04.2022. He has further reported the Hal Sabik Comparison report as per which the Hal Plot No. 913 Hal Khata No. 38 correspond to Sabik Plot No. 176/317, 176/318, 176/320, 176/321 Sabik Khata No. 57. She had executed a deed of endowment dt 14.02.1968 in favour of "Sri Purna

Chandra Mandir"bijeBaripada Town constituting Sri Purna Chandra Mandir Trust Estate. She has vested the immovable properties absolutely with the Mandir Trust Estate along with the right to transfer when direct necessity is felt by 3/4th of the Members. The Petitioners has also submitted the copy of judgement passed by learned Sub Judge, Baripada in Misc Case No. 3/1 of 1976 regarding Trust of OPs being not a public Trust. As per the Hal Sabik Co-relation By ASO the Sabik Plot No. 176/317, 176/318, 176/320, 176/321 Sabik Khata No. 57 correspond to Hal Plot No. 913 Hal Khata No. 38 of Mauza- Hemchandrapur. The Hal Khata No. 38 is found recorded in favour of Sri Gopal Krushna Jew Bije Takatpur Estate Marfat Pradip Chandra Bhanj Deo, Swaroop Chandra Bhanj Deo S/O- Pratap Chandra Bhanj Deo. The Tahasildar, Baripada has submitted his field possession report vide letter no. 1702 dt 13.04.2022. He has stated that the Petitioners are in possession of the suit land.

It is pertinent to mention here that in RP Case No. 303/2017, the referred Sabik Plots above were found to be mentioned in the Gift Deed executed by Maharani Takhat Kumveri in favour of Government of Mayurbhanj registered on 18.06.1948. The Sabik Plot No. 176/321 is mentioned in the Gift Deed. Hence it is necessary on part of the Tahasildar, Baripada to verify whether the transacted plot relates to the gifted Sabik Plot.

Further as per as Lease Deed no. 3849 dt 26.11.1993 is concerned, it is pertinent to discuss that, the deed has been executed much later to the Hal ROR Publication year which is 1985. Moreover the transacted plot in the Lease Deed is itself the Hal Plot No. 913 from Hal Khata No. 38. However, as per the conditions laid down in Lease Deed, the lessee has been entitled to occupy the case land with the right to sell, alienate or mortgage. The lessee can also get the land mutated in his name in recognition of the leasehold right. Hence transfer of suit land to Petitioner is clear but as the transaction has been done with Hal Plots that too in a post publication stage of Hal ROR, the matter does not attract the adjudicatory power of this forum.

Thus in consideration of the facts and circumstances stated above, the petition is not maintainable in this court. Therefore the petition is hereby dropped with a liberty for the Petitioners to approach Tahasildar, Baripada for redressal of their prayer. The Tahasildar, Baripada is also directed to hear the matter as per law if Petitioners plead before him within a reasonable time.

Order pronounced in the open Court today.

Accordingly, this case is disposed of.

Sd/-
Secretary to RDC (CD), Cuttack

Settlement Revision Petition No.45/2017

Decided on 23.05.2022

(Order by Secretary to Revenue Divisional Commissioner (ND), Sambalpur)

Jambeswar Sahu & OthersPetitioners

-Vrs.-

Pradeep Kumar & others..... Opposite Parties

ORDER

The instant revision petition has been filed by the petitioners through their advocate u/s-15(b) of the OS&S Act-1958 claiming for recording of the case plots in their names on the basis of Sabik record and possession.

Notices have been duly served. Heard this case.

Learned Advocate for the petitioners contended that Sabik ROR bearing No.582 was in the name of the forefather of the petitioners. In Sabik Khata there were Plot No.2150 Ac.0.35 decimals and 2151 Ac.0.59 decimals along with other plots. According to him Sabik area of these two Plots comes to Ac.0.94 decimals. But during Hal settlement the corresponding with total area of Ac.0.81 decimals have been recorded in Hal Plot No.6286, 6287, 6288, 6279, 6280 in Hal Khata No.253 of village Similisahi causing less area of Ac.0.13 decimals which have been recorded in Govt. Rakhita Khata vide Plot No.6281 and 6282. He prayed for recording of these plots as part of Sabik Plot No.2150 and 2151 in the name of the petitioners.

In order to know the actual position, the concerned Tahasildar was asked to report, which has been received vide letter No.8804 dated 22.12.2020 of the Addl. Tahasildar, Chhendipada. It is revealed from the said report that no Sabik Hal comparison of Map has been done. The Sabik reference of the case plot No.6281 and 6282 have not been reported by the Addl. Tahasildar. He has blindly believed on the field enquiry report of the Revenue Inspector, Raijharan who very tactfully reported the possession of the petitioners over these two plots. Both R.I. and Addl. Tahasildar should be more careful as to Govt. land while conducting enquiry.

On the other hand perused the report of the Settlement Officer, Dhenkanal received vide his letter No.552 dated 18.09.2021. This report clearly says that the Sabik reference of Hal Plot No.6281 and 6282 is 2149 which was Govt. land in Kisam Puratan Patita and these two plots have no relation with the Sabik plot No.2150 and 2151 of the petitioners. So this Court is convinced that the petitioners have misrepresented the fact by suppressing the actual state of thing with a malafied intention to grab the Govt. land and the Revenue Inspector and Addl. Tahasildar being revenue agencies have failed to protect the interest of the state which is not good in eye of law.

In the above circumstances the claim in this revision petition can not be allowed.

Hence, this revision petition is devoid of merit and dismissed without consideration.

Send extract of this order to the Tahasildar Chhendipada for strict follow up action.

Pronounced the order in the open court today i.e. 23rd May, 2022.

Sd/-

RDC (ND), Sambalpur

Settlement Revision Petition No.68/2017

Decided on 10.02.2022

(Order by Smt. Sanjita Das, O.A.S.(SS)
Land Reforms Commissioner,
Board of Revenue, Odisha, Cuttack)

Panu Biswal and others ... **Petitioners.**

-Vrs-

Bijaya Biswal & others ... **Opp. Parties**

Mr. A.A.Lenka	...	Adv. for the petitioners
Mr.S.K.Swain	...	For the Opposite parties.
Addl. Standing Counsel	...	For the State

ORDER

This case was taken up to-day following COVID-19 guidelines. Learned Counsel for the petitioners, opposite parties and State were present.

The petitioners have filed this petition U/s.15 (b) of the O.S. and S. Act, 1958 for correction of R.O.R.

Heard. In the course of hearing, the learned Counsel for the petitioners contended to record the scheduled land in favour of the petitioners along with opposite parties with specific share note. The scheduled land stands recorded in the name of Madhusudan Biswal son of Uchhaba Biswal pertaining to Mouza -Tentoi,P.S/ Tahasil –Naugaon, Dist.- Jagatsinghpur bearing HAL Khata No.488, Plot No.2250 area Ac 0.14 dec, Plot No.2333 area Ac 0.07 dec, Plot No.2334 area Ac 0.02 dec, Plot No.2506 area Ac 0.16 dec. corresponding to Sabik PlotNo. 2230, 2318, 2319, 2320, 2229, 2490, 2492, 2493.

On the contrary, Counsel for the OPs has filed written notes of argument Stating the fact that order passed by the Settlement Authority in “UNA/701” and “UNA/989” mistake clearly indicates that the Panakrushna Biswal @ Panu Biswal

(Petitioner No.1) and Jhari Biswal (father of Petitioner No.2 & 3 in the instant case) have given their consent to record the scheduled land in favour of Madhusudan Biswal son of Uchhaba Biswal. Further, Counsel for the OPs contended that the case is not maintainable in the light of Sub-section-3 of Section-96 of the Civil Procedure Code which clearly states that “No appeal shall lie from a decree passed by the court with the consent of parties”.

Went through the case record along with the report submitted by the Tahasildar, Nuagaon and written notes of arguments filed by both the Counsels.

On perusal of the case record, it is seen that the Sabik ROR stood recorded in the name of Madhu Biswal son of Uchhaba Biswal, Ananda Biswal & Sama Biswal(deceased father of petitioner No.1 and grandfather of petitioner No.2 & 3) son of Dharamu Biswal. After Settlement operation, the Hal ROR published in the year 1979 got recorded in the name of Madhusudan Biswal(Deceased father of OP No.6 & grandfather of OP No.1,2,3,4 & 5) son of Uchhaba Biswal bearing Khata No. 488, Plot No.2250 having area Ac 0.14 dec, Plot No.2333 area Ac 0.07 dec, Plot No.2334 area Ac 0.02 dec, Plot No.2506 area Ac 0.16 dec. As per the report of the Tahasildar, Naugaon, the Plot No.2250 having area Ac 0.14 dec , Plot No.2333 area Ac 0.07 dec, Plot No.2506 area Ac 0.16 dec are possessed by both the petitioners and Ops. but Plot No.2334 having area 0.02 dec is possessed by the petitioners only. Further, written notes of submission filed by the Counsel for the petitioners reveals that the order in “UNA/701” and “UNA/989” mistake is not a decree as there is appeal provisions for “UNA” mistake under section-12 (a) of the O.S & S Act 1958.

Considering the materials on record coupled with written notes of arguments of both the parties , the revision is allowed and the Tahasildar, Naugaon is directed to correct the ROR within 03(three) months from the date of receipt of order, only after proper field enquiry and verification of the related documents following due procedure of law.

SCHEDULE OF THE LAND

Mouza -Tentoi,P.S/ Tahasil –Naugaon, Dist.- Jagatsinghpur bearing HAL Khata No.488, Plot No.2250 area Ac 0.14 dec, Plot No.2333 area Ac 0.07 dec, Plot No.2334 area Ac 0.02 dec, Plot No.2506 area Ac 0.16 dec. corresponding to Sabik PlotNo. 2230, 2318, 2319, 2320, 2229, 2490, 2492, 2493.

Accordingly, the case stands disposed of.

Pronounced in the open Court on this day of 10th February, 2022.

S/d-

Land Reforms Commissioner

Consolidation Revision Petition No.24 / 2018

Petition U/s.37 (1) of the O.C.H & P.F.L Act, 1972

Decided on 26.04.2022

(Order by Smt. Sanjita Das, O.A.S.(SS)
Land Reforms Commissioner,
Board of Revenue, Odisha, Cuttack)

Kedar Bhoi @ Das and another ... **Petitioners.**

-Vrs-

Sanei Bhoi ... **Opp. Party.**

Mr. B.C.Das	....	Adv. for the petitioners.
Mr. Ch. P.K. Mishra	...	Adv. for the Opp. Party.
Addl. Standing Counsel	...	For the State.

ORDER

This case was taken up today for hearing today following COVID-19 guideline.

Both the learned counsel for the petitioners, Opp. Party and State 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 Consolidation R.O.R. in their favour by deleting the name of Opp. Party.

Heard. In the course of hearing, the learned counsel for the petitioners contended to correct the R.O.R. in their favour by deleting the name of the Opp. Party as per Sabik R.O.R (1931) and on the basis of Panchyat Faisalaname. The scheduled land is situated in Mouza – Manguli, P.S./Tahasil/Dist.- Jagatsinghpur relating to Consolidation Khata No.100, Non-consolidable Plot No.657, Ac.0.20 dec. corresponding to Hal Settlement Khata No.105, Plot No.622, Ac.0.20 dec. Further, corresponding to Sabik (1931) Settlement Khata No.175, Plot No.496, Ac.0.23 dec. The learned counsel also submitted that the father of the petitioners Kelei Bhoi acquired the scheduled land by virtue of RSD No.2213 dt.30.04.1926. Accordingly, the R.O.R. published in the year 1931 during Settlement operation stood recorded in the name of Kelei Bhoi, when the sole Opp. Party was not even born nor his mother was married to Chaitanya Das the father of the Kelei Bhoi. But the R.O.R. published in year 1982 and in the year 1991 during Settlement and Consolidation operation respectively the scheduled land was recorded jointly in the name of father of the petitioners along with Opp. Party. For which Kelei Bhoi filed Objection Case No.693/323 u/s 9(3) of the OCH & PFL Act, 1972 for correction of the R.O.R. by deleting the name of the Opp. Party. But the said case was dismissed on the ground

of maintainability as the Consolidation authority had no jurisdiction to decide the right, title, interest over non-consolidable land. Thereafter, Kelei Bhoi, the father of the petitioner filed the Consolidation Revision Case u/s 37(1) of the OCH & PFL Act, 1972 before the Commissioner, Consolidation, Odisha, Cuttack and the same was remanded to Consolidation Officer, Balia for fresh adjudication. The Consolidation Officer, Balia vide order dtd.30.05.2002 allowed the case in recording the scheduled property exclusively in favour of the father of the petitioner. Against such order, the Opp. Party preferred appeal before the Deputy Director, Consolidation Range –II, Cuttack and the appeal was allowed vide Order dt.28.02.2003. The petitioners being aggrieved by the order of the Deputy Director, Consolidation Range – II, Cuttack preferred Consolidation Revision No.63 of 2004 u/s 36 of the OCH & PFL Act, 1972 before the Commissioner, Consolidation, Cuttack and the same was dismissed on default. When the Consolidation R.O.R. was finally published, the petitioner finding no other alternative remedies filed this revision u/s 37(1) of the said Act. He further submitted that the scheduled land was recorded in favour of the father of the petitioner exclusively in 1931 Settlement R.O.R., if the same was incorrect the Opp. Party never challenged the same before the Commissioner, Land Records & Settlement within one year of its final publication or within 03 years before the Civil Court. The law is well settled by the Apex Court, *“that any order passed between the parties if not challenged in higher forum, the said order assumes finality as reported in A.I.R. 1996 (S.C) 906.”* But after 31 years it was recorded jointly in 1982 Settlement R.O.R., in this respect the Hon’ble High Court of Orissa is of the opinion that *“ Settlement entries - Do not create or extinguish any title as reported in Vol. 55(1983)CLT (Notes-2)3.* The father of the petitioners categorically challenged the Hal Settlement ROR published on 1982 and has never given consent to record the property jointly with the Opp. Party and *further* the title of the suit property cannot be passed to the opposite party in absence of any registered document. The said dispute between both the parties was resolved by “Panchayat Faisalanama”, dated 15.05.1994. The law is well settled u/s.58 of the Evidence Act that the facts admitted need not be proved. It is held by their Lordships of Hon’ble Supreme Court that *“the Court can base its decision on the admission of the parties as reported in AIR 1965(SC)-364.”* The Counsel for the petitioner also filed an additional Written Note of submission wherein he placed reliance on the point of limitation that the land purchased by Kelei Bhoi was recorded in his favour in 1931 Settlement R.O.R and the same was not challenged in any fora within the period of limitation for which the entries is final and conclusive. Besides the above, he pleaded that u/s.90 of Indian Evidence Act the documents which is 30 years old is to be considered proper, the court may presume that the signature and every other part of such document is correct and prayed to allow this revision.

In reply to the submission of the learned Counsel for the petitioners, the learned Counsel for the Opp. Party submitted that the petitioners have filed this revision challenging the order, dated 28.02.2003 passed by the Deputy Director,

Consolidation, Range-II, Cuttack in Consolidation Appeal No.30 / 2002 by setting aside the order, dated 30.05.2002 passed by the Consolidation Officer, Balia. The petitioners have prayed to record the scheduled land in their favour as the same was exclusively purchased by their father and as per the R.O.R. published in 1930 Settlement. The case of the Opp. Party relating to Consolidation Khata No.100, Plot No.657, Ac.0.20 dec. is a homestead land and house of both the parties are situated on it. In both the Settlement and Consolidation R.O.R. published in the year 1982 and 1991 respectively the scheduled land is recorded both in the names of Kelei Bhoi and Sanei Bhoi on the basis of consent given by Kelei Bhoi in Yadast No.192. Thereafter, Sanei Bhoi filed Revision Case No.1307 of 1989 before the Director, Consolidation to separate his eight annas share. The Director, Consolidation remanded the case to the Consolidation Officer for fresh adjudication of the matter. The Consolidation Officer vide Order dtd.05.02.1990 recorded the scheduled land with eight annas share each of both the parties. But the said order has not been challenged by the petitioners in any higher fora. By suppressing the fact the petitioner has filed the Revision Case No.831/1990 u/s 37(1) before the Commissioner, Consolidation, Cuttack. The Commissioner, Consolidation after hearing remanded the same to the Consolidation Officer for proper adjudication. The Consolidation Officer passed order dt.05.02.1990 in favour of father of the petitioners and Opp. Party i.e. eight annas share each. Being aggrieved by the order of the Consolidation Officer, the petitioners have preferred appeal before the Deputy Director, Consolidation and same was allowed. The Counsel for Opp. Party further pleaded that recording of 1930 R.O.R exclusively in the name of Kelei Bhoi cannot be presumed that it is the sole property of Kelei Bhoi as per the decision reported *in 1975(I) CWR 268 at page 274(Para-7)*. Criminal Misc. Case No. 117/2001 U/s.144 of Cr.P.C filed by the present petitioner No.2 has been dropped by the Executive Magistrate, Jagatsinghpur as the Opp. Party has their house over the suit property. The present revision is barred by resjudicata as the order passed by the Consolidation Officer, dated 05.02.1990 in R.R.C Case No.1307/1989 has not been challenged. In his additional written submission he has vehemently opposed the preparation of Panchayat Faisalanama and stated that the same should be proved as per Civil Procedure Code and Evidence Act , as per Rule 3 of O.C.H & P.F.L Rules, 1973 and filed the citation reported in *AIR 1989(Patna) page-66*, and prayed to dismiss the revision.

Went through the contention of the petition, report of the Addl. Sub-Collector, Jagatsinghpur received vide letter No.395, dated 14.12.2021, documents, Written Note of Submissions along with Addl. Written Note of Submission filed by both the parties.

On perusal of the case record, it is revealed that both the parties have admitted that the land in question was purchased by Kelei Bhoi, S/o Chaitan Bhoi from Sadei Behera, vide Regd. Sale Deed No.2213, dated 30.04.1926, basing on which name of Kelei Bhoi was exclusively recorded in 1931 Settlement R.O.R vide

Khata No.175. The real dispute between the parties arises on the correctness of R.O.R published in the year 1982 in the names of Kelei Bhoi and Sanei Bhoi, Sons of Chaitan Bhoi and subsequently in the hal R.O.R published in the year 1991 during Consolidation operation. The Opp, Party though submitted that the R.O.R published in the year 1982 is on the basis of consent given by Kelei Bhoi in Yadast No.192 but no materials / records to this effect has been adduced. In absence of the valid document the correctness of R.O.R published in 1982 can't be justified. So, the pleading of Opp. Party as the consent given by Kelei Bhoi in Yadasta No.192 appears misleading and false, hence unjustified. Since the preparation of 1982 Settlement R.O.R. in the name of Sanei Bhoi is not correct and genuine, the subsequent R.O.R published in the year 1991 by the Consolidation Authorities following the said R.O.R can't be construed as correct and genuine. Though the matter has been raised in different fora of Consolidation but the present revision is filed after final publication of R.O.R in the year 1991 challenging the preparation of Consolidation R.O.R, which necessarily includes all the orders passed by the Consolidation authorities. While deciding the matter, this Court placed reliance upon the flow of title which shows that originally the land belongs to Sadei Behera who transferred the same to Kelei Bhoi vide Regd. Sale Deed bearing No.2213, dt. 30.04.1926, the deceased father of the present petitioners in the year 1926 and the same has been recorded in 1931 Settlement R.O.R in favour of Kelei Bhoi. But strangely the name of Kelei Bhoi and Sanei Bhoi has been jointly recorded in the 1982 Settlement R.O.R without any basis which creates bonafide doubt and confusion. Because at the time of publication of R.O.R. in 1931 in the name of Kelei Bhoi during Settlement operation, the Opp. Party was not even born nor his mother was married to Chaitanya Das, the father of the Kelei Bhoi. The argument advanced by the Opp. Party regarding the purchase of the property in the year 1926 in the name of Keli Bhoi out of joint family income is out of the place and without any evidence on record. Only on recoding of the name of Sanei Bhoi in the 1982 Settlement R.O.R, cannot simply justify that the said Kelei Bhoi put the suit land voluntarily to the common stock for common use by abandoning his separate claim over it. It is also settled principle of law that the Settlement R.O.R published under O.S & S Act, 1958 does not create or extinguish the title. Further, the findings of Consolidation Officer, Balia in R.P.No.1307/89 revealed that the present petitioners have not produced the Sale Deed of the year 1926 before the Consolidation Officer. In absence of the said Sale Deed, Consolidation Officer allowed the claim of the present Opp. Party but not basing upon the statement of Yadast No.192. Hence, the same does not come under the purview of resjudicata. The dispute between both the parties was resolved by "Panchayat Faisalanama", dated 15.05.1994. One of the Panchayat Samiti, members namely Sri Rabindra Kumar Sahoo by filing an affidavit, dated 29.11.2021 has stated that the meeting held on 15.05.1994 rejected the claim of the Sanei Bhoi and accordingly Sanei Bhoi also put his thumb impression on the said Faisalanama. As there is no evidence on record to show that the scheduled property was acquired out of the joint family fund, the prayer of the petitioners to record the scheduled land in their favour is

genuine. Since, there is no scope for the Tahasildar to correct the Consolidation R.OR, the petitioners have prayed before this Court to correct the same on the basis of the R.O.R, Regd. Sale Deed and record the scheduled land in their favour.

Keeping this in view, the revision is allowed and Tahasildar, Jagatsinghpur is directed to correct the Hal consolidation R.O.R within three months on receipt of this order, only after proper field enquiry and verification of related documents, following due procedure of law.

Accordingly, the case stands disposed of.

SCHEDULE OF THE LAND

Mouza – Manguli, P.S./Tahasil/Dist.- Jagatsinghpur, Consolidation Khata No.100, Non-consolidable Plot No.657, Ac.0.20 dec. corresponding to Hal Settlement(1982) Khata No.105, Plot No.622, Ac.0.20 dec, further, corresponding to Sabik (1931) Settlement Khata No.175, Plot No.496, Ac.0.23 dec.

Pronounced in the open Court on this day of 26th April, 2022.

S/d-

Land Reforms Commissioner

Settlement Revision Petition No.3861/1993)

Decided on 05.01.2022

(Order by Smt. Jayanti Singh, OAS, (SS)
Commissioner, Consolidation,
Board of Revenue, Odisha, Cuttack)

Ramesh Chandra Rout **Petitioner**

-Versus-

State **Opp. Party**

Counsel for the Petitioner	.... ..	Mr. M.K. Mohanty
Counsel for the O.P. No.1	.... ..	ASC

ORDER

In Revision Petition No.3861/1993 filed U/s 15 (b) of the O.S. & S Act, 1958 (shortly called as the Act) relating to Mouza-Sankhapur, PS/Tahasil-Pattamundai, Dist-Kendrapara the Petitioner has filed this Revision for correction of Hal ROR under Hal khata No.100, Hal plot No.314 & 315 corresponding to Sabik khata No.36, Sabik plot No.529 area Ac.0.10 dec.

The learned Counsel for the petitioner and Addl. Standing Counsel for the State were present on the date of hearing. Heard.

The fact of the case is that one Champa Dei W/o-Gopinath Mohanty was the owner of Sabik plot No.529 khata No.36 measuring an area of Ac.0.10 dec.,

Kisam-Gharabari of Mouza-Sankhapur, P.S.-Pattamundai, the status of the land was stitiban in the ROR published on 29.04.1930. Champa Dei died leaving behind her only son Radha Krushna Mohanty who died in the year 1961 leaving behind his son Golekha Mohanty and two daughters namely Narayani and Laxmi. After abolition of estate, in the Tenant ledgers the name of Champa Dei was recorded in the Stitiban status. In the Hal Settlement Operation the said Sabik plot corresponding to Hal Plot No,314 area Ac.0.04 dec. and 315 area Ac.0.64 dec. Under Hal Khata No.100 of Mouza-Sankhapur were recorded in the name of State Govt. under Anabadi khata and it was published on 26.12.1986. Golekha Chandra Mohanty, Narayani and Laxmi as legal heirs of Champa Dei could not take steps for correction of the said ROR but sold the suit land to Ramesh Chandra Rout vide Regd. Sale Deed No.2119 dt.26.11.1993. After purchasing the land Ramesh Chandra Rout filed R.P. Case No.3861/1993 for correction of Hal ROR and to record the land in his name.

In R.P. Case No.3861/1993 Commissioner Land Records and Settlement in his order dated 26.12.1994 had passed an order as per the report of ASO dt.02.09.1994 that the Sabik record was in the name of Champa Dei and subsequently the Jamabandi No.40 was opened in favour of Srimati Bewa, the basis of which was not known. The Hal record was prepared in favour of Govt. of Odisha in Abadjogya Anabadi Status as the suit land was taken by the Ex-Land Lord in an auction and it was under the possession of the Balijhari UGME School. The Case was remanded to the Tahasildar, Pattamundai to enquire in to the flow of title to the vendors in the Regd. Sale Deed No.2119 dt.26.11.1993 and subsequent transfer by the Ex-Land Lord, if any and to cause a field enquiry with a notice to the School. The Tahasildar was instructed to dispose of the Case as per law within a period of four months of receipt of the order.

Being aggrieved by the order of the Commissioner dt.26.04.1996 the petitioner filed OJC No.1315 of 1995 before the Hon'ble High Court and the Hon'ble Court disposed of the writ petition directing the Revisional Authority to re-hear and dispose of the Revision Petition in accordance with law and in the light of the observation made in judgement as under;

(i) The Tahasildar will make an enquiry and submit the report to the Revisional Authority within a period of two months from the date of communication of the order.

(ii) The Revisional Authority will give appropriate opportunities to the parties interested to adduce evidence in support of their respective cases.

(iii) The Revisional Authority will dispose of the Revision Case after considering the relevant materials on record within a period of three months from the date of submission of report by the Tahasildar.

As the Revision Petition was not disposed of for long time, the petitioner filed W.P. (C) No.11476/2020 before the Hon'ble High Court praying for a direction to dispose of the R.P. Case as per the order passed in OJC No.1315 of 1995. The

Hon'ble Court vide order dt.26.06.2020 has directed the Revisional Authority to dispose of the said revision petition as expeditiously as possible within a period of three months from the date of communication of the order. Due to non-compliance of the order by the revision court, the petitioner filed Contempt Case No.5549/20.

As per order passed in OJC No.1315/1995, Tahasildar, Pattamundai was asked to submit his report in connection with R.P. Case No.3861/1993, accordingly he had submitted his report vide Letter No.5289 dt.31.12.2020, wherein he stated that the disputed Hal plots situated in the campus of the Jagannath Bidyapitha, Balijhari and one MDM kitchen house, one tube well, Toilet (Boys & Girls), School Main Gate, Cycle Stand, school veranda have been constructed over these disputed plots and play ground have been situated over these plots.

In the subsequent field enquiry report dt.28.09.2001 in connection to W.P. (C) No.18765/2021, Tahasildar, Pattamundai has reported that the plot No.314 Ac.0.040 dec. and 315 Ac.0.640 dec. under khata No.100 now encroached un-authorizely by Jagannath Bidyapitha, Balijhari School.

The petitioner has submitted his objection to both the reports of the Tahasildar. He stated that the report of the Tahasildar differs from the report of the Amin dt.13.06.2017. The Tahasildar has not stated anything about the basis how the stitiban land recorded in the name of Champa Dei, W/o-Gopinath Mohanty in the Sabik Settlement record has been recorded in the name of Govt. of Odisha under Abadjogya Anabadi khata in the year 1997. Tahasildar, Pattamundai was directed to submit his report about the basis on which Champa Dei or her successors was/were ejected by the land lord after obtaining a decree from the competent authority but he is silent on this matter.

The petitioner has filed the following documents in support of his claim

- (i) Copy of Sabik ROR of khata No.36.
- (ii) Copy of RSD No.2119 dt.26.11.1993.
- (iii) Copy of Judgement dt.14.01.1997 passed in OJC No.1315 of 1995.
- (iv) A copy of order dt.16.06.2020 in W.P. (C) No.11476 of 2020.
- (v) A copy of Memo No.34 dt.09.04.2016 of the Headmaster of Jagannath Bidyapitha under RTI Act.
- (vi) Copy of the Amin report dt.13.06.2017.
- (vii) Copy of ROR No.3 of Mouza-Balijhari.
- (viii) Copy of ROR No.102 of Mouza-Sankhapur.
- (ix) Copy of order dt.18.04.1996 passed in OJC No.3279 of 1996.

Perused all the documents submitted by the petitioner.

First of all, it is to be examined the flow of occupancy right of plot No.529, area Ac.0.10 dec. under khata No.36 of Mouza-Sankhapur. The Sabik ROR shows that the said land is a homestead land recorded in the name of one Champa Dei, W/o-Gopinath Mohanty in sthitiban status in the Sabik Settlement of year 1930.

As per the petitioner, in the Hal Settlement the area of the Sabik plot No.529 area Ac.0.10 dec has been reduced to Ac.0.04 dec. In the corresponding Hal plot No.314 and the rest area of Ac.0.06 dec. was included in Hal plot No.315 under Hal khata No.100 which is illegal. As per provision of law stated in the ground No. 3 area of the land should be remained intact and accordingly, the suit plot should be corrected as Ac.0.10 dec. The petitioner challenged the illegal recording of his Stitiban Homestead land in the name of the Govt. of Odisha by the Settlement authorities under Anabadi khata.

Perused the Hal ROR It is revealed that area of Hal Plot No.314 has been reduced to Ac.0.04 dec in comparison to area of Sabik Plot No.529. The yadast of Hal settlement says that the Hal record has been prepared in favour of the Govt. of Odisha in Abadjogya Anabadi status as the suit land was taken by the Ex-land lord in an auction and currently it is under the possession of the Balijhari UGME School.

In this context, gone through the enquiry report submitted by the Tahasildar, Pattamundai on dt.22.02.21 & 08.03.21, but the reports are silent about the conversion of land from stitiban status to a Govt. land. In the tenant ledger after abolition of estate the name of Champa Dei was recorded in Stitiban status and her legal heirs have paid rent up to the year, 1987. Hence, in absence of any documentary evidence, it is evident that the Hal Settlement Authority had recorded wrongly in the name of Govt. under Anabadi khata.

The Hal record of Right was published on 26.12.1996, it is clear that Golekha Chandra Mohanty and his two sisters, all are legal heirs of Champa Dei had sold the suit land vide Regd. Sale Deed No.2119 dt.26.11.1993. It is found that the Sale Deed was executed before publication of Hal ROR. Hence, as per rule U/s 15 (b) of O.S. & S Act.1958 the ROR of the suit land is to be revised.

Hence, the Tahasildar, Pattamundai is directed to correct the Hal R.O.R by increasing the area of Hal Plot No.314 from Ac.0.04 dec. to Ac.0.10 dec. by reducing area of Ac.0.06 dec. from Hal Plot No.315 (adjacent to Hal Plot No.314) of Khata No.100 and record the same in the name of Ramesh Ch. Rout S/O Benudhar Rout of Village-Chakibanka, P.O-Sansarpal, P.S-Rajnagar, District- Kendrapada in stitiban status in a separate Khata. Accordingly, the area of Hal Plot No.315 is to be reduced from Ac.0.64 dec. to Ac.0.58 dec. and Hal plot No.315, Ac.0.58 dec. instead of Ac.0.64 dec. is to be kept in the Government Abadajogya Anabadi Hal Khata No.100 and also Map should be corrected within three months of receipt of this order.

The lease orders corresponding to the suit land are hereby quashed.

Pronounced in the court today i.e. 5th January, 2022.

Sd/-
Commissioner, Consolidation,
Odisha, Cuttack

Settlement Revision Petition No. 24 / 2017

Decided on 31.12.2021

(Order by Sri Pratap Chandra Rout, OAS (SS)
Commissioner Consolidation, Bhubaneswar)

Shree Jagannath Mahaprabhu Bije, Puri ... **Petitioner**

-Versus-

Prafula Bhoi & others **Opp. Parties**

Mr. A.P.Mishra ... Advocate for the petitioner
Mr. B.P. Pattnaik ... Advocate for the O.Ps
Mr. B.C. Mohanty ... Learned 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 impugned Record of Rights in respect of Hal khata No. 831, Hal plot No. 1312 of village- Sankarpur and to delete the name of O.P No.1 to 4 as marfatdar of Shree Jagannath Mahaprabhu Bije,Puri.

The Land Schedule involved in this case is given below :

Mouza-Sankarpur, P.S- Puri Sadar, P.S.No.93, Tahasil- Puri Sadar, Dist- Puri, Hal Khata No. 831(Consolidation), Plot No.1312, Area Ac2.000dec, Sabik Khata No.53(Settlement 1977) Plot No.247

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. 831 plot No. 1312 Ac2.000dec corresponding to 1977 Settlement khata No. 53 plot No. 247 . In 1977 Record of Rights (ROR) the case land stands recorded in the name of Sri Jagannath Mahaprabhu Bije, Puri maftat Sankaracharya Bharat Bhusan Tirtha Swami Guru Madhusudan Tirtha Swami. The Learned Counsel contends that the Land has been endowed to Lord Jagannath and the recorded marfatdar is a mere Manager. After enactment of 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 Record

of Rights the case land has been recorded in the name of the O.P No.1 to 4 as marfatdar of Shree Jagannath Mahaprabhu Bije, Puri which is claimed illegal with a prayer to pass order to record the name of the petitioner Deity Shree Jagannath Mahaprabhu Bije, Puri marfat Shree Jagannath Temple Managing Committee.

During the time of hearing the Opposite parties appeared through their Counsel and argued that during preparation of Consolidation Records the Lower Consolidation authorities have prepared the Land Records and final Record of Rights in favour of the Opp. Parties and supply the extracts of Land Records and hal Record of Rights in their favour and prayed to dismiss the revision. But the Opp. Parties did not submit any document or written counter/ written note of submission in support of their claim.

The Learned Counsel for the petitioner has submitted that in sabik (1977 Settlement) Record of Rights the suit land stands recorded in favour of Shree Jagannath Mahaprabhu, Bije Puri marfat Bharat Bhusan Tirtha Swami Guru Madhusudan Tirtha Swami, Sankaracharya Matha, Puri. The suit land is absolute Endowment of Lord Jagannath Mahaprabhu Bije, Puri and recorded marfatdar is a mere Manager having no personal and pecuniary interest over the same. After enactment of Shree Jagannath Temple Act 1954, the management of all Endowments of Shree Jagannath Mahaprabhu, Bije, Puri vest with Shree Jagannath Temple Managing Committee and the erstwhile marfatdars have lost their right to manage the property endowed in favour of Shree Jagannath Mahaprabhu, Bije, Puri.

I have considered the revival 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.

The Learned Counsel also submitted that the petitioner is absolute owner in possession in respect of the suit land but during preparation of Hal Consolidation record the lower Consolidation Authorities illegally recorded the suit land in favour of the O.Ps as marfatdar of Deity Shree Jagannath Mahaprabhu , Bije, Puri . In support of the submission the Learned Counsel for the petitioner places his reliance in the case of Administrator Shree Jagannath Temple Managing Committee- Vrs- Sidha Matha and others reported in 2016(VOL-1)OLR(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 Shree Jagannath Temple Act, 1954, the Endowments of lord Jagannath vested in the Shree Jagannath Temple Managing Committee. The Hon'ble Supreme Court in aforesaid decision reported in 2016 Vol(1) O.L.R (SC)-209 have clearly held that, the Endowments of lord Jagannath vested in Temple Managing Committee as such recording of the name of the Opp. Parties in Hal

Record of Rights as marfatdar of Shree Jagannath Mahaprabhu Bije, Puri is against the Principale laid down U/S 5 of the Shree Jagannath Temple Act 1954.

In a decision reported in 1992(II) O.L.R-362 in case of Sarbeswar Rath and another vrs Consolidation Officer and others their lordship of our own High Court held that -

“It is not the law that merely because somebody has obtained a sale deed he has got title to the property as vendee- Deed may be void for want of title of the vender. In such a case deed may be ignored as not worth the paper written on”. The Learned Counsel for the petitioner have submitted that the Settlement Authorities have recorded the suit land under sabik khata No.53 in favour of Shree Jagannath Mahaprabhu Bije, Puri and the said Record of Rights of 1977 have never been challenged before the concerned Authorities within the stipulated period of limitation or their after.

In the present case the Opp.Parties have no manner of any right, title and interest in respect of the suit land to be recorded as Marfatdar of Deity Shree Jagannath Mahaprabhu Bije, Puri but the lower Consolidation Authorities without proper inquiry, illegally and erroneously recorded the suit land in favour of the Opp.Parties as Marfatdar of Deity Shree Jagannath Mahaprabhu Bije, Puri . The settle principle of law is that-

“Land belonging to the deity cannot be subjected to alienation in violation of the statutory requirement. The deity requires protection from its marfatdar- if they fail to do so, because deity is a perpetual/minor and disable person, it is the duty of the Court to protect the interest of the deity”.

In a decision reported in 2012 Vol-I OJR-275 in a case of Deben Sethi Vs State of Orissa and others their lordship of our own High Court have held as follows:

“Debottar property- Jagannath Temple property- Land belonging to the deity which is a juristic perpetual minor/ and disabled person cannot be subject to alienation in violation of statutory requirement- it requires protection- 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 and interest in the property- Right, title and interest over the land/property belonging to Lord Jagannath always vests with the deity”.

The Lower Consolidation Authorities without taking into consideration facts of flow of title in favour of the Opp.Parties and the sabik Record of Rights which is prepared and published in favour of Shree Jagannath Mahaprabhu Bije, Puri has illegally recorded the land of lord Jagannath Mahaprabhu in favour of Opp.Parties as Marfatdar of Deity Shree Jagannath Mahaprabhu Bije, Puri.

It has been observed in the case of Lokesh Patro 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 or 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.

It is a fact that the suit plot No. 247 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. But the hal record of rights is prepared in favour of the Opp .Parties as marfatdar of Shree Jagannath Mahaprabhu Bijee, Puri. The Opp. Parties have not filed single scrap of paper in support of their claim. As per Section-5 of Shree Jagannath Temple Act 1954 Endowment of Lord Jagannath vest with Shree Jagannath Temple Managing Committee as per Section-33 of the said Act, the Committee is entitled to being in possession of the same. As such non except Shree Jagannath Temple Managing Committee can represent Shree Jagannath Mahaprabhu Bijee, Puri.

In above view of the matter the claim of the petitioner in the present case is allowed, the Record of Rights prepared by the lower Consolidation authorities in favour of the Opp. Parties as marfatdar of Shree Jagannath Mahaprabhu Bijee , Puri is set-aside. The case land is ordered to be recorded absolutely in the name of Shree Jagannath Mahaprabhu Bijee, Puri marfat Jagannath Temple Managing Committee.

Since Consolidation Operation in the village has been completed and RORs distributed, the Tahasildar, Puri is directed for correction of record in favour of Shree Jagannath Mahaprabhu Bijee, Puri marfat Temple Managing Committee in respect of the suit land.

Order Pronounced in the open Court on this day the 31st December, 2021.

Sd/-
Commissioner Consolidation,
Bhubaneswar

Revision Case No. 59 / 2019**Decided on 28.01.2022**(Order by Sri Pratap Chandra Rout, OAS (SS)
Commissioner Consolidation, Bhubaneswar)Prasanta Kumar Sahoo ... **Petitioner**

-Vrs-

Smaran Kumar Sahoo & others ... **Opp. Parties**Suman Priti Darshini & others... **Proforma Opp. Parties**

Mr. D.K. Tripathy	...	Counsel for the petitioner
Mr.P.K.Jena	...	Counsel for the O.P No. 1 to 3
Mr. A.C. Rout	...	Counsel for the Pro. O.P.4,5,6

ORDER

Mouza- Gop, P.S- Gop, Tahasil- Gop, Dist- Puri

Hal/ L.R/Sabik Khata Nos.	Plot Numbers	Area
Hal khata No.1626	Plot No.2860	Ac0.10dec
	Plot No.3094	Ac0.08dec
L.R khata No.1138	Plot No.3620	Ac0.21dec
	Plot No.3684	Ac0.13dec
Sabik Khata.No.706	Plot No.3327	Ac0.22dec
Sabik khata No.58	Plot No.3342(P)	Ac0.14dec

Learned Counsels for the petitioner, O.P No. 1 to 3 and proforma Opp. Parties are present. Heard the Learned Counsel for both the sides at length. This case has been filed u/s 37(1) of the O.C.H & P.F.L Act, 1972.

The prayer in this revision is to record the name of the Petitioner and proforma Opp. Parties alongwith the Opp. Parties in respect of suit plot No. 2860 Ac0.10dec and plot No. 3094 Ac0.08dec to the tune of 50% share recorded in khata No. 1626 relating to village-Gop, P.S-Gop, Dist-Puri.

The brief history of the case is that the corresponding sabik plot No.3327 Ac0.22dec and plot No.3342(P) Ac0.14dec of the suit hal plots were purchased by Banamali Sahoo, the predecessor of O.Ps alongwith one Ratnakar sahuo (Brother of another branch) vide RSD No.3288 dt.15.10.1949 and RSD No.10652 dtd.1.12.1964, RSD No.10656 dt.1.12.1964, RSD No.10678 dt.3.12.1964. But in the consolidation operation, Ratnakar Sahoo separated his share on the consent of Banamali Sahoo and accordingly separate plot No.2859 Ac0.10dec, 3095 Ac0.04dec has been prepared. The petitioner has not challenged the recording prepared in

favour of Ratnakar Sahoo or his legal heirs. The petitioner has claimed that the corresponding sabik plots of the suit plots were purchased by Banamali Sahoo (predecessor of O.Ps) in the year 1949 and 1964 during jointness of their family being manager of the joint family and elder brother of Jayakrushna Sahoo. The petitioner has claimed that as per the provision of law the property purchased during jointness should be treated as joint family property and hence the suit plots are required to be recorded jointly in favour of the petitioner, O.Ps and proforma O.Ps having 50% share each.

Learned Counsel for the petitioner, has averred that a partition was effected between Banamali Sahoo and Jayakrushna Sahoo having 50% share each vide orders passed in 15(1) Case No.2822/88. From the certified copy of the 15(1) case No. 2822/88 it is revealed that seven nos. cases were clubbed up together with case No. 2822/88 for an analogous hearing and a common order was passed. There was no prayer for partition in any of the cases. Moreover, the partition was effected u/s 15(1) of the Act which is without jurisdiction and as such a nullity. The wrong orders of the above case was also set aside vide order in Consolidation R.C No.952/91 . In absence of any regular partition, all the family property is still now joint. The fact of jointness is also admitted by O.P No.1 to 3 in C.S. No.173/19 filed in the court of Civil Judge(Sr. Division), Nimapara mentioned in para-5 (page-4) of the plaint. The Learned Counsel has cited couple of decisions of Hon'ble High Court, Orissa passed in 1st Appeal No. 258/1969 decided on dt.20.12.1977 and in 2nd appeal No. 269/1972 decided on dt.12.11.1975 in which it has been held that if there is a joint family which possess a nucleus of joint family, the property acquired by a member of that family is presumed to be joint family property. To prove the nucleus, learned counsel produced a Xerox copy of partition deed executed in the year 1946, in which an area of Ac90.50dec land fell to the share of Nabaghana Sahoo (grandfather of both the parties). Learned Counsel further emphasizes that Doctrine of Blending clearly shows that there are judicial pronouncements that whatever may be the extent of contribution of the acquiring member himself out of his self acquisition fund, if he takes aid of any portion of joint or ancestral property in acquiring the property whatever small the aid may be, the property so acquired assumes the character of joint family property and cannot be claimed by him as self acquisition.

The Learned counsel cited another decision of Hon'ble Supreme Court decided on dt.6.9.2017 in Civil Appeal No. 11220/2017 in which it has been held that all the assets pertaining to Hindu undivided family are to be treated as joint family property unless contrary proved as self acquisition of property through valid documents. Both the decisions of Hon'ble Supreme Court and Hon'ble High Court are results of analysis of Article 23 of Mulla Hindu Law (22nd Edition).

The Learned Counsel also produced two un-registered written family arrangements with signature of parties executed in the year 2000 and 2015 for some of the disputed valuable homestead properties alongwith these two case

plots specifying ½ share of both the parties. The Learned counsel has averred that it is a settled principle that a family settlement/arrangement even without registration can be used as corroborative evidence and explains the conduct of the parties.

The Learned Counsel concluded that, basing on the above pleadings, the suit plots were purchased by Banamali Sahoo during existence of joint family having sufficient nucleus. As such, the suit plots are to be assumed as joint family property and need to be recorded jointly in favour of petitioner, O.Ps and proforma O.Ps and the recording by the Consolidation authorities is violation of principles of law.

The Learned Counsel for the petitioner put forth that, partition order passed in 15(1) case No. 2822/88 is a void one and further it has been set-aside by orders passed by this Court in R.C. No. 952/91. But basing on the wrong orders, separate records have been prepared for consolidable land. This Court has suo motu jurisdiction conferred under section 37(1) of the Consolidation Act to rectify the error at any time when it comes to his notice. In the result, Commissioner may utilize his power to pass an order to bring the chakas into joint khata deleting from separate khata which have been recorded in khata No. 1626, 436, 138, 807. Learned Counsel for the proforma O.Ps. support the averments made by the petitioner.

01. The Learned Counsel for O.P No.1 to 3 has objected the pleading of the learned counsel for the petitioner in different angles. The objections of O.P No.1 to 3 mainly on three points.

(i) The first point raised is inordinate delay in filing the revision.

In this regard, the learned Counsel for the petitioner has contended that no time has been fixed in section 37(1) of the OCH & PFL Act to file a revision. He has quoted two decisions of Hon'ble High Court, Orissa in which it has been held that ground of long delay should not prevent from seeking redressal by way of revision under the Act. It is also held that a forum has to be available to a person who was to be aggrieved after section 41(1) notification has been issued with any order having been passed or anything having been done during the Consolidation operation affecting his right, title and interest. So this aspect objected by learned Counsel for O.P no.1 to 3 is not acceptable.

(ii) The second point raised is that when a sale/transaction is in

Challenge, Consolidation Court lacks jurisdiction to adjudicate the matter for which quoted a citation.

On this point, the learned Counsel for the petitioner has clarified that the petitioner has never challenged the sale/transactions executed in the year 1949, 1964 by Banamali Sahoo (the predecessors of O.P No.1 to 3). Rather the petitioner claims title through him. So, the question of lack of jurisdiction of this Consolidation Court does not arise.

(iii) The third point raised is that suppression of material fact that

the purchasers of one of the suit plot No. 3094 Ac0.08dec have not been impleaded by the petitioner for which not entitled to get any relief as prayed for and quoted a citation for the purpose.

The Learned Counsel for the petitioner in this regard has mentioned that O.P No.1 to 3 knowingly alienated the suit land on 10.07.2019 in order to prevent the petitioner from his claim after filing of this revision on dt.02.07.2019. So the purchasers are neither necessary or proper parties to be impleaded. Rather, they will be treated as lis-pendens purchasers and as per section-52 of T.P. Act, the order of the Court will be binding on them. Hence citation of the Hon'ble High Court quoted by O.P No.1 to 3 is not applicable in this issue.

Considered the arguments advanced by the Learned Counsel of both the parties, examined the relied documents produced before the Court. Gone through the citations relied upon by the learned Counsels.

Verified the common orders passed in Case No. 2822/88 decided u/s 15(1) of the O.C.H & P.F.L Act, Section-14 of the said Act imposes a bar to decide the matter relating to right, title, interest and partition after completion of publication of records u/s 13(1) of the Act. As such, the partition made u/s 15(1) of the Act is without jurisdiction and hence a nullity. Moreover, the order of the case was set-aside by this Court in its order passed in R.C. No.952/91. In the result, in absence of any regular partition, all the properties of the family belong to both the parties either prepared in separate khata or in joint khata are considered to be their undivided ancestral property. The citations of Hon'ble High Court, the orders of which were passed in 1st Appeal No.258/1996 dt.20.12.1977, in 2nd Appeal No. 269/1972 dt.12.11.75 and orders of Hon'ble Supreme Court decided on dt.6.09.2017 in Civil Appeal No. 11220/2017 placed before this Court are befitting citations for the present case. The language of the said order is as follows " If there is a joint family which possesses a nucleus of joint family, the property acquired by a member of that family is presumed to be joint family property". Doctrine of Blending clearly shows that there are judicial pronouncements that whatever may be the extent of contribution of the acquiring member himself out of his self acquisition fund, if he takes aid of any portion of joint or ancestral property in acquiring the property whatever small the aid may be, the property so acquired assumes the character of joint family property and cannot be claimed by him as self acquisition.

Two unregistered written documents made in the year 2000 and 2015 show that the suit plots are equally divided between the parties on their consent.

On the above premises it is held that all the properties either recorded separately or jointly are presumed to be joint family properties of both the parties. Hence the suit plots purchased during jointness by Banamali Sahoo are also joint family property of both the parties and included in common hotch pot. Hence the case is allowed.

1. The Tahasildar, Gop is directed to record Hal Plot No. 2860 Ac0.10 dec., hal plot No.3094 Ac0.08dec in favour of petitioner and O.Ps alongwith proforma O.Ps deleting from khata No.1626
2. Record the chakas of both the parties in joint khata deleting from their separate khatas, which have been recorded in khata No.1626, 436, 138 and 807.

Pronounced the Order in the Open Court this day, the 28th January, 2022

Sd/-
Commissioner Consolidation,
Bhubaneswar

Consolidation Revision Case No. 114/2015

U/s 37(1) of OCH & PFL Act.1972

Decided on 15.11.2021

(Order by Smt. Sanjita Das, O.A.S.(SS)
Commissioner, Consolidation & Settlement,
Odisha, Bhubaneswar)

Samuel Bisoi and another **Petitioners**

-Vrs-

Sephali Bisoi and others **Opposite Parties**

Mr. N. K. Rath	...	Advocate for Petitioners.
Mr. P.K. Mohanty	...	Advocate for OP No.1 & 2
Mr.B.K. Samantaray	...	Addl. Standing Counsel for the State.

ORDER

This Case was taken up today for hearing following COVID-19 guidelines. The learned Counsel for the petitioners, Counsel for O.P.No.1 & 2 and Additional Standing Counsel for the State were present. The Opp. Parties No. 3 to 7 were absent on call at the time of hearing.

This revision petition was filed by the petitioners u/s.37(1) of the OCH & P.F.L Act, 1972 for correction of ROR as per purchase and by deleting sikim possession note from the ROR. During pendency of this revision the Opposite party No.1 Rabindra Bisoi expired on 29.09.2020, his legal heirs have been substituted as OP No.1 (a) to 1(c).

Heard. In the course of hearing, the Advocate for the petitioners contended that the ROR of the scheduled land be corrected as per purchase by their deceased father vide Regd. sale deed bearing No.2127 dtd.15.03.1978 and by deleting sikim note of possession from the remarks column. The scheduled land is situated in Mouza- Bhapur, P.S- Balipatana, Tahasil- Bhubaneswar, Dist- Khordha stands recorded in the name of the Daniel Rout and others vide Hal Khata No. 217, Chaka No.05, Plot No.1545, area Ac.0.54 dec. which corresponds to Sabik Khata No. 518, Plot No. 2176, area Ac.0.08 dec which corresponds to Sabik(1927) Khata No.391, Plot No.1383, Ac.0.53 dec,

On the other hand the learned Counsel appearing for O.P. No.1 & 2 submitted by filling written note of submission that the petitioners have prayed for filing the revision to delete the sikim possession note which is not applicable and also stated that without O.L.R. order the land has not been settled in favour of the petitioner as well as Opp. Parties. The petitioners have not mentioned the RSD No. and Sabik Khata No in the revision petition. On these defects the revision has no merit for consideration.

On verification of the case record, it is revealed that during Consolidation Operation the scheduled land stood recorded in the name of Daniel Rout the deceased father of O.P. No. 3 to 6 and husband of O.P. No.7 along with Gunanidhi Bisoi the deceased father of the petitioners. Originally, the scheduled land was the property of Ananta Patra S/o Nabin Patra, Baban Patra S/o Narayan Patra and Bhaka Patra & Dharamu Patra Sons of Gopal Patra and against the said plot Sikim note of possession was reflected in the remark column. The recorded tenants have partitioned the scheduled properties among themselves vide Regd. Partition Deed No.5101 dtd.22.09.1944 and subsequently one of the co-sharers Rajib Sahu S/o Bhaka Sahu had alienated measuring an area Ac.0.33 dec. from Sabik Plot No.1383 (Eastern side) in favour of Gunanidhi Bisoi the deceased father of petitioners. Further, another portion measuring area Ac.0.20 dec. was purchased by Basanta Rout D/o Daitari Rout from the said plot. Accordingly, the Consolidation authorities have correctly recorded the scheduled land in favour of the legal heirs of the purchasers. During pendency of this revision petitioners have filed a Civil Suit bearing C.S. No.8566/2015 before the learned Civil Judge, Bhubaneswar, in which O.P. No. 1 & 2 are the defendants. After hearing the suit the learned Civil Judge passed order dtd.03.12.2019 as follows-

"The suit be and the same is decreed on ex-parte against the defendants. The defendants are hereby restrain from interfering in the possession of the plaintiffs over the suit land till disposal of Consolidation Revision Case No.114/2015".

The petitioners being the legal heirs of the hal recorded tenants Gunanidhi Bisoi have prayed to record the scheduled land in their favour issuing separate R.O.R. by deleting sikim note of possession. "Since, the Consolidation Authorities have already taken into consideration the sale deeds on record and the name of the deceased father of the petitioners in the Hal R.O.R, allowing a separate R.O.R will create

fragmentation of Chaka land in the light of Sub-Section (1) of Section 34 of the O.C.H. & P.F.L. Act, 1972.

Section 34 (1) read as follows:

“No agricultural land in a locality shall be transferred or partitioned so as to create a fragment.”

In view of this, the revision merits no consideration, hence dismissed.

Accordingly the case stands disposed of.

Order pronounced in the open court on this day of 15th November 2021.

Sd/-

Commissioner Consolidation & Settlement,
Odisha, Bhubaneswar

Consolidation Revision Case No. 18 / 2016

U/S 37(1) of OCH & PFL Act.1972

Decided on 24.11.2021

(Order by Smt. Sanjita Das, O.A.S.(SS)
Commissioner, Consolidation & Settlement,
Odisha, Bhubaneswar)

Bhaskar Dixit **Petitioner**

-Vrs-

Raghunath Pradhan **Opposite Party**

Mr. P.K.Nayak ... Advocate for Petitioner.

Mr. B.K . Samantaray ... Addl. Standing Counsel for the State.

ORDER

This Case was taken up today for hearing following COVID-19 guidelines. The learned Counsel for the petitioner and Additional Standing Counsel for the State were present. The opposite Party was absent on call at the time of hearing.

Heard. In the course hearing, the Advocate for the petitioner contended that the scheduled land be recorded in the name of petitioner as per purchase by his deceased father vide Regd. Sale Deed bearing No. 4179 dt. 25.07.1973. The scheduled land is situated in Mouza- Sarakana, P.S./ Tahasil- Baliana, Dist- Khurda relating to Hal Khata No. 1119, Chaka No.554, Plot No. 2420, area Ac.0.020 dec. which corresponds to Sabik(1976) Khata No. 1032, Plot No. 1778, Ac.0.01 dec and Plot No.3738, Ac.0.02 dec further corresponds to Sabik(1927-28) Khata No.61, Plot No.2048.

On verification of the case record, it is revealed that originally the scheduled land belongs to Sudam Pradhan, Danei Pradhan, sons of Bada Anand Pradhan. The deceased father of the petitioner Banamali Dixit had purchased the scheduled

land from one Raghunath Pradhan, S/o Sudam Pradhan, the Sabik recorded tenant vide Regd. Sale Deed bearing No. 4179 dt.25.07.1973 measuring area Ac.0.04 ½ dec. out of Ac.0.09 dec. from Plot No.240 and Ac. 0.05 ½ dec. out of Ac.0.11 dec. from Plot No.2048 under Khata No.61 of 1927 Settlement R.O.R. Although, the petitioner is in possession of the scheduled land but the R.O.R. published in the year 1994 during Consolidation operation stood recorded in the name of the Sabik recorded tenant. In the course of hearing, the petitioner admitted in Paragraph 4 of the revision petition, that a water channel had passed through the plot prior to consolidation operation and the said plot has been acquired by Irrigation Department long back. But the Irrigation Department has not been impleaded as party in this revision. It is also not clear whether the compensation has been paid to the petitioner by the Irrigation Department. At the same time, petitioner is praying to record the said scheduled area of Ac.0.020 dec, in favour of him already acquired by Irrigation Department as stated. But no document has been adduced or relied upon to substantiate the same.

In view of this, the revision merits no consideration, hence dismissed.

Accordingly the case stands disposed of.

Order pronounced in the open court on this day of 24th November 2021.

Sd/-

Commissioner Consolidation & Settlement,
Odisha, Bhubaneswar

Consolidation Revision Case No. 62/2003

U/s 37(1) of OCH & PFL Act, 1972

Decided on 12.09.2022

(Order by Smt. Sanjita Das, O.A.S.(SS)
Commissioner, Consolidation & Settlement,
Odisha, Bhubaneswar)

Smt. Minakhi Jena ... **Petitioner**

-Vrs-

Tahasildar, Bhubaneswar and others ... **Opp. Parties.**

Mr. S.K.Samantaray ... Advocate for Petitioner.

Mr. B.K. Samantaray ... Addl. Standing Counsel for the State.

ORDER

As per direction of the Hon'ble High Court vide order dated 15.02.2022 passed in W.P(C) No.17100 of 2006 the Case was taken up today for hearing following COVID-19 guideline. Both the Learned Counsel for the petitioner and State were present.

This Revision case u/s.37(1) of the OCH & PFL Act 1972 has been filed by the petitioner assailing the legality and judicial propriety of the impugned order dated 23.09.2002 passed in W.L Case No.1042/1978 by the Sub-Collector, Bhubaneswar(O.P.NO.2) who cancelled the confirmation of the lease in favour of the petitioner which is improper, and therefore liable to be quashed.

In the instant case, lease was granted under the provisions of OGLS Act, 1962 vide W.L. Case No.1042/1978 measuring Ac.1.500 dec. The petitioner appears to have granted the lease hold land by the Tahasildar, Bhubaneswar and converted Ac.0.750 dec, to Gharabari and claim to be in possession over the said lease hold land.

Heard Mr. S.K. Samantaray, learned Counsel for the petitioner and Mr. B.K. Samantaray, learned Addl. Standing Counsel for the State. Counsels for both the parties were given due opportunities to supplement documents in support of their claims.

The brief history of the case is that an area measuring Ac.1.500 dec. of land was leased out in favour of the petitioner by the Tahasildar vide order dated 09.01.1980. But due to non-correction of R.O.R he preferred OJC No.4224/02 before the Hon'ble High Court and while disposing the said Writ petition, the Hon'ble Court directed Tahasildar, Bhubaneswar vide their order dated 22.04.2002 to consider and dispose of the application of the petitioner latest by 31.07.2002. Accordingly, the Tahasildar effected required changes in the ROR on obtaining prior confirmation dt. 04.05.2002 of the Sub-Collector, Bhubaneswar. But later, Sub-Collector, Bhubaneswar recalled the confirmation order passed on 04.05.2002 and directed the Tahasildar to bring back the suit land to Government Khata vide order, dated 23.09.2002. In the process, the R.O.R. issued earlier was reverted back and the land was recorded in Govt. Khata on 23.09.2002.

Being aggrieved by the aforesaid order of Sub-Collector, Bhubaneswar and Addl. Tahasildar, Bhubaneswar, the petitioner filed Consolidation Revision Case No. 62/2003 u/s.37(1) of OCH & PFL Act, 1972 before the Commissioner Consolidation & Settlement, Odisha, Bhubaneswar.

That the Commissioner Consolidation & settlement disposed the revision case vide order dated 25.07.2003 directing the Tahasildar, Bhubaneswar to consider the case on merit and mutate the case land in favour of the petitioner as per law. Thereafter, Tahasildar, Bhubaneswar took up the matter in M.C. No.9076/2003 but due to delay in disposal the lessee/petitioner again moved to Member, Board of Revenue in Consolidation Revision case No.03/2004 where Hon'ble Member, vide order dated 14.02.2005 directed Tahasildar to prepare records in the name of the applicant as per order passed in W.L Case No.1042/78.

The State of Odisha and other filed W.P(C) No.17100 of 2006 challenging the order, dated 25.07.2003 passed by the Commissioner, Consolidation & Settlement, Bhubaneswar in Consolidation Revision case No.62/2003 and order

passed by Member, Board of Revenue dated 14.02.2005 in Consolidation revision case No.2 of 2004 u/s.38 of the O.C.H & P.F.L Act, 1972 read with Sec. 7 of the Board of Revenue Act, 1951. The Hon'ble Court while disposing the aforesaid writ petition bearing W.P(C) No.17100/2006 has set-aside the impugned order of Commissioner, Consolidation & Settlement Bhubaneswar in Consolidation revision case No. 62/2003 and subsequent order, dated 14.02.2005 of Member, Board of Revenue passed in Consolidation Revision Case No.3 of 2004 and directed the Commissioner, Consolidation & Settlement for fresh adjudication.

Accordingly, the report of the Tahasildar was called for vide letter No.173/CC&S, dated 18.06.2022. The report submitted by the Addl. Tahasildar, Bhubaneswar, vide letter No.11539, dated 18.07.2022 categorically indicates that -

“The W.L. lease in question earlier confirmed by the Sub-Collector has been cancelled after the confirmation was recalled by the Sub-Collector and accordingly the suit land is now recorded in Government Khata. The present status of the case land as reported by R.I Patrapada reveals that that some part of the land is lying fallow and the rest part is being used for Agricultural purpose by constructing boundary wall.”

On verification of the entire case record, it is revealed that –

- (a) *The Consolidation operation was started in Mouza -Patrapada vide Notification No.30765, dated. 06.08.1973u/s.3 (1) of the O.C.H & P.F.L Act, 1972.*
- (b) *The lease was granted in favour of the petitioner by the Tahasildar, Bhubaneswar dated 09.01.1980 while the Consolidation was very much in force.*
- (c) *The Mouza Patrapada was finally published u/s.22(2) of the O.C.H & P.F.L Act, 1972, dated 28.04.1983.*
- (d) *The closure of Consolidation operation was made on 23.11.1985 u/s. 41(1) of the O.C.H & P.F.L Act, 1972, in respect of Mouza Patrapada.*
- (e) *The order, dated 09.01.1980 passed by the Tahasildar, Bhubaneswar in granting lease in favour of the petitioner was confirmed by the Sub-Collector, Bhubaneswar on 04.05.2002.*
- (f) *A portion of the lease hold land measuring area Ac.0.750 dec was converted to homestead u/s.8 (A) of the O.L.R Act, 1960 by the Tahasildar, Bhubaneswar, dt. 22.06.2002.*
- (g) *The Sub-Collector, Bhubaneswar cancelled the earlier order of confirmation of lease on 23.09.2002 and accordingly the Tahasildar, restored the lease hold land to Govt. Khata on the very day which has*

been communicated by the present Tahasildar, vide letter No.11539, dated 18.07.2022.

True, the petitioner was granted lease by the Tahsildar, Bhubaneswar on 09.01.1980 under OGLS Act, 1962. But confirmation of the said lease was cancelled by Sub-Collector, Bhubaneswar on 23.09.2002. Settlement of Govt. land is made in accordance with Sec. 3 of OGLS Act which itself provides the hierarchy of Appeal and revision against any order of Land Settlement. If aggrieved by the order of Sub-Collector, the petitioner could have approached the appropriate hierarchy / authority under the said Act which has not been done in the instant case. As such, this Court lacks jurisdiction for revision under OGLS Act.

Coming to the other contention of the petitioner, the claim to have got the land settled in his favour vide order of the Tahasildar, dated 09.01.1980, the petitioner should have adhered to the provision of OGLS Act, by following the procedure outlined in the Odisha Govt. Land Settlement Rule, 1983. In the prescribed procedure, settlement of Agricultural land in favour of land less persons is subject to the confirmation by Sub-Collector as per delegation of power in schedule- II, column 8 of OGLS Rules, 1983. The confirmation of lease by Sub-Collector is an integral part of lease proceeding, which unless made does not bring the settlement to completion conferring the land right on the allottee.

Though the order of settlement of land on lease was made by the Tahasildar but the confirmation had not been made till final publication of R.O.R in Consolidation Operation dated 28.04.1983, thus, the land having not been settled with completion of full process prior to final publication, dated 28.04.1983 no relief under Section 37(1) of the O.C.H & P.F.L Act, 1972 is due to the petitioner. As Section 37(1) envisages-

“The Consolidation Commissioner, may call for and examine the records of any case decided or proceedings taken up by any subordinate authority for the purpose of satisfying himself as to the regularity of the proceedings or as to the correctness, legality of propriety of any order passed by such authority in the case or proceedings and may, after allowing the parties concerned a reasonable opportunity of being heard make such order as he thinks fit”

Presuming the fact that land was settled in favour of the petitioner under OCH & PFL Act, but the petitioner has not exhausted the hierarchical forum of Consolidation procedure starting from U/s.6(1) to 18(2) of the OCH & PFL Act, 1972 but approached the Revisional Forum with a sole prayer to quash the order of Sub-Collector, Bhubaneswar dt. 23.09.2002. The prayer of the petitioner is without any land schedule. In the absence of any land schedule, no right of revision can be accrued in favour of the petitioner under the said Act.

While deciding a case, it is necessary to examine the legality and propriety of the order of the Court below in the light of evidence on record. As per Section 4(4) of the OCH & PFL Act, 1972, the Tahasildar after notification u/s.3(1) of the Act is not competent to grant lease in favour of any person. However, the prayer of the petitioner to quash the order dt. 23.09.2002 of Sub-Collector, Bhubaneswar, in cancelling the confirmation of lease is beyond the pervue of the OCH & PFL Act, 1972. While approaching this revisional forum u/s.37(1) the petitioner has failed to establish the irregularity, impropriety and illegality, if any committed at the time of preparing the ROR in respect of the land in question rather challenged the cancellation order of confirmation of lease of Sub-Collector, Bhubaneswar, dt. 23.09.2002 passed in lease Case No. 1042/1978 which requires no interference by this Court since the exercise made by the Sub-Collector, Bhubaneswar to invalidate the otherwise nonest order of Tahasildar, Bhubaneswar is a justified one.

Admittedly, the lease was granted by the Tahasildar, Bhubaneswar on 09.01.1980 but by that time Consolidation operation in the said Mouza had already been started vide Notification No.50765, dated 06.08.1973. The said lease was subsequently cancelled on 23.09.2002 and the R.O.R issued earlier was revoked and land got recorded in Govt. Khata. But the contention made by the learned Counsel for the petitioner in Para-10 and 16 appears contradictory.

“In Para 10, the petitioner has admitted that “ as per the latest Consolidation R.O.R prepared and published on 28th April, 1983, wherein the suit land stood in Government Khata, the lessee could have presented his plaint during the Consolidation operation, the Tahasildar has no jurisdiction to effect changes in the finally published Record of Rights.”

“But in para 16 of the plaint contended that “in view of the Circular, dated 06.05.1999 issued by Revenue & Excise Department this Revisional Court has jurisdiction to effect any change in the Record of Right published on 28.04.1983 u/s.22 of the O.C.H & P, F.L Act, 1972, as the Tahasildar has already effected the required changes in the Record of Rights after making enquiry and following due procedure and also obtaining prior confirmation from the learned Sub-Collector.”

As regards to this claim of the petitioner no such documentary evidence is available as indicated in the report of the Addl. Tahasildar, Bhubaneswar, dated 18.07.2022.

On the other hand, a question was raised by Addl. Standing Counsel regarding non-maintainability of the said revision u/s.37 (1) of the OCH & P.FL Act. As stated by him, the Tahasildar granted the lease dated 09.01.1980 in violating the section 4 (4) of the O.C.H & P.F. L Act, 1972, because by then the Consolidation operation

was in force. The Addl. Standing Counsel Mr.B.K.Samantray has opined that there is no relevant documents available with the petitioner for claiming the land granted on the basis of lease and the said lease being not confirmed by the Sub-Collector, Bhubaneswar, is illegal and void therefore, bears no merit. It is further contended by the Addl. Standing Counsel that he himself along with R.I. Patrapada visited the spot on 19.08.2022 and found that the lease hold land granted earlier for agricultural purpose is now utilized for Commercial purpose which violates the very purpose & basis of the lease as per the *Judgement, dated 13th December, 1995 of the Apex Court passed in Civil Appeal No.171 of 1979 wherein their Lordships have observed that-*

“The sale of Government land for nominal amount was for the avowed constitutional purposes. After the conversion, sale of the lands for building purpose would be a windfall. Obviously, the public purpose of the grant and the constitutional goals would be defeated by this method of circumvention. The Government therefore is justified in cancelling the grant” (1995 Supp.(6) SCR 661)

It is also explicit from the written note of argument of Addl. Standing Counsel that the petitioner is not landless as evident from the ROR under Khata No.7, 86,120, 125, 166, 183 & 230/12 in Mouza Aiginia.

Besides the above, Addl. Standing Counsel has also pointed out that the lease allotted to the petitioner is coming under Forest Kissam and the State Govt. have filed an Affidavit before the Hon'ble Supreme Court in W.P (CC) No.202/1996 wherein the suit Plot No.321 of Mouza - Patrapada is having plantation and Forest growth. So, the lease land without approval of the Central Government / State Government will violate the Act, hence prayed to dismiss the petition filed by the petitioner. However, this particular contention of Addl. Standing Counsel as Forest growth does not attract the Forest Conservation Act, 1980 since settlement of land was made before 25.10.1980 and cancelled thereof.

In the case of State of Orissa and others-Vrs. Brundaban Sharma and another 1995 Suppl.(3) SCC 249, the Hon'ble Supreme Court held that validity of a nonest order can be questioned in a proceeding at any stage.” The aforesaid analogy holds good in the present context that when the material irregularity and illegality in procedure was detected, the prompt action taken by the Sub-Collector in cancelling the confirmation of lease can't be held as unfair or unjustified.

In the light of the foregoing corroboration of facts and materials on record, the correctness of the impugned order of the Sub-Collector, Bhubaneswar dt,23.09.2002 as has been alleged by the petitioner was thoroughly examined where I do not find any error apparent on the face of the said order. In the instant statue, there is a definite bar to view that the cancellation order, dt. 23.09.2002 of Sub-Collector, Bhubaneswar is wrong. Considering all these, I am constraint to hold that

the order, dt.23.09.2002 of Sub-Collector, Bhubaneswar is a valid one and the prayer of the petitioner bears no merit hence stands dismissed on the following grounds.

- (1) ***Lease was granted on 09.01.1980 when the Consolidation operation was very much in force vide Notification No.50765, dated 06.08.1973.***
- (2) ***The said lease as granted under OGLS Act, 1962 and confirmation cancelled thereof by the Sub-Collector, Bhubaneswar do not attract the O.C.H & P.F.L Act, 1972.***
- (3) ***The petitioner having not approached and exhausted the Consolidation procedure starting u/s.6(1) of the O.C.H & P.F.L Act, 1972 has no base and merit. Any relief and remedy, therefore, as sought for is unwarranted.***

Order pronounced in the open court on this day of 12th Sept., 2022.

Sd/-

Commissioner Consolidation & Settlement,
Odisha, Bhubaneswar

REVISION PETITION NO. 409 of 2020

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

Decided on 06.04.2022

(Order by Shri Dillip Kumar Parida
Additional Commissioner,
Settlement and Consolidation, Cuttack)

Antarjami Pani and others **Petitioners**

-Versus-

Souri Jena Opp. party

Counsel for the Petitioners : Mr. J. Paikray

Counsel for the Opp. party : Mr. G.K. Parida

ORDER

This case is taken up today.

The learned Counsel for the Petitioners, the learned Addl. Standing Counsel for the State and the learned Counsel for the Opp. party are present.

Heard the learned Counsel for the Petitioners filed the revision petition U/s. 15 (b) of the O.S. & S. Act, 1958. The delay was condoned on considering the petition filed U/s. 5 of the limitation Act, 1963 and accordingly the revision was

admitted. Notice was issued and duly served to the Opp. party following due procedure. In response to notice the Opp. party entered appearance through her Counsel and filed objection.

The claim of the Petitioners are connected in this revision for correction of Hal Record-of-Right and recording of schedule land in their names exclusively in a separate Khata on the basis of purchased through Registered Sale Deed vide R.S.D. No. 1584, dated 08.04.1985 and possession. The case land appertains to Hal Consolidation Khata No. 751, Hal Plot No. 974 "Bajefasal-I" in Kissam area Ac.0.59 decimals i.e. Ac.0.590 decimals of Mouza-Belagachhia, P.S.-Barang, District-Cuttack. The Hal Consolidation R.O.R. has been finally published on 19.01.1984 under section 13(4) of the O.C.H. and P.F.L. Act, 1972.

On verification of documents available in the case record and submissions made by the learned Counsel for the Petitioners, it is revealed that Plot No. 974 "Bajefasal-I" in Kissam area Ac.0.59 decimals i.e. Ac.0.590 decimals along with another Plot under Khata No. 751 stands recorded in the name of Sauri Jena wife of Ugrasen Jena, the sole Opp. party in "Stitiban" status. The true copy of second part L.R. Khata No. 751 issued on 01.02.2020 by the Officer in Charge, District Record Room, Cuttack in C.A. No. 1314 of 2020 along with the other relevant documents relating to this case has been submitted by the Petitioners which reveals that Hal Plot No. 974 area Ac.0.59 decimals corresponds to the year 1973 Sabik Plot No. 808 "Patita" in Kissam area Ac.0.59 decimals was recorded under Sabik Khata No. 639 in favour of Hema Dei wife of Nalu Nayak in "Stitiban" status. It is revealed that the Sabik recorded tenant Hema Bewa wife of Nalu Nayak has sold Sabik Plot No. 808 area Ac.0.59 decimals recorded under Sabik Khata No. 639 in favour of Kasinath Behera son of Chintamani Behera vide R.S.D. No. 7027, dated 31.12.1975. It is found that after death of Kasinath Behera his widow, namely Oshi Behera and only son, namely Bansidhar Behera both have sold Sabik Plot No. 808 area Ac.0.59 decimals corresponds to Hal Consolidation Plot No. 974 in favour of Maheswar Pani son of Jadumani Pani, the father of Petitioners vide R.S.D. No. 1584, dated 08.04.1985. The learned Counsel for the Petitioners contended that in Hal Consolidation the vendors of the father of Petitioners could not take step and as such the Hal Plot No. 974 area Ac.0.590 decimals has been recorded under Hal Consolidation Khata No. 751 in favour of the original Sabik recorded tenant Hema Nayak wife of Nalu Nayak the late mother of Opp. party No. 1. Hence, this revision.

On the other hand the learned Counsel for the Opp. party filed written objection petition and contended that earlier the Petitioners were filed R.P. No. 250 of 2014 on the same case land U/s. 15 (b) of the O.S. & S. Act 1958 in this Court which has been dismissed on merit basis vide order dated 11.12.2019. Further, contended that the Petitioners also filed Civil Suit No. 851 of 2019 on the same case land for declaration and confirmation of possession in the Court of Civil Judge,

Junior Division, 1st Court, Cuttack along with I.A. No. 1/2019 under Order-39, Rule-3 CPC to restrain this Opp. party coming upon the suit land which has been rejected vide order dated 01.10.2019. It is submitted that during pending of the civil suit on the same land the revenue authorities have no jurisdiction to record the case land in the name of Petitioners. Further, submitted that either Opp. party Souri Jena or her mother Hema Nayak have not sold the case land to any party and the Petitioners have presented fraud documents to record the case land in their favour. The learned Counsel for Opp. party submitted that the father of Petitioners has purchased the case land from the successors of Kasinath Behera, but Kasinath Behera has no issue and he has died before 1970 who belongs to schedule caste category. To support the contention of Opp. party the learned Counsel has filed the true copy of order dated 11.12.2019 in R.P. no. 250 of 2014 and the order dated 01.10.2019 in I.A. No. 1/2019 arising out of C.S. No. 851 of 2019. On the aforesaid facts the learned Counsel for the Opp. party urged to dismiss the revision as it is bad in law and devoid of any merit.

The learned Counsel for the Petitioners submitted written argument and cited the decisions in support of the contention of Petitioners that the predecessor of the vendors of father of Petitioners, namely Kasinath Behera has purchased the case land in the year 1975 and then the father of Petitioners has purchased the case land from the legal-heirs of Kasinath Behera in the year 1985. The sale deed of the year 1975 is one pre-publication document and could not produce at the appropriate stages of Consolidation operation and as such the jurisdiction comes under this Court to decide the matter as per the decision reported in 2202 (I) OLR (BOR)-82. Further, submitted that the earlier R.P. No. 250 of 2014 has not been decided on merit basis rather it has been dismissed due to nonproduction of documents would not be res judicata and as per decision reported in AIR 1966 SC 1332 (V 53 C 257) that "the dismissal is confirmed in the decision not being on the merits would not be res judicata in a subsequent suit." The learned Counsel for the Petitioners again submitted that pending of civil suit on the self-same property is not a bar for deciding settlement cases while preparing the record-of-right as per the decision reported in 2002 (I) OLR (BOR)-61. Further, contended that the plea taken by the Counsel for Opp. party that Kasinath Behera, the predecessor of vendors of the father of Petitioners has been died issueless is completely false and concocted story rather he has been died leaving behind his widow Oshi Behera and only son Bansidhar Behera who are the legal-heirs of Kasinath Behera and vendors of the father of Petitioners. Again contended that the caste of Kasinath Behera is "Gopal" which has been reflected in the sale deed of the year 1975 and he does not belong to schedule caste community. Further submitted that in accordance with the process of law the recorded tenant has been arrayed as necessary party and there is no defect in the revision in regard to miss-joinder and non-joinder of necessary parties. In view of the aforesaid facts, the learned Counsel for the Petitioners urged to allow the revision in their favour.

Taking into consideration the rival contentions of the parties and after going through the details documents available in the case records it is to make an opine that the R.O.R. which has been assailed by the Petitioners in this revision is not the final publication of Hal R.O.R. rather it is a mutation record-of-right prepared in favour of Opp. party vide order passed in Misc. Case No. 13 of 2018 by the Tahsildar, Barang and the Plot No. 974 area Ac.0.590 decimals has been deleted from the Mutation Khata No. 751/891 which was prepared and recorded earlier in the names of Petitioners vide order passed in Mutation Case No. 4295 of 2014. In view of the above this Court lacks of jurisdiction to adjudicate upon the R.O.R. which has been prepared and issued by the concerned Tahasildar. Accordingly, the revision is dismissed due to non-maintainability.

Pronounced the order today.

Sd/-
Additional Commissioner
Settlement & Consolidation, Cuttack

SRP No. 279 / 2016

Decided on 07.01.2022

(Order by Sri Surya Madhaba Panigrahi, OAS (SS),
Additional Commissioner,
Settlement & Consolidation, Berhampur)

Smt. Namita Das... **Petitioner**

-Versus -

Sri Sri Sri Gopalji Mahaprabhu Bijje & others ... **Ops.**

ORDER

This revision case has been filed by the petitioner u/s 15 of the OS&S Act-1958 claiming an extent of Ac0.060 decimal from Hal Khatian No. 1742, Plot No.876 & 878 of mouza Goilundi under Berhampur Tahasil, Dist: Ganjam corresponding to Old Khata No. 2904 , Survey No. 369 of Bhapur mouza which stands recorded in the Anabadi Khatian .

Dr.S.N.Rath,Sri K.C.Bisoyi and Sri G.C.Barad,Advocates filed Vakalatnama on behalf of the petitioner.

Heard the learned Advocate appearing for the petitioner and the learned Addl. Standing Counsel representing the State Government.

Gone through the case record.

Before proceeding with the matter for final adjudication of the case, it is pertinent to indicate here that the similar matter having bearing on this case covering the land pertaining to the sabik plot involved in this case along with other lands has already been decided by the Hon'ble Member, Board of Revenue, Odisha, Cuttack vide his order dtd 07.09.2021 passed in revision case bearing OEA Case No. 09/2015 which was communicated to this court for necessary compliance for which this case needs to be disposed of having regard to the orders of Hon'ble Member, Board of Revenue, Odisha, Cuttack.

The case of the petitioner as made out from the revision petition in a nutshell is that, originally the land belonged to the Deity (OP No.1) covered under T.D. No. 2904, Sabik Survey No. 369, mouza- Bhapur, presently covered under hal Khatian No. 1742 of mouza Goilundi in Berhampur Town which has been wrongly recorded in Anabadi Khatian as alleged by the petitioner. The Deity is a public religious Deity governed by the O.H.R.E. Act. The Commissioner of Endowment have sanctioned alienation of the Deity's property by dividing them in to plots under Section-19 of the Orissa Hindu Religious Endowment Act in OP No. 538/1967 in memo No. 12736 dtd 27.12.75 for necessity & benefit of the Deity.

The petitioner had purchased the layout plan Plot No. 19 measuring to an extent of Ac0.060 decimal as per RSD No. 4354/1999. The allegation of the petitioner is that Survey & Settlement operation of the area completed in the year 1979 and the site has wrongly been recorded under 'Anabadi' Khatian without proper field enquiry. Further contention of the petitioner is that the Respondent No. 3 failed to exercise his power under the O.E.A. Act to settle the lands in favour of the persons in possession & used for homestead purpose by different private persons. Accordingly, the petitioner has preferred this revision for recording of the suit land in her favour.

The other factor involved in the case as transpired from the records as well as from the order dtd 07.09.2021 of Hon'ble Member, Board of Revenue, Odisha, Cuttack in OEA Case No. 09/2015 is that the disputed land pertaining to an extent of about nine acres of land had been given on mortgage during the year 1917 by one archak of the Deity to one S.V. Narasingham for 50 years of lease. Due to non-handing over of the land by the lessee after completion of 50 years, the Deity filed O.S. Case No 82/1934, in as much as E.P. Case No. 3/1970 before the District Judge, Berhampur for recovery of possession. Thereafter the Trustee of the Deity filed 'H' form for settlement of land under the Acts of O.E.A. and the OEA Collector settled the land in favour of the Deity.

Being aggrieved with the above order of the OEA Collector, the heirs of the Mortgagee filed OJC No. 1053/1976 before the Hon'ble High Court, Orissa. The

Hon'ble High Court while allowing the above OJC Case No 1053/1976 directed the OEA Collector to re-dispose the OEA Case No. 103/1974 under Section-7.A of the OEA Act. Consequently, the OEA Collector passed order during the year 1978 that the land be vested to the Govt. U/S-5(a) of the OEA Act. Subsequently against the above order of the OEA Collector, appeals were preferred by the parties concerned before the A.D.M., Ganjam during the year-1980 who while disposing of the same has held that the Deity is entitled for settlement of the land.

Later on, challenging the above order of the ADM, Ganjam, the heirs of the Mortgagee preferred OJC No. 1026/1980 and OJC No. 1066/1980 before the Hon'ble High Court, Orissa. On 19.01.1980 the Hon'ble High Court, quashing the order passed by the learned ADM, Ganjam held that Section-7.A. is applicable to the circumstances of the case.

Thereafter, challenging the above orders passed by the Hon'ble High Court, Orissa, the Deity had preferred appeal before the Hon'ble Supreme Court of India in Civil Appeal No. 8284 and 8285 of 1995. The Hon'ble Apex Court allowing the above two appeals vide their orders dtd 17.09.1998 have held that since the amended provisions of Section 7-A of the OEA Act came into force in 1978, the application made by the appellant during the year 1974 i.e. at a point of time when Section 7-A had not been amended, cannot be taken into consideration. The Hon'ble Apex Court had further observed that under the provisions of the OEA Act the application made under Section 7-A would be considered only by the Member, Board of Revenue as per the delegation made by the State Govt. Accordingly, the Hon'ble Apex Court by substituting the afore said judgement of the Hon'ble High Court by their above direction remitted the matter to the Member, Board of Revenue, Odisha, Cuttack for re-consideration of the matter & to dispose of the Deity-Petitioner's application in accordance with law.

Thereafter, the Hon'ble Member, Board of Revenue, Odisha, Cuttack in disposing of the revision case bearing No. OEA R.C No. 83 of 2000 instituted u/s 38-B remanded the case with certain observations to the OEA Collector, Berhampur on 20.02.2006 for disposal of the OEA case i.e. OEA No. 103/1974 under the old unamended provisions of Section 6 & 7.

After remand from the Member, Board of Revenue, Odisha, the OEA Collector-Cum-Tahasildar, Berhampur disposed of the OEA Case on 19.06.2015 by declaring that the suit land was vested to the Govt u/s 5(a) of the OEA Act and held that the suit land was not in khas possession of any of the parties at the time of vesting and also held that as regards cases involving transactions of land and transfer to various vendees, there shall have to be separate proceedings for reversing correction of RORs periodically effected. Subsequently, the Deity challenged the said order of the OEA Collector before the Hon'ble Member, Board of Revenue on various grounds.

Accordingly, the Hon'ble Member, Board of Revenue, Odisha, Cuttack invoking jurisdiction u/s -38-B of the OEA Act and in compliance to order of Hon'ble Apex Court invoking Section 7-A, exercising both the above jurisdiction together with analogous hearing of all such cases filed before him decided the matter vide his order dtd 7.9.2021 passed in OEA Case No. 09/2015. The order dtd 07.09.2021 of Hon'ble Member, Board of revenue, Odisha, Cuttack passed in revision case bearing OEA Case No. 09/2015 has been communicated to this Court by the Secretary, Board of Revenue, Odisha, Cuttack vide his L.No. 4118 dtd 08.09.2021 for necessary compliance of the said order.

It is to be noted that after framing different issues and elaborate discussions Hon'ble Member, Board of Revenue, Odisha, Cuttack have up-held the order of the OEA Collector dtd 19.06.2015 observing that the suit land was not in khas possession of any of the parties at the time of vesting. Accordingly, the Hon'ble Member, Board of Revenue, in exercise of the powers conferred by Section-38-B read with Section 7-A and the order dtd 17.09.1998 of the Hon'ble Apex Court have ordered that there is no material to interfere with the order dtd 19.6.2015 of the OEA Collector. It has been confirmed therein that the land shall remain recorded in Govt. Khata as it stands vested in Govt since 18.03.1974. It has also been observed by the Hon'ble Member, Board of Revenue that Survey & Settlement Act cannot create new right. Any proceeding for mutation/ mutation appeal or revision under the Survey & Settlement Act covering any part of the schedule land cannot be allowed to ignore or disregard the order of Hon'ble Member, Board of Revenue, Odisha, Cuttack. It has also been impressed upon that as the 2013 amendment of Section 22-A of Registration Act was upheld by the Hon'ble High Court of Orissa in WP(C) - 18401 of 2015, the Registering Officer shall refrain from registration of the instruments involving transactions of any part of the scheduled land of various Vendors and Vendees.

The Hon'ble Member, Board of Revenue, Odisha, Cuttack while disposing of the above OEA Case bearing No. 09 of 2015 in the proceeding u/s 7-A & 38 of Orissa Estate Abolition Act, 1951 vide his order dtd 07.09. 2021 has observed and directed as follows:

"27. I therefore conclude, in exercise of the powers conferred by Section 38-B read with Section 7-A and the Order dtd 17.09.1998 of the Apex Court, that there is no material to interfere with the finding of the OEA Collector in his order dtd 19.6.2015. The scheduled land shall remain recorded in Government Khata, as it stands vested in the Government since 18. 3. 1974. The revision petition is disallowed. The claim under Section 7-A is disallowed.

28. Regarding the second observation of the OEA Collector involving transactions involving various vendors and vendees, it is reiterated that no vendee

can have rights that are superior to those of the vendor. It is also reiterated that Survey & Settlement Act cannot create new rights. The provisions of the Mutation Manual are derived from the Survey & Settlement Act. Therefore any proceeding for mutation or mutation appeal or for revision under the Survey & Settlement Act covering any part of the scheduled land cannot be allowed to ignore or disregard this order. It is also to be born in mind that the 2013 amendment of Section 22-A of Registration Act was upheld by the Hon'ble High Court of Odisha in WP(C) 18401 of 2015. Therefore any registering Officer shall refuse to register the instrument, if it involves any part of the scheduled land.

29. xxx xxx xxx xxx xxx xxx xxx xxx

30. *Copy of this Order be provided to Tahasildar, Berhampur for compliance.*

31. *Copy of this Order be provided to Additional Commissioner, Consolidation, Berhampur, Inspector General of Registration, Odisha, Cuttack and Collector, Ganjam for ensuring compliance."*

All the above discussions inter alia other factors of the case land can be safely culled out from the order dtd 07th Sept' 2021 of the Hon'ble Member, Board of Revenue, Odisha, Cuttack passed in the OEA Case No. 09 of 2015- Sri Sri Sri Gopalji Mahaprabhu- Versus- Tahasildar- Cum- OEA Collector, Berhampur and others. Since the scheduled property claimed by the present petitioner originates from the Sabik Plot No. 369 and part and parcel of the above OEA proceeding involving the property in multiple litigations and finally has been decided by Hon'ble Member, Board of Revenue, Odisha, Cuttack in the OEA case stated supra with specific direction to the effect that any proceeding for mutation or mutation appeal or for revision under the Survey & Settlement Act covering any part of the scheduled land cannot be allowed to ignore or disregard his order as discussed above, this Revision Court has no jurisdiction to entertain the OEA matters and to interfere with the orders of Hon'ble Member, Board of Revenue, Odisha, Cuttack.

Accordingly in compliance to the orders of the Hon'ble Member, Board of Revenue, Odisha, Cuttack this case stands dropped being devoid of merit in as much as maintainability.

Accordingly the revision case is disposed of.

Order pronounced in the open Court to day the 7th day of January'2022.

Sd/-
Additional Commissioner
Settlement & Consolidation, Berhampur

Revision Petition No. 152/1997

(originally filed before the Land Reforms Commissioner, Orissa, Cuttack) and
Misc Case No. 01/2017 (arising out of SRP No. 152/1997)

Decided on 17.02.2022

(Order by Additional Commissioner,
Settlement & Consolidation, Berhampur)

Srinibas Sundar Das ... **Petitioner**

-Versus-

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

ORDER

This case, which was originally filed before the Land Reforms Commissioner, Orissa, Cuttack during the year 1997 by Srinivas Sundar Das (father of the present petitioner) & was disposed of by the learned Land Reforms Commissioner on 28th April'1999, was reopened on the basis of the Misc. Case No. 01/2017 filed by the present petitioner, Lokanath Das (arising out of SRP No. 152/1997) as per the orders of Hon'ble High Court of Orissa dtd 16.02.2017 passed in OJC No. 8211 of 1999 and in WP(C) No. 12267 of 2010 & Misc. Case No. 8359 of 2016. The Hon'ble High Court had remitted back the original SRP No. 152/1997 to the Land Reforms Commissioner, Orissa, Cuttack for re-adjudication of the case for compliance of their orders. After receipt of the order of Hon'ble High Court, the learned Land Reforms Commissioner vide his order dtd 27.10.2017 has observed that he has no jurisdiction to adjudicate the matter of the case land which relates to the Dist.of Ganjam and accordingly advised the petitioner to move this Court for re-adjudication and enquiry of the matter. Consequently, the present petitioner, Lokanath Das filed the Misc. Case bearing No. 01/2017 in this Court. Later on the record of case No. 152/1997 was transmitted by the Court of the Land Reforms Commissioner vide their L.No. 549/LR dtd 13.03.2018. During pendency of the case the petitioner filed order of Hon'ble High Court dtd 11.03.2019 passed in IA No. 14 of 2019 with modification of the direction given on 16.02.2017 in OJC No. 8211/1999 directing for working out the direction to Joint Commissioner, Settlement& Consolidation, Berhampur within a stipulated period of three months.

The petitioner appeared in person to plead his case. The learned Addl. Standing Counsel representing the State Government also participated. Heard the petitioner and the learned Addl. Standing Counsel at length.

The background involved in this case is that the father of the present petitioner late Srinibas Sundar Das had filed this revision case before the Land Reforms Commissioner, Orissa, Cuttack, vide SRP No. 152/1997 praying therein to record the hal plot No.2 of Khatian No. 186, Ac0.820 dec. land of Sana Khajuria Mouza in

his favour on the ground of erroneous recording made by the settlement authorities during the period of settlement operation. The alleged Khatian stands recorded in 'Abadjogya Anabadi' Khatian No. 186 being finally published on 31.03.1976. The Land Reforms Commissioner, Orissa, Cuttack after hearing of the case vide his order dtd 28.04.1999 had dismissed the revision observing that the person in the note of possession being necessary and relevant party has not been added in the revision petition and as decided the revision failed for non-joinder of parties.

Thereafter, the original petitioner preferred writ application bearing OJC No. 8211 of 1999 before the Hon'ble High Court, Orissa, Cuttack assailing the order of LRC, Cuttack. Hon'ble High Court after considering the submissions of the learned Counsel for the petitioner, the learned Addl. Standing Counsel for the State and from the factual background and submission made therein have graciously observed/ordered that;

"... the application at the instance of the petitioner was merely an application under Section-15(b) of the Orissa Survey and Settlement Act, 1958 for correction of Record of Rights pertaining to Hal Khata No. 186, Plot No. 2 Ac0.820 of Sana Khajuria presently under Kanisi Tahasil. This being an application under section 15(b) of the Orissa Survey and Settlement Act, 1958, such application needs to be considered based on records produced by such party to establish his right and such proceeding has nothing to do with note of possession in favour of somebody else. Record of Rights has nothing to do with possession of a party which is altogether an independent aspect".

Accordingly, the Hon'ble High Court have held that the order of the authority below that the application under section 15(b) of OSS Act cannot be allowed unless the person shown to be in possession of the property is made a party is illegal and erroneous. Accordingly, while interfering with the impugned order of the LRC, Cuttack the Hon'ble High Court have set aside the same and directed the LRC, Board of Revenue, Cuttack with observation that who while allowing the SRP No. 152/1997 shall direct the competent authority to prepare the ROR involving the disputed property in the name of the petitioner. The LRC, Cuttack vide his order dtd 27.10.2017 has observed that he has no jurisdiction to re-adjudicate the case land relating to Ganjam District and accordingly he has advised the petitioner to move the competent Revisional Authority for re-adjudication of the matter. Thereafter the present petitioner filed Misc. Case No. 1/2017 with a prayer to pass necessary orders by giving direction to the competent authority Tahasildar, Kanisi in compliance to the orders of Hon'ble High Court, Orissa, Cuttack for recording the name of the petitioner in the Record of Rights by effecting necessary correction pertaining to the case land Khata No. 186, Plot No. 2 Ac0.820 decimal mouza Sana Khajuria under Kanisi Tahasil.

The fact of the case, in brief, as inter alia submitted by the petitioner in SRP No. 152/1997 as it transpired from records transmitted by the Land Reforms Commissioner, Odisha, Cuttack is as follows.

The claim of the petitioner is pertaining to Plot No. 2, Khatian No. 186, for an extent of Ac0.820 dec. of mouza SanaKhajuria under Tahasil, Kanisi. It has been contended by the petitioner that the suit land was purchased by his deceased father in the year 1973 during the course of settlement proceeding from one Juria Biswal vide RSD No. 93/1973. As pleaded in the plaint, ROR could however be erroneously prepared for which a proceeding under the OPLE Act was initiated. The O.P.L.E. proceeding was disposed of by the Addl.Tahasildar, Kanisi vide his order dtd 24.02.1997 in the LE. Case No. 136/1989. The petitioner further contended that due to the pendency of the above proceeding, he did not make any prayer for correction of ROR in any other separate proceedings as stated. After closure of the case under the OPLE Act the petitioner sought for mutation which was likely to be rejected as petitioner's claim was based on a sale deed that came into existence before the final publication of alleged ROR. Accordingly the petitioner, based on the declaration in the OPLE proceeding that the suit land does not belong to the State filed the application before the Land Reforms Commissioner, Orissa, Cuttack praying for correction of the ROR in respect of the scheduled land in his name on the strength of his purchase through Regd.Sale Deed.

As reflected in the order dtd 28.04.1999 of the LRC, Board of Revenue, Odisha, Cuttack, the learned Counsel for the petitioner contended that the suit land as per settlement- 1912 was private land being recorded in the name of Narayan Das & 4 others appertaining to Sabik Khata No. 41, Sabik Plot No-2 Ac 1.60 of Khajuria. Thereafter one Smt. M.Pappa, w/o M.Nalla became the sabik R.T. over the suit land measuring to an extent of Ac0.85 against Sabik Khata No.107 of Sana Khajuria after purchase of the suit land on 31.3.1924. After death of the said M.Pappa, dispute arised among the family members of deceased sabik recorded tenant regarding the right & title, over the suit land and as said, in the 2nd Appeal No. 188/67 dtd 28.01.1971 of Hon'ble Orissa High Court the claimants M.Chinnaya and M.Solo were declared the rightful owners & Juria Biswal as a tenant to offer the rajbhag. It was further contended that in due course of time the tenant Juria Biswal purchased the suit land from Chinnaya & the legal heirs of M.Solo vide RSD No. 2991 of 1972. Lastly, the petitioner Srinivas Sundar Das had purchased the suit area of Ac0.85 covering Sabik Plot No. 2/2, of Sabik Khata No. 107 of the scheduled mouza- Sana Khajuria from the said Juria Biswal through RSD No. 93 dtd 09.01.1973. But during the settlement operation the suit land has been recorded in the Govt. A.J.A. Khatian No. 186 of San Khajuria. As pleaded another proceeding under OPLE Act was initiated by the Tahasildar, Kanisi claiming the suit land as property of Government. But ultimately the Tahasildar, Kanisi in his order dtd 24.02.1997 in EC. No. 136/89 declared the suit hal Plot as private land. So the original petitioner preferred the revision case before the LRC, Board of Revenue, Cuttack to record the suit land in his favour. However, the L.R.C., Cuttack while disposing the case observed that Juria Biswal was being shown as possessor but not owner and the relevant parties were not added in the Revision Case. Accordingly,

due to non-joinder of parties, the revision case was dismissed by the learned Land Reforms Commissioner which has not been appreciated by the Hon'ble High Court in O.J.C. No. 8211/1999 vide their orders dtd 16.02.2017 passed in the above O.J.C.case.

The present petitioner Lokanath Das, being the son of the original petitioner late Srinibas Sundar Das has already been substituted himself by order of Hon'ble High Court in OJC No. 8211/1999 and accordingly he has been substituted in place of Srinibas Sundar Das, the original petitioner of the revision case.

The other factor involved in this case as it transpires from the case is that for the self same schedule of property, one K.Kandasu had filed another SRP bearing No. 276/2008 in this court during the year-2008 with a prayer to record the suit plot in his name. The said petitioner contended therein that Sabik Plot No. 2 Sabik Khata 107 stood recorded in favour of his grandmother M.Papa. After death of his grandmother the said petitioner being the only legal heir of late M.Papa inherited the property by virtue of succession. The said petitioner was enjoying and cultivating the property through his hired labourer (Halia) namely Juria Biswal. The petitioner being a Govt. servant was out of village during the period of settlement operation. The said petitioner had also contended in his petition that due to his frequent transfer he was always out of the suit village for which he was cultivating the lands through hired labourer (Halia) Juria Biswal. Due to his absence the said Juria Biswal was possessing the suit land since then for the last 25 years and as per the Amin Report, Juria Biswal was a 'Sikkim Tenant'. Accordingly, the Ex- Presiding Officer of this Court allowing the revision has remanded the case to the Tahasildar, Kanisi with observation that a detail enquiry should be made regarding legal heir of sabik tenant and as to how the suit land recorded in the AJA khatian and settle the suit plot No. 2 in favour of the said petitioner.

As contended by the petitioner, being aggrieved by the order of the Joint. Commissioner, Settlement & Consolidation, Berhampur dtd 27.07.2009 passed in SRP No. 276/2008 he filed writ application before the Hon'ble High Court of Orissa vide WP(C) No. 12267/2010. As it reveals, the legal heir of K.Kandasu, petitioner of SRP No. 276/2008 intervened in the Hon'ble High Court vide Misc. Case No. 8359/2016 arising out of the W.P(C) No. 12267 of 2010. The matter along with OJC No. 8211/1999 filed by Srinibas Sundar Das the original petitioner of SRP No. 152/1997 was placed before the Hon'ble High Court & after hearing the Hon'ble High Court have passed orders dated 16.02.2017 as follows:-

"..... Hearing OJC No. 8211/1999 this Court has already passed an order directing for recording of the disputed land in favour of the petitioner, who has been substituted by his son in the present writ petition. Since there is already a direction for preparation of Record of Rights involving the disputed properties

by way of disposed of OJC No. 8211/1999 in favour of the petitioner, the order impugned in the present writ petition cannot be sustained. Accordingly, the writ

petition stands allowed and while interfering with the impugned order, this Court sets aside the same. However, allowing the writ petition shall not stand as a bar on the way of the private OP 5 to claim his right over the disputed property by way of appropriate proceeding otherwise maintainable in law “.

In the circumstances, taking into consideration the above facts, it is to be concluded that the petitioner has filed the application for correction of ROR U/S 15(b) of the OS&S Act-1958 with submission based on a declaration in an OPLE proceeding that the suit land does not belong to the State. Accordingly, in the plaint there has been citation/mention of L.E. Case No. 136/1989 under the OPLE Act, in as much as order dtd 24.02.1997 passed therein by the learned Addl. Tahasildar, Kanisi . However, in spite of repeated chances and opportunities the petitioner did not file the relied documents or the C.C. of the final order of the relied L.E. Case.

The petitioner in his petition showing the written submission has contended that he is continuing in physical possession and enjoyment of the scheduled property which was purchased by his deceased father in the year 1973 through Regd. Sale Deed but referred to vide Document No. 779/1924 without filing any copy of the deed. The petitioner has also referred to various proceedings such as TS No. 24/1964, 2nd Appeal No. 188/1967, OLR Case No. 274/1972 and also referred to other Sale Deeds bearing No. 2991/1972, and 93/1973. But the copies of these documents/proceedings have not been filed by the petitioner. The petitioner further contended that the lands are in his personnel cultivating possession in hierarchy and are all rayati lands. But he failed to show any document to this effect. The case land has been recorded in AJA Khatian finally published on 31.06.1976. But the petitioner specifically contains that the case land are purely private and rayati lands, but no documents have been filed by the petitioner in support of his contentions. Although the petitioner has referred to various proceedings and documents etc as stated above, he failed to file any original or copies of such proceedings and documents for examination by this Court.

The learned Addl. Standing Counsel, on the other hand, by filing a note of argument has vehemently opposed the argument of the petitioner. He submits that since the petitioner could not file any valid documents either on the basis of valid deeds or any lease from Govt to establish his claim despite several directions from this court, the claim of the petitioner is not established. The learned Addl. Standing Counsel further submits that only oral submission of the petitioner without any supportive documents cannot create any right to record the land in his favour. Accordingly, the Addl. Standing Counsel prays for dismissal of the revision petition.

As discussed above, although Hon'ble High Court have directed to allow the Settlement Revision Petition No. 152/1997 for direction to the competent authority to prepare the ROR involving the disputed property in the name of the petitioner but at the same time have also graciously observed that application of the petitioner

needs to be considered based on records produced by such party to establish his right. But as stated supra the present petitioner did not produce the relevant proceedings/ documents relied by him to substantiate his claim despite several opportunities. There is also no material available on records to verify the veracity of the claim advanced by the petitioner. Since the petitioner failed to produce relied documents/proceedings, there is no scope for this court to examine the authenticity of the claim of the petitioner for expressing any views. Since the matter has already been delayed due to the fact involving the jurisdiction of the disputed land and consequent transfer of the case to this court from the Court of the LRC, Board of Revenue, Cuttack, the pandemic situation of COVID-19 and the restrictions imposed by the Govt. as well as by the Dist, Administration to contain spread of Corona Virus and also the vacancy of the post of the Presiding Officer of this Court for a long period, the matter is taken up for disposal by this Court keeping in view the direction of the Hon'ble High Court for working out the order within the stipulated period.

Consequently, in consideration of the facts and circumstances of the case as discussed above and following the direction of the Hon'ble High Court the Tahasildar, Kanisi is directed to take appropriate steps for compliance of the orders of Hon'ble High Court. It is directed that the petitioner should produce the certified copy of this order along with the relied documents before the Tahasildar, Kanisi where upon the Tahasildar, shall do well with the matter on the basis of the documents filed by the petitioner & comply the orders of the Hon'ble High Court, verifying his own records in the LE Case No. 136/1989 cited by the petitioner confirming the status of the land as to whether the land is Govt. land or private land appertaining to the scheduled land and enquire into the field position and physical possession of the petitioner & verify the relevant documents & also the status of legal heirs of late Srinibasa Sundar Das, s/o late Harihara Das, the original petitioner of this revision case and other relevant factors & the material aspects involved in the case in consonance with the direction of the Hon'ble High Court with regard to preparation of ROR in favour of the petitioner. It is also made here clear that correction of ROR No. 186 in favour of the petitioner involving this order pertaining to the disputed property would not stand as a bar on the way of the legal heir of K. Kandasu (Petitioner of the SRP No. 276/2008) to claim his right over the disputed property by way of appropriate proceeding otherwise maintainable in law as has been liberalised by the Hon'ble High Court in the aforementioned W.P. (C) No. 12267 of 2010.

Accordingly the revision petition stands disposed of.

Pronounced in the open Court today the 17th day of February'2022.

Sd/-
Additional Commissioner
Settlement & Consolidation, Berhampur

R.C. No.10/2020

Decided on 26.05.2022

(Order by Shri Sukanta Tripathy, OAS (SAG),
Additional Commissioner,
Settlement & Consolidation, Sambalpur)

Lalita Sahu

-Vrs.-

State of Odisha represented through
District Magistrate and Collector, Bargarh and another

ORDER

Consolidation Revision Case No.10/2020 was originally filed by one Mansi Sahu, s/o late Bhima Sahu against state of Odisha, U/s-37(I) of the OCH & PFL Act 1972 which was subsequently substituted by Lalita Sahu w/o-late Mansi Sahu.

Before proceeding in this case, it is to be mentioned here that the present revision petitioner filed a case bearing W.P.(C) No.3998 of 2022 before the Hon'ble High Court of Orissa, Cuttack against the Collector, Bargarh and Tahasildar, Bargarh and for a direction for speedy disposal of the case. The Hon'ble High Court in their order dated 28.3.2022 have disposed of the case with a direction that "this court without expressing any opinion on the merits of the case of the parties disposes of this writ petition directing the Additional Commissioner, Settlement and Consolidation, Sambalpur to dispose of Consolidation Revision Case No.10 of 2020 in accordance with law as expeditiously as possible preferably within a period of six months from today. Till disposal of Consolidation Revision Case No.10 of 2020, Alienation Case No.12 of 2022 initiated in respect of the land in question shall be kept in abeyance."

The learned counsel for the petitioner on 27.4.2022 filed substitution petition along with copy of order of Hon'ble High Court on the above W.P.(C) to dispose of the pending revision on the basis of the spirit of the order of the Hon'ble High Court dated 28.3.2022 .

This revision petition relates to Village Behera, P.S/Dist-Bargarh. The final consolidation ROR and Maps was finally published U/s-22(2) of the OCH & PFL Act with effect from dt 22 04 1992 and subsequently the said village has also been notified for closure of consolidation of operation vide Rev & DM Deptt notification No 5678 Dt 19 02.2016 of Govt of Odisha. The petitioner has prayed to record Ac.0. 600 in her name pertaining Plot No 139 of MS Khata No 189 which he says is wrongly recorded in Rakshit Chaka Khata No618 Plot No 136, Ac0.600 dec during consolidation operation.

In response to the order of this Court, Tahsildar has submitted his a report vide letter No 1508 dated 08 4.2022 indicating the change effected by the consolidation authority during consolidation operation as per guidelines under O.C.H. & P F.L Act, 1972 .

The A.C.O. Hdqrs, Sambalpur was also present during the course of hearing and submitted supportive documents of Chaka operation in Village Behera under the district of Bargarh.

Heard the learned Advocate and perused the documents filed by him in this case, report submitted by the Tahasildar, Bargarh and the A.C.O., Sambalpur also. The Advocate for the petitioner has also filed some documents relating to grievances of the villagers of Village Behera submitted to different authorities regarding issue of R.O.R., delivery of possession etc. under the O.C.H. & P.F.L. Act which are not related to the present case.

This Revision has been filed U/s-37(1) of the Act long after the final publication of the ROR and Maps and closure of consolidation operation of | the village on the plea of illegal and wrong recording. It has been filed against State of Odisha represented through the District Magistrate and Collector, Bargarh and Tahasildar, Bargarh.

It is found from the schedule land of the revision petition, that the petitioner's claims relates to Major Settlement Plot No.139 with an area Ac.0 600 dec. of Major Settlement Knata No 189 which corresponds to! Chaka Plot No.136, area Ac.0.600 dec. of Chaka Khata No.618 of Village Behera.

On verification of the records further it is found that the corresponding Land Records Holdings of the said Major Settlement was originally in the name of Bhima Sahu.e. at the time of consolidation operation. The said Land Record Holding No.278 comprises of an area Ac.5.70 decimal of consolidable land with a valuation of 265.150 paisa. It also comprises an area of Ac.0.290 dec. Non consolidable land. The total Land Record area comes to an area of Ac.5.990 dec. The Major Settlement Plot No 139 with an area Ac 0.940 dec corresponds L.R Plot No 345 Ac.0.220 dec. and 346 Ac 0470 dec. The rest area of the said Major Settlement Plot No 139 includes as a portion of LR. Plot No.383 and 393 recorded in the said L R. holding of Bhima Sahu. The case land in the R.C constitutes Ac.0.600 dec. out of Ac.0.940 dec. of Major Plot No 139.

During preparation of the P C S (Provisional Consolidation Scheme) the said land owner Bhima Sahu exercised his choice vide Form No.70 for allotment of Chaka around his L.R. Plot No.377,383,323,358 etc. which forms the largest part of his L.R. holdings.

It is verified and found that Chaka plot No.144.166 & 190 with a total area of Ac.5.520 dec. to the valuation of 265.200 in Chaka No.72 was given to him. Now the said Chaka with his Non Consolidable plot Ac.0.290 dec. comes to a total Ac 5 81 recorded in his final consolidation HoldingNo.389.

Though Sri Bhima Sahu, the R.T. had exercised his choice to allothim a 2nd Chaka also around L.R. Plot No.345 & 346 he was allotted a single Chaka only in the vicinity of the largest part of his L.R. holding. The L.R. Plot No.345 & 346 which were claimed by Bhima Sahu was allotted to one DalganjanSahu in Chaka No.67 of his holding No.153/244 in the provisional Consolidation scheme. Such modification was made while disposing of objection case No.718/247 filed by one DebadhiPadhan at that time. Consequently the said L.R. Plot No.345 & 346 were included in Chaka Plot No.119 and recorded as Gochar Land in Rakhitakhata ofState Govt. in Gochar Kisam.

The original recorded tenant Bhima Sahu never raised any objectioneither U/s-18(2) after publication of P.C.S. U/s 18(1) or at any subsequent stages of consolidation operation. He was allotted the equivalent land in exchange for his L.R Plot No.345 & 346 in his Chaka No.72 as stated above. Thus the claim of the revision petitioner that the case land is wrongly and illegally recorded in the name of the O.P. i.e. State of Odisha is not correct. It is also not correct that such allotment were made without | their knowledge and behind their back since the original land owner Bhima Sahu had never filed any objection for such allotment as stated aboveduring the objection period. Though he has exercised his choice to allot a 2nd Chaka in his L.R. Plot No.345 & 346 it was not considered as the same was neither a larger part of his original holding nor there was any source of irrigation / valuable growth of trees etc on it.

After the said Land Record Plots i.e 345 and 346 were recorded as Govt. land it formed the Chaka Plot No.136 in the Govt. Rakhitbearing Khata No 618 in GocharKisamas reported by the Tahasildar, Bargarh the said plot has also been de-reserved for Govt. purpose vide DR Case No.5/2021.

From the above it clearly transpires that the submission and contention in the revision petition is quite misleading. It appears that the present revision is an afterthought due to changes of circumstances i.e. characteristic of the lands in course of time It also hits the Limitation Actas such. Hence, the claims in this revision petition has got no merit for consideration and thereforeit is dismissed.

Pronounced the order in the open Court today.

Sd/-
Additional Commissioner
Settlement & Consolidation, Sambalpur

OSS Case No. 2081 of 2016

Decided on 29.08.2022

(Order by Sri Biswanath Sahu, O.A.S.(S.S.)
Additional Commissioner,
Additional Revision Court No. 1, Bhubaneswar)

Anshuman Pani, ... **Petitioner**

-Versus-

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

For the Petitioner - Mr.P.K.Nayak, Adv.

For the Opposite Party No.1 & 2 - Mr. G.C.Nayak, Sr. Standing Counsel.

DECISION

1. The case is taken up for hearing to-day in presence of the Petitioner and the Learned Sr.Standing Counsel for the Opposite Party No.1 & 2 (State).
2. This Revision Petition has been filed by the petitioner, U/s 15 (b) of the O.S.&S Act,1958 for revision of the area Ac 0.046 decimals in the impugned Hal R.O.R. finally published u/s 36 (1) (c) of the said Act, on 30.11.2013. A Petition U/s 5 of the Indian Limitation Act, 1963 for condonation of delay has also been filed along with the Revision Petition. The delay is accordingly condoned on consideration of the limitation petition and the case was admitted.

SCHEDULE OF PROPERTY

Mouza-Ogalapada, Ps- Jatni, Tahasil- Jatni, District- Khurda.

	Khata No.	Plot No.	Area
Sabik	255/193	496/1423	Ac0.046 decimals
Hal	373	2562	Ac0.046 decimals

3. The case of the petitioner in brief is that, the case land pertaining to Hal Plot No.2562 area Ac.0.046 dec corresponding to the Sabik Plot No.496/1423, stands recorded in the name of Bishnupriya Samantray,Krushnapriya Samantray D/o-Jagmohan Samantaray,Sujit Kumar Rath S/o-Ajit Kumar Rath in 'Sthitiban' status under the impugned Hal Khata No. 373 of Mouza- Ogalapada. That the Sabik recorded tenants namely Khetrabasi and Banamali partitioned their suit property to

avoid future litigation. As per the said partition Khetrabasi got Khata No.55,Plot No.496 area Ac.2.000 dec.out of Ac.3.720 dec.Plot No.264 area Ac.0.395 dec.and rest property fell into the share of Banamali Samantra from Khata No.55 Plot No.496 area Ac.1.720 dec.Plot No.486 Ac.0.350 dec. and Plot No.447 area Ac.0.315 dec.

That, After the death of Banamali Samantray his two sons Harmohan Samantray and Jagmohan Samantray again partitioned their father's property vide Partitioned Deed No.2337 dtd.27.08.1975. As per said Regd. Partition Deed Jagmohan Samantray got Khata No.55,Plot No.496 area Ac.0.845 dec. out of Ac.3.720 dec. and Plot No.447 area Ac.0.315 dec. and Harmohan Samantray got Khata No.55 Plot No.496 area Ac.0.845 dec. out of Ac.1.720 dec. Plot No.486 area Ac.0.350 dec.

That, the said partition has been mutated in favour of Harmohan Samantray vide Mutation Khata No.255/193 Plot No.496/1423 area Ac. 0.845 dec.,Plot No.486 area Ac.0.350 dec. by the order of Tahsildar in Mutation Case No. 4345/1976.

That, Harmohan Samantray died leaving behind his five sons namely Biswa,Sudhanshu, Himanshu,Subharnsu and Abani. Similarly Abani Deid leaving behind his wife Santilata and son Prakash. All the successors of Harmohan Samantray alienated an area of Ac.0.046 dec. out of Ac.0.845 dec.vide Sub-Plot No.20 from Plot No.496/1423,under Khata No.255/193 to their Power of Attorney Holder Ashiyana Promoters Pvt.Ltd Managing Director Basanta Kumar Mohapatra (O.P No.3) vide GPA No. 5422 dtd.12.03.2010 to the present petitioner Anshuman Pani vide RSD No.7389 dtd. 06.04.2010(Original copy of the RSD is attached in the file).

4. The petitioner claims to be in peaceful possession over the case land without any dispute from the date of his purchase. Because of inaction on the part of the petitioner during the Settlement operation in the village, the case land could not be recorded in his name exclusively in a separate Hal Khata under 'Sthitiban' status on the strength of his purchase and possession, of the suit land and has been wrongly recorded in the name of Bishnupriya Samantray,Krushnapriya Samantray D/o-Jagmohan Samantray,Sujit Kumar Rath S/o-Ajit Kumar Rath in 'Sthitiban' status under the impugned Hal Khata No. 373 of Mouza- Ogalapada. The present Revision Petition is filed by the petitioner Anshuman Pani S/o-Prasanna Kumar Pani with a prayer to record the case land i.e. Hal Plot No. 2562 area Ac.0.046 dec. in his name in a separate Hal Khata under 'Sthitiban' status on the strength of his purchase and possession by deleting the same from the impugned Hal R.O.R. Khata No.373.

5. Notice was sent to all the Opposite parties. Heard the learned advocate for the petitioner in presence of the learned Sr.Standing Counsel who represented OP No. 1 & 2 (State). Gone through the documents filed by the petitioner and the parawise report of the Settlement Authorities kept in the case record.

6. The Sabik and Hal status of the suit land submitted in the parawise report by the Assistant Settlement Officer, Record Room of Cuttack Major Settlement is seen to corroborate with the documents and Sabik & Hal status submitted by the petitioner in the present revision. Further, on perusal of the documents filed by the petitioner the flow of title from the Sabik recorded tenant to the present petitioner is seen established.

7. The following documents have been filed by the petitioner to substantiate his claim.

- (i) The certified copy of Hal R.O.R. Khata No.373 of Mouza-Ogalapada.
- (ii) The Sabik-Hal correlation information of the case land.
- (iii) The Original Regd. Sale Deed No. 7389 dated 06.04.2010.
- (iv) Certified copy of Sabik ROR Khata No.255/193 of Mouza-Ogalapada.
- (v) Report of the Addl. Tahasildar Jatni submitted vide letter No.6526 dated 28.10.2021.
- (vi) Report of the Assistant Settlement Officer Cuttack.dtd.24.09.2020.

8. In view of the documents submitted by the petitioner and from the parawise reports submitted by the Cuttack Major Settlement Authorities the petitioner is seen to have a prima-facie claim on the suit land. The revision petition is therefore allowed in favour of the petitioner.

9. The Tahasildar Jatni is directed to make necessary correction of maps as per the sketch map attached to with RSD No. 7389 dated 06.04.2010 relating to Hal Plot No. 2562 area Ac.0.046 dec. and record the corresponding area of the present suit land measuring an area Ac0.046 decimals mentioned above in favour of the present petitioner under "Stithiban" status.

10. Send a copy of the order to the Tahasildar, Jatni for necessary compliance within a period of 3 (three) months from the date of receipt of the copy of the order.

11. 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 29th day of August, 2022.

Sd/-
Additional Commissioner.

OSS Case No. 2533 of 2016**Decided on 29.08.2022**

(Order by Sri Biswanath Sahu, O.A.S.(S.S.)
Additional Commissioner,
Additional Revision Court No. 1, Bhubaneswar)

Ganguli Panda ... **Petitioner**

-Versus-

Basundhara Estate Developer, represented through its Chairman,
Smt.Debapriya Bidhar & others ... **Opp. Parties**

For the Petitioner - Mr. J.Pradhan, Adv.

For the Opposite Party No. 15 & 16 - Mr. G.C.Nayak, Sr.Standing Counsel.

DECISION

1. The case is taken up for hearing to-day in presence of the Petitioner and the Sr.Standing Counsel for the Opposite Party No.15 & 16 (State).

2. This Revision Petition has been filed by the petitioner, U/s 15 (b) of the O.S.& S Act, 1958 for revision of the area Ac 0.055 decimals in the impugned Hal R.O.R. finally published u/s 36 (1) (c) of the said Act, on dated 21.11.2012. A Petition U/s 5 of the Indian Limitation Act, 1963 for condonation of delay has also been filed along with the Revision Petition. The delay is accordingly condoned on consideration of the limitation petition and the case was admitted.

SCHEDULE OF PROPERTY

Mouza- Bhuasuni, P.S.- New Capital , Tahasil- Bhubaneswar, District- Khurda.

	Khata No.	Plot No.	Area
Sabik	150	382	Ac.0.055 decimals
Hal	875	1919	Ac.0.055 decimals

3. The case of the petitioner in brief is that, the case land pertaining to Hal Plot No. 1919 area Ac.0.055 decimals corresponding to the Sabik Plot No.382, stands recorded exclusively in the name of Baikuntha Routra S/o-Digambar Routra, Banambar Routra S/o-Mani Routra, Bamadev Routra S/o-Barju Routra, Lokanath Routra S/o-Fakira Routra, Kirtiprava Mohanty W/o-Dilip Kumar Das, Kailash Chandra Swain, Tusar Ranjan Swain S/o-Bharmarbar Swain, Swarnalata Sahani W/o-Upendra Kumar Muduli, Sandhyarani Devi W/o-Guru Prasad Acharya , Manjushree Rout W/o-Bhagirathi Rout in 'Sthitiban' status under the impugned Hal Khata No. 875 of Mouza-Bhuasuni. That in the Sabik ROR their was Kabjawari note of possession and the suit property fallen in favour of Baikuntha Routra. For legal

necessity said Baikuntha Routray sold the suit property to Somanath Patasahani and Pravakar Patasahani i.e O.P No. 3 & 4 vide RSD No. 2710 dtd.05.4.1966. On the strength of the Sale Deed Somanath Patasahani and Pravakar Patasahani executed one GPA bearing No. 820 dtd.13.11.1997 in favour of Basundhara Estate Developer represented through its Chairman Sri Prafulla Kumar Bidhar. On the strength of Said GPA the Attorney Holder executed a RSD bearing No. 2393 dtd.03.06.2000(Original copy of the R.S.D is attached in the file) in favour of the present petitioner. That soon after the sale transaction the petitioner filed application before the Learned Tahasildar Bhubaneswar, U/s-8(A) of the OLR Act for Conversion of Agricultural Land to Homestead Purpose. The same was registered as OLR 8(A) Case No.7067/2008 and due conversion of the case land was made vide issuing receipt No.AS 942944 dated 20.03.2009.

The Settlement Operation was going on when the conversion was made by the Tahasildar, Bhubaneswar and the Settlement Authority could not give effect to the orders of the Tahasildar in the finally published ROR and rather published the ROR in the name of Baikuntha Routra S/o-Digambar Routra, Banambar Routra S/o-Mani Routra, Bamadev Routra S/o-Barju Routra, Lokanath Routra S/o-Fakira Routra, Kirtiprava Mohanty W/o-Dilip Kumar Das, Kailash Chandra Swain, Tusar Ranjan Swain S/o-Bharmarbar Swain, Swarnalata Sahani W/o-Upendra Kumar Muduli, Sandhyarani Devi W/o-Guru Prasad Acharya, Manjushree Rout W/o-Bhagirathi Rout in 'Sthitiban' status under the impugned Hal Khata No. 875 of Mouza-Bhuasuni. The present revision Petition is filed by the petitioner with a prayer to change the Kisam of the suit land from Patita to Gharabari and delete the name of O.P No.1 to 14 from Hal ROR and accordingly a separate correct Patta be issued in favour of the petitioner.

4. The following documents have been filed by the petitioner to substantiate her claim.

- (i) The original Hal R.O.R. Khata No.875 of Mouza- Bhuasuni.
- (ii) The Sabik-Hal correlation information of the case land.
- (iii) The original Regd. Sale Deed No. 2393 dated 03.06.2000.
- (v) Xerox copy of the OLR Case Rent Receipt No.AS 942944 dated 20.03.2009.

5. Having heard the learned Counsels for the parties, on perusal of the documents filed by the petitioner alongwith the certified copy of the OLR Case No.7067/2008, it is seen that the case land stands recorded in favour of the Opposite parties under the impugned Hal R.O.R. Khata No.875. The Petitioner claims to revise the classification/ Kisam of the case land from 'Patita to Gharabari' on the ground that order of conversion of kisam of the case land from 'Patita to Gharabari' U/s 8-A of the O.L.R. Act, 1960 has been passed by the learned Authorised Officer-cum- Tahasildar, Bhubaneswar in O.L.R. Case No. 7067/2008 and the Premium / conversion fee of Rs.1687/-(Rupees One Thousand Six Hundred Eightyseven) only

vide Rent Receipt No.AS 942944 dated 20.03.2009 have already been deposited by the petitioner in compliance to the order so passed in the aforesaid O.L.R. Case No. 7067/2008.

6. The Revision Petition is therefore allowed with the observations.
7. The Tahasildar Bhubaneswar is directed to revise the ROR as follows;
 - i) To delete the Hal Plot No.1919, Area-Ac.0.055 decimals from the Hal Khata No-875 and record the same exclusively in the name of the petitioner in a separate Hal Khata under Sthitiban status with kism Gharabari on the strength of her purchase, possession and conversion from 'Patita to Gharabari'.
 - ii) To correct the kism of the Hal Plot No-1919, Area-Ac0.055 decimals under Hal Khata No.875 as "*Gharabari*" kism instead of Patita by making necessary corrections of rent, cess and etc.
8. Send a copy of the order to the Tahasildar, Bhubaneswar for necessary compliance within a period of 3 (Three) months from the date of receipt of the copy of the order.
9. 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 29th day of August, 2022.

Sd/-
Additional Commissioner.

O.S.S. Case No. 594 / 2019

Decided on 25.02.2022

(Order by Sri Pratap Chandra Rout, OAS (S.S),
Additional Commissioner,
Additional Revision Court, Bhubaneswar)

Gopabandhu Pal**Petitioner.**

-Vrs.-

Tahasildar, Bhubaneswar & others**Opposite Parties**

Advocate for Petitioner	-	Mr. A. K Swain
Advocate for opposite party 1 & 2	-	Mr. S. K Dash (ASC)
Advocate for opposite party 3 to 6	-	Mr. D.K Mohany

ORDER

This Revision case has been filed under section 15(b) of the O.S & S Act, 1958 with prayer to record the suit land in favour of petitioner on the basis of R.S.D and field possession.

SCHEDULE OF PROPERTY

Mouza- Bhalunka, Tahsil- Bhubaneswar, PS- Chandaka No. 35, Dist- Khurda.

Sabik Khata No.	Sabik Plot No.	Area
15	161	Ac.0.035 dec
Hal Khata No.	Hal Plot No.	Area
51	71	Ac.0.035 dec out of Ac.0.068 dec

Basing on the aforesaid petition of the petitioner one O.S.S. Case had been registered vide O.S.S case No. 594/2019 and notice had been issued to all opposite parties by Regd. Post. In response to notice, opposite party 3 to 6 are appearing through their Advocate Mr. D. K Mohanty. But he did not file any objection in this case. The Additional Standing Counsel Mr. S.K Dash is represented for State (Op 1 & 2). Thus this case heard in presence of the counsel for the petitioner and Additional Standing Counsel for the State.

The Hal ROR of Mouza Bhalunka had been finally published on 21.11.2012 and the revision petition had been filed on 22.04.2019. 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 following documents in support of his claim.

1. Certified copy of Hal ROR bearing Khata No. 45 Hal Plot No. 70 area Ac.0.065 dec of Mouza Bhalunka Ps- Chandaka which stands recorded in the name of Gopabandhu Pal S/o- Kapila Chandra Pal.
2. Photo copy of Hal ROR bearing Khata No. 51 Hal Plot No. 71 of Mouza Bhalunka Ps- Chandaka which stands recorded in the name Chitrasen Sahoo, Pravakar Sahoo, Jagannath Sahoo & Maguni Charan Sahoo all are S/o- Chakradhar Sahoo.
3. Certified copy of Yadast No. 74.
4. Certified copy of G.P.A No. 868 dated 21.11.1997.
5. Original R.S.D No. 5994 dated 31.12.1997.

The Case in brief that, as per P.W.R Sabik Plot No. 161 under Sabik Khata No. 15 stood recorded in the name of Chakradhar Sahoo S/o- Dash Sahoo.

That, after the death of Chakradhar Sahoo his legal heirs namely Chitrasen Sahoo, Pravakar Sahoo, Jagannath Sahoo & Maguni Charan Sahoo all are S/o-

Late Chakradhar Sahoo (Through their Power of Attorney Holder Sri Kailash Chandra Pradhan S/o- Late Arakhita -Pradha vide G.P.A No. 868 dated 21.11.97) had sold with an area of Ac.0.100 dec out of Ac.0.905 dec from Sabik Plot No. 161(Sub Plot No. 5 marked in red) under Sabik Khata No. 15 of Mouza Bhalunka in favour of present petitioner Sri Gopabandhu Pal S/o- Late Kapila Ch. Pal vide R.S.D No. 5994 dated 31.12.1997.

At the time of Settlement Operation, the petitioner submitted all his relevant documents for recording the suit land in his favour as per R.S.D and possession but the ROR has been prepared only with an area of Ac0.065 dec vide Hal Plot No. 70 under Hal Khata No. 45. Remaining purchased part of the petitioner i.e area Ac.0.035 dec has been recorded in the name of the vendors of the petitioner vide Hal Plot No. 71 Hal Khata No. 51 of Mouza Bhalunka. So petitioner filed this case to record the remaining area in his name.

Para-wise report has been received from Settlement Officer, Cuttack. As per report, the Sabik Khata No. 15 containing Sabik Plot No. 161 of Mouza- Bhalunka is corresponding to Hal Khata No. 51 containing Hal plot No. 71 of Mouza Bhalunka Ps- Chandaka.

Field inquiry report received from Tahasildar, Bhubaneswar which reveals that the petitioners is in possession over area Ac.0.065 dec in Hal Plot No. 70 under Hal Khata No. 45 and area Ac.0.035 dec in Hal Plot No. 71 under Hal Khata No. 51 of Mouza Bhalunka as per purchased through R.S.D No. 5994 dated 31.12.1997 from Sabik Plot No. 161 under Sabik Khata No. 15 of Mouza Bhalunka Ps- Chandaka.

On perusal of the case record, P.W.R, field enquiry reports and available documents filed by the counsel for the petitioner, 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 takeaway with an area of Ac0.035 dec out of Ac.0.068 dec from Hal Plot No. 71 (As per trace map attached in R.S.D) under Hal Khata No. 51 of Mouza Bhalunka Ps- Chandaka and record the same in favour of present petitioner Sri Gopabandhu Pal S/o- Late Kapila Chandra Pal by creating separate Khata and plot with fixation of rent, cess, etc following due process of law.

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

Order pronounced in the open court today the 25th day of February, 2022.

Sd/-
Additional Commissioner

Revision Case No.RP- 1015 / 2015

Decided on 29.01.2022

(Order by Sri Chandramani Badnayak, OAS (S.S),
Additional Commissioner,
Additional Revision Court, Bhubaneswar)

BenzfabTechnoligies Pvt. Ltd.,
Represented through its Managing Director
Sri Susant Pujari - - - - - **Petitioner**

-Versus-

V.Chencha Rao & others - - - - - **Opp. Parties**
Bhikari Behera and others **Intervenor**

For Petitioner - Mr. Jalandhar Pradhan and
Bighnaraj Rath, Advocate
For O.P. Nos. 4 & 5 - Mr. H. Choudhury, Addl. Standing Counsel.
For Intervenors - P.K. Panda & S.K. Mishra and
M.P. Dhani, Advocate

DECISION

1. This revision petition has been filed under Section 15(b) of the Orissa Survey and Settlement Act, 1958 for correction of the Hal RoRof the suit land mentioned below which has been finally published on 30.11.2013. The petitioner is claiming the suit land vide purchase through Registered sale deed No. 11121203649 dated 26.11.2012.

Schedule of Property

Mouza- Ogalapada, Tahasil- Jatni, Sabik Khata- 255/401, Sabik Plot - 596/1639, Area Ac 5.00Kisam- PuratanPatita corresponding to Hal Khata No. 150, Hal Plot No -1515, Area Ac 0.060, Plot No - 1516, Area Ac 0.025, Plot No - 1517, Area Ac 0.025, Plot No - 1518, Area Ac 0.060, Plot No - 1519, Area Ac 0.070, Plot No - 1520, Area Ac 0.055, Plot No - 1522, Area Ac 0.060, Plot No - 1523, Area Ac 0.060, Plot No - 1524, Area Ac 0.060, Plot No - 1525, Area Ac 0.060, Plot No - 1526, Area Ac 0.060, Plot No - 1527, Area Ac 0.060, Plot No - 1530, Area Ac 0.015, Plot No - 1531, Area Ac 0.050, Plot No - 1532, Area Ac 0.060, Plot No - 1533, Area Ac 0.060, Plot No - 1534, Area Ac 0.050, Plot No - 1536, Area Ac 0.050, Plot No - 1537, Area Ac 0.020, Plot No - 1538, Area Ac 0.050, Plot No - 1539, Area Ac 0.060, Plot No - 1540, Area Ac 0.050, Plot No - 1541, Area Ac 0.055, Plot No - 1543, Area Ac 0.055, Plot No -

1544, Area Ac 0.055, Plot No – 1545, Area Ac 0.055, Plot No – 1546, Area Ac 0.055, Plot No – 1547, Area Ac 0.055, Plot No – 1548, Area Ac 0.055, Plot No – 1549, Area Ac 0.055, Plot No – 1550, Area Ac 0.055, Plot No – 1551, Area Ac 0.060, Plot No – 1552, Area Ac 0.060, Plot No – 1553, Area Ac 0.055, Plot No – 1554, Area Ac 0.055, Plot No – 1555, Area Ac 0.055, Plot No – 1557, Area Ac 0.180, Plot No – 1558, Area Ac 0.850, Plot No – 1560, Area Ac 0.245, Plot No – 1562, Area Ac 0.060, Plot No – 1563, Area Ac 0.060, Plot No – 1564, Area Ac 0.060, Plot No – 1565, Area Ac 0.060, Plot No – 1566, Area Ac 0.060, Plot No – 1567, Area Ac 0.060, Plot No – 1568, Area Ac 0.060, Plot No – 1569, Area Ac 0.060, Plot No – 1570, Area Ac 0.050, Plot No – 1573, Area Ac 0.060, Plot No – 1542, Area Ac 0.055, Plot No – 1571, Area Ac 0.055, Plot No – 1559, Area Ac 0.065, Plot No – 1561, Area Ac 0.065, Plot No – 1556, Area Ac 0.170, Plot No – 1535, Area Ac 0.350 **(Total 55 Nos of Plots having total Area Ac 4.525)**

2. The case in brief is that as per sabikRoR the suit property stood recorded in the names of V. Chench Rao, S/o- Appa Rao of Visakhapatnam, Andhra Pradesh. To look into the suit land and for the purpose of sale, Sabik recorded tenant namely V. Chench Rao executed a regd. General Power of Attorney bearing No.304 dtd. 30.07.2001 in favour of Sailendra Pradhan, S/o- Surendra Pradhan (Opp.Party No.2). (Xerox copy of the G.P.A. No. 304 dtd 30.07.2001 has been filed). Sailendra Pradhan on the strength of said G.P.A. executed a Regd. Sale Deed bearing No.79dtd. 14.01.2004 in favour of Pratap Singh, S/o- Raj Kishore Singh (Opp.Party No.3) for an area of Ac. 4.00 dec out of total area of Ac. 5.00 dec. from Sabik Plot No. 596/1639 of SabikKhata 255/401 (Xerox copy of R.S.D. dtd 14.01.2004 has been filed). Thereafter the Pratap Singh was in peaceful, physical possession over the suit property and in the mean time for his legal necessity he executed a regd. Sale Deed bearing No.11121203649 dtd.26.11.2012 in favour of the Benzofab Technologies Pvt Ltd (Present Petitioner) for an area Ac. 4.00 dec and there after the present petitioner has been in peaceful, physical possession over the suit land. (Xerox copy of the R.S.D. dtd 26.11.2012 has been filed).

In the mean time the present petitioner submitted the relevant documents before the settlement authority but unfortunately the Settlement Authority again recorded the suit property in favour of the Sabik Recorded tenants (Opp.Party No.1) which is the basic problem to the present petitioner.

(Copy of the said impugned Hal RoR has been filed).

Hence, the petitioner has filed the present revision U/s 15(b) of O.S.S. Act 1958, praying to record separately & exclusively in her name an area of Ac. 4.00 dec out of total 55 Nos of Hal Plots under Hal Khata No. 150 by virtue of the purchased through Registered sale deed No. 11121203649 dated 26.11.2012.

This Revision has been filed with a delay condonation petition U/s 5 of Limitation Act and the delay for filing the Revision mentioned therein is considered. Delay is condoned and case is admitted.

3. Notice issued to O.P. No.s1 to 5 through Regd. post are deemed sufficient. The O.P. No. 4 & 5 being government officials is represented by the learned Addl. Standing Counsel for the state. Heard the learned Advocate for the petitioner and perused the documents filed on behalf of the petitioner and the reports submitted by the Cuttack Major Settlement Authorities and Bhubaneswar Tahasil Authorities which are kept in the case record.

During the hearing of the Case, several Opp. Parties namely Bhikari Behera, Rita Sahoo and Sambit Martha and others have pleaded to implead them as necessary Opposite parties/Intervenors to this Case, as they all have their interest over the suit property. All those Intervenors petitions were allowed and Court gave them opportunities to submit the relevant documents in support of their claim. Perused all the documents submitted by all these Intervenors, which are kept in the case record.

As per the prayer of the Intervenors, the Brief history of the case is that :

the suit property corresponding to Mutation Khata No.255/401, Plot No.596/1639, Area Ac.5.000 dec further corresponds to Sabik Khata No.44, plot No.596, Kisam:Puratan Patita, Area Ac.5.000 decs. stands recorded in the name of V. Chench Rao in the year 2013 final settlement R.O.R. .It is the admitted facts of both the parties that one Prafulla Chandra Samantaray was the owner in possession over the Schedule land, who sold the same to V.Chench Rao vide Registered Sale Deed No. 1684 dt. 01.11.1980 (A xerox copy of the R.S.D. No.1684 dt. 01.11.1980 has been filed). V. Chench Rao taking possession in respect of the Schedule land on the strength of R.S.D. dt.01.11.1980 possessed the same as bonafide purchaser-cum- owner over the Schedule land and mutated his name over the same (A xerox copy of the Mutation R.O.R. vide Khata No.255/401 has been filed).

V. Chench Rao expired on 11.06.1987 (A Xerox copy of Death Certificate issued by Vishakhapatnam Municipal Corporation has been filed).

V. Chench Rao expired on 11.06.1987 leaving behind his legal heirs (A xerox copy of legal heirs. Certificate has been filed). All the legal heirs of Late V. Chench Rao executed a General Power of Attorney in favour of D.Keshav Rao at a different date, i.e. on dt. 18.04.1991, Dt. 10.09.2003, Dt. 23.10.2003 Dt. 16.10.2003, Dt. 27.09.2003 (A Xerox copy of all the GPAs has been filed).

It is stated that, D.Keshav Rao on the strength of above five General Power of Attorney, he executed and registered a Sale Deed in favour of M/S MAITRI BUILDERS PVT.LTD vide R.S.D. No. 3308 dt. 06.04.2004 in respect of Ac.5.00 decs. (Five Acres) and delivered possession in his favour (A Xerox copy of the R. S.D. No. 3308 dt. 06.04.2004 has been filed).

On the strength of R.S.D. No.3308 dt. 06.04.2004 MAITRI BUILDERS PVT.LTD represented by it's Managing Director Sri Brahmananda Sahoo deviding lot of Sub-Plots with separate sketch map, has sold the same to different persons vide different sale deeds and now all the purchasers, on the strength of their sale

deeds are in peaceful possession over their purchased land and also they have filed Revision Case in Member Board of Revenue, Odisha, Cuttack to record all those purchased share in their names. Now the Revision Cases are pending in the Court of Member, Board of Revenue, Odisha, Cuttack and Revision Court's in Bhubaneswar for final disposal.

One Bhikari Behera (Intervenor) has also purchased an area of Ac.0.055 decs. from MAITRI BUILDERS PVT.LTD vide R. S. D. No.3089 dated 15.03.2005 and he is possessing the said area peacefully and also he has recorded the same in his name by the Settlement Authorities and got R.O.R. (A Xerox copy of the Sale Deed No. 3089 dt. 15.03.2005 and Settlement Final R.O. R. has been filed).

Similarly, Rita Sahoo (Intervenor) has purchased an area of Ac.0.055 decs. from MAITRI BUILDERS PVT.LTD vi.de R. S.D. No. 3089 dt. 15.03.2005 and she is in possession over her purchased land peacefully and also she has filed Revision case in the Court of Member Board of Revenue, Odisha, Cuttack. Now the said Revision Case is pending in Revision Court, Bhubaneswar (A Xerox copy of the R.S.D. Revision has been filed).

Similarly, Sambit Martha (Intervenor), has purchased an area of Ac.0.056 decs. from MAITRI BUILDERS PVT.LTD vide R. S.D. No. 5226 dt. 09.04.2008 and on the strength of said R. S.D., he is in peaceful possession over his purchased land and also he has filed Revision Case in the Court of the Member, Board of Revenue, Odisha, Cuttack vide R.P. No.1981/2014 and the said Revision Case is pending for final disposal. (A Xerox copy of R.S.D. and Revision Petition has been filed).

Now, as stated by all the aforesaid Intervenor/Opp. Parties, the fact of the present Revision Case runs as follows:

That, one V. Chench Rao, the Opp.Party No.1. has executed a General Power of Attorney in favour of Sailendra Pradhan, the Opp. Party No.2 vide G.P.A. No.304 dt. 30.07.2001 and on the strength of the said G.P.A. he has executed a Sale Deed in favour of Pratap Singh, the Opp.Party No.3 vide R. S.D. No.79 dated 14.01.2004 and the said Opp.Party No.3 has executed a Sale Deed. in favour of the present petitioner vide R. S. D. No.11121203649 dt. 26.11.2012 in respect of Ac.4.000 decs. (Four Acres) and on the strength of the said Sale Deed, the present petitioner has filed the said Revision case to record the same in his name. This is the case of the petitioner.

As stated by the intervenors, the fact of the case is that, all the documents of the petitioner i.e. G.P.A. No.304 dated 30.07.2001, R.S.D. No. 79, dt. 14.01.2004 and Deed No.11121203649 dated 26.11.2012 are illegal, void and fabricated as the G.P.A. No. 304 dt. 30.07.2001 has been declared as fabricated, illegal document by the Competent Civil Judge (Jr. Di.vn.) Berhampur in C. S. No. 157/2004. In fact, V. Chench Rao expired on 11.06.1987, whereas the G.P.A. No. 304 dt. 30.07.2001 has been executed by V. Chench Rao in favour of Sailendra Pradhan. This has

been declared forged one by the Civil Judge (Jr. Divn.) Berhampur in C.S.No. 157/2004. In the year 2004, all the legal heirs namely Vippera Jyoti and others, when came to know about the illegal Genral Power of Attorney bearing No. 304 dt. 30.07.2001, they filed a Civil suit bearing ea C. S. No.157/2004 in the Court of the Civil Judge (Jr. Divn.) Berhampur against Sabendra Pradhan and on 06.02.2006 the Hon'ble Civil Judge (Jr. Divn.) Berhampur decreed the suit against Sailendra Pradhan and perusing the death certificate of V. Chench Rao and legal heirs Certificate, declared that the G.P.A. No.304 dt. 30.07.2001 is forged one (A xerox copy of G.P.A. No.304 dt. 30.07.2001 and Judgement of C.S. No.157/2004 has been filed). It is principle of law that after hearing of the suit, the Hon'ble Court has relied on the death certificate of Late V. Chench Rao and legal heir certificate of Late V. Chench Rao and the G.P.A.No.304 dt. 30.07.2001 has been cancelled by the Competent Civil Court vide C. S.No.157/2004.

On the other hand, relying the illegal G.P.A. No.304 dt. 30.07.2001 Sailendra Pradhan has sold the Schedule land to Pratap Singh, the Opp.Party No.2 vide R. S.D. No. 79, dt. 14.01.2004 and Pratap Singh has sold relying the said Sale Deed to the present petitioner vide R.S.D. 11121203649 dt. 26.11.2012. So the Sale Deed of Opp. Party No.3 and Sale Deed of the petitioner are illegal in the eye of law, so the petitioner has no manner of any right, title, interest and possession over the Schedule land at any point of time. Hence considering the facts and circumstances of the case and perusing the documents, the intervenors has prayed the Court to dismiss the Case.

4. Perused the documents/report filed/received by the petitioner/revenue authorities as well as the Intervenors.

Gone through the judgement of C.S. No. 67/2002 dtd. 17.07.2003 of the Hon'ble Civil Judge, Junior Division, Berhampur where it has been declared that , the power of attorney bearing 304, dtd 30.07.2001 is a forged one. It is settled principle of law is that, as the GPA deed itself is forged one, as declared by the Competent Civil Court, all the subsequently sale deed executed on the strength of that forged GPA deed is invalid as it has been fraudulently created.

In view of the foregoing observation and factual (disputed) aspects along with limited scope provided under Section 15(b) of O.S.S. Act 1958, this revision scans no merit. Hence this court is constrained to reject the prayer of the petitioner.

Hence this revision stands **dismissed**. It is open for the petitioner to approach the appropriate forum for seeking her relief if so advised.

5. Original documents filed, if any be returned to the petitioner by keeping attested xerox copies of the same in the case record. Lower case records, if any, be returned to the concerned Courts.

6. Pronounced, the order in the open court today, i.e.on 29thday of January, 2022.

Sd/-
Additional Commissioner

ON ROAD/ RASTA/STREET (PRIVATE / PUBLIC)

Now days a common problem has been marked by almost all Quasi Judicial Authorities of the State in connection Road/Rasta/Street (Pvt/Public). In relation to the above aspect, most of the parties / petitioners are raising their objections before the Revenue Courts for redressal of their grievances by exercising the power as contained therein in the local Revenue laws/State Revenue Laws.

In most of the Revisional Courts, the claimants / petitioner / plaintiffs are trying to enforce their right of Road / Passage (Pvt/Public) for filing applications under **Section-6, 12, 15 & 25** of the **OSS Act, 1958**. It is the right time to envisage and to enlighten the Public at a large including their lawyer representatives that for the purpose of getting a Road/Rasta/Street/Passage (Pvt/Public) for their land, there are various principles/Rules/Regulations/Acts on the provisions are already available/ contained there in different codified statute of the state.

The relevant provisions of different Acts were given here below for ready references:-

Chapter-xviii of Odisha Municipal Corporation Act, 2003 which relates to regulation of streets/roads contained therein from section 379 to 430.

Section-379- Vesting of public streets in the corporation-

Section-380- Power of Commissioner in respect of public streets-

Section-381. Disposal of land forming site of closed street-

Section-382- Power to make new public street-

Sec- 429- Persons accidentally breaking lamp to repair the damage –

Section-430- Measures for watering street-

ODISHA MUNICIPAL ACT, 1950 CHAPTER (XVI) ON PUBLIC ROAD FROM SECTION 234-280

Section-234- Maintenance and repair of roads-

Section- 235- Power of [municipality]-(1) The [Municipality] may-

- (a) lay out and make new public roads;
 - (b) construct bridges and sub ways;
 - (c) turn, divert or with the special sanction of the State Government permanently close any public road or part thereof; and
 - (d) widen, open, extend or otherwise improve any public road.
- (2) Reasonable compensation shall be paid to the owners of any land or buildings or part of the building which are required for, or effected by, and such purposes.

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Section- 279- Filling in if pools, which are a nuisance;-

Section- 280- Cleansing of insanitary private tank or well used for drinking-

Odisha Development Authorities Act, 1982 “(Chapter- 10) Section-91, road it Section-21(j)and Sub-Section- (xxx) (Public street) of Section-2

Section-91- Removal of unauthorized development-

Similar provisions are there for Notified Areas and Grama Panchayat in the said codified Acts and Rules. On a bare reading of the aforesaid clear provisions of the Act, the persons aggrieved / or the person deprived of getting a Road/ Rasta/ Street (Pvt/Public) in order to approach to his land can legitimately approach to the competent authorities of the aforesaid Acts through the appropriate provision of the said Act for quick redressal of their grievances and for efficacious statutory remedies.

In the event, the statutory authorities failed to discharge their duties within a stipulated time or in otherwise will discharge their duties rightly or wrongly, the person aggrieved with the said order/directions of the competent authorities or on any inaction of the competent authorities, he/she can approach the Hon'ble High Court of Odisha, Cuttack under Article -226 of the constitution of India, 1950 read with Article-227 of the constitution of India, 1950.

In the event it is not possible for the aggrieved parties concerned, to approach the Hon'ble High Court, either on the ground of financial stringencies or on the ground of ailment / old age factor, they can approach to the competent Civil Court having jurisdiction on the disputed road, by filing Title suit/ Civil Suit for declaration. Those persons who are exempted from paying court fees can also take assistance of Court Fees Act by citing the exemption notification issued by Govt. of Odisha, for different classes of people during 1995-1996 which holds good till date.

To approach any other authorities for redressal of their grievance other than the statutory authorities will amount to unnecessary wastage of time and money. If an Act provides/prescribe certain provision of law to perform certain duties then the work has to be exercised in that manner otherwise not. This principle was expressed by the Hon'ble Apex Court of India since, 1950

Section-6, 12, 15, 25 and 32 of OSS Act, 1958 have not given any such powers to Revisional Authorities to provide road if it is otherwise blocked or encroached by any individual or public at large. If the map is prepared wrongly at the time of settlement operation in connection with public road not even private road then only Revisional Authorities can issue directions to the concerned Tahasildars, for rectification of Map otherwise no such provision is available for issuance of any such direction.

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STANDING COUNSEL

INTESTATE SUCCESSION IN INDIA: AN OVERVIEW

Intestate Succession refers to a Succession that occurs without the use of a will. A will specifies how a person intends to distribute his or her assets or possessions to his or her heirs after death. A person is said to have died intestate when he /she dies without a will.

In other words, Succession of the person dying without leaving a valid and enforceable Will, is called Intestate Succession. Principles of distribution of assets in this regard are based on personal laws applicable to Deceased. Where a person makes a Will for some of the properties only and leaves out balance, or where Will is not found valid for whatever reason, such balance property shall devolve in accordance with principles of Intestate succession.

LAWS OF INTESTATE SUCCESSION ARE DIFFERENT FOR HINDU, MUSLIMS AND CHRISTIANS.

For Hindus, which include Buddhist, Jains, Sikhs, Arya Samaj, the law of intestate succession is codified in Hindu Succession Act, 1956. The principles of devolution of property of deceased in this case are as follows:

FOR MALE HINDUS:

There are four classes of Legal heirs. The property will pass on exclusively to legal heirs specified in Class 1 if there is anyone available. Class 1 relatives include wife, son/daughter, mother, son/daughter of predeceased son/ daughter, widow of the predeceased son and few other such relatives. The property would be distributed in equal share to widow, mother and each of children. In case, any of the child has predeceased, his spouse and children will collectively get his / her share. Example, A has died. He has left behind B, his wife, C, his mother and D, elder son, F, youngest son and G, his daughter. E, his middle son had died few years earlier and he left behind his wife E-1, and two children E-2 and E 3. His property would be divided in 6 parts, each legal heir would get one part. Wife and children of deceased E would collectively get one part.

The legal heirs specified in Class II will get the estate of the deceased only if there is no relative in Class 1. Relatives in Class II have been put in sequence and it is provided that the relative named first in list would get full, in preference to the next. Second person will get in Full, only if first named relative is not there and so on. In this schedule, Father is named first and brother/sister as second and so on. As such, if there is no relative in class 1 and father is there, then he will inherit the estate fully. If father is not there, then brothers and sisters of the deceased shall inherit the estate fully.

Class III and IV are Agnates (relations only through male) and Cognates (relations not wholly through males). In case there are no heirs even in class II,

then succession would devolve upon agnates of such deceased, failing which by cognates. If there are no Agnates and Cognates also, the estate will devolve upon the Government. Among the Agnates and so also in cognates, the one closer in relation is preferred.

FOR FEMALE HINDU,

Class 1 relatives are somewhat similar i.e. Husband, sons and daughters, including children of predeceased son/daughter. If none of them are there, estate shall devolve upon the heirs of the husband. If there are no heirs of husband also, it will devolve upon the mother and father of the deceased, if alive. One special provision is there for property inherited by the female Hindu from her father or mother. Such property would revert back to the legal heirs of her father, in case she does not leave behind any son or daughter.

The law also provides that if two people die simultaneously, say in a car or plane accident and exact timing of death of each cannot be ascertained, it shall be presumed that the older one died first, unless contrary is proved. Further, person guilty of murder of any person shall not inherit his property. However, his heirs are not so disqualified, and it will be presumed that such murderer died immediately before death of murdered person. These provisions are important as they affect the line of succession / ratio of property coming to legal heirs.

FOR MUSLIMS:

Different personal laws are there for Shias and Sunnis and such laws are not codified in any Statute. For Sunnis following Hanafi Law (most Muslims in India follow this law) personal law restricts legacies to maximum one-third of the estate remaining after taking care of funeral expenses, outstanding wages of domestic servants and debts etc.

Sharers and Residuary have the right to file a claim if a person governed by Mohammedan Law dies intestate. Sharers are heirs who are entitled to the specific part of the property, while Residuary are those who get the balance. In their absence the group of people known as Distant kindred can make claim to the property of the deceased.

Sharers: these legal heirs are entitled to a prescribed share of the estate

Residuaries: they will get remaining estate, if anything remains after sharers get their prescribed shares.

Distant kindred: they are other relatives who are neither sharers nor residuaries. They will only get if there are no Sharer or residuary.

Meheri.e., Dower promised by husband, would be 1st charge (priority debt), if the same has not been paid by deceased during his lifetime.

FOR CHRISTIANS:

In accordance with section 32 of the Indian Succession Act, 1925, the legal heirs of the Christians are his/her husband, wife or KinderedThe widow/widower inherits one-third share and balance goes to the lineal descendants. In case there are no lineal descendants, then one-half goes to the widow and balance to the other relatives, i.e. prescribed as kindered. Amongst the lineal descendants, each child or if pre-deceased, his children collectively will get equal shares. In the kindered, the first preference is given to the father and in case he is predeceased then mother, brother and sister (or their children together if any one is predeceased) equally.

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