



**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.)**

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## **FOREWORD**

Land is a limited resource. Conflicting demands on use of land require timely resolution, for which proper use of technology, due application of legal principles and consultation with stakeholders play crucial roles.

The issues dealt with in this volume range from land that was originally classified as forest land, through cases requiring protection of common property resources to cases of alleged fraud in which attempts have been made to trace back one's title based on documents that were purportedly issued by an ex-intermediary before the Estate abolition etc. One of the cases also deals with the possibilities of preventing a large number of possible claims owing to transfer of lease hold property, by means of an appropriate policy decision.

The work of the Board of Revenue will greatly improve if the field reports from the concerned revenue officials are received in a timely manner.

It is hoped that regular publication of this Journal will help in contributing to the knowledge base of the concerned revenue officers, advocates and other stakeholders. Suggestions for improvement are welcome.

24.05.2019  
Cuttack

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

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**R.P Case No. 69 of 2014.**

**(Renumbered as OSS Case No.353 of 2019)**

**Decided on 12.03.2019**

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

Manasi Biswal & another ... **Petitioners**

-Versus-

Asst. Settlement Officer, Janla, Dist,- Khurda, & others ... **Opp. Parties**

For Petitioners ... Mr. S. K Pradhan Advocate & Associates.  
For O.P. Nos.1 & 2 ... Mr. S.K Routray, Addl. Standing Counsel.  
For O.P. Nos.3 & 4 ... Mr. L.D. Biswal, Advocate.  
For O.P. Nos.5 to 7 ... None

**DECISION**

1. This Revision Petition has been filed Under Section 15(b) of the Orissa Survey & Settlement Act, 1958 for correction of Hal R-O-R of the suit land mentioned below which has been finally published on 15.11.2013.

**SCHEDULE OF PROPERTY**

Mouza- Harapur, Tahasil- Jatni, Dist- Khurda, Sabik Khata No.53 (wrongly mentioned as Sabik Khata No.52) , Sabik Plot No.40, Area Ac.0.500 dec. out of total land of Ac.3.455 dec. corresponding to Hal Khata No.142, Hal Plot No.156, area Hect.0.1602 (i.e, Ac.0.396 dec.), the area of which is claimed to have been reduced from, Ac.0.500 dec.

2. The case in brief is that Satyabhama Biswal( the mother of the present petitioners) is said to have purchased the aforesaid suit sabik property measuring Ac.0.500 dec. from Brahmananda Jena (predecessor father of O.P. No.5) and Trinath Jena (O.P. No.6) vide R.S.D. No.1413 dated 03.08.1990 (Original sale deed of which with its sketch map has been filed). The present petitioners state that since aforesaid purchase Satyabhama Biswal and after her death both the present petitioners are in continuous possession over the aforesaid suit land. The Tahasildar, Bhubaneswar is also said to have earlier mutated the aforesaid suit land measuring area Ac.0.500 dec. in favour of Satyabhama Biswal (the late mother of the present petitioners) vide Mutation Case No.3538/1992 after inviting objections from the surviving legal heirs of Harekrushna Jena (the deceased sabik R.T.). The petitioners have submitted the original mutation Khata No.55/10 arising out of Mutation case No.3538/1992 in support of their claim. Satyabhama Biswal is said to have expired on 01.06.2005 (Death certificate of Satyabhama Biswal has been filed) . After her death, on the basis of an amicable family partition among her surviving legal heirs the present

Petitioner No.1 and Petitioner No.2 are said to have taken their shares as Ac.0.300 dec. and Ac.0.200 dec. respectively out of aforesaid total area of Ac.0.500 dec.(Original Regd. Partition Deed No.414 dated 22.02.2010 has been filed). The petitioners have also stated that both Petitioner No.1 and Petitioner No.2 had got the nature of their respective areas of land of Ac.0.300 dec. and Ac.0.200 dec. converted from 'Sarad 3 Fasali' to 'Gharabari' before the Tahasildar, Jatni vide order dated 20.02.2011 in OLR Case No.277/2011 in connection with Mutation Case No.315/2011 (Photocopy of Form-K issued by Tahasildar, Jatni in respect of OLR Case No.277/2011 & M.C. No.315/2011 has been filed) and vide order dated 21.02.2011 in OLR Case No.276/2011 in connection with Mutation Case No. 314/2011 (Photocopy of Form No.28 issued by Tahasildar, Jatni in respect of OLR Case No.276/2011 & M.C. No.314/2011 has been filed) respectively. The petitioners claim to have constructed a boundary wall around their land of Ac.0.500 dec. and to remain in possession over the same. However, in the finally published Hal R.O.R recorded in favour of the present petitioners the area of the petitioners is said to have been reduced from Ac.0.500 dec. to Ac.0.400 dec. without change of nature of the suit land from 'Sarad 3 Fasali' to 'Gharabari.' The petitioners have filed the original Hal Khata No.142 of the suit village containing Hal Plot No.156, Kisam- S.A.J-I, Area- Hect.0.1602 has been filed. The revision petitioners have further alleged that the Asst. Settlement Officer, Janla during the last current Settlement operation of the suit village had arbitrarily and illegally deducted an area of Hect.0.364 decs. (i.e, Ac.0.090 dec. out of their Ac.0.500 dec. land and had recorded the same in favour of outsiders namely Smt. Lili Pradhan and Smt. Brundabati Dei (present O.P. Nos.3 & 4), who are said to be the daughters of deceased sabik tenant Harekrushna Jena. The petitioners have claimed that the present O.P. Nos. 3 & 4 were never in possession over the suit land of Ac.0.500 dec. as the same had been sold earlier in 1990 through regd. sale deed by both the sons of deceased sabik tenant Harekrushna Jena, namely Brahmananda Jena (predecessor father of O.P. No.5) & Trinath Jena (present O.P. No.6) to Satyabhama Biswal (the mother of the present petitioners who is presently deceased). It is further alleged by the petitioners that immediately after getting a patta (Not-final) for an area Ac.0.090 dec. of land recorded in their favour Smt. Lili Pradhan and Smt. Brundabati Dei (present O.P. Nos.3 & 4) who had no possession over the same had sold the said land to Ananga Manjari Nayak, W/o- Gopinath Nayak (present O.P. No.7) vide R.S.D. No.11121305981 dated 27.8.2013 (Photocopy of certified copy of the said sale deed has been filed). Further, it has been alleged by the petitioners that the learned Addl. Sub-Collector of Major Settlement Cuttack in Appeal Case No.2694/2013 has wrongly and arbitrarily mutated the aforesaid area of Ac.0.090 dec. in favour of Ananga Manjari Nayak (present O.P. No.7) without giving any notice to the present petitioners (Photocopy of certified copy of the orders passed in the aforesaid appeal case has been filed). Presently, the area of Ac.0.090 dec. which is claimed as a portion of land out of the purchased land of Ac.0.500 dec. of the present petitioners is said to stand recorded in another Hal R.O.R bearing Hal Khata No.10, Hal Plot No.156/467. The present petitioners



have contended that earlier there had been no objection raised by any surviving legal heirs of the deceased Harekrushna Jena when the suit land measuring area Ac.0.500 dec. was mutated by the Tahasildar, Bhubaneswar in favour of Satyabhama Biswal (the mother of the present petitioners who is presently deceased). Further, the present petitioners contend that the validity of their R.S.D of 1990 had never been challenged in any court of law earlier and that their deceased mother Satyabhama Biswal had perfected the title of ownership of the suit land of Ac.0.500 dec. by way of 'adverse possession.' The revision petitioners have preferred the present revision by having prayed to correct the area recorded in their favour in Hal R.O.R from Ac.0.400 dec. to Ac.0.500 dec. and to correct the nature (Kisam) of the suit land as 'Gharabari' in place of 'Sarad 3 Fasali' (which actually stands recorded as 'Sarad Anajalasechita- I').

**3.** Notice sent to the Opp. Parties are deemed to have been made sufficient. However, no one has appeared on behalf of O.P. Nos. 5 to 7 during hearing of the present case. In this case although O.P. Nos. 3 & 4 had earlier appeared through their learned Advocate, no written objection has been filed on their behalf. There is also no written objection filed by O.P. Nos. 5 to 7 in this case. Heard the learned Advocate for the petitioners and perused the documents filed by him and the para-wise and status reports submitted by the Cuttack Settlement Authorities and concerned Tahasil Authorities which are kept in the case record.

**4.** In his status report dated 21.04.2017 the Tahasildar, Jatni has submitted that in respect of suit Village- Harapur, the Hal Plot No.156, Kisam- 'Sarad Anajalasechita-I' stands recorded with an area Ac.0.396 dec.(i.e, Hect.0.1602) under Hal Khata No.142 in 'Stitiban' status in favour of the present petitioners (Attested photocopies of the said hal R.O.R has been submitted by the Tahasildar, Jatni). The sabik khata bearing Khata No.55/10 containing Plot No.40/198, Kisam-Sarad-III, area Ac.0.500 dec. has been said to have stood recorded in the name of Satyabhama Biswal, W/o- Rankanath Biswal (the deceased mother of the present petitioners) of Dolamundai, P.S- Banapur, Dist- Puri(At present- Khordha) in 'Stitiban' status (An attested photocopy of the said sabik Khata No.55/10 has been submitted by the Tahasildar, Jatni) . In the enclosed R.I. Chhatabar's report submitted by the Tahasildar, Jatni alongwith his status report it is seen that the R.I. Chhatabar has reported that on spot visit with sabik and hal map the present petitioners are found to remain in possession over an area of Ac.0.500 decs. as per sabik map. He has further reported that at the time of field verification with Hal map it revealed that one hal plot bearing Hal Plot No. 156/467 has been prepared in the Hal map/records in favour of Ananga Manjari Nayak, W/o- Gopinath Nayak (present O.P. No.7) with an area Ac.0.090 decs. under Hal Khata No.10 of suit Mouza- Harapur. The R.I. Chhatabar is also seen to have reported that the above recorded person (present O.P. No.7) is not in possession over the same.

**5.** In the para-wise report, the Asst. Settlement Officer, Record Room of Cuttack Major Settlement has submitted that the original Sabik Khata No.53 instead of

Sabik Khata No.52 mentioned by the present petitioners containing Sabik Plot No.40, area Ac.3.455 decs., Kisam- Sarad-III stood recorded in 'Stitiban' status in favour of Harekrushna Jena, S/o- Natabar Jena, of caste- Khandayat and of the same suit village-Harapur. During Khanapuri stage of Settlement operation order is said to have been passed by the Asst. Settlement Officer to record the suit Hal Plot No.156 initially recorded with an area of Hect.0.2347 in favour of the successors of deceased Bramhananda Jena and in the name of Trinath Jena, the two sons of deceased sabik tenant Harekrushna Jena. Subsequently on basis of order passed in Rent Case No.1978/2012 the area of the suit Hal Plot No.156 is said to have been revised from Hect.0.2347 to Hect.0.1602 which is said to have been presently recorded in favour of the present petitioners. In another para-wise report submitted by the Cuttack Settlement Authorities it has been further reported that the Asst. Settlement Officer had revised the area of suit Hal Plot No.156 as Hect.0.1602 in place of Hect.0.2347 with a direction to record the same in favour of the present petitioners. The learned A.S.O is also said to have directed in the said Rent Case No.1978/2012 to record the batta plot bearing Hal Plot No.156/467 with an area Hect.0.0364 in favour of Brundabati Dei & Lili Pradhan, both are daughters of Late Harekrushna Jena (present O.P. No.4 & 3) while making observations that the two daughters of the deceased sabik tenant Harekrushna Jena, namely Brundabati Dei and Lili Pradhan have neither sold their share of the sabik property nor had given their consent / nor relinquished their share in the R.S.D. No.1413 dtd. 23.08.1990.

**6.** On perusal of the certified copy of the orders passed by the concerned Asst.Settlement Officer and the Amin's report in Rent Objection Case No.1978/116 of 2012 submitted by the petitioners it is seen that the Settlement Amin in his report while giving the geneology of the deceased sabik R.T Harekrushna Jena has reported that in place of the total recorded area Hect.0.2347 in respect of suit Hal Plot No.156 (before bifurcation) the area being passed is found as Hect.0.1966. The Settlement Amin is also seen to have mentioned that the objectors Brundabati Dei and Lili Pradhan (present O.P. Nos.4 & 3) who have claimed their share over suit Hal Plot No.156 were also in possession over a portion of the same. The Settlement Amin has stated to have therefore carved out an area measuring Hect.0.0364 (i.e, Ac.0.090 decs.) out of his reported total area Hect.0.1966 which has been subsequently numbered as Hal Plot No.156/467 and has been recorded in favour of Brundabati Dei and Lili Pradhan (present O.P. Nos.4 & 3). The remaining area of Hect.0.1602(which comes to Ac.0.0396) under Hal Plot No.156 has been reported by the Settlement Amin for being recorded in favour of the present petitioners.

**7.** In the Rent Objection Case No.1978/116 of 2012 the carving of a part plot bearing Hal Plot No. 156/467 with an area Ac.0.090 dec. and reported by the Settlement Amin to be under the possession of Smt. Brundabati Dei and Smt. Lili Pradhan (present O.P. Nos. 4 & 3) appears fictitious as neither there was any report during the khanapuri stage regarding any possession by present O.P. Nos. 4 & 3 over portion of suit Hal Plot No.156 nor there is any report of such possession by

O.P. Nos. 4 & 3 or their vendee (present O.P. No.7) as per present status reported by the Revenue Inspector, Chhatabar in his enquiry report stated in para-4 above. Further, the learned Asst. Settlement Officer in his order dated 29.08.2013 in Rent Objection Case No.1978/116 of 2012 is seen to have gone in length in justifying his order to record portion of the suit land in favour of Brundabati Dei and Smt. Lili Pradhan (present O.P. Nos. 4 & 3) who were the objectors in the said rent case by quoting the provisions under amended Act 2005 of Hindu Succession Act, 1956. Although the learned Asst. Settlement Officer has mentioned that "After the commencement of Amendment Act, 2005, the share of sisters is equal with brothers, if father being the recorded tenant has expired after the year 2005. Here Harekrushna Jena has expired before 2005. Thus the shares of Class-I heirs will be decided through notional partition in accordance with the provisions of Hindu Succession Act, 1956." However, the learned Asst. Settlement Officer has overlooked the proviso under the amended Section 6 (1) of the Hindu Succession Act, 1956 (Amended in 2005), wherein it has been laid that '**Provided that nothing contained in this sub-section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day December, 2004.**' As such, the R.S.D. of 1990 through which Satyabhama Biswal (the mother of the present petitioners) had purchased the suit land measuring Ac.0.500 decs. from Bramhananda Jena and Trinath Jena, the sons of deceased sabik R. T Harekrushna Jena being much prior to 2004, the same could not have been refuted by the learned Asst. Settlement Officer. Besides, the aforesaid R.S.D of 1990 having not been declared as void document by any competent court of law previously the conclusions made by the learned Asst. Settlement Officer in bifurcating the suit area of Ac.0.500 decs. on basis of fictitious possession report by the Settlement Amin is seen as wrong and illegal which are liable to be set aside. The subsequent purchase of portion of the suit Hal Plot No.156 bearing Hal Plot No.156/467 of an area of Ac.0.090 dec. by Ananga Manjari Nayak (present O.P. No.7) vide RSD No.11121305981 dated 27.08.2013 from Smt. Brundabati Dei and Smt. Lili Pradhan (present O.P. Nos. 4 & 3) as per subsequent report submitted by the Settlement authorities is seen to ab-initio void as her vendors had no valid title and possession over the same previously. Moreover, it is quite surprising to note here that the aforesaid RSD dtd. 27.08.2013 has been executed just prior to the order dated 29.08.2013 passed by the learned Asst. Settlement Officer in aforesaid Rent Objection Case No.1978/116 of 2012 which suffices the above observation that the vendors (present O.P. Nos. 4 & 3) had no valid title and possession over Hal Plot No.156/467, area Ac.0.090 dec. when alienating the same in favour of present O.P. No.7. Therefore the recording of Hal Plot No.156/467 of an area of Ac.0.090 dec. in favour of Ananga Manjari Nayak (present O.P. No.7) vide order passed in Appeal case No.2694/2013 on the basis of such ab-initio void document is also un-sustainable as per law.

8. In the subsequent report dated 26.12.2017, furnished by the Tahasildar, Jatni it is seen from the enclosures therein that the Revenue Inspector, Chhatabar has

reported that on extraction of the area from hal map the area of Hal Plot No.156 under Hal Khata No. 142 is found as Ac.0.410 dec. instead of its hal recorded area Ac.0.396 dec. and that the area of Hal Plot No.156/467 under Hal Khata No.10 is Ac.0.090 dec.. The Tahasildar, Jatni has also submitted attested copies of the aforesaid two hal khatas. The total area extracted in respect of both the above plots is said to be Ac.0.500 dec. which are said under the possession of the present petitioners Manasi Biswal and Bikash Kumar Biswal covered by a single boundary measuring Ac.0.500 dec. as per field demarcation. However, as the aforesaid area of Ac.0.500 dec. has been partitioned between Manasi Biswal (Petitioner No.1) and Bikash Kumar Biswal (Petitioner No.2) as Ac.0.300 dec. and Ac.0.200 dec. through a registered instrument bearing Regd. Partition Deed No.414 dated 22.02.2010 wherein a copy of sketch map of such partition has been shown, the said document also executed prior to the final publication of the Hal R.O.R cannot be ignored.

**9.** In view of the documents submitted by the petitioner and from the aforesaid para-wise and status reports submitted by the concerned Settlement and Tahasil Authorities, the present petitioners are seen to have a prima-facie claim on the suit land. The revision petition is therefore allowed in favour of the present petitioners.

**10.** In view of the above, Tahasildar, Jatni is directed to make the following corrections in the Hal RORs :

- i) Enhance the area of Hal Plot No.156 under Hal Khata No.142 of the suit village- Harapur by recording its area as Ac.0.410 dec. in place of its recorded area Ac.0.396 dec. and also delete the Hal Plot No.156/467, area Ac.0.090 dec. from Hal Khata No.10 and record the same under the aforesaid Hal Khata No.142 of the suit village- Harapur.
- ii) The classification of both the above two plots under Hal Khata No.142 be changed as 'Gharabari' in place of 'Sarad Anajalasechita- III'.
- iii) Thereafter, an area of Ac.0.300 decs. as per the sketch map attached with Regd. Partition Deed No.414 dated 22.02.2010 be deducted out of corresponding Hal Plot No.156 and the same be recorded separately in favour of Manasi Biswal (Petitioner No.1) under 'Stitiban' status by simultaneously deleting her name from the recorded tenants column of Hal Khata No.142 of the suit village- Harapur, thereby keeping a balance area of Ac.0.200 dec. recorded under Hal Khata No.142 of the suit village- Harapur in favour of Bikash Kumar Biswal (Petitioner No.2).

**11.** Send copy of the order to the Tahasildar, Jatni for necessary compliance within a period of 4(four) months of receiving the copy of order.

**12.** Original / Certified copy of the documents filed be returned to the petitioners by keeping a Photo copy of the same in the case record.

**13.** Pronounced the order in the open court today, i.e. on the 12th day of March, 2019.

**Sd/-**

Member,

Board of Revenue, Odisha, Cuttack.

**OEA Revision Case No. 02 of 2010**

**Decided on 29.03.2019**

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

Prafulla Kumar Sarangi & others ..... Petitioners  
-Versus-

State of Odisha represented through  
The Tahasildar, Narasinghpur, Dist-Cuttack. ... Opposite Party.

For the Petitioners ... Mr. S.K.Moharana, Adv. & Associates.

For the Opposite Party ... Mr.J.Rath, Standing Counsel .

**DECISION**

**1.** This revision petition has been filed under Section 38-B of the Orissa Estate Abolition Act, 1951(herein after called as OEA Act) read with provision under para-3(XXVI) of circular No.57677/R dt.06.12.2000 issued by the Revenue Deptt.Government of Odisha challenging the order dated 18.12.2003 of the Tahasildar, Narasinghpur passed in Suo-Motu Bebandobasta Case No. 378/2003.

**SCHEDULE OF PROPERTY.**

**Mouza- Solabandha. P.S./Tahasil-Narasinghpur Dist-Cuttack**

**Sabik Khata No.263 Sabik plot No.1161 Area Ac 0.02 & 1162 Ac 0.01  
Corresponds to Hal Khata 472 Hal Plot No.1339 Area Ac 0.03 Kisam- Ghara.**

**2.** The scheduled land, is claimed to have been recorded as per sabik R.O.R in the name of the Sindhu Sarangi the ancestor of the petitioners. In the Hal settlement R.O.R, the suit land is said to have published in favour of Ananda Sarangi the father of the petitioner No,1(a) to 1(h), Sananda Sarangi the father of petitioner No.2 & Seshadev Sarangi the petitioner No.3 on 20.09.1994 under "Bebandobasta" status with classification as "Ghara" .

**3.** Further it is claimed that, in pursuant to the latest circular No.57677/R dt.06.12.2000 issued by the Revenue Department, the Tahasildar, Narasinghpur, though initiated a Suo Motu Bebandobasta Case No.378/2003, however illegally recorded the suit land under Government "Abad Jogya Anabadi" Khata No.472, ignoring the sabik & Hal record position and without taking into account the possession of the petitioners. Hence, the petitioners by filling this revision have prayed to set-aside the impugned order of the Tahasildar, Narasinghpur, passed in Suo Motu Bebandobasta Case No.378/2003 and to record the suit land under sthitiban status by deleting the same from Govt "Abad Jogya Anabadi" Khata.

**4.** I have heard learned Advocate for the petitioners and learned Standing Counsel for the O.P(s) (State). Perused the Suo Motu Bebandobasta Case No. 378/2003, enquiry report dt.17.03.2014, 03.04.2014 &03.02.2015 of Tahasildar, Narasinghpur and gone through other documents i.e copy of order of the Asst. Settlement Officer (Camp) based on the Amin report No.180 and Sabik-Hal statement available in the case record .From the earlier order of this court, it is seen that on the death of the Petitioner No.1 Ananda Sarangi, he has been substituted by his legal heirs

**5** From the Amin report No.180 of village- Solabandha and sabik-hal comparison statement issued by the Settlement authority available in the case record, it is apparent that, the land in question which has been recorded in hal R.O.R in favour of the present petitioner under “Bebandobasta” status, was stood without the rent being assessed in the name of the predecessor of the present petitioners Sindhu Sarangi pertaining to Sabik plot No.1161 Area Ac 0.02 & 1162 Ac 0.01 of Sabik Khata No.263. From the above Sabik and Hal records, it is evident that the suit land has been rightly recorded in the name of the present petitioners, who are the successors of the Sabik recorded tenant.

**6** The order dt. 18.12.2003 of the Tahasildar, Narasinghpur passed in Suo Motu Bebandobasta Case No.378/2003 manifested that before passing the impugned order, the Tahasildar has deputed Amin for filed enquiry. However without mentioning his own findings on the point of sabik status and field possession which are the basic requirements for settlement of rent in respect of land recorded under bebandobasta status, is found to have arrived at the conclusion to record the suit land under Government “Abad Jogya Anabadi” Khata relying on the report of the Amin & Record Keeper on the ground that the suit land was remain vacant and nobody claims possession over the same. The extract of the operative part of the order Tahasildar, Narasinghpur dt. 18.12.2003 is appended below:-

*“Perused the report of R.K along with report of Amin. It is revealed from the report that the B.B holder is not possessing the suit land since long. The suit land is lying vacant and non is possessing it.*

*Proclamation has been duly served and back without any objection. In view of the above the following schedule land be amalgamated in “Abad Jogy Anabadi” Khata of the village”*

**7** The subsequent enquiry report submitted by the Tahasildar, Narasinghpur vide letter No.1128 Dt.03.04.2014& 434 dt.03.02.2015 is found to differ from the contention of the Tahasildar in Suo Motu Bebandobasta Case No.378/2003. The above reports are clear, that the present petitioners are possessing the suit land by constructing building on it.

**8** Further it is to be mentioned here that, the ancestor of the petitioners was in possession of the suit land on the date of vesting and thereafter petitioners being successors have inherited the land and are in possession over the same. Accordingly

the Settlement authorities have prepared R.O.R of the suit land under "Bebandobasta" status in their names .Hence restoration of land in Government Khata by the Tahasildar without proper verification of possession is not proper in the eyes of law.

**9** In view of the above discussions, it is observed that, the impugned order of the Tahasildar ,Narasinghpur passed in Suo Motu Bebandobasta Case No.378/2003 is not based on the provisions contained in para (x), (xi) and (xiii) of the Government of Odisha, Revenue Deptt Circular No.57677/R dt.06.12.2000 and hence liable to be set aside.

**10** In the result the revision petition is allowed. The order dt.18.12.2003 of the Tahasildar ,Narasinghpur passed in Suo Motu Bebandobasta Case No.378/2003 is hereby setaside.The suit land be assessed to fair and equitable rent and after realization of required dues as applicable for the suit land in accordance with Circular No.57677/R dt.06.12.2000, the R.O.R be corrected in the name of petitioners after observing all formalities

**11** Original lower court case records, if any, be returned to the concerned courts by keeping attested photocopies thereof. Original documents be returned to the parties if any by keeping attested photocopies thereof.

**12** Pronounced, the order in the open court today, i.e., the 29th day of March-2019.

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

**OEA Revision Case No. 08 of 2014**

**Decided on 07.12.2018**

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

Nijamuddin Khan & others ... Petitioners  
-Versus-

State of Odisha represented by  
The Collector, Bhadrak & another .... Opposite Parties.

For the Petitioners ... Mr. S.K.Nayak-2, Adv. & Associates.  
For the Opposite Party No.1&2 ... Mr.J.Rath, Standing Counsel .

**DECISION**

**1.** This revision petition has been filed under Section 38-B of the Orissa Estate Abolition Act, 1951(herein after called as OEA Act) challenging the order dated 04.10.2000 of the O.E.A Collector -Com-Tahasildar, Bhadrak passed in OEA Case No. 2588/1991 and order dt.24.06.2014 of the Sub-Collector, Bhadrak passed in

OEA Appeal Case No.03/2008 on the ground that the O.E.A Collector -Com-Tahasildar, Bhadrak has passed the impugned order behind back of the petitioners and the Appellate authority by upholding the order of the O.E.A Collector has dismissed the appeal of the petitioners without applying judicious mind .

**SCHEDULE OF PROPERTY.**

<b><u>Mouza- Saidabad.</u></b>		<b><u>P.S./Tahasil-Bhadrak</u></b>		<b><u>Dist-Bhadrak</u></b>			
<b><u>Sabik Khata</u></b>	<b><u>Sabik plot</u></b>	<b><u>Area</u></b>	<b><u>Kisam</u></b>	<b><u>Hal Khata</u></b>	<b><u>Hal Plot</u></b>	<b><u>Area</u></b>	<b><u>Kisam</u></b>
17	398	Ac.0.07	Kabrasthan	238/01	437	Ac0.07	Kabar
	399	Ac0.08	-do-		438	Ac0.08	Kabar
	301	Ac0.13	-do-		332	Ac0.12	Smasan

**2.** The suit properties in sabik, is claimed to have been recorded under sabik Khata No.17 under “Nizidakhal” status in the name of the predecessors of the present petitioners Umed Khan & others who were the ex-intermediaries. The suit land was used as “Kabrasthan” burial ground of the family the ancestors and was under khas possession. In hal settlement R.O.R, published on 27.03.1981, the suit land though recorded in the name of the predecessors of the present petitioner under “Bebandobasta” Khata No.228 ,however the sabik classification “Kabrasthan” has been wrongly recorded as “Smasan” and “Kabar” in corresponding hal plots.

**3.** Further it is claimed that, the O.E.A Collector –Cum- Tahasildar, Bhadrak, by initiating R.F Case No.2588/1991, illegally recorded the suit land under Government “Abad Jogy Anabadi” Khata without the knowledge of the present petitioners. The order of the OEA Collector is stated to have been challenged before the Sub-Collector, Bhadrak in OEA Appeal Case No.03/2008, but the appellate authority by upholding the order of the O.E.A Collector has dismissed the appeal of the petitioners.

**4.** This case was last heard on 13.06.2018 in presence of Mr. J.Rath learned Standing Counsel for the O.P(s) (State). Mr. S.K.Nayak-2 learned Advocate though seen to have appeared earlier for the petitioners but to-day found absent on call. I have gone through the status reports submitted by the Addl. District Magistrate, Bhadrak and Tahasildar, Bhadrak and perused the copy of L.C.R and documents available in the case record

**5.** On perusal of sabik Khata No.17, the suit land is seen to have stood under “Nijdakhal” status in the name of Umed Khan and others, apart from other landed properties. From the copy of letter No. 80 Dt.21.01.2017 of Sub-Collector, Bhadrak transmitted by the Addl. District Magistrate, Bhadrak in Letter No.299 Dt.4.02.2017, it is confirmed that the suit land in sabik was Nijdakhal land which presently being used by the petitioners as burial ground “Kabrasthan” of their family members. The report further unveiled that Hindu community residing in this village has never used the suit land as their burial ground even if the Kisam (classification) of the suit plots have been wrongly recorded as “samsan” during last settlement operation.



**6.** From the sabik and Hal R.O.R and materials available in the case record, it is apparent that, the land in question, in sabik, were under the Khas possession of the predecessor of the petitioners. Accordingly the suit land should have been settled with the sabik occupiers or their successor if they are found to be in possession of the suit land on the date of vesting, subject to payment of fair and equitable rent as per section-7 of the O.E.A Act-1951. However the O.E.A Collector, Bhadrak and appellate authority Sub-Collector, Bhadrak both have erred by law in recording the suit land in favour of the Government under "Abadjogy Anabdi" Khata simply considering the communal characteristic of the suit land .

**7.** In view of the discussions made above, the impugned order dated 04.10.2000 of the O.E.A Collector-Com-Tahasildar, Bhadrak passed in OEA Case No. 2588/1991 and order dt.24.06.2014 of the Sub-Collector, Bhadrak passed in OEA Appeal Case No.03/2008 are hereby quashed.

**8.** The case is remitted back to the O.E.A Collector -Com-Tahasildar, Bhadrak who will verify whether present petitioners are the successor of the ex-intermediaries and were possessing the suit land on the date of vesting. On enquiry, if satisfied, the suit land may be settled in the name of the petitioners in accordance with Section-7 of the O.E.A Act read with Government of Odisha erstwhile Revenue Department Letter No.75677/R Dt.06.12.2000 with assessment of fair & equitable rent by restoring the sabik classification.

**9.** Copy of the order be sent to the Tahasildar, Bhadrak, for implementation of the order and report compliance.

**10.** Pronounced, the order in the open court today, i.e., the 7th day of December, 2018.

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

**O.S.S Case No. 45 of 2015.**

**Decided on 12.03.2019**

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

Smt. Nalini Prava Kar ..... Petitioner  
-Versus-

Settlement Officer, Cuttack & others ..... Opp. Parties

For Petitioner ... Mr. M.K Mohanty (2), Adv. & Mr. M.P.Dhani, Adv.  
For O.P. No.1 (State) ... Mr. S.K Routray, Addl. Standing Counsel.  
For Opp. Parties No. 2 to 4 ... Mr. S.Mukherjee, Adv. & Associates  
(on behalf of the GPA holder of O.P. No. 2 to 4).  
For O.P. No. 5 ... Mr. Lingaraj Pradhan, Adv. & Associates.

**DECISION**

**1.** This Revision Petition has been filed Under Section 32 of the Orissa Survey & Settlement Act, 1958 for correction of Hal R-O-R of the suit land mentioned below, which is under not-final stage of settlement operation and has not been finally published. The petitioner has assailed the order dated 30.05.2003 of the Settlement Officer, Cuttack-Puri Major Settlement passed in Appeal Case No.905/1998.

**SCHEDULE OF PROPERTY**

Mouza- Chakratirtha, Unit-27, Puri Town, P.S- Puri Town, Dist- Puri,

Hal (Not-final) Khata No.75, Hal Plot No.402, area Ac.0.067 decs. corresponding to Sabik Plot No.1146 (wrongly mentioned as Sabik Plot No.146)

**2.** The case of the petitioner in brief is that the suit land is said to have belonged to the Opposite Parties No. 2 to 4 , the sabik record of which had stood recorded in the name of Ghanshyam Das Birla (the predecessor-in-interest of the present Opposite Parties No. 2 to 4). The Opposite Parties No. 2 to 4 are said to have sold the scheduled land to one Bishnu Charan Barik (O P No. 5) vide RSD No. 10222 dated 12.7.1985 (Photocopy of the said sale deed has been filed). The O P No. 5 had thereafter sold the scheduled land to the present petitioner vide RSD No. 1868 dated 22.5.1999 (Photocopy of the said sale deed has been filed). When these facts were placed before the settlement authorities, the ASO is said to have not entertained her request. The petitioner further states that she then approached the Commissioner, who had remanded the matter to the Charge Officer, Puri vide R P Case No. 7397 of 1999 which was filed u/s 32 of the O.S.S. Act to hear the matter u/s 22 of the O.S.S. Act and decide the same on merit. However, the Additional Sub Collector, Puri (earlier called the Charge Officer) is said to have transferred the said case (i.e, Suit No.239/1999) to the Settlement Officer, Cuttack. As per order sheet dated 20.12.2002 the above suit is said to have been wrongly tagged to another appeal case bearing No. 905/1998 wherein the learned Settlement Officer, Cuttack is said to have passed the wrong impugned order dated 30.05.2003 (Certified copy of orders passed in Appeal case No.905/1998 and its Amin report has been filed). The petitioner has claimed that the above impugned order passed in Appeal case No.905/1998 is not linked with the Suit No.239/1999. Hence, this revision.

**3.** Notice have been deemed sufficient to the Opp. Parties No. 2 to 5. Earlier one Vakalatnama is seen to have been filed on behalf of the GPA holder of Opp. Parties No. 2 to 4 alongwith one written statement of Opp. Parties No. 2 to 4 wherein the said Opp. Parties have stated that they have no objection if the present case be adjudicated in favour of the present petitioner. The impleaded O.P. No.5 had also appeared through his learned Counsel on 27.11.2018 who had submitted through an affidavit sworn by the O.P. No.5 that he has no objection to the claim made by the present petitioner in this case. Heard the learned Advocate for the petitioner in presence of the learned Addl. Standing Counsel for the State (O.P. No.1). Also gone

through the documents filed by the petitioner and the para-wise and status reports on the suit land submitted by the Puri Settlement Authorities and by the Shree Jagannath Temple Office, Puri Authorities and the sabik document furnished by the Tahasildar, Puri which are kept in the case record.

**4.** In the status report submitted by the Deputy Administrator (Rev.), Shree Jagannath Temple, Puri it has been admitted by the Temple Authorities that in respect of Hal Mouza- Chakratirtha, Hal Plot No.402 which has been presently recorded in the Not-final ROR in favour of Govt. of Odisha vide Anabadi Khata No.488, with Kisam- Patita, the corresponding sabik particulars of the same as Sabik Khata No.169, Sabik Plot No.1146, Sabik status- Chandana and the name of the sabik recorded tenant as Ghanshyam Das Birla, S/o- Baladev Das Birla (inadvertently mentioned as Ghanshyam Das Biraja, S/o- Baladev Das Biraja). In the said report it has been clarified that in view of the above sabik & hal record position the name of Shree Jagannath Mahaprabhu is no where recorded in respect of the suit land.

**5.** In their para-wise report the Asst. Settlement Officer, Judicial, Puri is also seen to have submitted an identical sabik & hal status of the suit land as submitted above by the Shree Jagannath Temple Authorities, Puri. The corresponding Sabik village name of the suit land stated is Village- Balukhanda, No.109. In the said para-wise report the Settlement authorities are seen to have kept silent about the alleged impugned order dated 30.05.2003 passed in Appeal Case No. 905/1998 which had been filed by the Administrator, Sri Jagannath Temple, Puri (Certified copy of the said impugned has been filed by the petitioner) which justifies the claim made by the present petitioner that the said impugned order does not relate to the Suit No.239/1999 which involved the present suit land. Further, in the said report the Settlement authorities have reported that presently the suit Hal Plot No.402 with an area Ac.1.008 decs., Kisam-Patita (Balua) has been recorded under Govt. Anabadi Khata bearing Hal Khata No.158 on the basis of order passed by the Addl. Sub-Collector, Puri (Settlement) in Appeal Case No.134/2011.

**6.** On perusal of the certified copy of orders passed in Suit No.239/1999 submitted by the petitioner it is seen from the order proceedings dated 20.12.2002, 10.01.2003, 14.01.2003 and 14.02.2003 therein that the reference of Appeal Case No.905/1998 has been mentioned although there is neither any reference of suit No.239/1999 nor any reference of the suit property found mentioned in the certified copy of the impugned order dated 30.05.2003 in Appeal case No.905/1998 submitted by the petitioner. However, in the subsequent order proceeding dated 07.03.2003 of Suit No.239/1999 the Appellate authority is seen to have dropped the proceeding by mentioning that the appellant (present petitioner) was absent on call. Hence, it is seen that the impugned order dated 30.05.2003 in Appeal case No.905/1998 which was filed by the Administrator, Sri Jagannath Temple, Puri is no way related with the Appeal Suit No.239/1999 of the present petitioner. The aforesaid status report submitted by the Sri Jagannath Temple Authorities, Puri also corroborates with this fact. Moreover the present petitioner appears to have no knowledge regarding the

Suit No.239/1999 instituted in her name had been dropped by the Appellate authority vide his order dated 07.03.2003 as the certified copy of the orders passed in Suit No.239/1999 has only been submitted during the pendency of the present revision on 18.12.2015.

7. Perused the true certified copy of orders passed in Appeal case No.134/2011 submitted by the Puri Settlement authorities on the basis of which the suit Hal Plot No.402, area Ac.1.008 decs. corresponding to Sabik Khata No.169, Sabik Plot No.1146 of sabik Mouza- Balukhanda, No.109 is reported to have been presently recorded in Govt. Anabadi Khata bearing Hal Khata No.158 of Hal Mouza-Chakratirtha. It is seen that the learned Addl. Sub-Collector, Puri in his order dated 02.05.2012 while rejecting the claim made by the applicant of Appeal case No.134/2011 alongwith the applicants of other clubbed appeal cases has passed the order to record all the plots recorded under the reported hal (Not-Final) Khata No.75 in Abada Jogya Anabadi Khata. The learned Addl. Sub-Collector, Puri while passing the above order has made the following observations that; “ ***On perusal of sabik records it is seen that the R.T column of the suit land has been deleted vide Revision U/s 125 (2) of Odisha Tenancy Act by Hon’ble Member, Board of Revenue , order dated 12.12.1929. Hence as a result the suit land is supposed to be recorded in the Govt. Khata. Any transaction or otherwise made in between is ab-initio null and void. The petitioners also failed to produce any records giving the flow of title.***”

8. In order to verify the aforesaid sabik record status of the suit land a certified copy of the corresponding Sabik ROR bearing Sabik Khata No.169, Plot No.1146 of Sabik Village- Balukhanda, No.109 had been called for from the Tahasildar, Puri Sadar who has submitted the same which is kept in the case record. From the certified copy of the aforesaid Sabik ROR submitted by the Tahasildar, Puri Sadar it is seen that the sabik Plot No.1146, Kisam- Puruna Padia, with an area Ac.1.00 alongwith some other plots , the total area of all plots being Ac.2.00 under Sabik khata No.169 had stood recorded in the name of Ghanashyam Das Biral, S/o- Baladev das Biral, of caste-Mahesari and resident of Calcutta (presently Kolkata) under the Ex-Intermediary Smt. Sushilabala Dasi & others in the R.T. column (Col. No.4) and the status of the same recorded as ‘Chandana.’ Further, in the remarks column(Col. No.10) of the aforesaid sabik ROR there is an entry which mentions that ‘As per order dated 12.12.1929 passed by Hon’ble Board of Revenue under Section 125 (2) of Orissa Tenancy Act the column No.3 of the Sabik ROR has been deleted.’ From the certified copy of the aforesaid Sabik ROR submitted by the Tahasildar, Puri Sadar it is seen that column No.3 relates to Column meant for special remarks. In the column No.3 of the said sabik ROR there was earlier a note of calculation of rents in terms of 1 acre and 2 acres of the entire landed property recorded in the said sabik ROR followed with a note that out of Rs.250 /- calculated for the entire khata the down payment amount will be Rs.220/- and the ex-intermediary Zamindar will get Rs.30/-. The aforesaid notings in the special remarks

column (Col. No.3) is seen to have been deleted on the basis of such note for deletion of the same mentioned in the remarks column(Col. No.10) of the aforesaid sabik ROR. However, the learned Addl. Sub-Collector, Puri without verifying the entries made in the Sabik ROR kept with the Tahasildar, Puri has erroneously held that the Column No.3 in the sabik ROR was the recorded tenants column and which was deleted vide the aforesaid order passed on dated 12.12.1929 by the Board of Revenue under the provisions of Orissa Tenancy Act. Moreover, the learned Addl. Sub-Collector, Puri has also failed to appreciate the point of law that the sabik status of the suit land being 'Chandana' in the name of a recorded tenant, the same is to be presently recorded in 'Stitiban' status in favour of the said recorded tenant or his/her/theirs successors-in-interest in the hal ROR as per Para-21.5 of the Rayati Jami Record Kariba Pranali O Swatwaswatwa Niyamabali of 1990. As such, the order dated 02.05.2012 passed by the learned Addl. Sub-Collector, Puri in Appeal case No.134/2011 pertaining to the suit Hal Plot No.402 and other plots relating to the aforesaid sabik property is erroneous the same is liable to be set aside. The impugned order dated 30.05.2003 passed in Appeal Case No.905/1998 however, needs no interference as the same does not relate to the present suit land.

**9.** In view of the facts and points of law discussed above, the order dated 02.05.2012 passed by the learned Addl. Sub-Collector, Puri in Appeal case No.134/2011 is set aside.

The Addl. Sub-Collector(Settlement), Puri is directed to revert the recordings of the suit Hal Plot No.402 and all similarly placed hal plots of suit Hal Mouza-Chakratirtha corresponding to Sabik Plot No.1146 and other sabik plots under Sabik Khata No.169 of Sabik Mouza- Balukhanda, No.109 as stood prior to the order dated 02.05.2012 passed by the learned Addl. Sub-Collector, Puri in Appeal case No.134/2011.

The present petitioner Smt. Nalini Prava Kar, W/o Raghunath Kar is given liberty to approach the learned Addl. Sub-Collector, Puri for necessary restoration of the Appeal Suit No.239/1999 which was dropped on 07.03.2003 and produce relevant original documents in support of her claim before the said appellate authority for considering her claim.

**10.** The revision petition is therefore partially allowed with the above observations.

**11.** Send copies of the order to the Addl. Sub-Collector(Settlement), Puri/ Settlement Officer, Cutack for necessary compliance .

**12.** Pronounced the order in the open court today i.e. on the 12th day of March, 2019.

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

**O S S Case No. 452 of 2015**

**Decided on 27.02.2019**

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

Gopal Sahoo ..... Petitioner.  
- Versus -  
State of Odisha, represented through,  
Collector, Jajpur & others ... Opp. Parties  
For the Petitioner ... Mr. N.P.Pati, Advocate & Associates.  
For the Opposite Parties .... Mr. J. Rath, Standing Counsel.

**DECISION**

**1.** This Revision has been filed U/s - 32 of OSS Act, 1958 read with Para-111 of Orissa Mutation Manual, challenging the order dated 20.06.2015 passed by the Sub-Collector, Jajpur in Mutation Appeal Case No. 39/2013 wherein the order dt.16.01.2013 of Tahasildar, Danagadi passed in Mutation Case No.443/2009 has been confirmed .The scheduled of property is mention below.

**SCHEDULE OF PROPERTY.**

***Mouza- Ankurapal, Tahasil- Danagadi, District- Jajpur,  
Hal Khata No. 372, Plot No. 629 Ac.0.87 , Plot No.635 Ac0.76***

**2.** The background of the case in brief is that, in Civil Suit No.103/2005 the title of the scheduled property is claimed to have acquired by the petitioner. On the basis of which petitioner filed Mutation Case No.443/2009 for recording the suit land in his favour. However, the Tahasildar, Danagadi disallowed the claim vide his order 16.01.2013, on the ground that, the suit land is Government land, recorded under Rakhita Khata having its classification as “ Sal Jungle”.

**3.** The petitioner being aggrieved with the order of the Tahasildar, preferred Mutation Appeal No.39/2015 before the Sub-Collector, Jajpur, who by holding that the suit land is forest land which cannot be diverted or converted for non forest purpose and accordingly has dismissed the appeal vide order dt. 20.06.2015, placing reliance to the decision of Hon’ble Apex Court passed in W.P(C) No.2002 of 1995.

**4.** On being aggrieved, the present petitioner has filed this revision assailing the order of the Tahasildar, Danagadi as well as the Sub Collector, Jajpur passed in Mutation Case No. No.443/2009 & Mutation Appeal No.39/2015.

**5.** Mr. N. P. Pati, learned Advocate appearing for the petitioner, in his submission, has averred that, the ex-intermediary of Sukinda estate had inducted Serai Sahoo, the father of the present petitioner as tenant in respect of suit land in the year 1943 and accordingly after vesting of estate, the Government of Odisha accepted his

tenancy right. Present petitioner who is the son of said Serai Sahoo has inherited suit land on succession and possessing the same after death of his father. However, in current settlement operation, the suit land is said to have been wrongly recorded under Rakhit Khata in "Sala Jungle" classification. He further contended that, though right, title and interest of the petitioner has been established in Civil Suit No.103/2005, but the Tahasildar, Danagadi & Sub-Collector, Jajpur by ignoring the order of the Civil Court, have dismissed the claim of the petitioner since the suit land has been recorded under forest classification. Learned Advocate for the petitioner prays to set aside the order of Tahasildar, Danagadi and Sub-Collector, Jajpur dated 16.01.2013 dt. 20.06.2015 passed in Mutation Case No.443/2009 and Mutation Appeal No.39/2015 respectively.

**6.** Learned Standing Counsel Mr.J.Rath appearing for the O.Ps by refuting the claim of the petitioner, contended that, the suit land in sabik stood recorded under Anabadi Khata No.98. Present petitioner claimed to have got the suit land on lease from ex-intermediary by his father in the year 1943. However he could not adduce any documentary evidence in support of their claim before the Settlement officials at the time of Khanapuri stage, for which the Asst Settlement Officer concerned vide his order dated 02.08.1985 passed in Yaddast No.629 (Copy filed) of Mouza-Ankurapal has recorded the suit land under Abad Jogya Anabadi Khata and illegal possession note in the name of petitioner has been reflected in the remarks column. He further pointed out that, in Civil Suit No.103/2005, petitioner does not seem to have filed any lease deed or Ekpadia, if any, had ever been granted by the ex-in intermediary. He further pleaded that the suit land in sabik was "forest" land and accordingly has been recorded under Government Khata with sabik classification which cannot be recorded in favour of the petitioner. In this context, learned Standing Counsel asserted that It has been held by Hon'ble Supreme Court in the State of Orissa and another-Versus-Brundaban Sharma and another [reported in 1995 Supp (3) Supreme Court cases 249] that if an OEA Collector concludes that a "lease, transfer or settlement" made prior to vesting of an ex-Estate (even if it is prior to 1.1.1946 and registered) is not to be set aside, he should obtain prior confirmation from the Board of Revenue under section 5(i) of the OEA Act. This interpretation of section 5(i) of the OEA Act has been reiterated by the Hon'ble Supreme Court in para 5 & 8 of their judgment dated 20.04.2009 in the State of Orissa & others Vs. Harapriya Bisoi reported in 2009 (I) CLR SC-1100. It means that unless the temporary lease of land granted by the ex-Intermediary is confirmed by the Board of Revenue under section 5(i) of the OEA Act, it cannot be honoured. Further, as per the Apex Court order in T.N Godavaram case, no forest land can be diverted for any non- forest purposes.

**7.** After going through the documents available on records, I agree with the contention of the learned Standing Counsel that the suit land which in sabik was Government land and since been recorded as "Jungle" classification in the hal Settlement R.O.R published on 04.01.1993 is obviously communal in nature, it cannot

be settled under the provisions of Orissa Estates Abolition Act as has been held in the case of State of Orissa - Vrs - Nityananda Satapathy and others reported in 96(2003) CLT 720 (S.C.). Besides on the issue of rent been 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."

**8.** Also it is a fact that the Civil Suit No.103/2005 has been disposed off exparte against the present O.Ps, wherein the Forest Department officials have not been impleaded as party although classification of the suit land has been recorded as "Sala Jungle" in hal Settlement R.O.R. This court lacks the authority to violate the orders of the Hon'ble Apex Court order in T.N Godavaram case, notwithstanding the contrary order of the Civil Court in civil suit No.103/2005

**9.** The provisions of Para-111 of the Mutation Manual, may be noted :

*"Under Section 32 of the Act, the Board of Revenue have powers, with or without petition, to call for and revise any proceedings before any Officer from whose decision no appeal lies. The fact that the Board of Revenue have been vested with this power of revision of any proceedings at any time does not mean that any party to a mutation proceeding can, as a matter of course, move the Board for changing an order passed by a subordinate authority. The statutory rule does not provide for a second appeal or revision after the first appeal and in the absence of such a specific provision, the general powers conferred by Section 32 cannot be invoked to utilise the Board of Revenue as a Court of Second Appeal. Powers of control and supervision by the superior authority are discretionary and the authorities exercising such powers are not ordinarily disposed to interfere except in the following classes of cases, namely:*

- a) *where a subordinate officer has improperly refused to exercise a jurisdiction vested in him, or*
- b) *where such officer in the exercise of the jurisdiction has failed in his duty or has contravened some express provision of law affecting the decision on the merits, and where such contravention has produced a serious miscarriage of justice, or*
- c) *generally where it is necessary for the purpose of preventing gross abuse or gross injustice."*

**10** In the instant case, no material has been placed that would indicate existence of any of the three remedies envisaged above.

**11.** In the result, the case is dismissed.

**12.** Pronounced the order in the open Court today this the 27th day of February, 2019.

**Sd /-**

Member,

Board of Revenue, Odisha, Cuttack



**O.S.S Case No. 1560 of 2016**

**Decided on 12.03.2019**

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

Smt. Sanjukta Patnaik ... Petitioner  
-Versus-  
State of Odisha, represented by  
Collector, Khurda & others .... Opp. Parties.

For Petitioner ... Mr. B.N.Bagh, Adv. & Associates.

For Opp. Parties ... Mr. S.K.Routray, Addl.Standing Counsel.

**DECISION**

**1.** This revision petition has been filed by the above petitioner under Section 32 of the Orissa Survey & Settlement Act, 1958 challenging the impugned order dated 16.09.2013 of the Addl. Sub-Collector, Bhubaneswar passed in Settlement Appeal Case No.2371/2013 in respect of the schedule of property mentioned below.

**SCHEDULE OF PROPERTY**

Mouza- Sampur (Hal records has not yet been finally published), Tahasil-Bhubaneswar, Dist- Khurda,

Draft Hal Plot No. 7855, Area- Ac.0.100 decs. (i.e., Hect.0.0405), corresponding to Sabik Mutation Khata No. 224/172, Sabik Plot No.788/1365/1666 , Area-Ac.0.100 decs. which further corresponds to Correction Sabik Khata No. 233/52, Sabik Plot No.788/1365 out of total Area-Ac.1.00.

**2.** The case of the revision petitioner in brief is that originally the suit land belonged to Government. An area of Ac.1.00 had been leased out to one Gopinath Sahoo for agriculture purpose by the Tahasildar, Bhubaneswar vide his order dated 16.10.1969 (wrongly mentioned as 16.11.1969) passed in Wasteland Lease Case No.388/1968-69 and accordingly the corrected R.O.R vide Khata No. 233/52, Plot No.788/1365, Area-Ac.1.00 had been issued in favour of the above lessee (Bhulekh copy of the said ROR has been filed). Thereafter the said lessee Gopinath Sahoo for his legal necessity had sold an area of Ac.0.100 decs. out of his total leasehold area Ac.1.00 pertaining to Sabik Plot No.788/1365, Area-Ac.1.00 to the present petitioner through R.S.D. No.7368 , which was registered on 20.12.1980 followed with a deed of Rectification vide R.S.D. No.7501, registered on 16.10.1981 wherein the name of the husband of the present petitioner has been mentioned in place of her late father's name. The petitioner has further stated that the lessee, who had got the suit property on lease in the year 1969, has sold the present suit land in the

year 1980 to the petitioner, i.e, after more than 10 years. The petitioner contended that there was no necessity of obtaining any permission from the Tahasildar concerned for transfer of the suit land, which is claimed to have been validly executed in favour of the petitioner. After her purchase, the petitioner 's purchased area measuring Ac.0.100 decs. is said to have been mutated by the Addl. Tahasildar, Bhubaneswar vide his order dated 31.07.1986 passed in Mutation Case No.933 of 1984. On this basis, the Sabik Mutation Khata No.224/172, Plot No.788/1365/1666 with an area Ac.0.100 decs. had been issued in favour of the present petitioner Sanjukta Patnaik under 'Stitiban' status. The petitioner further states that in response to the Letter No.1061 dated 15.03.2013 of the Asst. Settlement Officer, Rental Camp, Sampur, Bhubaneswar the Tahasildar, Bhubaneswar vide his letter No.2282 dated 18.03.2013 is said to have issued the clarification to the Asst. Settlement Officer in admitting the record position in the name of the present petitioner in Tahasil records (Photocopy of the said letter dtd.18.03.2013 of the Tahasildar, Bhubaneswar has been submitted). Accordingly, the draft record of the suit land is claimed to have been rightly prepared in favour of the present petitioner pertaining to Hal Plot No.7855, area Ac.0.100 decs.(i.e, Hect.0.0405) under 'Not-final' Hal Khata No.1486 of the suit village and the 'Parcha Slip' of the same is said to have been issued in her favour. The present petitioner further states to have filed an objection case bearing Objection Case No.198/423 of 2012 u/s 21 of the O.S. & S Act, 1958 before the Asst. Settlement Officer, Rental Colony, Bhubaneswar by enclosing relevant documents of deposit of conversion fee amount of Rs.30,000/- before the Revenue Inspector, Paikrapur for change of Kisam of the suit land to 'Gharabari' kisam. However, the above objection case is said to have been disposed of arbitrarily by the learned Asst. Settlement Officer, Rental Colony, Bhubaneswar. Further a Suo-motu Appeal Case No.2371 of 2013 u/s 22(2)(a) is said to have been instituted in respect of the present suit land and without any intimation to the present petitioner the learned Addl. Sub-Collector, Bhubaneswar is said to have passed the impugned order dated 16.09.2013 behind the back of the present petitioner to record the Hal Plot No.7855 in favour of the G.A. Department by deleting the same from 'Not-final' Hal Khata No.1486 on the ground that the present petitioner (Opp. Party in the said Suo-moto appeal case) had failed to produce the sabik map of the sabik plot and other necessary documents justifying her claims. However, the present petitioner claims that all the relevant documents were already available in the connected Objection Case No.198/423 of 2012 of the Asst. Settlement Officer, Rental Camp, Bhubaneswar and that the learned Addl. Sub-Collector, Bhubaneswar had passed a cyclostyled order without proper application of mind in passing the impugned order. In the present revision the petitioner has prayed to set aside the impugned order passed by the Addl. Sub-Collector, Bhubaneswar and to record the suit land with 'Gharabari' Kisam in her favour on the basis of her relied upon documents. The petitioner pleaded that there was a temporary ban period of only ten years on transfer of leased land, as per Section 6-A of OLR Act, which has an overriding effect over OGLS Act, as per the decision of Hon'ble High Court in Bhikari Nayak case of 1991. The learned

advocate on behalf of the petitioner pleaded that as per Section 4 (1) (f) of OLR Act, the lessee is a raiyat and therefore, can transfer the land without any doubt. Further, he argued that as per the Government's own booklet titled rayati jami record kariba pranali o swatwaswatwa niyamabali, published in 1990, the lands recorded as dakhil swatwa sunya in the districts of Puri, Cuttack and Balasore shall be recorded in 'sthitiban' status. The revision petitioner has further pleaded that the interim order issued by Hon'ble High Court on 3.7.2013 in respect of the settlement operations in Sampur Mouza in Misc case No. 13456 of 2013 related to W P ( C ) No. 14424 of 2013 has since been vacated on 9.7.2018.

**3.** Heard the learned Advocate for the petitioner in presence of the learned Addl. Standing Counsel who represented the State. Gone through the documents and the reports submitted by the Cuttack Major Settlement Authorities, the Addl. Tahasildar, Bhubaneswar and A.D.M Bhubaneswar which are kept in the case record. The report from the Settlement Office indicates that the Yaddast was prepared in favour of the present revision petitioner, but that it was decided in the Rent case by the Additional Sub-Collector to take it to G A Department. The report of the Tahasildar in letter No. 19354 dated 24.12.2018, by which the letter No. 1152 dated 22.12.2018 of R I, Paikrapur was enclosed, indicates that the present revision petitioner, with boundary wall constructed, was doing agriculture cultivation in the suit land recorded under the kism "Baje Phasal 3 ". The Additional standing counsel has opposed the revision on the following grounds: (i) No trace map was attached with the lease case No. 388/68-69. The map which is said to have been carved out in respect of Hal Plot No. 7855 is misconceived and baseless, in the absence of the map of the original lease plot No. 788/1365. (ii) The original lease said to have been granted by the Government is void in the eyes of law, as the Tahasildar initiated the so-called lease case No. 388/1968-69 on 21.9.1968, wherein he ordered R I, Chandaka to report by 'date not mentioned'. But without waiting for the report of R I, the Tahasildar passed the order on 16.10.1969. This shows the mala fide and negligent action of the then Tahasildar and it cannot justify the lease to have been duly granted by the Government. (iii) When the lessee sought violation of the conditions of lease by seeking conversion of the Government land given on lease for agriculture, to non-agricultural purposes, it is not lawful for the R I to have accepted Rs 30,000 towards premium. (iv) As the leased land was with the status "Dakhil Swatwa Sunya", Section 2 of the Odisha Government Land Bar to Acquisition of the right of occupancy Act, 1950 clearly prohibits right of occupancy of the land, unless it is specifically conferred. (v) In OJC No. 9449 of 1993, Hon'ble High Court of Odisha upheld the right of the Government of Odisha to find out irregularities committed by various authorities who passed orders illegally in Bhubaneswar area. (vi) In the State capital area, many land grabbers are trying to grab valuable Government land with the help of fraudulent documents.

**4.** The Sabik & Hal status of the suit land submitted in the para-wise report by the Asst. 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. In their para-wise report the Settlement authorities have stated that in respect of the suit village- Sampur the original Sabik Plot No.788, area Ac.13.455, Kisam- Puratan Patita stood recorded under Sabik Khata No.245 in 'Anabadi' status. The Sabik correction Khata No.233/52, Plot No.788/1365, area Ac.1.00, Kisam- Baje Fasal-3 is said to have stood recorded under 'Dakhal Satwa Sunyo' status in the name of Gopinath Sahu, S/o- Ainthi Sahu of village-Sampur vide W.L.L Case No.388/1968-69 on being mutated from Sabik Khata No.245.

**5.** The Addl. Tahasildar, Bhubaneswar has submitted the same facts in his status report dated 21.12.2018 as submitted by the Cuttack Settlement authorities in their para-wise report above. In his status report the Addl. Tahasildar, Bhubaneswar has further reported that subsequently, the Khata No.224/172, Plot No.788/1365/1666, area Ac.0.100 has come from Khata No.233/52, Plot No.788/1365, area Ac.1.000 vide Mutation Case No.933 of 1984. From the true certified copy of the Wasteland Lease case record bearing No.388/1968-69 enclosed by the Addl. Tahasildar, Bhubaneswar in his status report it reveals that the area of Ac.1.00 of land out of Sabik Plot No.788 had been granted on lease in favour of Gopinath Sahu by the Tahasildar, Bhubaneswar vide his order dated 16.10.1969. The R.O.R copies of Sabik Correction Khata No.233/52, Plot No.788/1365, area Ac.1.000, Kisam-Baje Fasal-3 recorded in the name of Gopinath Sahu, S/o-Ainthi Sahu (the original lessee) in 'Dakhal Satwa Sunyo' status since the year 1970-71 and the Sabik Mutation Khata No.224/172, Plot No.788/1365/1666, area Ac.0.100, Kisam-Baje Fasal-3 recorded in the name of present petitioner Sanjukta Patnaik W/o- Pramod Chandra Patnaik in 'Stitiban' status have also been submitted by the Addl. Tahasildar, Bhubaneswar alongwith his report dated 21.12.2018. Subsequently, the Addl. Tahasildar, Bhubaneswar vide his letter dated 24.12.2018 has further submitted a field enquiry report of the Revenue Inspector, Paikarapur, who has reported that on field enquiry it reveals that the present petitioner Sanjukta Patnaik, W/o- Pramod Chandra Patnaik is in found to remain in cultivating possession in respect of Khata No.224/172, Plot No.788/1365/1666, area Ac.0.100, Kisam-Baje Fasal-3.

**6.** In the report received from the Office of the A.D.M, Bhubaneswar it has been mentioned that no revision case u/s 7-A(3) of the O.G.L.S Act, 1962 has been instituted against the Waste land Lease Case No.388/1968-69. Therefore, the authenticity of the W.L.L case No.388/68-69 is not disputed by the Opposite parties, as it is in consonance with the status reports of the Addl. Tahasildar, Bhubaneswar and the certified copy of the said W.L.L. case record submitted by the Addl. Tahasildar, Bhubaneswar. It is clear that no steps for cancellation of the lease or for resumption of the land have so far been taken by the Tahasildar, Bhubaneswar.

**7.** On perusal of the copy of the orders passed in Suo-motu Appeal Case No.2371/2013 submitted by the petitioner, the learned Addl. Sub-Collector, Bhubaneswar is seen to have directed to register the suo-mou Appeal case u/s 22(2)(a) of the O.S. & S Act, 1958 and to issue notice on 23.08.2013, the case been

posted to 16.09.2013. On 16.09.2013 the learned Addl. Sub-Collector is seen to have passed the impugned order in absence of the Opp. Party before him (i.e, the present petitioner) without verifying sufficiency of notice as the interim period between the above two dates is seen less than a month. Further, it is seen that despite the sabik-hal correlation been described in the impugned order that the Hal Plot No.7855 of village-Sampur co-relates to Sabik Plot No.788/1365/1666 under sabik Khata No.224/172 which is said to have been derived from Sabik Khata No.245 the learned Addl. Sub-Collector has passed the impugned order to keep the Hal R.O.R of the suit hal Plot No.7855 from 'Not-final' Hal Khata No.1486 as per the sabik 'Anabadi' status on the ground that the sabik status of the suit hal plot being Anabadi the parties fail to produce necessary documents and maps without calling for any report from the concerned Tahasildar, Bhubaneswar for verification of hal-status and W.L.L case record. Besides, there is no reference of any objection case or Yadast no. made in impugned order of the learned Addl. Sub-Collector on the basis of which earlier draft record was prepared in favour of the present petitioner which in case needed any cross examination in such Suo-motu Appeal proceeding.

**8.** Regarding the objections cited by the State as described in Para 3 above, the following observations are made. (i) The point regarding the non-availability of the trace map in the original lease case record is flimsy, as it does not prove conclusively that the original lease was fraudulent and in any case, the physical plot claimed by the revision petitioner is specific and identifiable. (ii) The R I does not have any statutory powers. It is a common practice for Tahasildars to take the assistance of Revenue Inspectors to discharge their duties. There is no bar for the Tahasildar to take decisions without waiting for the field reports of R I, as a general administrative practice. Therefore, it is not acceptable that this alone could enable this Court to conclude that the original lease of one acre of Government land was fraudulent, in the absence of any steps taken or initiated by the State authorities to issue necessary notices to concerned stakeholders for cancellation of lease or for resumption of the land. (iii) The point made by the Addl Standing Counsel with regard to Section 8-A of OLR Act is valid, as the said section did not empower the R I to decide the premium amount and collect it, as no plea has been taken that the Tahasildar, who is the competent authority, had actually started proceedings u/s 8-A for conversion of land to non-agriculture purposes. In any case, the field report of the R I is clear that the present revision petitioner is doing agriculture on the scheduled land. Therefore, the question of changing the kism of the land to 'gharabari' at this stage does not arise. (iv) The point made by the Additional Standing Counsel with reference to the 1950 Act is irrelevant. As the statement of objects in respect of that Act indicates: ***"In the district of Sambalpur lands have been acquired for the Hirakud Project. Many of these lands will be submerged under water as the construction of the Dam progresses but the submersion will be gradual. It is, therefore, desirable to utilize these lands which were under cultivation all along instead of allowing there to lie waste particularly in these days of food***

**shortage. The persons from whom the lands have been acquired would themselves like to cultivate these lands under an agreement with Government till the lands are actually submerged or otherwise utilized in the construction of the Hirakud Dam. The difficulty in doing so is the risk that occupancy right may accrue once these lands are let out and a fresh acquisition may be necessary to dispossess the occupants who might be cultivating with Government permission. To guard against such a contingency happening, it is considered necessary to enact a law by which accrual of occupancy right will be barred on lands acquired by Government. The Orissa Tenancy Act specifically prohibits the accrual of occupancy right on such lands but there is no such provision in the C.P.Tenancy Act or in the Madras Estates Land Act.”** In any case the Section 2 of the said Act has no bearing on the present dispute, in view of the fact that by a specific lease, right has been conferred and therefore, the bar of Section 2 does not apply here. It is relevant that as per Section 6-A of the OLR Act, 1960 the transfer by a raiyat of any land settled with him for agriculture purposes under a permanent lease from Government shall be void, if it is made within a period of ten years from the date of such settlement without obtaining the prior permission of the Revenue Officer. Thus, it is clear that there is no automatic provision in the law, by which a lease-hold land becomes free hold on its own, after ten years. It is not correct to accept the argument of the revision petitioner that land leased for agriculture will attract the definition of Section 4(1)(f) of OLR Act, as the scheduled land here was neither “settled under a lease from land-holder” nor it was under ‘permanent lease from the Government’. Therefore nothing stops the Government from bringing in a policy by which such transferable right can consciously be given to a lessee against some consideration of payment of premium/ fee at notified rates to permit such change of classification from ‘Dakhil Swatwa Shunya’ to ‘freehold’ i.e. with alienable rights. In the instant case, the transfer happened much later than ten years. But, there is nothing on record to indicate that the lessee had sought the permission of the Government for transfer or that any competent authority in the Government had permitted such sale. However, in the instant case, the fact remains that no resumption proceedings for cancellation of lease have been initiated. (v) and (vi): No correlation or document to indicate presumption of land grabbing has been produced in the instant case, as it is clear that no proceedings for cancellation of lease have so far been initiated under the provisions of OGLS Act. It is difficult to accept the imputation that the fact of land grabbing or irregularity was known to the Additional Sub-Collector, but not to ADM or Tahasildar or other concerned authorities.

**9.** There is no strength in the argument advanced by the petitioner that for any transfer of land leased out by the Government after a period of ten years, no permission by the Government is needed. It is noted that as per Section 6-A of the OLR Act, 1960 the transfer by a raiyat of any land settled with him for agriculture purposes under a permanent lease from Government shall be void, if it is made

within a period of ten years from the date of such settlement without obtaining the prior permission of the Revenue Officer. It does not logically follow that transfer after ten years needs no permission. Thus, it is clear that there is no automatic provision in the law, by which a lease-hold land becomes free hold on its own, after ten years. Government can bring in a policy by which such transferable right can consciously be given to a lessee against some consideration of payment of premium/ fee at notified rates to permit such change of classification from 'Dakhal Swatwa Shunya' to 'freehold' i.e. with alienable rights. Further, it is necessary to note that Hon'ble High Court has laid down certain principles governing resumption of leased land in 2005 (II) OLR 77, Smt Sandhyarani Rout and others vs State of Odisha and others. In the said judgement, it was mentioned that ***the authorised officer can resume any land settled by him if he has reasons to believe that the person with whom the land was settled has used it for any purpose other than that for which it was settled. Even though there is no specific provision in Section 3-B of the Act to give opportunity of hearing to the present owner of the land in a proceeding under the said Section 1 for resumption of lease, but according to us, any person who may be directly affected by any order passed by the authority under the above section 3-B has a right to be heard before final decision of resumption of the lease is taken by the authority.***

However, it is noted in the instant case, while the Government has the powers to cancel the lease, the fact remains that so far the lease has not been cancelled under the OGLS Act.

**10.** This Court is not in a position to uphold the Order passed by the Additional Sub-Collector, Bhubaneswar on 16.9.2013. On the other hand, the Court cannot disregard the RSD of 1980 and the rectification deed of 1981. In view of the documents submitted by the petitioner and from the para-wise report submitted by the Cuttack Major Settlement Authorities, the status alongwith enquiry reports submitted by the Bhubaneswar Tahasil Authorities and from the report submitted by the A.D.M, Bhubaneswar the petitioner is seen to have a prima-facie claim on the suit land. However, the classification cannot be on 'sthitiban' basis, as that would give full legitimacy to the transfer of the leased Government land in 1980, for which there is no existing scheme of the Government. It cannot be on non-transferable basis, as that would encourage further transfers, whereas a right that a lessee did not have could not have legally been passed on to his successors-in-interest.

**11.** In view of the above, the revision is partially allowed. The impugned order dated 16.09.2013 of the Addl. Sub-Collector, Bhubaneswar passed in Settlement Appeal Case No.2371 of 2013 is set aside, with the following stipulations:

- (1) The classification of the land will not be 'gharabari' but will remain "Baje Fasal-3".
- (2) The scheduled land will be recorded in favour of the present revision petitioner Smt Sanjukta Patnaik, w/o Pramod Chandra Patnaik.

However, It has to be as per lease-hold status i.e. non-transferable and non-heritable, till the Government brings out any scheme to address such intending applicants through appropriate notification.

- (3) There shall be no bar on the authorities concerned to initiate resumption proceedings under OGLS Act, if they have any material to indicate violation of lease terms, by following due procedure as observed by Hon'ble High Court, as described in Para 9 above.

**12.** Send copy of the order to the Settlement Officer, Cuttack for necessary compliance as above, subject to the overall directions of Hon'ble High Court in respect of Sampur Mouza.

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

**14.** Copy of this Order be forwarded to Principal Secretary, Revenue and Disaster Management Department, who may examine the possibilities of bringing in a policy, as indicated at Para 9 above, so that several similarly-placed land matters can be addressed administratively and Government can augment its revenue by providing such service by way of conscious regularisation to eligible persons, who may have obtained land by transfer from the original lessees or from their successors-in-interest.

Pronounced the order in the open court today i.e. on the 12th day of March, 2019.

**Sd/-**

Member,

Board of Revenue, Odisha, Cuttack

**REVISION PETITION No.5362 of 1994**

**Decided on 12.02.2019**

(Order by Shri NBS Rajput, I.A.S,  
Commissioner,  
Land Records & Settlement, Odisha, Cuttack)

Maheswar Sahu ... Petitioner

-Versus-

Nilamani Sahu ... Opp. Party

Counsel for the Petitioner - Mr. A.B. Mohanty, Advocate

Counsel for the Opp. Party - None

**DECISION**

In Revision Petition No.5362/1994 filed U/s 15(b) of the O.S. & S. Act, 1958 (shortly called as the Act) relating to village-Goudabahali, P.S. Sukinda, Dist. Jajpur,



the petitioner, Maheswar Sahu has prayed for correction of impugned Hal R-O-R and separate recording in his favour in respect of disputed Hal Plot No.110, Area-Ac.0.09 dec., 142, Area-Ac.0.06 dec., 143, Area-Ac.0.06 dec., 140, Area-Ac.0.15 dec., 133, Area-Ac.0.07 dec. & 151, Area-Ac.0.33 dec. (part) Ac.0.15 dec. in Hal Khata No.90, corresponding to Sabik Plot No.104, 105, 106, 109, 110, 111 & 101 (part) under Sabik Khata No.29 & 28 respectively and rest of the land in Hal Khata No.90 be recorded jointly in favour petitioner and Opp. Party on the basis of purchase and possession through Registered Sale Deed No.3905 dated 29.05.1981.

2.0 Considering the available documents on record and nature of relief prayed for by the petitioner, delay is condoned. The revision is taken for consideration on merit.

3.0 The learned Counsel for the petitioner was present and heard. Opp. Party was absent at the time of hearing on repeated calls. Hence, he was set ex-parte.

The contention of the learned Advocate for the petitioner is that the petitioner purchased an area of Ac.0.60 dec. from one Ghanashyam Das through Registered Sale Deed No.3905 dated 29.05.1981 and delivered possession. During Hal settlement operation, the aforesaid purchased land of the present petitioner has been amalgamated with the land of the ancestral property of the petitioners and the Opp. Party bearing Hal Khata No.90 out of which the petitioner is exclusively entitled for an area Ac.0.60 dec. and rest of the land is to be recorded jointly in favour of the petitioner and the Opp. Party as co-sharer. Hence, this revision for remedy.

4.0 The learned Counsel for the petitioner has submitted the following documents in order to substantiate his claim over the suit land.

1. Original Hal R-O-R No.90
2. Certified copy of Sabik R-O-R No.28 & 29
3. Original RSD No. 3905 dated 29.05.1981

Para-wise report submitted by Settlement Officer, Cuttack vide his letter No.8355 dated 26.09.2000 has been received.

5.0 Gone through the contention of the petition and above documents on record.

On verification of the documents on record, it is evident that the status of the disputed land both in Sabik & Hal R-O-R is Stitiban. From the para-wise report submitted by Settlement Officer, Cuttack and certified copy of Sabik R-O-R No.29, it is verified that Sabik Khata No.29 in which Sabik Plot Nos.104, 105, 107, 109, 110 & 111 exist stood recorded in favour of Mana Das, son of Dina Das. Sabik R-O-R No.28 in which Sabik Plot No.101 exist stood recorded in favour of Mana Das, son of Dina Das. Through RSD No.3905 dated 29.05.1981, Ghanashyam Das, son of late Mana Das had transferred Sabik Plot No.104 Ac.0.09 dec., Sabik Plot No.105 Ac.0.06 dec., Sabik Plot No.106 Ac.0.07 dec., Sabik Plot No.109 Ac.0.05 dec., Sabik Plot

No.110 Ac.0.12 dec. & Sabik Plot No.111 Ac.0.06 dec. (total area Ac.0.45 dec.) from Sabik R-O-R No.28/29 and Sabik Plot No.101 Ac.0.57 dec. (part) Ac.0.15 dec. from Sabik R-O-R No.29/28 (total area Ac.0.45 dec. + Ac.0.15 dec. = Ac.0.60 dec.) to Maheswar Sahu, son of late Baishnab Sahu (the present petitioner). Hence, the flow of title in respect of disputed plots in Hal R-O-R No. 90 is established in favour of the present petitioner and he is entitled to be recorded for the purchased property.

6.0 Resultantly, the Revision Petition is admitted and allowed. The learned Tahasildar, Sukinda is directed to implement the order as per my above observation within three months from the date of pronouncement of the order.

Pronounced the order in the open Court to-day, the 12th February, 2019.

Send the copy of this order to the Tahasildar, Sukinda.

Sd /-

Commissioner,

Land Records & Settlement, Odisha, Cuttack

**REVISION PETITION No.724 of 2007**

(W.P.(C) No.19719/2015 & W.P.(C) No.12808/2018)

**Decided on 11.10.2018**

(Order by Shri NBS Rajput, I.A.S,  
Commissioner,

Land Records & Settlement, Odisha, Cuttack)

Ananta Behera ... Petitioner

-Versus-

State of Odisha, represented through Tahasildar, Jajpur ... Opp. Party

Counsel for the Petitioner - Mr. S.K. Rout, Advocate & Associates

Counsel for the Opp. Party - Mr. S.C. Mohapatra, Standing Counsel

Mr. B. Brahmachari, A.S.C.

**DECISION**

In Revision Petition No.724/2007 filed U/s 15(b) of the O.S. & S. Act, 1958 (shortly called as the Act) relating to village-Boulanga, P.S. Mangalpur, Dist. Jajpur, the petitioner, Ananta Behera has prayed for correction of impugned Hal R-O-R and separate recording in his favour in respect of disputed Hal Plot No.270, Area-Ac.0.06 dec. and Hal Plot No.271, Area-Ac.0.25 dec. in Hal Khata No.551, corresponding to Sabik Plot No.208 under Sabik Khata No.52 and Sabik Plot No.211 (P) under Sabik Khata No.501 on the basis of Sabik patta issued by Addl. Tahasildar, Jajpur, order dated 2nd day of November, 1992 in Title Suit No.194 of 1990 and physical possession.

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

3.0 The Hon'ble High Court of Orissa has directed vide their order dated 06.11.2015 in W.P. (C) No.19719 of 2015 to this court to dispose of the revision petition within a period of six months from the date of production of a certified copy of this order.

Further, Hon'ble High Court of Orissa has also directed vide their order dated 23.07.2018 in W.P.(C) No.12808 of 2018 to this court to conclude the R.P.No.724 of 2007 positively within a period of three months.

Hence, the revision petition is taken up for early disposal.

4.0 The learned Counsel for the petitioner and learned Standing Counsel for the State were present and heard.

The learned Advocate for the petitioner has contended that the land consists of two plots measuring Ac.0.31 dec. i.e. under M.S. Khata No.551 and Plot No.270, Ac.0.06 dec. and Plot No.271 Ac.0.25 dec. which corresponds to CS Khata No.52 and Plot No.208 Ac.0.06 dec. and CS Khata No.501, Plot No.211 Ac.0.34 dec. In the CS R-O-R the status of the land was Anabadi in 1928 R-O-R and it was vested in Government on abolition of Estate and the petitioner being a poor schedule caste man as sub-caste "Chamara" is a landless person having no profitable means of livelihood other than agriculture, the said land had been settled in the name of the present petitioner by Encroachment Case No.288/81 and the final patta was issued in favour of the petitioner on 26.07.1982. In the year 1990, some persons forcibly trying to disposes the petitioner from the disputed land tried to cancel the patta issued by the Tahasildar, for which the petitioner had filed a Title Suit before the Court of Munsif, Jajpur bearing T.S. No.194/1990 and the suit has decreed in favour of the petitioner confirming the right, title and interest of the petitioner over the disputed land. During Hal settlement operation, due to non-production of judgment, the disputed land has been recorded as "Rakhit" Khata of the Government. Hence, this revision for remedy.

5.0 The learned Counsel for the petitioner has submitted the following documents to substantiate the claim of the petitioner.

1. Certified copy of Hal R-O-R No.551.
2. Certified copy of Sabik R-O-R No.52.
3. Certified copy of speaking order dated 2nd day of November, 1992 in T.S. No.194 of 1990.
4. Certified copy of speaking order in Encroachment Case No.288/81.
5. Xerox copy of Certified copy of order dated 29.01.1999 passed by the Hon'ble High Court in Civil Revision No.81 of 1996.
6. Photocopy of Caste Certificate issued by Tahasildar, Jajpur

Para-wise report submitted by Tahasildar, Jajpur vide his letter No.3798 dated 27.07.2018, letter No.4062 dated 09.08.2018 and para-wise report submitted by Tahasildar, Dasarathpur vide his letter No.2340 dated 18.09.2018 have been received.

6.0 On verification of the above documents on record, it is evident that though the petitioner is claiming his right, title, interest and possession over the suit subject matter on the strength of judgment passed on 02.11.1992 by the learned Munsif, Jajpur in Title Suit No.194 of 1990 but the report from Tahasildar, Jajpur depicts something contradictory. As per the report of Tahasildar, Jajpur, during field enquiry of Revenue Inspector, Tentulidiha it is found that one Sri Balakrushna Das, son of Bira Das of village Kamalpur, P.S.-Mangalpur under Jajpur district had encroached an area of Ac.0.04 dec in Plot No. 738 under Khata No. 447 of Mouza-Kasapa for which an encroachment case bearing No.288/1981 was instituted and the case had been closed as the said land was vacated. Besides, it is also described in the report that as stated by the petitioner Sri Anant Behera in the plaint copy of the aforesaid W. P. (C) No. 19719/2015 as well as the R. P. Case No. 724/2007 that the Tahasildar has issued final Patta on 26.07.1982 passing the order in Encroachment Case No.288/1981 is false and fabricated. All these things are confirmed through the LCR received from Tahasildar, Jajpur in Encroachment Case No. 288/1981.

7.0 Subsequently, from the field enquiry report submitted by the Tahasildar, Dasarathpur which has been prepared by Revenue Inspector, Tentulidiha Circle, Revenue Supervisor and Amin of Dasarathpur Tahasil, it is ascertained that the Hal Plot No.270 area Ac.0.06 dec. kism Nala is being used by Ananta Behera as road to his gharabari plot and Hal Plot No.271 area Ac.0.25 dec. is existing as Jalasaya (Gadia) in Hal Khata No.551 (Rakhit Khata) of Government.

8.0 Perused the order dated 02.11.1992 passed by Munsif, Jajpur in Title Suit No.194 of 1990, it is found that Tahasildar, Jajpur, Sub-Collector, Jajpur Sub-Division, Addl. District Magistrate, Revenue, Cuttack and Collector, Cuttack have been arrayed as Defendants No.1, 2, 3 & 4 respectively. In the joint written submission filed by Defendants No.1 to 4 they have admitted the fact that the Encroachment Case bearing No.288/81 was initiated against Ananta Behera (plaintiff) the present petitioner basing on the report of Revenue Inspector, Tentulidiha and the order had been passed by the Tahasildar on 19.04.1982 to settle the suit land in favour of the present petitioner. But subsequently, after ascertaining the non-issuance of proper proclamation, the Addl. Tahasildar, Jajpur suggested for review of order and accordingly, Sub-Collector, Jajpur set aside the order of Tahasildar in aforesaid lease case and cancelled the lease thereon.

9.0 On observation of the above facts and in the circumstances, it is found that the Sabik Kism of the plot no.208 in Sabik R-O-R No.52 as provided by the petitioner is 'Tala' and there is no such Kism existing in Anabadi Khata of Government. But Hal Plot No.270, area Ac.0.06 dec. & Hal Plot No.271, area Ac.0.25 dec. which corresponds to Sabik Plot No.208, area Ac.0.06 dec. in Sabik Khata No.52 and Sabik Plot No.211, area Ac.0.34 dec. in Sabik Khata No.501 have been recorded as

'Nala' & 'Jalasaya-2' in Hal R-O-R No.551 respectively which is a Rakhita Khata of Government. The above Hal Kissam of land is not fit for agriculture as such, the land is not leaseable in nature. As per sub-section 2 of Section 7 of OPLE Act, 1972, "no settlement shall be made if the land is recorded as Gochar, Rakhit or Sarbasadharan in any record-of-rights prepared under any law." So, while settling the land in favour of the petitioner, Tahasildar, Jajpur has contravened the expressed provision of law but subsequently, he has reviewed his earlier order after appraisal of the case which was also not under his jurisdiction. While adjudicating the matter in the Civil Court, there must be mis-representation or suppression of facts regarding the Kissam of the land and its suitability for sanction of lease. Suppression of a material document would also amount to a fraud on the court (Gowrishankar V. Joshi Amba Shankar Family Trust (1996 (3) SCC 310). Non-production and even non-mentioning of the documents at the trial is tantamount to playing fraud on the court. 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 [S.P. Chengalvaraya Naidu Vrs. Jagannath 1994 (SCC) (1)].

10. Again, the order dated 02.11.1992 passed by the learned Munsif, Jajpur in Title Suit No.194 of 1990 has been challenged in the High Court of Orissa in Civil Revision No.81 of 1996 by the Defendants No.7 & 8 of the Title Suit No.194 of 1990 and the Hon'ble High Court in its order dated 29.01.1999 has dismissed the Civil Revision for default.

11. Basing on the above facts and legal provisions cited supra, the prayer of the petitioner is liable to be dismissed.

Further, as reported by Tahasildar, Dasarathpur the present kisam of the disputed plots are "Nala" and "Jalasaya-II" in Hal R-O-R No.551 and the suit land in question has been recorded in Rakhit Khata of Government. As such, the land is not leaseable in nature. However, if the land has ever been settled in favour of the petitioner, it is quite non est in the eyes of law. Though the Sub-Collector, Jajpur has cancelled the lease agreement taking into cognizance of some problem or other regarding settlement of the suit land in favour of the petitioner which was beyond his jurisdiction. Subsequently, the petitioner has got the title in respect of the suit plots by the order of Munsif, Jajpur. Hence, Tahasildar, Dasarathpur be directed to file Civil Appeal before appropriate forum against the unlawful order passed by the then Tahasildar, Jajpur for protection of the Government land that has been settled in favour of the petitioner vide Encroachment Case No.288/81.

12. Resultantly, the Revision Petition is dismissed.

Pronounced the order in the open Court to-day, the 11th day of October, 2018.

Send the copy of this order to the Collector, Jajpur, Tahasildar, Jajpur & Dasarathpur.

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

**REVISION PETITION No.396/2016**

**Decided on 14.03.2019**

(Order by Shri NBS Rajput, I.A.S,  
Commissioner,  
Land Records & Settlement, Odisha, Cuttack)

Babaji Charan Das & another .... Petitioners

-Versus-

State of Odisha, represented through

Tahasildar, Jajpur & others ... Opp. Parties

Counsel for the Petitioners	-	Mr. C.S. Pati, Advocate
Counsel for the Opp. Parties	-	Additional Standing Counsel
Counsel for the Pro-forma O.Ps	-	None

**DECISION**

In Revision Petition No.396/2016 filed U/s 15(b) of the O.S. & S. Act, 1958 (shortly called as the Act) relating to village-Kuanla, P.S. Mangalpur, Dist. Jajpur, the petitioners, Babaji Charan Das & another have prayed for correction of impugned Hal R-O-R and separate recording in their favour in respect of disputed Hal Plot No.953, Area-Ac.0.10 dec., Hal Plot No.954, Area-Ac.0.10 dec. & Hal Plot No.975, Area-Ac.0.08 dec. in Hal Khata No.842, corresponding to Sabik Plot No.3174 area Ac.0.74 (part) Ac.0.30 dec. under Sabik Khata No.689 on the basis of Rent Schedule, Registered Sale Deeds, Yadasts and Objection Case No.3251/392.

2.0 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.

3.0 The learned Counsel for the petitioners and learned Addl. Standing Counsel for the State were present and heard.

The contention of the learned Counsel for the petitioners in his written notes is that Hal Plot No.954, 953 & 975 from Hal Khata No.842 recorded in favour of the petitioners in stitiban Khata on the basis of registered sale deeds dated 04.01.1999 and 3112.2001 which was executed by Nrusingha Sahani, Upendra Sahani and Keshab Sahani, sons of late Banchhanidhi sahani and title followed by these three vendors by way of OEA Case No.5840 of 76 in which order dated 18.12.1981 passed by OEA Collector u/s 6 & 7 of OEA Act and thereafter rent schedule patta was issued by the Tahasildar, Jajpur in favour of the aforesaid vendors for an area of Ac.0.32 dec. in respect of Sabik Plot Nos.2887 & 3156 and disputed plot No.3174 & 2911 of Sabik Khata No.689. The suit land has been decided by the OEA Collector,

Jajpur u/s 6 & 7 by the Tahasildar, Jajpur but while deciding the matter u/s 15(b) of OS&S Act, 1958, the order of the OEA Collector must be prevailed and respected by the settlement authorities or by the Commissioner, Land Records and settlement, otherwise the order not assailed by the appropriate forum in appropriate court. The settlement Courts being the court of Records cannot ignored the order of the OEA Collector, rightly or wrongly passed by the authorities concerned. So, this order creates the title of the vendor of the petitioner and the vendor of the petitioners is in peaceful possession over the suit land on the basis of their sale deed. During earlier stage of settlement operation, the Yadast No.3050 and 3985 clearly described the status of the suit land and the kism was Puratan Patita as Sabik Khata No.389 was Anabadi with ex-intermediary Nrusingha Charan Sahani. During draft publication and objection hearing stage, the petitioner Babaji Charan Das filed an Objection Case No.3251/392 for recording the suit land in his favour. The Asst. Settlement Officer passed an order dated 20.09.2007 for recording Hal Plot No.954, 953 and 975 by deleting from Not-final Government Khata No.429 and recording in favour of the petitioners. This order should be reflected in final publication of R-O-R separately. But unfortunately, it has been inserted in Government Abada Jogya Anabadi Khata No.842 which is contradictory to the order of the Objection Case No.3251. So, the settlement authorities has committed gross error by recording these plots in the government Khata without taking into consideration of Objection Case No.3251 which is followed by OEA Collector order, rent, schedule patta and the registered sale deeds of the petitioners. Hence, this revision petition for remedy.

Learned Addl. Standing Counsel in his written statement has contended that after going through the records, it is found that the petitioners have stated that it has been decided u/s 6, 7 of the OEA Act in the name of the petitioners but it appears from the order dated 18.12.2001 that it is not an order u/s 6, 7 of the OEA Act but Tahasildar passed order u/s 8(1) of the OEA Act. The rent schedule shows that patta has been granted u/s 6, 7 of the OEA Act. So land settled u/s 8(1) of the Act for which no patta has been granted. The basis of patta does not tally with orders passed in Case No.5840 of 1976 on 18.12.1981. Thus, the case of the petitioners is that the land settled u/s 6, 7 but the order shows otherwise.

Under the above circumstances, the case of the petitioners is devoid of merit. Hence, disallowed.

4.0 Learned Counsel for the petitioners has submitted the following documents in order to substantiate their claims.

1. Certified copy of Hal R-O-R No.842
2. Certified copy of Sabik R-O-R No.689
3. Copy of Tenant Ledger No.689
4. Certified copy of Yadast No.2985, 3050 & 3151

5. Certified copy of order dated 18.12.1981 passed by the OEA Collector.
6. Original Rent schedule-cum-Patta issued by Tahasildar, Jajpur dated 29.10.1982
7. Original RSD No.10 dated 04.01.1989 & No.1379 dated 31.12.2001
8. Certified copy of Hal R-O-R No.371

5.0 On perusal of the above documents, it is ascertained from the Yadast Nos. 3985, 3050 and 3251 submitted by the petitioners and para-wise report submitted by Assistant Settlement officer, Cuttack that the impugned Hal Plot No.953, 954 and 975 in Hal R-O-R No.842 corresponds to Sabik Plot No.3174 area Ac. 0.74 dec. in Sabik Khata No.689. It is verified from the certified copy of Sabik R-O-R that Sabik R-O-R No.689 stood recorded in **Anabadi Khata of Government** and the kism of the Plot No.3174 was "**Puratan Patita**". It is ascertained from the certified copy of Lease Case No. 5840 of 1976 that the suit land has been settled with the ex-Intermediary, Nrusingh Chandra Sahani, Keshab Chandra Sahani, Upendra Sahani and Balaram Sahani, sons of Late Banchhanidhi Sahani u/s 8(1) of OEAAct, 1951.

6.0 In this context, certain provisions of the Odisha Estate Abolition Act, 1951 need to be noted.

Section 2 (hh) defines as '**intermediary interest**' as an estate or any rights or interest therein held or owned by or vested in an Intermediary. Significantly, as the above definitions would show, an 'intermediary' and an 'intermediary interest' cover all the holders or owners of interest in land between the State and the 'Raiyat' i.e. the actual cultivator or tiller of the soil. This is in line with the object and purpose of the 1951 Act i.e. to establish a direct relationship between the tiller and the State, and to abolish all intermediary interests, by whatever name called.

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

If there has been a notification under the OEAAct, the said properties would vest in the state free from all encumbrances. The intermediary is entitled to file an application for settlement under Section 6 and 7 of the Act. If the properties have come under the ambit of a notification under the OEAAct, the intermediary unless becomes a settlee in accordance with the provisions of the OEAAct cannot proceed for getting back possession: **1996 (II) OLR 630**.

By virtue of **Section 8 (1)**, any person who immediately before the vesting of an estate in the State Government was in possession of any holding as a tenant under an intermediary shall on and the from the date of the vesting, be deemed to be a tenant of the State Government. The words 'holding as a tenant' mean the



'Raiyat' and not any other class of tenant. Section 8 thus confers protection only on the 'Raiyat' i.e. the actual tiller of the soil.

Significantly, a 'lease' and 'lessee' on the one hand are defined separately from the 'Raiyat' under the Act. Thus, the mere execution of a lease by the intermediary in favour of a person would not confer the status of a 'raiyat' on the lessee nor would protect the possession of such lessee under Section 8. On the other hand, for protection under Section 8, one has to be a Raiyat cultivating the land directly and having the rights of occupancy under the tenancy laws of the State. Thus, a 'lessee' who is not actually cultivating the land i.e. who is not a 'raiyat', would not be within the protection of Section 8 of the Act.

7.0 On the facts of the present case, it is clear that the land was not under cultivation by any raiyats rather the land was under the possession of the intermediary. As per the Record of Rights published in 1928, the disputed land is classified as Anabadi land with kizam "Puratan Patita" i.e. uncultivable. Anabadi land is uncultivable as observed by the **Hon'ble Supreme Court in Civil Appeal No.2656 with 2657 of 2009 (State of Odisha –vrs.- Harapriya Bisoi) as reported in AIR 2009 Supreme Court 2991**. The land thus not being cultivated, Banchhanidhi Sahani cannot be considered as a 'Raiyat' under the Act. It is further submitted that even presuming Banchhanidhi Sahani a 'tenure-holder' as opposed to a 'raiyat', Section 2(h) of the Act defines 'intermediary' to include 'tenure-holder'. Thus, a "tenure holder" being an "intermediary" under the Act- the rights and liabilities of such tenure holder would stand extinguished under the Act.

8.0 Further, Tahasildar has no jurisdiction to settle land under Sec. 8(1) - If he acts as such that amounts to usurping jurisdiction not vested in him- Board of Revenue has jurisdiction to annul such decision: **1992 (I) OLR 41**.

Under the OEA Act, tenancy rights did not vest in the state- After vesting tenant continues as a tenant- The State as land-lord entitled to collect rent -The Tahasildar collects rent as agent of the landlord-Government-He has no right to settle the land with the tenant- such settlement, is without jurisdiction- when the tenant applies to the Tahasildar with application to be under Sec. 8(1), the Tahasildar may for his satisfaction, make enquiry as to the records if he is tenant- This is administrative in nature : **1992 (I) OLR 41**.

9.0 In view of the facts and legal discussions made supra, it is my considered view that Tahasildar has illegally settled the suit land in favour of the ex-intermediaries, Nrusingh Ch. Sahani, Keshab Ch. Sahani, Upendra Sahani and Balaram Sahani Sons of Banchhanidhi Sahani u/s 8 (1) of OEA Act, 1951.

10. As the suit land belongs to Government and the petitioners are claiming the suit property on the strength of the Registered Sale deeds executed between the petitioners and the successors of Banchhanidhi Sahani (ex-intermediary) who have no alienable right in the suit land, the sale of suit land in favour of the present petitioners

is not valid in eyes of law. Needless to say that, as the vendors have not acquired right, title and interest over the suit property, so the petitioners cannot acquire better title than their vendors. Consequentially, the petitioners have not acquired any right, title and interest in respect of the suit lands which they have purchased through Registered Sale Deeds from their vendors who are the ex-intermediaries.

11. Therefore, the revision petition is dismissed. The suit land (**Hal Plot No.953, area Ac.0.10 dec., Hal Plot No.954, area Ac.0.10 dec. & Hal Plot No.975, area Ac.0.08 in Hal Khata No.842 of village Kuanla, P.S. Mangalpur No.409 in the district of Jajpur**) will continue to remain in favour of Government as Abada Jogy Anabadi.

Pronounced the order in the open Court to-day, the 14th March, 2019.

Send the copy of this order to Tahasildar, Dasarathpur.

Sd /-

Commissioner,

Land Records & Settlement, Odisha, Cuttack

**Settlement Revision Petition No.102/2003**

**Decided on 23.08.2018**

(order by Shri Sukadev Das, I.A.S.

Land Reforms Commissioner, Odisha, cuttack)

Radhaprasad Mohanty ... Petitioner

-versus-

Saudamini Ray & others ..... Opp. Parties

Mr. S.K. Swain ...

Advocate for the Petitioner

Mr. J.R. Kar ... ..

Advocate for the Opp. Parties

**ORDER**

This case was taken up on 26.07.2018. Advocate for both the parties appeared. Heard. They have filed their written note of argument. Gone through those documents and the case record.

The suit land is situated in Mouza- Alipingala, P.S-/District-Jagatsinghpur. The Petitioner contends that the schedule of property stood recorded in Sabik Khata No.433, Plot No.145 for an area of Ac.0.65 decimals (part) corresponding to Major Settlement Khata No.596, Plot No.167, for an area of Ac.0.28 decimals, Land Register Khata No.544, Plot No.167 for an area of Ac.0.28 decimals and Plot No.170 for an area of Ac.0.09 decimals further corresponding to Consolidation Khata No.583, Plot No.167 for an area of Ac.0.28 decimals and Plot No. 170 for an area of Ac.0.09 decimals.

The Petitioner submits that initially the Petitioner had filed two Revisions u/s 36 of O.C.H & P.F.L. Act, 1972 vide Consolidation Revision Case No.1152/1994 & No.1153/1994 before the Commissioner, Consolidation, Odisha, Cuttack challenging the common order dated 24.06.1994 passed by the Deputy Director of Consolidation, Jagatsinghpur in Consolidation Appeal Case No.288 and 289 of 1992 arising out of common order dated 26.07.1992 of Consolidation Officer, Jagatsinghpur passed in Objection Case No.3755/124/1990 and Objection Case No.4144/327/1990 filed u/s 9(3) of the Act.

But during pendency of the above two Revisions the concerned suit Mouza-Alipingala was de-notified u/s-5(1) of the Act. Hence, the Petitioner filed application for withdrawal of above two Revisions with liberty to file Revision u/s 15(b) of O.S.& S Act, 1958 before the court of Commissioner, Land Records & Settlement, Odisha, Cuttack. Accordingly, prayer of the Petitioner was allowed for withdrawal of the Revisions on 22.04.2002. Thereafter, the Petitioners filed S.R.P.No.2581/2002 and S.R.P. No.2582/2002 before the Commissioner, Land Records and Settlement, Odisha, Cuttack. Subsequently, those cases were transferred to this court as per jurisdiction of area allotted to this court and the cases were renumbered here as S.R.P. No.102/2003 & S.R.P. No.103/2003.

The Petitioner submits that here the matter of S.R.P. No.102/2003 is taken up for discussion. The Sabik Khata No.433 (of 1930-31), Plot No.144 for Ac.0.02 decimals, Plot No.145 for area of Ac.0.65 decimals, Plot No.146 for area of Ac.0.04 decimals and Plot No.1314 for area of Ac.0.03 decimals relating to Mouza-Alipingal with status Bajyapti Satwadhikari was recorded in the name of Pranakrushna Mohanty, Biswambar Mohanty s/o Krupasindhu Mohanty and Swapneswar Mohanty, Kapila Charan Mohanty s/o Chakradhar Mohanty.

The aforesaid Pranakrushna and Biswambar were entitled to get eight anna share of interest and Swapneswar and Kapila were entitled to get 8 anna share of interest from the aforesaid plots. But there was an amicable mutual partition amongst the co-sharers in respect of Sabik Plot No.144 for Ac.0.02 decimals, Plot No.145 for Ac.0.65 decimals and Plot No.146 for Ac.0.04 decimals (in total Ac.0.71 decimals) and accordingly, Swapneswar and Kapila were allotted with Ac.0.37 decimals and Pranakrushna and Biswambar were allotted with Ac.0.34 decimals of land.

Out of allotted share to an extent of Ac.0.37 decimals, Swapneswar Mohanty executed a Gift Deed bearing No.590 dated 31.01.1975 in respect of his half share in favour of the present Petitioner relating to the lands recorded under Sabik Plot No.144,145 and 146. Petitioner is Radha Prasad Mohanty S/o Kapila Charan Mohanty. After death of Kapila Charan Mohanty, the Petitioner became exclusive owner of Ac.0.37 decimals of land which was allotted to his father Kapila Charan Mohanty and father's elder brother Swapneswar Mohanty on the basis of amicable partition.

The Petitioner further contends that when the Settlement Record-of-Rights was prepared, the Recorded Tenants were dead. Accordingly, legal heirs of Biswamber and Kapila were recorded in M.S. Khata No.596, Plot No.167 for an area of Ac.0.28 decimals and Plot No. 170 for an area of Ac.0.09 decimals, and Plot No.169 for area of Ac.0.10 decimals as because Prana Krushna and Swapneswar died, issueless.

The Sabik Plots bearing No.144, 145 and 146 was settled in favour of the Petitioner vide order dated 18.08.1977 passed by the Addl. Tahasildar, Jagatsinghpur in O.E.A Case No.23/1975 and the Petitioner paid Salami. Rent schedule was also issued in his favour.

The Petitioner also contends that during Consolidation operation at Land Registration Stage the Land Register Khata No.544, Plot No.167 for an area of Ac.0.28 decimals and Plot No.170 for an area Ac.0.09 decimals corresponding to Major Settlement Plot No.167 and 170 and further corresponding to Sabik Plot No.144,145 and 146 (part) were prepared in the name of Petitioner exclusively. Similarly, Land Register Khata No.685, Plot No.168 for area of Ac.0.24 decimals and Plot No.169 for Ac.0.10 decimals corresponding to Sabik Plot No.144, 145 & 146(part) were prepared in favour of the Legal heirs of Biswambar Mohanty in Bebandabasta status.

Subsequently, Binapani Mohanty, D/o Biswambar Mohanty executed a Registered Sale Deed bearing No.103 dated 22.01.1986 in favour of the Petitioner from Major Settlement Khata No.596, Plot No.168 for area of Ac.0.03 decimals (out of Ac.0.24 decimals) and Plot No.169 for an area of Ac.0.01 decimals 2 ½ kadi.

On the basis of amicable partition, Succession, Registered Gift Deed and order of OEA passed by the Addl. Tahasildar, Jagatsinghpur the petitioner became entitle for Ac.0.37 decimals of land relating to Land Register Plot No.167 & 170 area Ac.0.04.2 ½ decimals of land relating to Land Register Plot o.168 and 169 on the basis of Registered Sale Deed No.103 dated 22.01.1986.

But the Opposite Parties submit that the Petitioner has filed this Revision Case u/s 15 of O.S.& S. Act, 1958 against the impugned Hal Record-of-Rights Khata No.583 with a prayer for recording of Hal Plot No.167 area Ac.0.28 decimals and Plot No.170 for Ac.0.09 decimals (total Ac.0.37 decimals) in his name exclusively by deleting the name of present Opp. Parties from Column No.2 of the impugned Record-of-Rights.

The Hal Plot No.167 area of Ac.0.28 decimals, Plot No.170 area of Ac.0.09 decimals under Khata No.583 and Hal Plot No.168 for area of Ac.0.24 decimals, Plot No.169 for area of Ac.0.10 decimals under Hal Khata No.269 (total Ac.0.71 decimals) corresponding to Sabik Settlement Plot No.144 area Ac.0.02 decimals, Plot No.145 area Ac.0.65 decimals and Plot No.146 area of Ac.0.04 decimals under Sabik Settlement Khata No.433 was the disputed matter in the court below between the parties and the same has been decided by the appellate authority in Consolidation Appeal Case No.288/1992 & 289/1992. As per the order passed in the said Appeals, the Hal Record-of-Rights have been finally published.

Hal Record-of-Rights Khata No.769 in respect of Plot No.168 for area of Ac.0.24 decimals and Plot No.169 area of Ac.o.10 decimals (total Ac.0.34 decimals) has been prepared in the name of present Opp. Parties exclusively on the basis of purchased vide Registered Sale deedNo.1749 dated 4.04.1966 from one of the 1/3rd share holder of Sabik recorded tenant Prana Krushna Mohanty s/o Krupasindhu Mohanty and Registered Sale Deed No.06 dated 11.01.1983 from Ashalata Mohanty, the wife of another 1/3rd share holder of Sabik recorded tenant Biswanath Mohanty s/o Krupasindhu Mohanty. Though the present Opp. Parties have purchased area of Ac.0.20 decimals each (total area Ac.0.40 decimals) by virtue of the aforesaid two Registered Sale Deeds. But area of Ac.0.34 decimals instead of Ac.0.40 decimals has been recorded in the name of Opp. Parties and remaining Ac.0.06 decimals has been recorded under Hal Khata No.583.

Hal Khata No.583 in respect of Hal Plot No.167 for an area of ac.0.28 decimals and Plot No.170 for an area of Ac.0.09 decimals (total Ac.0.37 decimals) has been prepared in the name of present Petitioner along with the name of Opp. Parties jointly as those plots corresponds to part to Part Sabik Plot No.144,145,& 146, which stood recorded in the name of ancestors of both the parties as jointly and wherein the share of present Opp. Parties i.e. purchased area Ac.0.06 decimals plus remaining Ac.0.04 decimals out of Ac.0.24 decimals in respect of 1/3rd share of Sabik recorded tenant Biswanath Mohanty plus Ac.0.02 decimals out of remaining area of Ac.0.04 decimals of 1/3rd share of Sabik recorded tenant Pranakrushna Mohanty total Ac.0.12 decimals is involved along with the share of the present Petitioner i.e. area of Ac.0.24 decimals in respect of 1/3rd share of Sabik recorded tenant. Swapneswar Mohanty, Kapila Charan Mohanty s/o Chakradhar Mohanty plus Ac.0.02 decimals out of remaining area of Ac.0.04 decimals of 1/3rd share of Sabik recorded tenant Pranakrushna Mohanty.

The Opp. Parties also contend that Petitioner's prayer in this revision is involved for recording of impugned Hal Khata No.583 in his name exclusively by deleting the names of Opp. Parties from column No.2 of the said impugned Hal Record-of-Rights. Hence, the prayer of the Petitioner is baseless and the plea which is taken by the petition in Para 1 & 2 of the revision petition by saying that the Sabik recorded tenant Pranakrushna and Biswambar had eight anna interest and Swapneswar and Kapila had eight anna interest out of Sabik Plot No.144,145 & 146 under Sabik Khata No.433 as per amicable partition amongst co-sharers in the year 1937 for an area of Ac.0.37 decimals out of the said Sabik Plots was allotted in favour of Swapneswar and Kapila, which now corresponds to Hal Khata No.583, Plot No.167 for an area of Ac.0.28 decimals and Plot No.170 for an area of Ac.0.09 decimals (in total Ac.0.37 decimals) and balance area of ac.0.34 decimals out of the said Sabik plots was allotted in favour of Pranakrushna and Biswambar, which now corresponds to Hal Khata No.769, Hal Plot No.169 for an area of Ac.0.10 decimals (total Ac.0.34 decimals) is also false and fabricated.

The Opp. Parties also submit that the claim regarding Settlement of land in favour of the Petitioner vide order dated 18.08.1977 in O.E.A. Case No.23 of 1975 passed by the Addl. Tahasildar, Jagatsinghpur as reflected in para-5 & 6 has already been clarified while adjudicating the consolidation Appeal Case No.288 and 289 of 1992 by the appellate authority and wherein there is clearly stated that "out of total area of Ac.0.71 decimals appertaining to 3 C.S. Plots with 50% area i.e. Ac.0.35 decimals 5 links has been settled and moreover, Settlement made in favour of one co-sharer ensures benefit to other co-sharers. There-fore, the respondent, the present Petitioner cannot alone take the benefit of O.E.A Settlement as clarified. This fact has been rightly observed by the Appellate Authority as the part of Sabik land which has been settled in O.E.A. Case No.23 of 1975 is not only to take the benefit by one of the co-sharers in whose favour the land has been settled, but also for all co-sharers.

The Opp. Parties further contend that the plea as taken by the Petitioner for recording of suit land in his name exclusively on the basis of inherited from Swapneswar and Kapila, amicable partition, succession and order of Settlement in O.E.A. Case are all baseless. Rather the Petitioner is not born son of Kapila Charan Mohanty. Hence, Petitioner has no locus-standi to say anything on Hal Khata No.769, which has been prepared and recorded in the name of Opp. Parties. The plea as taken by the Petitioner for recording the name of the Petitioner along with the names of Opp. Parties in respect of the land recorded under Hal Khata No.769 on the strength of Registered Sale Deed No.103 dated 22.01.1986 had filed Objection Case No.4144, wherein the Opp. Parties did not file written note of statement denying the claim of the Petitioner and as such Petitioner's claim is false and it should not be entertained in the eyes of law.

The Opp. Parties also contend that the lands, which has been prepared and recorded under Hal Khata No.769 in the name of Opp. Parties exclusively on the strength of Registered Sale Deed No.1749 dated 4.04.1966 from one of the 1/3rd share holders namely, Pranakrushna Mohanty S/o Krupasindhu Mohanty and vide Registered Sale deed No.106 dated 11.01.1983 from Ashalata Mohanty W/o Biswanath Mohanty.(Ashalata Mohanty has sold the 1/3rd share of her husband Biswanath Mohanty after his death). The Sale Deed is unchallenged till date and yet the appellate authority confirmed that the Opp. Parties have acquired title in respect of their purchased land made through the Registered Sale deed dated 4.04.1966 and dated 11.01.1983.

The Opp. Parties further contend that during consolidation for the first time, while the dispute arose on behalf of the Petitioner for recording of an area of Ac.0.04. 7 ½ links from the Hal Plot No.168 and 169 recorded under Hal Khata No.769 on the basis of land purchased vide Registered Sale Deed No.103 dated 22.01.1986 from one Binapani Ray @ Mohanty daughter of Biswanath Mohanty by creating a dispute as Binapani Ray has got her share from her mother Ashalata and father Biswanath as Sabik recorded tenant. Biswanath died in the 1960 and the learned trial court without verifying the relevant documents though rejected the claim of the present Petitioner, the suit land has been recorded in Bebanda-basti Khatian as purchased

by him and observed that he should wait to get the rent settlement order from O.E.A. Collector by accepting the claim of mutation only taking into oral Statement and believing the version of the Petitioner in his objection Case No.4144/327 and for which the Opp. Parties were compelled to file consolidation appeal under the aforesaid case on the date of death of Biswambar Mohanty is in dispute. Hence, this Revision Petition filed by the Petitioner needs to be dismissed.

To the above averment of the Opp. Parties the Petitioner submits that Soudamini Ray W/o Bichitrananda Ray and D/o Late Biswambar Mohanty as Petitioner had filed an objection case No.3375/124/1990 impleading the present Petitioner as Opp. Party before the Consolidation Officer, Jagatsinghpur claiming that Land Register Plot No.167 for an area of Ac.0.28 decimals and Land Register Plot No.170 for an area of Ac.0.09 decimals (i.e. in total Ac.0.37 decimals) should have been recorded jointly in her favour along with Opposite Party as she had purchased the Sabik Plot No.144, 145 and 146 (L.R Plots No.107 & 170) from Pranakrushna Mohanty on the strength of Registered Sale Deed No.4749 dated 04.06.1966 and Radha Prasad Mohanty is not the Son of Kapila Charn Mohanty. But the said Plots were exclusively recorded in the name of the Radha Prasad Mohanty (Opp. Party).

During pendency of the Objection Case No.3755/124/1990, Bibekananda Ray and Nigamananda Ray filed a petition u/s 1, Rule-10 of code of Civil Procedure to implead them as parties as because they had purchased the Sabik Plots from Ashalata Mohanty, W/o Biswambar Mohanty by Registered Sale Deed No.106 dated 11.01.1983. Hence, they need to be recorded in Land Record Plots No.167 and 170.

The Petitioner further contend that the present Petitioner Radha Prasad Mohanty S/o Kapila Charan Mohanty had filed Objection Case No.4144/327/1990 before the Consolidation Officer, Jagatsinghpur impleading Sarojubala Mohanty, Saudamini Mohanty D/o Late Biswambar Mohanty as Opp. Parties claiming to recorded jointly with them as because he had purchased Ac.0.04.2 ½ decimals from Major Settlement Plots No.168 and 169 under Khata No.596 from Binapani Mohanty D/o Late Bisambar Mohanty vide Registered Sale Deed No.103 dated 22.01.1986.

The learned Consolidation Officer tagged both the above mentioned Objection Cases and passed a common order dated 28.07.1992. He disallowed the Objection Case No.3755/124/1990 with a finding that there has been prior partition of their joint properties as evident from the recital of Registered Sale Deeds and the Petitioner is the son of Kapila Charan Mohanty as evident from school certificate, voter list and from the O.E.A Case settled before the Additional Tahasildar, Jagatsinghpur. That has not been challenged before the appellate authority and the court had nothing to dispute in said O.E.A settlement made in favour of the Petitioner.

The Consolidation Officer was also pleased to reject the Objection Case No.4144/327/1990 filed by the Petitioner with an observation that recording of the disputed year of death of Biswambar Mohanty was in the year,1960. Registered Sale Deed No.103 dated 22.01.1986 executed by Binapani in favour of the Petitioner in respect of the Plot No.168 and 169 has not been set aside by the competent court of law. But the land has been recorded as Bebandobasta and unless it is settled to rent by the O.E.A. Collector, Mutation prayer should not be accepted.

Against the common order dated 28.07.1992 passed by Consolidation Officer, Jagatsinghpur in Objection Case No.3755/124/1990 and the Opp. Parties preferred Appeal Case bearing No.288/1992 and 289/1992 and the Deputy Director of Consolidation without giving opportunity of hearing to the Petitioner passed the common order dated 24.06.1994 ex-parte against the Petitioner and allowed both the appeals directing to record Land Register Plot No.167 and 170 for an area of Ac.0.37 decimals jointly in favour of the Respondent (Radha Prasad Mohanty) and the Appellants (Saudamini Ray, Bibekananda Ray and Nigamananda Ray) which should have been recorded in the name of the Petitioner exclusively and also directed to record Land Register Plot No.168 for an area of Ac.0.24 decimals and Plot No.169 for an area of Ac.0.10 decimals in favour of the appellants exclusively, which should have been recorded jointly in the name of Radha Prasad Mohanty along with Saudamini, Bibekananda and Nigamananda (Opp. Parties No. 1 to 3).

The Petitioner also contend that pursuant to the ex-parte order dated 24.1994 the final Consolidation Record-of-Rights was wrongly prepared vide Khata No.583, Plot No.167 and No.170 in the name of Radha Prasad Mohanty S/o Kapila Charan Mohanty, Saudamini ray D/o Biswambar Mohanty, Bibekananda Ray. Similarly, final Consolidation Record-of-Rights vide Khata No.769, Plots No.168 and 169 wrongly recorded in the name of Saudamini Ray D/o Biswambar Mohanty, Bibekananda Ray and Nigamananda Ray S/o Bichitrananda Ray.

Against the common order dated 24.06.1994 the Petitioner preferred two Revisions u/s 36 of O.C.H. & P.F.L. Act,1972 bearing R.C. Nos. 1152/1994 and 1153/1994 which were withdrawn with liberty to file Revisions /s 15(b) of O.S.& S. Act,1958 as the suit village was de-notified u/s 5(1) of the O.CH. & P.F.L. Act. Therefore, the present Revision vide S.R.P. No.102/2003 and S.R.P.No.103/2003 have been filed u/s 15(b) of O.S.& S. Act, 1958 challenging the ex-parte common order dated 24.06.1994 in Appeal Case No.288/1992 and 289/1992 (arising out of order dated 28.07.1992 of the Consolidation Officer, Jagatsinghpur passed in Objection Case No.3755/124/1990.

The Petitioner also submits that on perusal of Registered Sale Deed No.1749 dated 04.04.1966, executed by Pranakrushna Mohanty in favour of Saudamini Ray and Registered Sale Deed No.106 dated 11.01.1983, executed by Ashalata Mohanty in favour of Bibekananda Ray and Nigamananda Ray can be safely concluded that their joint properties have been partitioned by amicable arrangement. Further, both the parties have admitted that their fathers have mutually partitioned the homestead properties amongst them since 52 years back and were living in separate mess and residence and they were in possession of their allotted share in view of material



facts. Hence, the claim for the joint recording is not sustainable in the eye of law. The learned Consolidation Officer, Jagatsinghpur vide his common order dated 28.07.1992(at Page-9), 2nd para) has given his finding that own admission is the best piece of evidence which does not require to be proved. From recital of the Sale Deeds it is clear that there was prior partition of their joint properties. Hence, lands have been separately recorded in favour of Radha Prasad Mohanty (Petitioner) on the strength of several documents of his own. Besides, he has been recorded as son of Kapila Charan Mohanty in School certificate & Voter list. As such, separate recording as son of Kapila Charan Mohanty should therefore continue and there is no necessity of joint recording of Saudamini Ray with him and the Consolidation Officer disallowed the claim of Objector Saudamini Ray in Objection Case No.3755/124/1990.

After going through the above submissions of the Parties, common order dated 28.07.1992 passed by the Consolidation Officer in Objection Case No.3755/124/1990 and common order dated 24.06.1994 and documents available in the case record I find that the orders of the Consolidation Officer, Jagatsinghpur is appropriate and just thereby his order dated 28.07.1992 passed in Objection Case No.3755/124/1990 is confirmed.

The order dated 24.06.1994 of the appellate authority i.e. by Director of Consolidation, Jagatsinghpur is set aside.

The Tahasildar, Jagatsinghpur is directed to record final Consolidation Khata No.583, Plots No.167 and 170 exclusively in the name of the Petitioner deleting the name of the Opp. Parties on the strength of the amicable partition, succession, Registered Gift Deed No.590 dated 31.01.1975 and order of settlement in O.E.A Case No.23 of 1975, passed by the Addl. Tahasildar, Jagatsinghpur.

Accordingly, this case is disposed.

Pronounced the order in the open court this day of 23rd August, 2018.

**Sd/-**

Land Reforms Commissioner,  
Odisha, Cuttack

**O.L.R Revision Case No.1/2007**

**Decided on 09.08.2018**

(order by Shri Sukadev Das, I.A.S.

Land Reforms Commissioner, Odisha, cuttack)

Bimbadhar Prusty & another .... Petitioners

-Versus-

Land Reforms Commissioner, Odisha & others ... ..Opp. Parties

Mr. M.M. Mohanty ... Advocate for the Petitioners

Mr. B. Panda & Associates ... Advocate for the O.P.No.3,4 & 5

**ORDER**

This case was taken up on 9.08.2018. Advocate for both the parties appeared. Heard them. They also filed written note of argument. Gone through those documents and case records.

The case of the Petitioner in brief is that the present Opp. Party had filed O.L.R Case No.2/2004 u/s 23(A) of O.L.R. Act against the present Petitioners for eviction on the ground that the Petitioners are in un-authorised occupation of the suit property for an area of Ac.0.40 decimals which stands recorded under Hal Khata No.246, Plot No.23 of Mouza-Gunduripasi, P.S-Gandia of Dhenkanal District. Case of the Opp. Party(Shree Ram Naik) was that he is a Schedule Tribe person and Sawar by Caste. He had executed an agreement to sell the suit plot in favour of one Baba Natabara Das. But as because he could not get permission from the concerned authority as required u/s 22 (A) of O.L.R. Act,1960, a Sale Deed could not be executed. But on such agreement took place on 30.12.1974. The Opp. Party had received Rs.1000/- (One thousand) only from Baba Natabar Das and the present Petitioners in O.L.R Case No.2/2004.

In spite of the above fact, the present Opp. Parties had filed O.L.R Case No.2/2004 before the Sub-Collector, Dhenkanal. The present Petitioners (being Opp. Parties in O.L.R. Case) had filed their show cause contending that proceeding u/s 23 (A) of O.L.R. Act is not maintainable, which is barred by limitation, non-joinder of necessary parties, and further they contended that there is no cause of action to file proceeding u/s 23(A) of O.L.R. Act. The present Petitioners also contended in their show cause filed in O.L.R Case No.2/2004 that Baba Natabar Das with the knowledge of Shree Ram Naik had been possessing the suit land till his death took place in the year, 1997 and thereafter his disciples along with the Opp. Parties have been possessing the suit land on behalf of Biswa Kalyan Ashram with the knowledge of Petitioner and general public without any objection from any corner.

The said Baba Natabar Das constructed Pucca building with Asbestos roof since 1975 and had planted various trees. He also constructed Samadhi of 'Malati Mata' and dug a well. The present Petitioners further contend that hostile possession of Natabar Das started w.e.f. 1.1.1975 and matured after Limitation of 12 years.

The parties in agreement dated 30.11.1974 have not been made parties in this case. Hence, being Opp. Parties in O.L.R Case No.2/2004 the present Petitioners prayed the Sub-Collector, Dhenkanal to dismiss the case. But the Sub-Collector, Dhenkanal vide his order dated 15.04.2005 directed for eviction of Opp. Parties from the suit land.

The present Petitioners then filed O.L.R Appeal Case No.5//2005 u/s58 of O.L.R Act before the A.D.M, Dhenkanal on the ground that the Sub-Collector has acted illegally and erroneously passed impugned order. But the appellate authority

was pleased to confirm the order dated 15.04.2005, passed in OLR Case No.2/2004. Thereafter, the present Petitioners preferred this Revision i.e. OLR Revision Case No.1/2007.

The Petitioners here contend that the Petitioners in O.L.R. Case No.2/2004 being Scheduled Tribe person and unable to get permission to execute a Sale Deed requested the said Natabar Das to take back his given amount of Rs. 1000/-. This approach was objected by Bimbadhar Prusty (Petitioner No.1). The Opp. Parties in O.L.R Case were in forcible possession of the suit land.

In the Major Settlement, Record-of-Rights was recorded in the year,1985 in the name of Baidhar Naik, Souri Naik S/o Sada Naik an Sabitri Naik w/o Sada Naik. But the OLR Case No.2/2004 was filed without impleading all legal heirs of the Recorded Tenants of Khata No.246.

The Hal Plot No.23 for an area of Ac.0.40 decimals corresponds to Sabik Plot No.13 of Sabik Khata No.2. One agreement for sale of the suit land was executed by Sauri Charan Naik s/o Late Sada Naik and Shree Ram Naik s/o Late Baidhar Naik in favour of Natabar Das to sell Ac.0.40 decimals of land on receiving part consideration money. The agreement was made on 30.11.1974. The Opp. Parties of OLR Case No.2/2004 already completed 12 years of continuous possession as the case was filed on 10.02.2004. Hence, they (present Petitioners) have perfected their possessory title over the suit land.

The present Petitioners also claim to have adduced two witness to the above agreement made on 30.11.1974.

The present Petitioners also submit that whether the Petitioner is a S.T. person and petition u/s 23(A) is barred by time. Whether Opp. Parties in O.L.R Case (present Petitioners) have acquired any title by way of adverse possession.

The present Petitioners claim that they had raised their above points of argument in both the courts below. But he failed there. Hence, they have filed this revision case.

To expedite disposal of this revision case the present Petitioners also had preferred W.P.(C) No.6304/2017 before the Hon'ble High Court. The Hon'ble High Court have been pleased to direct this Court for early disposal of the revision case.

To the above contention of the Petitioners the present Opp. Party No.1 submits that he is a Scheduled Tribe person. There is restriction under provisions of law to sell S.T. land. In the present case the Petitioners Bimbadhar Prusty and Kalandi Charan Prusty belong to general caste. Claiming themselves as the disciples of Baba Natabar Das the Petitioners have filed this revision case.

Natabar Das is the founder of Bishwa Kalyan Ashram and without obtaining any permission under the provisions of OLR Act forcibly was possessing the suit land. The said land stands recorded in the name of the father of the Opp. Party No.1 namely Baidhar Naik. The present Opp. Party No.1 being the legal heir of the

said Baidhar Naik had filed O.L.R Case No.2/2004 u/s 23 (A) of O.L.R Act before the Sub-Collector, Dhenkanal for restoration of possession in respect of the suit land. He decided the case on 15.04.2005 in favour of the present Opp. Party No.1 and directed the Police (i.e. IIC of Gandia P.S.) to deliver physical possession of the suit land having demarcated by Revenue Inspector, Kapilash. Thereafter, physical possession of the suit land was also accordingly delivered.

Then the present Opp. Party No.1 taking due permission from the competent authority transferred the land to other Opp. Parties (who have been subsequently made parties).

The present Petitioner has challenged the validity of order dated 15.04.2005 of Sub-Collector, Dhenkanal passed in OLR Case No.2/2004. According to the present Opp. Party No.1, the learned lower court has not committed any illegality in passing his order for restoration of suit land to the Petitioner of O.L.R Case.

The Opp. Party No.1 further submits that admittedly the land belongs to his father. He is dead. The permission as required by law has not been obtained by Baba Natabar Das. The present Petitioners claim their right through Baba Natabar Das, who died some times in 1997. During his life time Baba Natabar Das possessed the suit land. After his death, the present Petitioners being the disciples were in possession of the land.

Their case is that Souri Naik and Shree Ram Naik executed an unregistered agreement to sale the suit land on 30.11.1974 with the said Baba Natabar Das, without obtaining any permission for transfer of the property. Further, the said Baba Natabar Das was possessing the suit land adversely with the knowledge of Opp. Party till his death occurred in the year, 1997. Law is well settled that it may be sale document or an agreement to sell with regard to the land of a Scheduled Tribe person. Permission for sale of such land by a S.T. person to a non S.T. person is required from the competent authority under the provisions of law under OLR Act. Hence, unauthorised occupation is bad and the land of a S.T. person should be restored. Thereby the lower courts rightly restored the suit land in favour of the Opp. Party.

The learned lower court i.e. Sub-Collector, Dhenkanal in his order dated 15.04.2005 has discussed regarding position of law in the suit matter. The Sale Deed or agreement does not show delivery of possession in respect of the suit land and the said document was not executed in favour of Biswa Kalyan Ashram, rather it was in the name of Natabar Das. Thereby the claim of the present Petitioners does not relate to Baba Natabar Das.

The present Opp. Parties also contend that if the said document is correct and Baba Natabar Das was possessing the suit land, why possession of the suit land was not recorded in favour of Baba Natabar Das during Hal Settlement operation in the suit Mouza. Hence, under no stretch of imagination it can be said that the

agreement to sell is a valid document and Baba Natabar Das was possession of the suit land till 1997. Now the Petitioners claiming themselves as disciples of Baba Natabar Das trying to grab the land of a poor S.T. person. This is their illegal and forcible activity.

The Opp. Parties also submit that the learned lower court has vividly discussed the matter of dispute and passed his order, correctly.

In regard to entitlement of ownership through adverse possession in case of land of a Schedule Tribe person the period is 30 years. But Baba Natabar Das died in the year 1997. Till his death he could have possessed 22 years only. The agreement was made in the year, 1974 on 30.11.1974 and the OLR Case was filed before the Sub-Collector, Dhenkanal on 10.02.2004. This shows that by the date of institution of this case before the Sub-Collector, 30 years possession was not completed. Hence, the Opp. Parties claim that the lower court has rightly passed order for restoration of possession u/s 23(A) of OLR Act.

On the above discussion of both the parties and going through the L.C.Rs I do not think it prudent to re-discuss the matter. Both the courts below have passed their orders considering that the Opp. Party No.1 is S.T. person. Accordingly, the learned Sub-Collector, Dhenkanal vide his order dated 15.04.2015 also directed the O.I.C Gandia Police Station to deliver the physical possession of the said land after being demarcated by Revenue Inspector, Kapilash forthwith and report compliance to the court.

The Section 23(A) of O.L.R Act reads as under :

“ Eviction of person in unauthorised occupation of property where any person is found to be in un-authorized occupation of the whole or part of a holding of a raiyat belonging to a scheduled caste or of a raiyat belonging to a scheduled tribe within any part of the State other than scheduled area, by way of trespass or otherwise, the Revenue Officer may either on application by the owner or any person interested therein, or on his own motion and after giving the parties concerned an opportunity of being heard, order for eviction of the person so found to be in unauthorised occupation and shall cause restoration of the property to the said raiyat or his heir in accordance with the provisions of Sub-Section (3) of Section 23.”

In view of above discussion & provisions of law, the eviction order passed by the Sub-Collector, Dhenkanal in O.L.R. Case No.2/2004 and the order of the Appellate Court i.e. Additional District Magistrate, Dhenkanal in O.L.R Appeal No.5/2005 are found just and proper. Hence, the orders of the lower courts are confirmed.

Accordingly, this revision filed by the present petitioners is rejected.

Pronounced this order in the open court this day of 9th August, 2018.

**Sd /-**

Land Reforms Commissioner,  
Odisha, Cuttack

**Revision Petition No.1542/2004**  
**(Arising out of W.P.(C) No.18923 of 2016)**

**Decided on 24.03.2017**

(Order by Shri Upendra Nath Mallick, I.A.S,  
Diector, Consolidation, Odisha, Cuttack)

Counsel for both the parties are present. Addl. Standing counsel for the state is present also.

Heard. The revision petition was heard by this court earlier and by order dt.29/07/2016, it was dismissed. Said order was challenged before the Hon'ble High Court of Orissa in W.P (C) No.18923 of 2016. As per observation of the Hon'ble court in order dt.04/01/2017 the matter is placed before this court for rehearing.

Perused the revision petition and written note of submissions by the petitioner and O.P. No-1 and the documents filed by the parties, heard the counsels for both the parties and the Add. Standing counsel for the state .

The prayer in the revision petition is to record the property described in the schedule of the petition in the name of the petitioner. Property described in the petition is plot No.3196 ,Ac0.03dec part Ac0.01dec of final consolidation Khata No-1847 correspond to L.R. plot No-3725 and further correspond to sabik plot No-3383 measuring Ac3.57 dec in sabik Khata No-49 of village – Gop ,P.s- Gop, Dist- Puri. In his prayer , the petitioner has also mentioned that in the 1927. 28 settlement the suit schedule land stood recorded in the name of Shri.Khaki Saheb Marfat- Budhusa under 2nd part Khewat No.32 as “Niji Dakhal” land and the said Marfatdar transferred the suit land to the District Board , Puri for the purpose of “KANJIA HOUSE” .This fact is disputed by O.P. No.1. So, the first question to be answered whether the suit property was transferred by O.P. No.1 in favour of District Board, Puri.

Second submission of the petitioner is that the suit land is mutated by the District Board vide Zamabandi Khata No. 49/6 and the District Board constructed Kine House over the suit land prior to 1959. This fact is also disputed by the O.P. No. 1 .

The petitioner , claims the property on the strength of transfer of the suit land by the District Board ,Puri vide

Letter No. 9644 dt. 31/03/1959 and continuing in possession since 1959 i.e from the date of transfer and makes regular payment of rent to the Govt. in the name of the District Board.

Petitioner after coming to know about the consolidation recording in the name of the O.P. No.1 has filed this revision challenging the R.O.R. to be wrong and illegal.

In course of argument learned counsel for the O.P. No.1 submits that admittedly the consolidation R.O.R. has been finally published on 14/10/1992 and this case was filed in 2004 without any explanation for filing the petition after a long

gap of 12 years . I do not accept such contention since the matter is reheard as per the direction of the Hon'ble High Court as stated earlier .

Coming to the merits of the petitioner's case it is submitted by the O.P. No. 1, that the petitioner has not been able to establish the alleged transfer of the suit property by the Marfatdar- Budhu Sha (Recorded Tenant). It is also submitted by the learned counsel for the O.P. No.1 that there could not have been a transfer without a registered document and secondly a Marfatdar is not competent to transfer the property of a deity in course of his prudent management. As against such submission learned counsel for the petitioner submits that though any transfer is not established by any document, it can be inferred from subsequent public record such as the Letter vide No. 9644 dt.31/03/1959 issued by the District Board , Puri Sarapanch, Gop Gram Panchayat , Zamabandi in the name of the District Board , Puri and payment of rent by the petitioner.

Learned counsel for the O.P. No.1 disputing aforesaid contention submits that if the transfer of deity's property which is the foundation of petitioner's claim is not established subsequent documents relied upon by the petitioner cannot establish the right and title of the petitioner. At the same time, the learned counsel for the O.P. No.1 disputes the documents filed by the petitioner to be genuine and also submits those documents do not refer to the disputed property. In such circumstance on perusal of the Letter No.9644 dt.31/03/1959 it is found that there is no mention of any Khata No. and area of the suit land transferred by that letter . On perusal of the said document it is found that there was a resolution by the District Board , Puri for transferring the control and management of the pounds under the District Board to the respective

Gram panchayats with the land and building where they exist. Accordingly the letter was issued to sarapanch ,Gram Panchayat ,Gop. Giving importance to the words "where they exist" , learned counsel for the O.P. No.1 files a copy of the Sabik R.O.R. in respect of Khata No.1375 , Plot No. 3506, Ac0.02dec and the plot is recorded as Kine House as per said R.O.R. published on 06/02/1928. Thus , the letter can refer only to Plot No. 3506 where the Kine House existed and not the suit property which is falsely claimed by the petitioner. I find some force in the contention. There is no challenge to the Sabik R.O.R. in respect of Khata No. 1375, Plot No. 3506 and by 1959 there was no other settlement in between . Furthermore Khata No.1375 in Mouza Gop is a Govt. Khata recorded in the name of District Board . When there was a Kine House in Mouza – Gop on Plot No.3506 the said District Board transferred the Plot No.3506 Ac0.02dec (Kanjia House) to Gop Gram Panchayat vide Letter No.9644 dt.31.03.1959.

The next document referred to by the learned counsel for the petitioner is an information by one Gobind Chandra Senapati, Amin , that a portion of Plot No. 3383 measuring an area Ac0.01dec, Moza- Gop ,P.S- Gop, " Distributary Puri"(KANJIA HOUSE) is the tenant as per Khata No.49/6. The said document further reflects

that since 1974-75 till 2001-2002 there was neither demand of rent nor collection of rent as per Tenant Ledger. On the basis of this Tenant Ledger payment of rent has been made on 10.02.2003 as appears from the rent receipt filed by the petitioner. The learned counsel for the petitioner gives importance to these two documents to establish that the Kine House exist on a portion of plot No.3383. But the learned counsel for the O.P. No.1 submits that without production of copy of the Zamabandi the information filed by the petitioner cannot be a valid document to prove a disputed fact. He further submits that the disputed information and rent receipt in the name of the tenant is shown as DISTRIBUTARY, PURI which cannot be read as District Board , Puri . He also submits that the tenant Ledger is prepared only on the basis of a Zamabandi and in the present case it cannot be accepted that the District Board which is a statutory authority comes under the meaning of "State " as per Article-12 of the Constitution of India can be a tenant under the state . It is not clarified why the tenant Ledger was opened in 1974-75 in the name of the District Board if the land with a structure was already transferred in 1959 to the GOP Gram Panchayat . The rent receipt shows that the rent was paid for the first time on 10/12/2003 and the information was obtained on 11/12/2003 for which there is a similarity as to the name of the tenant as DISTRIBUTARY ,PURI in both the documents . I also find that this mistake may be due to inadvertence. Except this rent receipt , no other receipt is produced to show any payment of rent either before or after . It is submitted by the learned counsel for the

O.P. No.1 that on the basis of final consolidation R.O.R. published in the year 1992, Tenants Ledger has been opened for the purpose of collection of rent according to the consolidation R.O.R. then on what basis the learned Tahasildar, Nimapara accepted rent from the petitioner on 10/12/2003 for the period 1974-75 to 2003-04 vide Sabik Zamabandi Khata No. 49/6 . It cannot be accepted that even after publication of new R.O.R. , rent will be collected on the basis of Sabik R.O.R. if any. Rather it is a strong circumstance to be live that both are manufactured for the purpose of this litigation and a parallel civil proceeding before the Civil Juydge (Jr. Div), Nimapara . On perusal of the plaint in C.S. No.31/2004 filed in the court of the Civil Judge (Jr.Div), Nimapara it transpires that the subject matter of claim in Civil Court regarding area is concerned is different than the claim of the petitioner in this court as for an area of Ac0.03dec but in present under he claims only an area Ac0.15dec. It appears that in Civil Court, when legal steps are taken by a Sarapanch, such discrepant claim in different forum is an additional circumstance against the petitioner.

Learned counsel for the petitioner submits that an enquiry report by the Tahasildar , Nimapara dt.05/06/2000 was submitted to the Collector , Puri . The collector neither took any steps for recording the land in favour of the Gram Panchayat nor communicated any response about the petitioner's grievance , hence this revision. The learned counsel for the petitioner emphasizes that such document is a substantive material in favour of his claim. To counter the submission as well



as the said enquiry report, learned counsel for the O.P. No.1 submits that the report cannot be a substantive piece of evidence to establish a fact in dispute . The said report is violative of natural justice in absence of any notice to the recorded tenant for the enquiry and most interestingly the Tahasildar has submitted his report that the Gram Panchayat office is functioning in the disputed land and no whisper about the existence of Kine House. To reverse the claim about the functioning of Gram Panchayat office over the disputed land which find place in the Tahasildar's enquiry report, the learned counsel for the O.P. No. 1 further produced a certified copy of the letter written by the Sarapanch , Gop Gram Panchayat to the Tahasildar, Nimapara regarding demarcation of land allocated in favour of Gop Gram Panchayat by the Collector , Puri for the construction of Gram Panchayat building . The letter which was submitted before the Civil Jurdge (Jr. Div.), Nimapara in C.S.No.31 of 2004 reveals that "the Gop Gram Panchayat has no personal land and building for the Panchayat work and the Collector and Sub-Collector , Puri have recommended a plot bearing No.2659 under Khata No.770 Ac.12dec to the concerned Gram Panchayat which stand recorded in the name of B.D.O.,Gop for the construction of Panchayat building over it and for which the Collector has sanctioned Rs.5,00,000 only" .The learned counsel for the O.P. No.1 submits that this letter written by the Sarapanch is an admission of the fact that the Gop Gram Panchayat has no land or building of its own. The learned counsel for the petitioner has failed to answer the question raised by the O.P. No.1. I perused the averments of the revision petition and did not find any claim of the petitioner regarding functioning of Gram Panchayat office over the disputed land .

Apart from that in Para-3 of his parawise report the Consolidation Officer, Gop, Kakatpur categorically mentoned that "there is no evidence on record to show that the Marfatdar of the deity, Budhusha has even transferred the suit land to the District Board , Puri for the purpose of "KANJIA HOUSE" .

It is further submitted by the learned counsel of the O.P. No.1 that during pendency of this revision, the petitioner had filed a suit bearing C.S. No.31/ 2004 before the Civil Judge (Jr. Div.), Nimapara against the O.P. No.1 for Khata No. 1847 plot No. 3196 Ac0.03dec for permanent injunction to restrain the O.P. No.1 to change the nature and character of the suit land. But the aforesaid suit was dismissed for default on 06/07/2012

The petitioner again filed a petition to restore the same vide C.M.A. No. 78 of 2012, which was also dismissed for default on 07/05/2013 . There after the petitioner filed another restoration petition vide C.M.A. No.97 of 2013 which was dismissed on contest on 10/09/2014 . It is further revealed from the document submitted by O.P. No.1 that a CrI. Misc No. 99 of 2014 was filed u/s 144 of the Cr. P.C. against the O.P.No.1 before the Executive Magistrate, Gop for the suit land which was dropped by the learned magistrate after scrutinizing the prime facie documents submitted by the O.P. No.1 .

Consolidation authorities are empowered to decide the right title interest in land. Unless a party substantiates existence or acquisition of such right by legally valid transfer or otherwise it is not proper to negative the claim of title of the admitted recorded owner in 1927 R.O.R. and in different stages of Major Settlement R.O.R. though not finally published and consolidation R.O.R. published in 1992.

In such circumstances , I find no merit in the revision and the same is dismissed on contest.

Pronounced in the open Court this day the 24 March 2017.

**Sd/-**

Director,

Consolidation Odisha, Cuttack

**R.P. No. 599/2017**

**Decided on 11.05.2018**

(Order by Shri Upendra Nath Mallick, I.A.S,  
Director, Consolidation, Odisha, Cuttack)

The case belongs to Village – Gop, P.S. Gop, Dist- Puri. The Counsel for the petitioner, O.P No- 1 are present. The Additional Standing Counsel for the state and counsel for Odisha Board of Wakf are also present. Heard. The prayer is for the recording of the case schedule land relating to consolidation Khata no- 959, Plot No- 3207, Ac.0.08dec corresponding to L.R Plot No- 3732 and further corresponding to Sabik Plot No- 3384(P), Ac.0.90dec in Khata No- 49 in favour of the deity Khaki Saheb Bije Gop on the basis of final settlement R.O.R by deleting the name of the O.P No- 1 from the consolidation R.O.R which is alleged to have been prepared wrongly behind the back of the petitioner who is the marfatdar of the deity and State wakf Board.

The brief facts of the petitioner's case is that the disputed land i.e. hal consolidation Khata No- 959, Plot No- 3207, Ac.0.08dec corresponding to L.R. plot No.3732/7593 and further corresponding to sabik Khata No.49,Plot No.3384(P) which originally belonged to the deity Khaki Saheb marfat Budhu Sha. The status of the land was NIJIDAKHAL as recorded in 1927/28 R.O.R. After the death of Budhu Sha, the present petitioner being his son became the marfatdar of the deity as the right is hereditary by custom . The Sabik Khata was notified in Orissa Gazette as a wakf property vide notification No- 684 (O.B.W) dt.13.09.1972 at Sl. No- 991 (1) published u/s 5 (2) of the Wakf Act, 1954 the land was recorded in the name of the petitioner at the L.R Stage of the consolidation proceeding. Two objection cases vide No-982/90 & 785/90 were filed U/s18(2) of the O.C.H. & F.L. act,1972 and without notice to the petitioner and the State wakf board, records have been wrongly prepared in the name of the O.P. No-1 behind the back of the petitioner . In the said objection cases, O.P No- 1 has allegedly claimed to record Ac0.08dec of land in his name on the basis of purchase from one Jaya Krushna Sahoo vide R.S.D. No-

850 dt.07.06.1988 and accordingly the learned C.O. Gop-Kakatpur passed a common order to record the disputed land in the name of O.P. No-1 in stitiban status without giving an opportunity of hearing to the sabik recorded tenant .The case of the O.P No- 1 is that Sri Budhu Sha, the then marfatdar of the deity executed permanent lease in favour of Sridhar Sahoo S/O Nitei Sahoo on 01.07.1958 in respect of Sabik Plot No- 3384(P), Ac.0.16dec out of Ac.0.90dec in Khata No- 49. The said Sridhar sold the said land to one Jayakrushna Sahoo S/O Nabaghana Sahoo vide R.S.D No- 6747 dt.16.12.1960 and again the said Jayakrushna sold the entire land to Dwijabara Swain S/O Ghana Swain and Dhruba Charan Swain S/O Sudarshan Swain vide R.S.D No- 850 dt.07.06.1988. Since the date of purchase the O.P No.1 is in peaceful possession of the land and regularly paying rent to the State after recording of the land in his favour by the consolidation authorities.

In the course of hearing, the learned counsel for the petitioner submitted that the then marfatdar has never executed permanent lease deed in favour of Sridhar Sahoo S/O Nitei Sahoo at any point of time. The so called allegation regarding execution of such deed is denied and is completely false, imaginary and intended to grab the property of deity. Where there is no existence of permanent lease, the creation of Jamabandi on the basis of a lease deed is wrong, illegal and fabricated one. He further submits that the suit schedule property is a wakf property and there is no provision either in the Mohamedan Law or Wakf Act for permanent alienation of the deity's property without prior sanction of competent court or State Wakf Board. The burden of proof lies on the opposite party No-1 to show the document in which the then Marfatdar transferred the property in favour of Sridhar Sahoo. When there is no existence of permanent lease, the subsequent creation of Jamabandi on the basis of a lease deed is wrong, illegal and fabricated one. He further submits that subsequent R.S.Ds executed on the strength of alleged permanent lease deed are also void.

The learned counsel for O.P No- 1 further submits that he is a bonafide purchaser and is in possession of the land since the date of his purchase. He is paying rent to the state regularly. He has been possessing the land for more than statutory period. The consolidation authorities have rightly prepared the R.O.R in his favour which should not be disturbed.

The standing counsel for Odisha Wakf Board submits that the disputed property is a wakf property and the marfatdar of the deity has no power to grant permanent lease without prior sanction of the Wakf Board. The alleged permanent lease if any granted by the marfatdar is a void document and subsequent sale deeds executed on the basis of such void document are also void and the court can ignore such documents. He further submitted that the O.P No- 1 even though in possession of the property cannot perfect his title on the basis of adverse possession because the property itself is a wakf property. He pleaded to record the land in favour of the petitioner.

**FINDINGS**

1. On perusal of the documents, I hold that the disputed property belongs to the deity Khaki Saheb managed by its marfatdars which is under the control and supervision of the Odisha Wakf Board and it is a wakf property.
  2. A marfatdar has a right to sue in order to protect the deity's property but he cannot execute permanent lease without sanction of the State Wakf Board. Moreover the alleged lease deed dt.01.07.1958 or the sanction letter could not be produced for perusal of this court.
  3. The objection case No- 982/90 and 785/90 filed u/s 18(2) of the O.C.H & P.F.L Act were analogously heard by the learned C.O, Gop-Kakatpur and disposed of by a common order by settling the disputed land in favour of the O.P. No-1 without giving opportunity of hearing to the marfatdar of the deity in whose name the property stood and the State Wakf Board. Hence, the order of the C.O cannot be sustained in the eye of law.
  4. When execution of alleged permanent lease deed in the instant case is not proved, the subsequent R.S.Ds and creation of Jamabandi are also void and can be ignored by this court.
  5. A plea of adverse possession is not acceptable against trust property i.e. wakf property. The suit property is a wakf property which is not at all transferrable under the Wakf Act without the sanction of the State Wakf Board. The revision petition is allowed on contest. The Addl. Sub - Collector, Puri correct the recording of the land in favour of the petitioner.
- Pronounced in the open Court this day the 11th May, 2018.

**Sd /-**

Director,

Consolidation Odisha, Cuttack

**OSS Case No. 403 of 2016**

**Decided on 02.08.2018**

(Order by Dr. Banani Mohanty, O.A.S.(S.A.G.),  
Additional Commissioner  
Additional Revision Court No. 1 under  
Member, Board of Revenue, Bhubaneswar)

Ajaya Kumar Dash ... Petitioner

-Versus-

State of Odisha represented through

Tahasildar, Bhubaneswar & others ..... Opp.parties.

For the Petitioner	...	Mr. J.B. Sahoo,Adv.
For the State	...	Standing Counsel(Mr.J.Rath)
For the Opp. Parties	...	None

**DECISION.**

Heard, the Counsel for the Petitioner, the learned standing counsel for the state who also represents the Director of Estates, Government of Odisha in the Deptt. Of General Administration and Public Grievance. In course of hearing of this matter the Director of Estates was called for submission of his report on the registered conveyance deed executed between the Director of Estates represented on behalf of Governor of Odisha and the Petitioner Ajay Kumar Dash dated 12.09.2011. The Schedule of property of the suit land is as follows.

**Schedule of Property**

Mouza-Ghatikia, Tahasil-Bhubaneswar, Dist-Khordha

<b>Khata No.</b>	<b>Plot No.</b>	<b>Area</b>
Sabik 443	54(P)	5400 Sqfts.
Hal 2339	7500	Ac0.130

**Perused the following Documents filed by the Petitioner along with the Plaint:**

1. Xerox copy of Certified copy of registered lease Deed No.275 dated 18.01.1994
2. Xerox copy of Conveyance Deed vide Sl. No.11131111684 dated 13.09.2011.
3. Xerox copy of Order from G.A. Deptt. No.28641/dtd 07.12.2015.
4. Rent receipt of Ground Rent on dtd.31.08.2013 & 07.01.2011.
5. Xerox copy of Adhar Card.

On 19.07.2018 the Director of Estates and Ex-Officio Additional Secretary to Government to G.A. and P.G. Deptt., Odisha, Bhubaneswar filed a report before this court, through the Standing Counsel in connection with the aforesaid registered conveyance deed No. 11131111684 dated 03.09.2011, from which it is evident that the suit land bearing Drawing plot no-112 of drawing no. B/371 with an area measuring 60; \* 90'(Ac.0.123 dec) corresponding to Revenue plot no-54(pt.) of Sabik khata no.443(Anabadi) in Mz-Ghatikia and had been leased out infavour of Shri Ajaya Kumar Dash S/o-Sri Gangadhar dash by G.A. Department vide registered lease deed no.276 dated 18.01.1994, which was exeuted between the G.A.Department and Shri Ajay Kumar Dash, the petitioner followed by the allotment order no.8271 dated 25.04.1992 physical possession of the leasehold land was handed over to the petitioner on 18.06.1999 vide G.A. Deptt Letter no. 9747 dated 07.06.1999. The Tahasildar, Bhubaneswar was directed to collect ground rent from the said lessee (Present petitioner) vide G. A. Deptt. Letter no.8841 dated 21.06.2000.

The leasehold land has already been converted into freehold vide registered conveyance deed no.11131111684 dated 13.09.2011 which was executed between the G.A. Deptt and the petitioner. An order to convert the suit land from leasehold to freehold with Sthitiban status was issued by GA Deptt vide Order no.28641 dated 07.12.2015.

The hal-sabik correlation report certified by the Addl. Tahasildar, Bhubaneswar entails that the suit plot belongs to hal plot no.7500 with an area Ac0.130dec under Khata no.2339, corresponding to sabik plot no.54(P) under Sabik Khata no.443.

The field enquiry report submitted by Tahasildar Bhubaneswar entails that the suit land is bounded with a half constructed house of Laterite stone, which forms a part of the Case Records.

During the course of hearing the counsel for the petitioner submits that he could not attend the Settlement operation while the same was going on. Due to such inadvertent lapses of the petitioner, the registered conveyance deed dtd.23.08.2011 could not be given effect to the necessary correction could not be carried out in the Hal ROR.

After final publication, the petitioner had approached the court u/s 15(b) of the O.S.S. Act, for necessary correction in Hal ROR (Published on 14.11.2013) praying to allow the petitioner and direct the opposite parties to correct the Hal ROR as per the registered conveyance deed.

In view of the aforesaid facts, and taking into consideration the report of the G.A. Department, along with their correspondence to the petitioner, the registered lease deed, the registered conveyance deed and the Sabik-Hal correlation report of the Settlement Authority, and the field enquiry of Tahasildar, Bhubaneswar I find, it is a fit case to allow the prayer of the petitioner with following directions.

The Tahasildar, Bhubaneswar is to correct the Hal ROR in favour of the petitioner having hal plot no.7500 area Ac0.130dec with kissam Gharabari, in Sthitiban status with a separate khata within 4(Four) weeks from the date of receipt of the order.

The Original documents filed by the petitioner be returned to the petitioner filing of substituted attested Xerox copies of the same.

Order be Communicated to the Tahasildar, Bhubaneswar and the Director of Estate, G.A. Department, Bhubaneswar for necessary communication and compliance.

Order Pronounced in the open court on the 2nd day of August, 2018.

**Sd /-**

Additional Commissioner.

**OSS CASE NO. 714 / 2016**

**Decided on 31.01.2019**

(Order by Dr. Banani Mohanty, O.A.S.(S.A.G.),  
Additional Commissioner  
Additional Revision Court No. 1 under  
Member, Board of Revenue, Bhubaneswar)

Rajanikanta Pattnaik ... Petitioner.

-Versus-

The Settlement Officer, Bhubaneswar & another ... Opp. Parties.

**DECISION**

1. In the Original revision petition, the prayer of the petitioner is as follows:-

*“It is, therefore prayed, that your Lordships may graciously be pleased to admit this revision application, as per the direction passed by the Hon’ble High Court of Orissa in W.P.(C) No. 8971/2015, calling upon the Opp. Parties to show cause as to why the Order dtd. 07.06.2012 passed by the Court of Settlement Officer, Cuttack in Appeal Case No. 632/2010 vide Annexure-3 shall not be set-aside and further as to why the land of the petitioner appertaining to Sabik Plot No. 450 under Khata No. 385 corresponding to Hal Plot No. 1875/2910 measuring Ac. 0.113 decimals under Hal Khata No. 3293 shall not be recorded in his name in accordance with the Judgment and Decree dated 04.03.2006 and 20.03.2006 respectively passed by the learned Civil Judge (Sr. Div), Bhubaneswar in T.S. No. 311 of 1988 in accordance with law.*

*And in the event the Opp. Parties fail to show cause or show insufficient cause, the said Rule be made absolute and the Order dtd. 07.06.2012 passed by the Court of Settlement Officer, Cuttack in Appeal Case No. 632 of 2010 vide Annexure-3 be set-aside and further direct the Opposite Parties to record the name of the petitioner over the land in question appertaining to Sabik Plot No. 450 under Khata No. 385 corresponding to Hal Plot No. 1875/2910 measuring Ac. 0.113 decimals under Hal Khata No. 3293 in accordance with the Judgment and Decree dtd. 04.03.2006 respectively passed by the learned Civil Judge (Sr. Div), Bhubaneswar in T.S. No. 311 of 1988 in accordance with law;”*

2. The petitioner earlier had moved to the Hon’ble High Court of Orissa, Cuttack in W.P.C No. 8971/2015. The Hon’ble High Court vide order No. 5 dtd. 23.02.2016 was pleased to pass the following order:-

*“Assailing the order dtd. 07.06.2012 passed by the Settlement officer in Appeal Case No. 632 of 2010 vide Annexure-3, the instant petition has been filed.*

*Heard Mr. Soumya Mishra, learned counsel for the petitioner and Mr. S.N. Mishra, learned Additional Government Advocate for the State Opp. Party.*

*On instruction learned Addl. Government Advocate submits that in the meantime record of right of the area, wherein the land falls, has been finally published.*

*Any person aggrieved by any entry made in the record of right may file revision before the Member, Board of Revenue under Section 15(b) of the Orissa Survey and Settlement Act.*

*At this juncture, learned Counsel for the petitioner submits that liberty may be granted to the petitioner to file revision before the Member, Board of Revenue, Odisha, Cuttack.*

*In view of the above, the petition is disposed of granting liberty to the petitioner to file revision before the Member, Board of Revenue, Odisha, Cuttack. In the event*

*the revision is filed within a period of fifteen days from today, the Member, Board of Revenue shall do well to dispose of the same on merit expeditiously without being influenced by the order passed by the Settlement Officer.*

*Certified copy of the orders under Annexures-1 and 3 be returned to the learned counsel for the petitioner by substituting Photostat copy thereof.*

*Sd/- Dr. A.K. Rath (J) “*

Thus, in the aforesaid order the Hon'ble High Court was pleased to direct the petitioner to file an application u/s.15 (b) of the O.S & S Act,1958 as the ROR of the suit land was finally published. But the petitioner without following the directions of the Hon'ble High Court filed the present revision under wrong provision of law i.e U/s 32 of the OSS Act, 1958,which is not maintainable as the provisions of this section is general in nature and relate to an order passed by a lower court prior to publication of the Hal ROR. Therefore, this petition is to be dismissed without further reference.

3. In course of hearing on maintainability of revision on 27.08.2018,when it was brought to the notice of the Counsel for the petitioner in presence of Standing Counsel, Mr. J.Rath, that by using white eraser in the original revision petition, the petitioner has changed the provisions of law without following proper procedure of law. The Counsel for the petitioner accepted the fact that the petition u/s.32 of O.S & S Act, 1958 is not maintainable and thereafter the petitioner's counsel prayed to withdraw the petition to file a better petition u/s.15(b) of the O.S & S Act, 1958 before the appropriate Court. Prayer was allowed on that day. The petitioner instead of withdrawing the petition and filling better petition, filed a petition on 19.11.18 with a prayer to amend the Original application.

Even if by changing the prayer, such a petition u/s.15 (b) of the O.S & S Act,1958 is not maintainable in the eye of law as the finally published ROR has not been challenged.

In the original application, the contention of the petition was to set aside the order of the Settlement Officer dtd.07.06.2012 passed in appeal case No.632/2010. To grant such relief this court lacks jurisdiction.

In view of the aforesaid observations, the original application scans no merit. Hence, the same is dismissed on the ground of maintainability.

4. However, for the interest of justice and to protect the interest of the petitioner since there is an order of Hon'ble High Court in W.P(C)8971/2015 dtd. 23.02.2016, if so advised, it is open for the petitioner to file a better petition u/s. 15(b) of OS&S Act, 1958 before the appropriate Court against the final publication of R.O.R of the suit land and for seeking appropriate relief / reliefs there under.

The order is pronounced in the Open Court to-day i.e. 31.01.2019

**Sd /-**

Additional Commissioner.



**O.S.S CASE NO. 2603 OF 2016**

**Decided on 27.12.2018**

(Order by Dr. Banani Mohanty, O.A.S.(S.A.G.),  
Additional Commissioner  
Additional Revision Court No. 1 under  
Member, Board of Revenue, Bhubaneswar)

Santosh Kumar Guru and another ... Petitioners.

-Versus -

Tahasildar, Baliana, Dist: Khuda ... Opp. Party.

For the Petitioners - Sri Laxmidhar Biswal, Advocate

For the Opp. Party - Addl. Standing Counsel.

**DECISION**

The C.R. is taken up to-day for final hearing. Heard the learned Counsel for the petitioners and the learned Addl. Standing Counsel for the Opp. Party.

This petition has been filed by the petitioner u/s.15 (b) of the O.S &S. Act, 1958 with a prayer to allow the Revision Petition and change the caste of the petitioner as **Khandayat**.

**SCHEDULE OF PROPERTY**

Mouza : Garharirampur, P.S. Baliana, Tahasil- Baliana, District- Khurda.  
Khata No. 44, Plot No. 248, area Ac 0.07 dec. corresponding to Mutation Khata No. 120/11, Plot No. 248, area Ac.0.07 dec, Kisam – Sthitiban.

Section 15 (b) of the OSS Act, 1958 read as follows:-

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, 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.

On perusal of the revision petition it is focused that the petitioners have not challenged any finally published Record of Rights and for revision of any record of Rights published U/s.12-B of the O.S & S Act, The suit scheduled property belongs to Tahasil “Baliana” in the district of Khurda. Referring the notification for conducting settlement operation and the list of final publication of Record of Rights of the villages under Khurda district, it is found that as far as Tahasil “Baliana” is concerned the village in question has not been, either under notified village for settlement operation or finally published. The latest RoR submitted by the petitioner is published in the year 1977 and the mutation of cases land are taken up in Tahasil of Baliana under Khordha District. Therefore, this revision petition before this Court is not maintainable U/s.15 (b) of O.S & S Act, 1958.

Apart from that, on perusal of the Annexures filed by the petitioners, it is also seen that no case has made out u/s.15 (b) of the O.S & S Act. In order to ventilate the grievance and to obtain appropriate relief, on mutated RoR, filing of such a petition is a misconceived one. The forum to get such relief, under O.S & S Act, lies somewhere else, not before this Court. Therefore, it is open for the petitioners, if so advised, to approach the appropriate forum for seeking the relief.

In view of the aforesaid observations and findings this revision stands dismissed, on the ground of maintainability and merit as well as on point of law. Pronounced the order in the open Court today this day of 27th Dec 2018.

**Sd /-**

Additional Commissioner.

**S.R.P CASE NO. 257 OF 2017**

**Decided on 14.12.2018**

(Order by Dr. Banani Mohanty, O.A.S.(S.A.G.),  
Additional Commissioner  
Additional Revision Court No. 1 under  
Member, Board of Revenue, Bhubaneswar)

Chandra Sekhar Nanda & others ..... Petitioners

-Versus-

Shree Jagannath Mahaprabhu Bijepuri & others ... Opp. Parties

For the Petitioners - Sri Jibanendu Patra & Associates, Advocate  
For the Opp. Parties - Sr. Standing Counsel.

**DECISION**

The C.R. is taken up to-day for final hearing. Heard the learned Counsel for the petitioners and the learned Sr. Standing Counsel for the Opp. Parties.

This petition has been filed by the petitioners u/s.15(b) of the O.S & S. Act, 1958 with a prayer to set aside the order passed by the Consolidation authorities while preparing the final Record of Rights in favour of the petitioners and further prayer made to record the suit land in favour of O.P.No.1 i.e. Shri Jagannath Mahaprabhu Bijepuri, Marfat Shri Jagannath Temple Managing Committee, Puri.

**SCHEDULE OF PROPERTY**

Mouza : Biragobindapur, P.S. Satyabadi, Tahasil- Satyabadi, District- Puri.

Sabik Khata No. 876, Sabik Plot No. 1099, area Ac 0.55 dec. and Sabik Plot No.2415, area Ac.0.6 dec. which is corresponding to Hal Khata No. 308, Hal Plot No. 1801 with an area Ac0.580, and Plot No. 3590 with an area Ac0.060.

On perusal of the revision petition as well as the annexures it is seen that land schedule given above belongs to Lord Jagannath Mahaprabhu Bijepuri as per

the sabik Record of Rights. One Sri Bijaya Krushna Mohapatra who is a Marfatdar of the said property has sold the property in a most illegal and irregular manner having no right, title and interest over the suit properties. The properties of Lord Jagannath is governed under the Sri Jagannath Temple Act, 1954(Orissa Act 11 of 1955) and the Rules there under.

So far as the properties of Lord Jagannath are concerned the Marfatdars are only the Caretaker of the said properties having no right to alienate. The right, title and interest of the suit property remains with the deity the perpetual minor Lord Jagannath Mahaprabhu Bije, Puri representing through its Managing Committee, Shree Jagannath Temple Administration, Puri. In no circumstances the Marfatdars have any power to sale the property of Lord Jagannath Mahaprabhu Bije, Puri. Starting from 1954 till date this was the views of the Hon'ble Apex Court and all through it has been reflected in the series of pronouncements. In recent past ,in the case of Lord Jagannath Mahaprabhu Bije Puri-vrs. Sidha Matha and others along with many other Civil Appeals, the Hon'ble Apex Court held that after commencement of Shri Jagannath Temple Act, 1955(reported in Vol.121, 2016 CLT page 201-S.C) the properties stands recorded in the name of Lord Jagannath Mahaprabhu Bije, Puri exclusively belong to Lord Jagannath Mahaprabhu Bije Puri, Marfat Sri Jagannath Temple Managing Committee through Shri Jagannath Temple Administration, Puri. It was also further held by the Hon'ble Apex Court that Orissa Estate Abolition Act, 1951 and Orissa Hindu Religious and Endowment Act got no application so far as properties of Lord Jagannath Mahaprabhu Bije, Puri is concerned.

In view of such clear findings of Hon'ble Apex Court any and as per Sri Jagannath Temple, Act, transaction made or any transfer made on the properties of Lord Jagannath Mahaprabhu Bije, Puri by the Marfatdars is illegal, arbitrary and also void one. Once a deed is declared to be void one, no further order is required to regularize the same. However, in the instant case though the Marfatdar has no right, title and interest over the suit property, but has sold the property in an illegal manner to the present petitioner without giving any notice to Sri Jagannath Temple Administration, Puri. In a most erroneous manner the Record of Rights has been prepared on 18.12.2013 in the name of present petitioners as marfatdars.

In view of such illegality and irregularities, the finally published R.O.R. stands in the name of present petitioners as marfatdars under Khata no 308 of mouza-Biragobindpur, dated 18.12.2013 is set aside. The Tahasildar, Satyabadi in the district of Puri is directed to correct the ROR and record the suit land in the name of" Lord Jagannath Mahaprabhu Bije Puri, Marfat Shri Jagannath Temple Managing Committee, Puri represented through Shri Jagannath Temple Administration, Puri preferably within a period of 03 (three) months from the date of receipt of this order.

This Court further directs to the Administrator, Shri Jagannath Temple Managing Committee, Puri (Opp. Party No.1) to look into the matter and take necessary initiatives for correction of the ROR of the suit land by deleting the name of the present petitioners.

With the aforesaid observations and directions the revision is allowed.

The order copy be communicated to the Tahasildar, Satyabadi, Addl. Sub-Collector-cum- Consolidation Officer, Puri and Lord Jagannath Mahaprabhu Bije Puri, Marfat Shri Jagannath Temple Managing Committee through Chief Administrator, Shree Jagannath Temple, Puri.

Pronounced the order in the open Court this day, the 14th December, 2018

**Sd /-**

Additional Commissioner.

**REVISION PETITION No. 375/2012**

**Decided on 20.02.2019**

(Order by Shri Kabir Kisan, I.A.S,  
Commissioner,  
Consolidation, Odisha, Cuttack)

Bansidhar Sethy and Others ... Petitioners

-Versus-

Akshaya Mohanty and Others .... Opp. Parties

Counsel for the Petitioner : Mr. P.K. Paikray

Counsel for the Opp. Party : Mr. P.R. Routray

**DECISION**

In Revision Petition No.375/2012 filed U/s 15(b) of the O.S. &S. Act, 1958 (Shortly called as the Act) relating to Vill.-Teragaon, PS-Patkura, Dist-Kendrapara the Petitioners Bansidhar Sethy and another have prayed for correction of impugned hal R.O.R. and separate recording in their favour in respect of hal plot No.186 Ac.0.21 dec., in hal R.O.R No.53 corresponding to sabik plot No.140(P) under sabik Khata No.13 on the basis of sabik record, succession and possession.

2.0. The learned counsel for the petitioners had contended that the disputed hal plot No.186 Ac.0.21 dec. in hal R.O.R No.72 corresponds to sabik plot No.104 Ac.0.42 (P) under sabik khata No.138. The prayer of the petitioners is to record hal plot No.186 Ac.0.21 in their favour on the basis of sabik record & succession. Originally sabik khata No.138 containing sabik plot No.104 Ac.0.42 dec. stood recorded in favour of Basu Sethy. Gopi Sethy s/o-Basu Sethy had transferred sabik plot No.104 Ac.0.61 (P) Ac.0.20 dec.5 kadi under sabik khata No.13 of mouza Sobala and accordingly hal plot No.212 under hal khata No.53 has been recorded in favour of Opp. party's as per purchase. Though the Opp. parties have been separately recorded in respect of hal khata No.53 containing hal plot No.212 of village sobala, but again they have been wrongly recorded in respect of hal khata No.72 of village Teragaon. Which is exclusively belongs to the petitioners. So petitioners cannot be

recorded twice for the self same purchased property. By mistake in the recital of the Registered Sale Deed No.5435 dt.25.05.1960, the village name had been mentioned as Teraguan. The vendor of the Opp. Parties was not the owner of Sabik Khata no.13 of village Teraguan. That is why when the vendor of the Opp. Parties was not the owner of suit Sabik Khata No.13 of village Teraguan, any transaction made by him confers no title on the vendee. Hence, hal plot No. 186 Ac.0.21 dec. in hal khata No.72 is separately recorded in the names of the petitioners by deleting the name of Opp. Parties as because the Opp. Parties have already been recorded in respect of hal khata No.53 of village sobala.

3.0. The learned Counsel for the Opp. Parties has contended that the petitioners have no locustandy to file this Rev. Petition against the Opp. Parties and it is not maintainable in the eye of law. This court has no jurisdiction to adjudicate the matter as it is not the proper forum. The proper forum is the Civil Court. The petitioners are neither the Opp. Parties nor the successor of the vendor of Opp. Parties who can challenge the RSD. The hal R.O.R has been published on 31.03.1986. The revision is filed on 10.10.2012 after long lapse of 26 yrs; they are claiming that the Settlement authorities have correctly prepared the hal R.O.R in the name of the Opp. Parties as per the RSD. So the question of interference of this Hon'ble court does not arise. Hence, for the ends of natural Justice, equity & good Conscience the Revision Petition should be dismissed on the point of maintainability and jurisdiction.

4.0. Gone through hal R.O.R No.72 & 53, sabik R.O.R NO.13, and plot index, RSD No.5435 dt.25.05.1960, written notes of argument filed by the learned counsel for both parties.

On verification of the above documents and other materials available in record it is found that this Revision is to be adjudicated on the point of maintainability and merit.

Regarding the point of law to condone or not to condone delay the Hon'ble Apex Court reported in A.I.R 1987 Supreme Court, 1353- Justice M.P. Thakar & B.C.Ray have observed that-

(1) "The Legislature has conferred the power to condone delay by enacting section 5 of the Indian Limitation Act,1963 in order to enable the courts to do substantial justice to parties by disposing of matters on merits." The expression "sufficient cause" employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which sub serves the ends". (2) "Ordinarily a litigant does not stand to benefit by lodging an appeal Late" (3)"Refusing to condone delay can result in a meritorious matter being thrown out at the very thresh hold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that cause would be decided on merits after hearing the parties."

“When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in un-justice being done because of a non-deliberate delay.”

Gone through the documents filed by the learned counsel for both the parties in order to judge the merit of the case.

The suit land is described under Schedule “A” & “B”.

**SCHEDULE “A” LAND**

Village- Teragan, Tahasil-Marshaghai, P.S.- Mahakalapada, Dist- Kendrapara.

<u>Sabik Khata No.</u>	<u>Sabik Plot No.</u>	<u>Area</u>
138	104	Ac.0.42 (P), Ac.0.21 dec. 5 kadi
<u>Hal Khata No.</u>	<u>Hal Plot No.</u>	<u>Area</u>
72	186	Ac.0.21 dec

**SCHEDULE “B” LAND**

Village- Subala, P.S- Marshaghai, Dist- Kendrapara

<u>Sabik Khata No.</u>	<u>Sabik Plot No.</u>	<u>Area</u>
13	104	Ac.0.61 dec
<u>Hal Khata No.</u>	<u>Hal plot No.</u>	<u>Area</u>
53	212	Ac.0.37 dec

On 27.4.1941 one co-sharer of Petitioner’s father i.e. Gopinath purchased an area Ac.0.61 dec. from one Ananda Sahoo out of sabik plot No.104 in village Subala with other Plots by way of Registered Sale Deed bearing No.1989. Out of the aforesaid land of Ac.0.61 dec. on 30.11.1947 the aforesaid Gopinath had alienated an area Ac.0.41 dec. to Dukhishyam Sethy and Lokanath Sethy jointly in Registered Sale Deed No.497. The said Gopinath on 25.05.1960 further transferred the balance Ac.0.20 dec 5 kadi of land by way of Registered Sale Deed No.5435 to Opp. Parties out of aforesaid sabik plot No.104 of Village Subala.

Inadvertently, in the land schedule of the Regd. Sale Deed executed on 25.5.1960 by Gopinath the same of the village has been wrongly mentioned as village “Teragan” instead of “Subala” although the intention of Gopinath has been written in the body of the aforesaid Sale Deed as the land in village Subala is the land for transaction. The Thana No. 630 in sabik village now corresponds to hal Thana No.277. Similarly, the sabik Thana No. of Teragan was 615 now corresponds to hal Thana No.264 is clearly distinguishable from the sale deed of the Opp. Parties executed by their vendor. Though the Opp. parties have been separately recorded in respect of hal khata No.53, Plot No.212 of Mouza Sobala, but again they have

been wrongly recorded in respect of hal khata No.72 of Mouza Teraguan which belongs to petitioners.

The Opp. Parties cannot be recorded twice for the self same purchased property. By mistake in recital of the Regd. Sale Deed, the Mouza has been mentioned Teraguan. Vendor of the Opp. Parties was not the owner of sabik Khata No.13 of Mouza Teraguan when the vendor of the Opp. Parties was not the owner of sabik khata No.13 of Mouza Teraguan, any transaction made by him confers no title on the vendee.

In the above premises, the Revision petition is maintainable and the claim of the petitioners appears to have merit. Hence, the Tahasildar, Marshaghai is directed to correct the impugned Hal ROR after conducting field enquiry and verifying the title of documents of both the parties.

5.0. Resultantly, the Revision Petition is admitted and disposed of. The Tahasildar, Marshaghai is directed to implement the order as per my above observation within two months from the date of pronouncement of the order.

Send the copy of the judgment to the Tahasildar, Marshaghai within two weeks from the date of order.

Pronounced the order in the open court today.

Sd /-  
Commissioner,  
Consolidation, Odisha, Cuttack

**REVISION CASE NO.173/2014**

**Decided on 06.02.2017**

(Order by Shri Kabir Kisan, I.A.S,  
Commissioner,  
Consolidation, Odisha, Cuttack)

Sri Gopinath Jew Bije Chhanchunia Samil Gualsingh represented by Hereditary Trustee Sri Mahanta Madhaba Prasanna Ramauja Das Guru of Late Mahanta Sudarsan Ramanuja Das At. Samdhi Matha, Kalikadevi Sahi, PO/PS/Dist-Puri Hal Mouza-Chhanchunia Smail Gualsingh PO-Thakurpatna, PS/Dist-Kendrapara represented through its registered power of Attorney Holder Sri Ananta Charan Patr, aged about 63 years, son of Late Bishnu Chandra Patra of Vill-Chhanchunia, Samil Gualsingh, PO-Thakurpatana, PS/Dist-Kendrapara. ... Petitioner.

-Versus-

Maheswar Nayak & another ... Opp. Parties

Counsel for the Petitioner - Mr.B.K.Dagara

Counsel for the Opp. Parties - Mr. P.K.Paikaray / Mr. Sridhartha Mishra

**DECISION**

In Revision Case No.173/14 filed U/S 36 of the O.C.H. & P.F.L. Act, 1972 (Shortly called as the Act) relating to Village-Gualsingh, PS/Dist; Kendrapara, the Petitioner, has prayed to set aside the orders dated 18.03.2014 passed by the learned Deputy Director, Consolidation, Kendrapara in appeal No.79/2013 u/s 12 of the Act.

During Course of hearing of the case, Endowment Commissioner, Odisha, Bhubaneswar was required to be made a party to this case. Accordingly notice was issued on him and the Endowment Commissioner has submitted his views in respect of the disputed land. Heard the learned Counsel for the both the parties.

2.0. The learned Counsel for the petitioner has contended that the suit property relating to Mouza-Gualsingh, in respect of Hal Khata No.1250 containing Hal plot No.2405 A0.350 (p) Ac0.180 corresponding to 1930 settlement Khata No.282, containing Sabik Plot No.1592 (part) originally stood recorded in the name of Sri Gopinath Jew represented by Mahant Sri Madhab Prasanna Ramanuja Das and as the property belonged to the deity, it was controlled and managed by the Commissioner, Endowment, Odisha. After abolition of Estate the land was settled by the OEA Collector, Kendrapara in O.E.A. Case No.278/92 and also during consolidation operation the land was recorded in the name of the deity. When the matter was as such, Opp. Party No.1 and 2 filed Revision case No.98/2012 u/s/ 37(1) of the Act. in this Hon'ble Court and the matter was remitted back to the Addl. Sub- Collector, Kendrapara for adjudication u/s11 of the Act, which was dismissed by the learned trial Court by order dated 27.08.2013. Therefore the Opp. Parties have preferred Consolidation appeal No.79/2013 u/s 12 of the Act and the learned Dy. Director, Consolidation, Kendrapara under misrepresentation of fact and without verifying the records allowed the appeal in his order dated 18.03.2014. Against such impugned order, this Revision has been filed u/s 36 for the following reason.

- I. In view of the order passed by the O.E.A. Collector in O.E.A. Case No.279/94, independent title was created in favour of the deity and the consolidation authorities have no jurisdiction to ignore such order.
- II. No permission from the Endowment Commissioner u/s19 of the Endowment Act was obtained by the Opp. Parties for which they cannot convey any title over the case land.

3.0. The learned Counsel for the Opp. Parties has contended that the disputed land originally stood recorded in 1930 settlement ROR in the name of the deity, Sri Gopinath Jew Thakur under Nijadakhil status and as the case land belongs to trust estate, the Marfatdar, Mahanta Biswakeshan Ramanuj Das has leased out an area of A0.18 dec. out of the said Sabik Plots to one, Kashinath Nayak by way of Chirastae Hatapata on dated 07.03.1938 after receipt of proper Salami and fixation of rent. The said Kashinath Nayak was all along in peaceful possession over the case land as a tenant on payment of regular rent to the land lord under receipts and consequent



upon Vesting of the Estate and by operation of OEA Act, the ex-land lord submitted Ekpada (Tenant Ledger Maintained in Zamidar Sirastha) before the local Tahasildar and in recognition and acknowledgement of right, title, interest and possession of Kashinath Nayak, Jamabandi Khata NO.282/1 has been opened in his favour and thereby said Kashinath Nayak became a tenant over the disputed land under State Govt. free from all encumbrances. That said Kashinath Nayak was enjoying the land peacefully on payment of land revenue before the Revenue authorities till his death and after his death present Opp. Party No.1 and 2 being his legal heirs have been enjoying the properties peacefully. During present consolidation operation, as the case land has not recorded in favour of present Opp. party No.1 and 2, they have filed consolidation Revision Case No.98/2012 before this Hon'ble court u/s 37(1) of the act for recording of the case land in their favour. This Hon'ble court on perusal of all the relevant documents coupled with judicial pronouncements, well adjudicated the matter and ultimately allowed the Revision with the following findings in para-4 of the judgment

“So, aforesaid documents and reported decisions confirmed the sthitiban right of the petitioners over the case land”

With such observations, this Hon'ble court has remanded the case to the court of learned Consolidation officer, Kendrapara only for verification of original Tenant Ledger maintained in Tahasil office and to correct the present ROR. On remand the C.O. Kendrapara (Now Addl. Sub-Collector, Kendrapara) had conducted field enquiry over the case land and ascertained that the petitioners (Present Opp. Party No.1 and 2) have been in peaceful possession over the suit land. The learned lower court has also verified the original Tenant ledger, for the case land which stands in favour of Kasinath Nayak against T.L No.282/1. Despite the above aspect, the learned lower court has arbitrarily dropped the case for which the present Opp. Party No.1 and 2 have challenged the said order and preferred consolidation appeal No.79/13 u/s 12 of the Act.

The learned Dy. Director, Consolidation, Kendrapara after hearing of the parties and verification of records with regard to the observation of this Hon'ble court passed in R.C. No.98/12 has been pleased to set aside the orders of the learned lower court and allowed the claim of present opp. Party No.1 and 2 against which the present petitioner has challenged the said order in the instant Revision Case. u/.s 36 of the Act., on the ground that no permission having been obtained from the Endowment Commissioner, Odisha for recording of the case land in favour of Opp. Party no.1 and 2. This peculiar preposition of the petitioner has no leg to stand as the intermediary (trust Estate) through his Mahanta has granted “Chirastae –Hata Pata” in favour of Kashinath Nayak on 07.03.1938 i.e. much prior to commencement of OHRE Act of 1939, which came into force form 04.11.1939. Besides this, by virtue of adoption of O.E.A Act, the said Estate vested with state Govt. and the ex-intermediary lost his right, title and interest, over the case land.

Thereby permission of Endowment Commissioner is not required at all in the instant case.

That, the learned advocate for opp. party no. 1 and 2 also submitted his argument that the plea taken by the petitioner regarding settlement of rent in favour of the deity basing on the consolidation Parcha in O.E.A. Case No.278/94 is completely misleading and against the provisions of law. Since the case land has already been settled in favour of Opp. Parties nO.1 and 2 and T.L.No.282/1 has been opened in their favour. Hence, re-settlement of land in a subsequent stage is completely illegal. In this connection, the learned Counsel for the Opp. Parties has submitted the following decisions of the Hon'ble high court reported in

- I. 1986 (ii)O.L.R. Page-427
- II. 2007 (ii)O.L.R. Page-557
- III. 2005 (ii)O.L.R. Page-491
- IV. 1974 (ii)O.L.R. Page-888

Besides the above preposition of law, the rent settlement during consolidation operation basing on the land Register Parcha in O.E.A Case No.278/94 is against the statutory provisions enshrined under Sub-Section (3) of Section 4 of the OCH & P.F.L. Act, 1972.

Lastly the learned advocate for the opp. Party No.1 and 2 has pointed that the earlier decision of this Hon'ble Court passed in R.C.No.98/2012 is still in force and binding on the parties being not challenged at any point of time. The said order is also applicable in the instant Revision as per provisions of section 11 of the C.P.C.

With these preposition of law, learned advocate for Opp. Party Nos.1 and 2 therefore pray to dismiss the Revision which is devoid of any merit.

In response to the notice issued by this court, the Endowment Commissioner has submitted his Show-cause / Written note to the effect that the case land be recorded in favour of the deity under the Marfatdarship of commissioner Endowment.  
4.0 Heard the learned counsel for both parties at length and gone through all the materials available in records with much care and caution.

After careful consideration of claim and counter claim submitted by the learned counsel for both the parties and decisions relied on by them, it is thus clear that the case land appertaining to an area Ac0.180 out of Hal Plot No. 2405, Ac0.350 stands recorded under Hal Khata No. 1250 of Village-Gualsingh corresponding to 1930 settlement Plot No. 1592(Part) of Khata No. 282 originally stood recorded in the name of the deity, Sri Gopinath Jew Thakur under Nijdakhal status. As the suit land belongs to the trust Estate, the Marfatdar/Mahanta had leased out the said land by way of "Chirastae Hata Patta" in favour of Kashinath Nayak,( the father of

Opp.PartyNo.1 and husband of Opp.partyNo.2) on 07.03.1938 on payment of due salami and fixation of yearly rent. Consequent upon vesting of the Estate and by operation of OEAAct, recognition and acknowledgement of Ekpadia submitted by ex-land lord, Tenant Ledger has been opened in favour of said Kashinath Nayak bearing Jamabandi Khata N. 282/1 and thereby said Kashinath Nayak has become a tenant under State Govt. over the disputed land free from all encumbrances.

The said tenant, Kashinath Nayak was all along in possession over the case land and after his death, his legal heirs (the Opp.Party No.1 & 2) are in peaceful possession over the disputed land.

As the case land was not recorded in their favour in consolidation operation, the present Opp.Party No.1 & 2 had filed consolidation Revision Case No. 98/2012 in this court u/s 37(1) of the Act. The said case was heard by my predecessor and after perusal of documents and records coupled with judicial pronouncements well adjudicated the matter and with following observation remanded the case to the learned lower court of Consolidation Officer, Kendrapara.

“SO, aforesaid documents and reported decisions confirmed the “sthitiban right of the petitioners over the case land.”

The only direction was issued in the said case to the learned lower court for verification of original Tenant Ledger maintained in Tahasil Office and to effect correction of ROR, which was wrongly recorded in favour of the present petitioner. Despite specific direction of this Revisional Court, the learned lower court has dropped the case, for which consolidation appeal No.79/13 has been preferred u/s 12 of the Act by the present Opp.partyNo.1 and 2. The learned Dy. Director, Kendrapara has allowed the appeal, against which this Revision has been field.

The stand taken by the petitioner that as the property belongs to the deity, the property was controlled and managed by the Endowment Commissioner, Odisha and prior permission u/s 19 of the Endowment Act is mandatory for recording of the Suit land other than the deity. In this connection, it is ascertained that the Opp. Parties Kasinath Nayak had been granted Chirastae Hata Patta from the Ex-land lord/ Mahanta on 07.03.1938 in respect of the disputed land and the said land was under Nijdakhal status of the trust-estate. O.H.R.E Act, 1939 came into force on 04.01.1939 i.e. prior to commencement of Endowment Act. So, question of permission u/s 19 of the Act does not arise in the instant case.

That apart, the 2nd plea of the petitioner is that the case land was settled in favour of the deity in O.E.A Case No. 278/94. In this connection, it is also evident that the ex-intermediary granted “Chirastae Patta” in favour of Kashinath Nayak and after vesting of the Estate and on adoption of OEAAct, basing on the Ekpadia of the Zamidar, T.L. was opened in the name of Kashinath Nayak in Tahasil and T.L No.282/1 was opened in his favour and he became a tenant under State Govt. free from all encumbrances. The ex-land lord lost his right, title; interest whatsoever upon adoption of OEAAct.

Re-settlement of rent in favour of the deity at a subsequent stage basing on consolidation parch is not legal as enshrined u/s 4(3) of the OCH & PFL Act, 1972 and settlement of tenancy land right of petitioner in favour of Ex-intermediary under lease principle is abinitio void.

In the above premises, after thorough verification of the materials available in record and reported decisions of the Hon'ble High Court it is concluded that the appellate authority has rightly decided the matter. Hence, I am not inclined to interfere with the order dated 18.03.2014 of the Dy. Director, Consolidation, Kendrapara in Appeal Case No. 79/2013 and the said order is hereby upheld.

Accordingly, the Revision case is dismissed.

Pronounced the order in the open court today.

Sd /-  
Commissioner,  
Consolidation, Odisha, Cuttack

**REVISION CASE NO. 203 / 2016**

**Decided on 04.02.2019**

(Order by Shri Kabir Kisan, I.A.S,  
Commissioner,  
Consolidation, Odisha, Cuttack)

Saraswati Panda and others ... Petitioners

-Versus-

Padmini Panda ... Opp. Party

Counsel for the Petitioner - Mr. S.K. Nayak-2

Counsel for the Opp. Party - Mr. B.K. Dagara

**DECISION**

In Revision Case No.203/2016 filed U/s 36 of the O.C.H & P.F.L Act, 1972, (Shortly called as the Act) relating to Vill.-Bandhapada, PS-Pattamundai, Dist-Kendrapara the Petitioners Saraswati Panda and 5 others have assailed the order dt.10.05.2016 of the Dy. Director, Kendrapara in Appeal No.88/2013 filed U/S 12 of the Act. reversing the order dt.27.07.2013 of Addl. Sub Collector, Kendrapara passed in Remand Rev. Case No.3481/2002 filed U/S 37(2) of the Act.

2.0. The learned Counsel for the Petitioners has countered that the case land appertaining to Hal plot No.746 Ac.0.080, 747 Ac.0.080, 747/787 Ac.0.040 & 748 Ac.0.020, under Hal khata No.233 which stand recorded in favour of Maguni Panda W/O- Jagannath Panda. Originally the suit land belonged to Daitari Panda &



It is further submitted by the petitioners that Biswanath Panda of the genealogy died much prior to the death of the Hal recorded tenant Maguni Panda w/o Jagannath Panda and Maguni Panda died issueless. After death of Maguni her interest in the suit land was succeeded by Daitari branch (ancestor of the petitioners) as per sec.8 (b) of the Hindu Succession Act. In fact the interest of Maguni never devolved upon Sabitri or Padmini as Biswanath died much prior to the death of Maguni. The petitioners as the descendants, legal heirs and Successors became owner in possession over of the Case land. The learned Consolidation Officer, Pattamundai after perusing the relevant documents has rightly held that, the petitioners are entitled to get the interest of Maguni in the suit land. But the learned Dy. Director, Kendrapara without perusing Amin's report and other relevant documents illegally passed order which is under challenge before the Hon'ble court. The learned appellate Court held Padmini Panda to succeed the properties of jagannath Panda as per section 3, 8, 13, 15 & 16 of Hindu succession Act.1956. The said learned court had also made gross illegality to ignore the field enquiry report of Amin. The O.P. has not challenged the Amin's report before the learned Dy. Director or Addl. Sub Collector, Kendrapara. Hence, this Revision to set aside the order of the Dy. Director, Kendrapara.

3.0. The learned Counsel for the O.P. has contended that the genealogy relied on by the petitioners is correct. Bhagaban Panda of the genealogy filed Title suit No.355/1940 in the court of Munsif, Kendrapara for partition. The said Title suit was decreed and the present suit land was allotted to Damodar Panda. In course of time there was a Registered Partition Deed No.4640 dt.01.10.1951 between Biswanath panda & Maguni Panda. The present suit land was allotted to Maguni Panda who died issueless. So, the suit property was devolved upon Sabitri W/O-Late Biswanath. Sabitri died leaving only daughter Padmini O.P. in this case. The O.P. submits that after death of Maguni, being issueless, the property would be treated as the property of her husband namely Jagannath. Jagannath being the male Hindu, the provision of section 8 of Hindu succession Act. will be applied. As per section 8 there is no class-1 and class-ii and also in clause (a) & (b) of section 8. Since there is no heir in class-ii the property will devolve as per clause (c) of sec.8 on the agnates of the deceased. If there is no agnates then upon the cognates of the deceased as per sub clause (d) of sec.8 of Hindu succession Act.

In the present case Damodar is the common ancestor of maguni W/O-Jagannath and after her death as per genealogy the property would devolved upon Padmini. The present O.P. coming to the category of agnates, the property of Jagannath would devolved upon the O.P. But the suit land cannot devolved upon cognates. The learned appellate court analysing the section 3, 8, 13 15, & 16 of Hindu succession Act.1956 correctly held that Padmini Panda is the sole successor who is the agnate of Jagannath and has rightly recorded the land in favour of Padmini Panda. This position of law has been decided by the Hon'ble Supreme Court analysing the section 16 of Hindu succession Act. as per Reported decision in A.I.R.-

1978 Supreme Court-page 793. The learned Consolidation Officer only basing on the report of the Amin has passed order which reveals that, petitioners are in possession of the suit land. Law is well settled that possession is not the basis of record but the title. So, the learned appellate authority has rightly decided the case by holding Padmini as agnate. Hence, the Revision is to be dismissed.

4.0. Considered the sustainability of the impugned order of the appellate authority.

The learned counsel for the petitioners has filed the original Hal R.O.R. khata No.233, L.R. Parcha and PCS Parcha and revised R.O.R. khata No.233, series of rent receipts and some reported decision of Hon'ble Supreme Court and High Court, written note of arguments and field enquiry report relating to Remand Revision Petition No.3481/2002. On the other hand the learned Counsel for the O.P. has filed the final Decree in T.S. No.355/1940 of Munsif, Kendrapara Registered Partition Deed No.4640 dt.01.10.1951 and photocopy of decision reported in A.I.R. 1978 S.C. Page-798 and written note.

Perused the documents and written note and also verified the L.C.R. It is revealed that the disputed land relates to Hal plot No.746 Ac.0.080, 747 Ac.0.080, 747/787 Ac.0.040 and 748 Ac.0.020 total area Ac.0.220 in Hal khata No.233 corresponding to 1930 settlement plot no.931, 932, 934 under Sabik khata No.236 and Sabik plot No.935 under sabik khata No.237 and Sabik plot No.930 under sabik khata No.238. The aforesaid 1930 settlement khatas stood recorded in favour of Daitari Panda and Damodar Panda S/O-Hrushu panda in sthitiban status. The genealogies submitted by both parties are same. In Title suit No.3055/1940, the suit lands along with other undisputed land were partitioned in the final Decree dt.20.08.1941. Subsequently the land allotted in the share of Damodar was partitioned in between Biswanath and Maguni in Registered Partition Deed No.4640 dt.01.10.1951. The disputed land was allotted in the share of Maguni. These are the admitted fact. During Consolidation proceeding originally Hal plot No.651 Ac.0.210, 746 Ac.0.160, 747 Ac.0.310, 748 Ac.0.060 with total area Ac.0.740 stood recorded in favour of Maguni Panda W/O- Jagannath Panda, Padmini Panda D/O- Biswanath Panda, Sabitri Panda W/O- Biswanath panda, Ganesh Chandra Panda, Hemalata Panda S/O- Bhagaban Panda, Srimati Panda W/O- Bhagaban Panda in sthitiban status. Though as civil suit No.355/1940 the land of aforesaid 233 khata belonged to Padmini, Sabitri and Maguni, the consolidation authorities have wrongly included the name of Ganesh Ch. Panda, Hemalata Panda and Srimati Panda in the aforesaid Hal khata No.233. Being aggrieved by the said preparation of Hal R.O.R., Sabitri panda as the petitioner filed R.C. No.646/1985 for correction of aforesaid R.O.R. by impleading other recorded tenants as O.P. On remand, the learned C.O., Pattamundai in his order dt.09.09.1992 deleted the name of Ganesh, Hemalata and Srimati from Hal khata No.233 and as per Registered Partition Deed No.4640 dt.01.10.1951 effected partition between Maguni and Biswanath. In the said partition, Maguni got disputed Hal plot No.746 Ac.0.08, 747 Ac.0.080, 747/787 Ac.0.040, 748

Ac.0.020 total Ac.0.220 under revised Hal khata No.233. After death of Maguni, as issueless, in the year 2008 both the contesting parties claim the share of deceased Maguni. Therefore the issue involved in this revision is whether the property of deceased maguni will devolved on Padmini Panda (O.P.) or to the branch of Bhagaban panda representing the present petitioners.

On perusal of the admitted genealogy, under sec.8 of the Hindu succession Act.1956 it is found that neither the petitioners nor the O.P. are coming under class-1 and class-ii and also clause (a) & (b) of sec.8 of Hindu succession Act.1956. But Padmini the present O.P. is coming to the category of agnate. So, property of Jagannath would devolved upon the O.P. and the present petitioners being the cognate cannot accrue any title over the disputed land. The learned appellate Court has vividly analysed different sections i.e. 3, 8, 13, 15 & 16 of Hindu succession Act.1956 and concluded that Padmini Panda is the sole successor to inherit the suit land as the agnate of Jagannath. On the other hand the learned trial Court has solely decided the instant issue basing only on possession of the present petitioners revealed from the field enquiry report of the Amin. Even if assuming the present petitioners are in possession of the suit land still then title of the suit land cannot pass to them because law is well settled that "title follows possession vice versa is not true". The reported decision relied on by the learned Counsel for the petitioners are irrelevant to the instant issue and are no help to the petitioners. Further, from the date of final Decree passed in the T.S. No.355/1940 Bhagaban Panda and Damodar Panda were separated by mess and property. So, they cannot claim the property of Damodar in such situation. From the lower Court records I find that the appellate Court has gone deep into the matter and rightly decided the matter. The trial Court has not applied it's judicial mind to explain issue from it's proper prospectives.

In the above premises I am inclined to upheld the order of the appellate Court.

5.0. Resultantly, the Revision Case is dismissed.

Send the copy of the judgment to the Dy. Director, Consolidation, Kendrapara/ Addl. Sub Collector, Pattamundai is directed to implement the order within two weeks from the date of order.

Pronounced the order in the open court today.

Sd /-  
Commissioner,  
Consolidation, Odisha, Cuttack



**R.C. Case No-22/2005**

**Decided on 30.06.2018**

(Order by Sri Muralidhar Mallik, O.A.S (SS),  
Commissioner ,Consolidation & settlement,  
Odisha ,Bhubaneswar)

NrusinghCharanSatapathy ..... Petitioner.

-Versus-

Laxmidhar Singh .....Opposite party.

Advocate for Petitioner - Mr. A.P. Mishra  
Advocate for O.P - Mr. S.P. Sahoo

**ORDER**

The case in brief is that originally one objection case No.11039/894 had been filed by the Opposite Party under section -9 (3) of the Act. before A.C.O, Abhayamukhi. Being aggrieved by the order passed by the A.C.O, Abhayamukhi, the Opposite Party had filed the appeal case No. 25/92 u/s-12 of the Act. before DDCH, Bhubaneswar. Since, The Learned Dy.Director, Consolidation had confirmed the order of the A.C.O vide appeal Case No.25/92,the OP Sri Laxmidhar Singh, S/o-Bhima Singh had filed one R.C. Case before the Commissioner, Consolidation & Settlement, Bhubaneswar u/s-36 of OCH & PFL Act. being aggrieved by the order Passed by the Dy.Director, Consolidation. The revision court had quashed the order of the appellate Court and the revision case was remitted back to C.O., Nimapara for fresh adjudication u/s-11 of the Act. The, C.O., Nimapara after hearing both parties, partly allowed the case in favour of present OP vide R.R.C No.253/1998. Being aggrieved by the order passed in R.R.C No.253/1998, the present Petitioner Sri Nrusingha Ch. Satapathy had filed one appeal Case bearing No.76/2002 before DDCH, Bhubaneswar under section 12 of the Act., which was disallowed on 29.12.2004.

Hence, this Revision Petition has been filed by the petitioner U/S 36 of O.C.H. & P.F.L. Act 1972 (Here after referred as Act.) with prayer for setting-aside the order passed by the learned Courts below with direction for continuance of the consolidation record in the name of the petitioner. Basing on the aforesaid revision petition of the petitioner, one R.C. Case had been registered Vide R.C. No.22/2005.

The schedule of property as per the plaint of the petitioner is cited below.

**SCHEDULE OF PROPERTY**

Mouza- Nariso, C.O. Circle – Nimapara, Dist. Khurda.

<b>SabikKhata No.</b>	<b>Plot No.</b>		
539	4954		
	4955		
	4969		
308	4955/8256		
<b>Hal Khata No.</b>	<b>Chaka No.</b>	<b>Chaka plot No.</b>	
144	953	4261	
	932	4205	
		4203	
		4262	
		4202	

The L.C.R had been called for from Deputy Director, Consolidation, Range Bhubaneswar and which had been received and attached with the Case Record.

Notice had been issued to the opposite party by registered post. The Opposite Party Sri Laxmidhar Singh had appeared through his Counsel Mr. S.P. Sahoo. Learned Counsel for both parties had participated in the hearing. They had also seen the records and documents filed by each of them.

Gone through the Case record, L.C.R, documents, Citations and written note of arguments filed by both parties.

The petitioner has filed certified copy of Sabikkhata No.539, original pre-sabik ROR pertaining to khata No.308, Hal ROR of khata No.144, Certified copy of Amin's report of Local enquiry, Certified copy of A.S.O Local enquiry report, written memorandum dt.25.08.1952, original Registered Partition Deed No.268 dt.14.01.1977, original RSD No.1138 dt.09.02.1971, Certified Copy of order of S.D.M, Bhubaneswar passed in Misc. Case No.53/1975 u/s-145 of the of the CRPC, Certified Copy of order passed By District Sessions , Judge, Puri in C.R. Revision Case No.51/1976 and certified Copy of order passed by the Deputy Director, Consolidation of Holdings, Bhubaneswr in Appeal Case No. 76/2002 under Section 12 of the Act.

The Opposite Party has filed certified copies of Registered compromise-cum partition Deed no. 268. Dt 14.01.1977, Certified copies of Registered Sale Deeds No. 2686 Dt. 19.04.1977, Registered Sale Deeds No. 7483 Dt. 20.10.1978, Certified copy of Registered Gift Deed No. 7373 Dt. 08.12.1975, xerox copy of Registered Sale Deeds No. 22 Dt. 02.11.1979, Certified copy of Amin's enquiry report dt. 14.11.2002, Certified copy of Sabik ROR pertaining to khata No.308 of village Nariso, Certified copy of Sabik ROR pertaining to khata No.539 of village Nariso.

The claim of the petitioner is to record Chaka No.953, Chaka Plot No.4261, Chaka No.932, Chaka Plot No.4205, Plot No.4203, Plot No.4262, Plot No.4202 under Hal khata No.144 of Village Narisocorresponding to sabikkhataNo.539, Plot No. 4954,4955 ,4969 and sabikkhata No.308, Plot No.4955/8256 in his favour by setting aside the order passed in Remand R.C. No.253/98 by the C.O., Nimapara.

Sabik khata No.539 having 24 plots with total area of Ac.5.25 dec. of Mouza-Nariso stands recorded jointly in the name of BisiSatapathy, S/o-KrupasindhuSatapathy, SapaniSatapathy, S/o- AlekhSatapathy, AbhiramSatapathy, S/o- MukundaSatapathy, AgadhuSatapathy, S/o- DamodarSatapathy, ChandriDibya, W/o- MadhaSatapathy, BalakrushnaSatapathy, BrundabanSatapathy, Raghunath Satapathy, Jagannath Satapathy, S/o- Hari Satapathy, Gangadhar Satapathy, Chakradhar Satapathy, Mani Satapathy, S/o-Laxman Satapathy by caste Brahmin of Vill-Nizgaon.

Though the property of above khata recorded jointly, the plot-wise note of possession had been mentioned in the remarks Column. The disputed plots bearing No. 4954, 4955, 4969 was in the possession of SapaniSatapathi, AgadhuSatapathy, AbhiramSatapathi and Chandra Dibya. Similarly sabikkhata No.308 Plot No.4955/ 8256 area Ac.0.22 dec. was under the possession of Sapani, Agadhu, AbhiramSatapathy and ChanduriDibya.

It is found from records available, that sabik Plot No.4934 with an area Ac.0.19(part) Ac.0.9.5dec., Plot No. 4954 area Ac.0.42,(P) Ac.0.21dec, Plot No. 4955 area Ac.0.98dec., (P) Ac.0.49 dec., Plot No. 4969 area Ac.0.17 (P) Ac.0.8.5 dec., undersabikkhata No.539.and Sabik Plot No.4955/8256area Ac.0.22 dec., (P) Ac.0.11 dec. underSabikkhata No.308 had been transferred by vendor Subash Chandra Satapathy, Rama Chandra Satapathy, S/o- SapaniSatapathy vide RSD No.7483 dt.20.10.1978in favour of Laxmidhar Singh, S/o- Bhima Singh.Further, vendor Santilata Sarangi, W/o-Somanath Sarangi had transferred an area of Ac.0.4 ¼ dec., out of Ac.0.17 dec., pertaining to sabik plot No.4969an area of Ac.0.19 dec., pertaining to plot No.4934 under sabikkhata No.539 and Ac.0.2 ¾ out of Ac.0.11 dec., pertaining to Sabik Plot No.4955/8256 under khata No.308 in infavour of Laxmidhar Singh, S/o- Bhima Singh.

The observation of the C.O, Nimapara in Remand R.C. No.253/98 is given below.

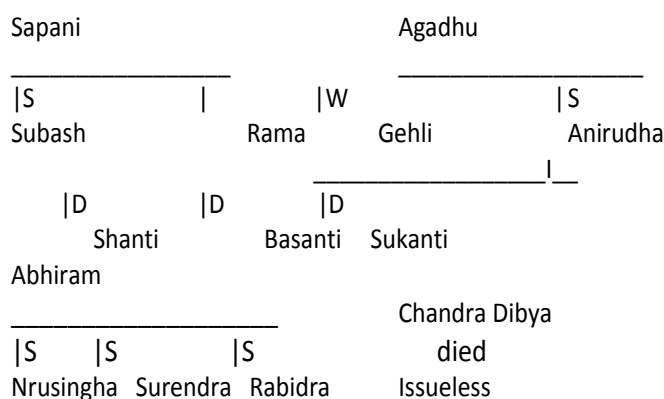
It reveals from LCR that sabik plot No.4954with an area of Ac.0.42, Plot No.4955area Ac.0.98dec., Plot No.4969 area Ac.0.17dec.,Plot No. 4934 area Ac.0.19dec., Plot No.4927 area of Ac.0.28 dec., Plot No.4928 area Ac.0.68dec., Plot No.4929 area Ac.0.10 dec., along with other plots against SabikKhata No.539 was in the name of BisiSatapathy, S/o- KrupasindhuSatapathy, SapaniSatapathy, S/o- Alekh, AgadhuSatapathy, S/o-DamodarSatapathy, AbhiramSatapathy, S/o- MukundaSatapathy, Chandra Dibya, W/o- MadhabSatapathy, BalakrushnaSatapathy, BrundabanSatapathy, Raghunath Satapathy, Jagannath Satapathy, S/o- Hari Satapathy, Gangadhar Satapathy, Chakradhar Satapathy, Mani Satapathy, S/o-

Laxman Satapathy with remarks column note of possession against suit plots in the name of Sapani Satapathy, Agadhu Satapathy, Abhina Satapathy and Chandra Dibya w/o Madhab Satapathy.

Sabik khata No.308 containing sabik plot No.4955/8256 area of Ac.0.22 was in the name of Sapani Satapathy, S/o- Alekh Satapathy, Abhiram Satapathy S/o- Mukunda Satapathy, Agadhu Satapathy S/o- Damodar Satapathy, Chandra Dibya W/o- Madhaba Satapathy, Balakrushna Sarangi S/o- Krushna Ch. Sarangi with possession note in the name of Sapani Satapathy, Agadhu Satapathy and Chandra Dibya.

Sabik Khata No.539 was kabjari possession note khata, where possession note was recorded in against each plot in the name of recorded tenant. So it is clear indication of amicable partition. Both khata was in stitiban status. In both Khatas, Late Sapani, Late Abhiram, Late Agadhu and Late Chandra Dibya are possession note recorded tenant.

The genealogy of Sabik recorded tenants as observed by the C.O is as follows.



Sabik Plot No.4927	Ac.0.28 dec.
4928	Ac.0.68 dec.
4929	Ac.0.10 dec.
4934	Ac.19 dec.,
4969	Ac.0.17 dec.
4955	Ac.0.98 dec.
4954	Ac.0.42 dec.
<u>4955/ 8256</u>	<u>Ac. 0.22 dec.</u>
Total	Ac. 3.04 dec.

Out of these 8 Plots comprising area of Ac. 3.04 dec., recorded tenant 3rd share holder Abhiram Satapathy had transferred Sabik Plot No.4927 area Ac.0.28 dec., 4928 area Ac.0.68 with total area of Ac.0.96 dec., to vendee Mahendra Singh vide RSD No.2686 dt.19.04.1977 which is mutated in the Mahendra Singh the purchased area Ac. 0.96 dec. in the final Khata No. 228. Out of these 8 plots covering total area of Ac.0.3.04 dec. will be divided in 3 equal shares as one Co-sharer has died issueless. So, extent of land per one share comes to Ac.1.1. 1/3rd dec. But it reveals that as their mutual partition, Late Abhiram got i.e. Plot No.4927 area Ac.0.28 dec., Plot No.4928 Ac.0.29 dec., Plot No.4929 Ac.0.10 dec with total area of Ac.1.06 dec. Abhiram transferred two plots with total area of Ac.0.96 dec. already reordered in the name of Vendee Mahendra Singh in final khata No.228. The other sabik Plot bearing No. 4929 is recorded in the name of Gopal Singh and others in final Khata No. 62. 1st share of late Sapani's successor Subash and Rama had transferred sabik plot No.4934 (P) area Ac.0.9.5 Plot No.4954 (p) area Ac.0.21 out of Ac.0.42, 4955 (p) Ac.0.49 dec out of Ac.0.98 dec., 4969 (P) area Ac.0.8.5 dec. out of Ac.0.17 dec., with total area of Ac.0.88 dec. of sabik khata No.539 and sabik plot No.4955/8256(P) area Ac.0.11 dec. out of Ac.0.22 dec., of sabik Khata No.308 with total area of Ac.0.99 dec. to the petitioner/Vendee Laxmidhar Singh, S/o- Bhima Singh vide RSD No.7483 dt.20.10.1978 who is in separate possession as it reveals from Amin enquiry report in 9 (3) case no 11039/894 and 10569/424. Besides this, Laxmidhar Singh had also purchased from the second share holder Late Agadhu's successor namely Shanti vide RSD No.40 dt.02.01.1976. As per above R.S.D, Shantilata Sarangi had transferred Sabik Plot No.4969(P) area Ac.0.4¼ dec. out of Ac.0.17 dec., Sabik plot No.4934 area Ac.0.19 dec. under Sabik Khata No. 539 and sabik plot No.4955/8256 (P) area Ac.0.02 ¾ dec. out of Ac.0.11 under Sabik Khata No. 308 with total area of Ac.0.26¾ dec. Thus, Laxmidhar Singh purchased Ac. 0.99 + Ac. 0.26 ¾ dec. total Ac. 1.26 dec from two share holders. Vendor Shanti has this land vide Regd. Partition deed No.268 dt.14.01.1977 executed between Nrusingha Satapathy, Subash Satapathy, Shantilata Satapathy and Sukanti Satapathy, in which she has got sabik plot No.4969 (P) Ac.0.04 ½ dec., 4934 (P) Ac.0.02 ¾ dec., 4954 (P) Ac.0.05 ¼ dec. and 4955 (P) Ac.0.12 ½ dec. total area Ac.0.24 ¼ dec. But, she has transferred her entire property allotted in partition to the vendee Laxmidhar Singh. Out of this purchased land of Ac.0.24 dec., Vendee Laxmidhar Singh has mutated an area of Ac. 0.19 dec. of land in his name vide final khata No.258.

Thus Laxmidhar Singh is entitled for an area Ac.0.99 dec. and Ac.0.05 dec. totalling to Ac.0.1.04 dec. as per the above mentioned two sale deeds. Nrusingha and Subash had purchased sabik plot No.4955/8256 Ac.0.22 dec., 4954 (P) Ac.0.21 dec., 4955 (P) Ac.0.49 dec., 4969 (P) Ac.0.8 dec. with total area Ac.1.00 from Gehli Bewa W/o- Late Agadhu Satapathy vide Registered Gift Deed No.7373 dt.08.12.1975 and after purchase, they executed the Registered Partition Deed. Out of Late Agadhu's share, Gehli is entitled to ¼th share out of 1/3rd share. So, she has transferred more than her share to Nrusingha and Subash.

The Hal final khata 144 containing chaka No.953, plot No.4261 area Ac.0.30 dec., Chaka No.932, Plot No.4205 area Ac.015 dec., Chaka Plot No. 4203 area Ac.0.22 dec, Plot No.4262 area Ac.0.12 dec., Plot No.4202 area Ac.0.89 dec. total Ac. 1.68 dec.is recorded in the name of Nrusingha Ch.Saapathy share 9 anna, S/o-AbhiramSatapathy by caste Brahmin of village-Nizgaon, Gangadhar Nayak share 3 anna 6 Pahi by caste Khandayat of village-Haladibasanta, Raj Kishore Singh share 3 anna 6 Pahi S/o- Chandan Singh by caste Rajput. From the above record position and sale deeds, it is clear that had no title from his father's property. He has purchased from Gehli more than her share and again got through partition deed an area of Ac.0.79dec. 8½ links. vide Registered Partition Deed No. 268 dtd.14.01.1977. Again, Nrusingha transferred an area of Ac.0.90 dec. to Dinabandhu and Gangadhar vide RSD No.527 dt.02.01.1979 which is more than he got in partition deed. So, Nrusingha has no title over the present suit property. Land purchased by Dinabandhu and Gangadhar vide RSD No.527 dt.02.01.1979 again Dinabandhu transferred 50% of Purchase to Sri Rajkishoresingh.

From perusal of the filed enquiry report of the Amin, the C.O has observed that the sabik recorded tenant are not in possession of any land, though record has been prepared jointly in the name of Nrusinghashare 9 anna, Gangadhar share 3 anna 6 pahi and Rajkishoeshare 3 anna 6 pahi. Now, total area of Hal Khata No.144 is Ac.0.1.68.Out of this, Laxmidhar Singh is in possession of an area of Ac.0.95 dec. towards 9 anna share. Rajkishore & Gangadhar are in possession of rest area towards their 7 anna share. Laxmidhar Singh had purchased total area of Ac.0.99 dec. vide RSD No.7483 dt.20.10.1978 and an area of Ac.0.24 dec. vide RSD No.40 dt.02.01.1976. Both these two Registered Sale Deeds bears valid title. Out of this area Ac. 0.19dec.(sabrik area) is already recorded in his name separately in final khata no. 258. Now, the rest area of Ac. 0.95 dec. possessed by him and in rest area Ac.0.04 dec(out of sabik area) is acquired for Canal Purpose. Now, he admits that he is in possession over Ac. 0.95 dec. which comes to 9 anna share. Gangadhar and Rajkishore admits that their share is 7 anna rest area possessed by Laxmidhar Singh. Nrusingha is not in possession over any land nor has any title over the suit land. The C.O. has observed that the averment of the Counsel of Nrusingha that Subas has valid title bears no merit as per Sabik record, Sale deed and field possession.

Thus, the C.O, Nimapara has discussed the matter in detail and came to the conclusion to allow the case partly in favour of the Laxmidhar Singh. I agree with the above findings of the Lower Court.

Gone through the orders dt. 25.12.2004 passed by the Learned Deputy Director of Consolidation vide Appeal Case No. 76/2002. It has been observed by the Appellate Court that the appeal is not maintainable since all three parties in the objection case before the C.O had not been impleaded as necessary parties in the appeal case. The plea taken by the Petitioner that only the necessary party against whom the relief is sought for, has been impleaded as party to the appeal case is not acceptable. The observation of the learned Deputy Director of Consolidation is correct.

It has also been observed that the appellant for the first time has taken a new plea in appeal memo regarding an un-registered mutual partition Dt. 25.8.1952 made among Sapani, Abhiram and Anirudha. It has not been accepted as evidence as it is an unregistered document. Moreover, the appellant/Petitioner had not taken permission from the Appellate Court to entertain the new plea.

The plea taken by the Petitioner that all Co-sharers have acknowledged and acted upon the Mutual partition cannot be accepted as there is contradictory.

It has been observed that the plea taken by the petitioner in respect of order passed under section 144 and 145 of C.R.P.C. on possession of the suit plot has no value because of the Compromise Deed dt. 14.1.1977 which has settled their dispute. The claim of the Petitioner for perfection of title by way of adverse possession of the suit land for more than twelve years cannot be accepted as the Compromise Deed dt. 14.1.1977 has nullified the effect of possession declared by the Executive Magistrate under section 144 and 145 of C.R.P.C. The above observation of the Appellate Court is also absolutely correct.

The observation of the Learned Deputy, Director, Consolidation regarding right, title and interest of both parties over the suit land is also Correct. I find no illegality or error has been committed by the Learned Deputy, Director, Consolidation in upholding the order of the C.O, Nimpara.

In view of my above observation, I find no merit in the Revision Petition to interfere with the orders passed by the Learned Lower Court. Hence, I am inclined to uphold the orders passed by the Appellate Court.

As such the R.C. Case No.22/2005 is hereby disallowed and the orders of the Lower Court is up held.

Order is pronounced in the open Court today the 30th June, 2018.

Sd/-  
Commissioner,  
Consolidation & Settlement  
Bhubaneswar

**R.P. Case No-557/14**

**Decided on 14.12.2018**

(Order by Sri Muralidhar Mallik, OAS (SS),  
Addl. Commissioner,  
Addl. Revisional Court, Bhubaneswar)

Sri. Satya Swarup Rath .....Petitioner.

-Vrs.-

Sashi Kumar Sahoo and others....Opposite Parties

**ORDER**

The petitioner had filed one petition u/s-15 (b) of O.S.&S. Act., 1958 with prayer to record the case land as detailed below in his favour on the basis of the registered sale deeds and physical possession. The land Schedule as per the Plaint is given below.

**SCHEDULE OF PROPERTY**

Mouza- Chandihata, , PS-Jatni, Dist. Khurda.

<b>SabikKhata No.</b>	<b>Plot No.</b>	
25	34 (Part)	
<b>Hal Khat No.</b>	<b>Plot No.</b>	<b>Area</b>
40	122	Ac. 0.114.78dec.out of Ac.0.303dec.

Basing on the aforesaid petition of the petitioner, one R.P. Case has been registered vide R.P. Case No.557/2014. Notices had been issued to Opposite Parties by registered posts. The Notices to O.P. no 2,3 & 4 returned unserved as they had refused to receive said notices as reported by the postal authorities. Hence, service of notice on O.P. no 2,3 & 4 had been treated as sufficient since they had refused to receive these notices. Further, in spite of service of notice by registered post O.P. No. 1 & 5 had not appeared. Since, none of the O.P had appeared in this case all of them had been set ex-parte.

The Hal R.O.R of village Chandihata has been Published on 17.07.2013. The revision petition has been signed along with Affidavit on 07.07.2014 which is within one year from the date of final publication. But, the said petition has been received by the Presiding Officer on 22.08.2014 which is beyond one year. The petitioner has filed a petition u/s-5 of the Indian Limitation Act, with prayer for condonation of delay and admission of the case. Gone through the limitation petition. The reasons stated there in for delay in filing of the R.P. case appears to be genuine. Hence, the petition for condonation of delay had been accepted. Delay has been condoned and the case is admitted.

The petitioner has submitted certified copy of Sabikkhata No.25, Hal Khata No.40 of Mouza- Chandihata, original RSD No.11081205394 dtd.24.02.12, Xerox copy of registered partition Deed No.1756 dt.02.07.2007, Sabikto Hal co-relation information in support of his claim. The Hal ROR has been finally published on dt.17.07.2013.

From perusal of the Sabik to Hal Co-relation information issued by Addl. Tahasildar, Jatani, It reveals that the Sabik Plot No.34 under SabikKhata No.25 of Mouza- Chandihata corresponds to Hal Plot No.122 under Hal Khata No.40. The Hal khata stands recorded in the name of Manas Kumar Das, Sanatanu Kumar Das, Sipra Das, S/o & D/o- Late Purna Chandra Das, Anjali Das, W/o- Late Purna Chandra Das of Village- Janla.



Sabik Khata No.25 of Village-Chandihata stands recorded in the name of Saratch. Das, S/o- Duryadhan Das which contains Plot No.34 with an area of Ac.1.505 dec.alongwith two other plots.The legal heirs of the Sabikrecorded tenant had partitioned the land among themvide the registered partition deedNo.1756 dtd.02.07.2007. As per the partition deed, the suit Sabikland had been kept in "Ga" Tafasil and the same had fallen in the share of 3rd party i.e. in the share of Anjali alias Smita Das, W/o- Late Purna Chandra Das andManas Kumar Das, Sanatanu Kumar Das, Sipra Das, S/o & D/o- Late Purna Chandra Das. Anjali alias Smita Das W/o- Late Purna Chandra Das, (2) Sipra Das D/o Late Purna Chandra Das, (3) Manas Kumar Das and (4) Sanatanu Kumar Das both 3 & 4 sons of Late Purna Chandra Das and being represented through the mother Guradian Anjali alias Smita Das had sold the Sabik Plot No.34 with an area of Ac. 0.470 ½ dec. northern side out of Ac. 1.295 dec.under SabikKhata No.25 along with another plot of different khatato one Sashi Kumar Sahoo, S/o- Late Surendra Sahoo of Village- Nayapalli vide RSD No.3501 dt.17.02.2010. Again Sashi Kumar Sahoo had sold the Sabik Plot No.34 with an area of Ac. 0.114.78 dec. out of Ac. 0. 470 ½ dec. out of Ac. 1.295 dec.out of total area Ac. 1. 505 dec.under SabikKhata No.25 to the present petitioner Satya Swarup Rath, S/o- Late Ananda Chandra Rath by Caste-Brahmin of Village-Nayapalli vide RSD No. 1081205394 dt.24.02.2012 for a consideration moneyof Rs.92000/- .

Para wise report has been received from the ASO, Cuttack which reveals that saibikKhata No.25, Sabik Plot No.34 having area Ac.1.505 dec. under stitiban status stands recorded in the name of Sarat Chandra Das, S/o- Duryadhan Das. The Hal ROR of Mouza-Chandihatacontaining Plot No.122 has been finally recorded in the name of Manas Kumar Das, SanatanuKumar Das, Sipra Das, S/o & D/o- Late Purna Chandra Das, Anjali Das W/o- Purna Chandra Das of Village-Janla during settlement operation.

The petitioner prays to recorded the case land in his favour on the basis of the registered deeds and physical possession.

On perusal of the case record, it transpires that the petitioner Satya Swarup Rath has purchased the above case land from the opposite party No.1 Sashi Kumar Sahoo, S/o- Late Surendra Sahoo vide RSD No.11081205394 dt.24.02.2012 who had purchased the case land from the O. P. No. 2, 3, 4 & 5. Since the petitioner had failed to produce relevant records before the Settlement Authorities, the case land had been recorded in the names of the O.P No. 2, 3, 4 & 5 vide Hal Khata No.40 being successors in interest of Sabik recorded tenant. As the petitioner has purchased case land fromSashi Kumar Sahoo, S/o- Late Surendra Sahoo vide valid registered sale deed, who had purchased the same from the successors in interest of Sabik recorded tenant, he has validly acquired right title and interest over the case land. Both the two Registered Sale Deed has been executed before final publication of Hal R.O.R.

In view of the above facts and discussion, I am of the opinion that the petition merits consideration. Hence, I am inclined to allow the Revision petition in favour of the petitioner Satya Swarup Rath, S/o- Late Ananda Chandra Rath, At-I.R.C Village, PS-Nayapalli, Plot No. N-4/288, Bhubaneswar, Dist. Khurda. An area of Ac.0.114.78 dec., pertaining to Hal Plot No.122 under Hal Khata No.40 of Mouza-Chandihata be recorded in the name of the petitioner separately with fixation of rent and cess as per prevailing rate.

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

Order is pronounced in open court today the 14th Day of December, 2018.

Sd/-

Addl. Commissioner,  
Addl. Revisional Court, Bhubaneswar

**R.P. Case No-1370/2014**

**Decided on 07.12.2018**

(Sri Muralidhar Mallik, OAS (S.S.),  
Addl. Commissioner,  
Addl. Revisional Court, Bhubaneswar)

Mutikanta Mohanty .....Petitioner

-Vrs.-

State of Odisha & another ..... Opposite Party

Advocate for Petitioner - Mr. P. Biswal.

Advocate for O.P. - Addl. Standing Counsel.

**ORDER**

The case in brief is that the petitioner had filed a petition u/s-15 (b) of the O.S & S. Act., 1958 with a prayer to record the case land exclusively in his favour in a separate Khata under Stitiban Status on the strength of his purchase and possession. The petition had been filed on 18.10.2014.

**SCHEDULE OF PROPERTY**

Mouza- Similipatna, P.S- Chandaka, Dist. Khurda.

<b>SabikKhata No.</b>	<b>Plot No.</b>
93/18	57/625(Part)
<b>Hal Khata No.</b>	<b>Plot No.</b>
348	19(Part)

Basing on the aforesaid petition of the petitioner, one Revision case had been registered vide R.P. No.1370/2014. The petitioner had also filed one petition u/s-5 of the limitation Act for condonation of delay in filing this Revision Petition. The only reason cited for delay in filing the Revision Petition is non-receipt of the Certified copy of the Hal R.O.R. the reason cited in the petition does not appear to be convincing.

The petitioner has submitted the certified of Sabik R.O.R No.93/18 of Mouza-Similipatna, attested photo copy of RSD No.34 dt.02.01.2009,attested photo copy of Form- K, attested photo copy of one rent receipt, attested photo copy of one registered General Power of Attorney bearing no. 41131312239 dt. 25.09.2013, attested photo copy of RSD No.11131313644 dt.09.11.2013 and two attested photo copies of counter foil of receipt for applying certified copy of documents in support of his claim.

From perusal of documents filed and Plaint of the petitioner, it appears that the Hal R.O.R pertaining to Khata No. 348 of Mouza-Similipatana containing Hal plot No. 19 (Part) has been published on 22.07.2013. The initial General Power of Attorney had been executed on dt. 25.09.2013 which is after final publication of Hal R.O.R. Further, the Petitioner has purchased the case land from the G.P.A holder vide R.S.D. No. 11131313644 dt.09.11.2013, which is also after final publication of Hal R.O.R. At the time of execution of above documents, the Hal R.O.R was in force. The details of the land schedule as per latest R.O.R, published on 22.07.2013, was not there in the recital of both the above documents. Since, these documents had been registered after final publication of Hal R.O.R., this court has no jurisdiction to entertain the same.

Moreover, the petitioner has not filed Hal Khata No.348 of Mouza-Similipatana containing Hal plot No. 19 (Part).

In view of above, the case is not admitted and dismissed as not maintainable.

Order is pronounced in open Court today the 7th day of December, 2018.

Sd/-

Addl. Commissioner,  
Addl. Revisional Court, Bhubaneswar

**R.P. Case No- 2089/2015**

**Decided on 06.02.2019**

(Sri Muralidhar Mallik, OAS (SS),  
Commissioner ,Consolidation & Settlement,  
Odisha ,Bhubaneswar)

Khali Sahoo ..... Petitioner.

-Vrs.-

Ullash Behera .... Opp. Parties.

Advocate for Petitioner - Mr.U.Barik  
Addl. Standing Counsel for State. - Mr. B. K. Samantray.

**ORDER**

The Case in brief is that the Petitioner had filed one Petition U/S 15(b) of the O.S & S Act 1958 with prayer to record the suit land i.e. the area of Ac.0.393 dec. of land of Hal Plot No. 82 in the name of the petitioner on the basis of the registered sale deed and long standing possession and to delete the name/father's name of the opposite parties, the Hal recorded tenant from the suit land. The Schedule of Property as per plaint is as follows.

**SCHEDULE OF PROPERTY**

Mouza- Bolagarh. P.S/Tahasil- Bolagarh, Dist- Khurda

<b>Sabik Khata No.</b>	<b>Plot No.</b>	<b>Area</b>
289	75	Ac.0.445 dec.(Purchased area Ac.0.393 dec.)
<b>Hal Khata No.</b>	<b>Plot No.</b>	<b>Area</b>
255	82	Ac.0.393 dec.,

Basing on the aforesaid petition of the petitioner, one R.P. Case u/s 15(b) of the O.S & S Act 1958 had been instituted Vide R.P. Case No. 2089/2015. During pendency of the case, the O.P. No. 1 had expired. Accordingly, the petitioner had filed one petition under order-1 Rule, 10 of the CPC for deletion of the name of deceased O.P No.1 as she had died leaving behind two sons who have already been arrayed as O.P No. 2 and 3 in this case. The said petition had been allowed. Accordingly, he had also filed the consolidated plaint. Though notice had been issued to the Opposite parties by registered post, they had not turned up on repeated calls, for which they had been set ex-parte. The Counsel for petitioner and the Addl. Standing Counsel for the State were present and heard.

The last Settlement ROR of Mouza-Bolagarh has been finally published on 31.03.1999, but the instant revision has been filed on 18.11.2015 i.e beyond the statutory period of one year. The petitioner had filed a petition u/s-5 of Indian limitation Act., for condonation of delay as there was delay in filing this revision. The delay petition has been accepted. Delay has been condoned and the Revision case is admitted.

The petitioner has submitted certified copy of Sabik ROR of Village Bolagarh pertaining to Khata No.289 containing Plot No.75 with an area of Ac.0.445 dec., which stands recorded in the name of tenant had transferred an area of Ac.0.393 dec. out of Ac.0.445 dec. pertaining to Sabik Plot No.75 under Sabik Khata No.289 of Mouza-Bolagarh vide R.S.D bearing No.2237 dt. 20.03.1972 in favour of Chandraketu Behera S/o- Baishnab, At/PO-Bolagarh, Dist.-Puri for a consideration money of Rs.500/-. The certified copy of RSD has been filed by the petitioner which is attached to the case record.

The petitioner has submitted another original registered sale deed No.1972 dtd.24.10.1994 vide which an area of Ac.0.393 dec., out of Ac.0.445 dec. pertaining to Sabik Plot No. 75 under Sabik Khata No. 289 of Mouza-Bolagarh had been transferred by Chandraketu Behera, S/o- Baishnab Behera by caste Kaibarta of Village-Bolagarh, Dist. Khordha in favour of Khali Sahoo, S/o-Late Sanatan Sahoo, by caste Teli of Village-Trutiapada, P.S.- Bolagarh, Dist Khordha for a consideration money of Rs.7500/-. The above R.S.D had been executed on the strength of RSD bearing No.2237 dt.20.03.1972 and after obtaining permission of competent Revenue Officer as required U/S -22 of the O.L.R Act., 1965 for transfer of suit land as transferor belongs to Scheduled Caste and the transferee belongs to non-Scheduled Caste. The original permission issued vide Misc. Case No. 36/1994 has been filed and the same is also attached to this case Record.

The petitioner has filed xerox copy of Hal ROR of Khata No.255 containing Plot No.82 with an area Ac.0.393 dec., which stands recorded in the name of Chandraketu Behera, S/o-Baishnab Behera.

The petitioner has also filed sabik to Hal co-relation information for the suit property which is tallied with sabik to Hal as per the claim of the petitioner.

The contention of the Counsel for the petitioner is that this case be allowed in favour of the Petitioner as right, title and interest has duly been transferred in favour of the present Petitioner on the strength of valid registered sale deeds, continuous and un-disturbed possession by his vendor from the date of his purchase as well as possession of the petitioner thereafter.

Para wise report received from the ASO, Judicial, Puri vide their L.No.2318 dtd.22.11.2016. It reveals that Sabik Plot No.75 under Sabik Khata No.289 of Mouza-Bolagarh stands recorded in the name of Bhagabat Santara Mahapatra, S/o- Mahan Santara. As per the claim of Chandraketu Behera for purchase and possession of the case land pertaining to Hal plot No.82 under Hal Khata No.255, the same had been recorded in the name of Chandraketu Behera, S/o- Baishnab Behera vide Rent Case No.9115 during the final stage of settlement operation.

Gone through the case records, documents, Para wise Report and Sabik to Hal Co-relation information filed by the petitioner. From the above, it is clear that the title has rightly been transferred in favour of the present petitioner. The Petitioner have acquired right, title and interest over the case land by virtue of his purchase through valid R.S.D and long possession.

In view of above findings, I am inclined to allow this revision case in favour of petitioner. Therefore, the RP Case No. 2089/2015 is hereby allowed in favour of petitioner Khali Sahoo, S/o- Late Sanatan Sahoo. An area of Ac.0.393 dec. pertaining to Hal Plot No.82 under Hal Khata No.255 of Mouza/Tahasil/ PS- Bolagarh, Dist. Khordha be recorded in the name of the petitioner by deleting the name of the Husband of the opposite party no. 1 and name of the father of opposite party no. 2 & 3 keeping all other entries intact.

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

Order is pronounced in the open Court today the 6th day of February 2019.

Sd/-  
Commissioner,  
Consolidation & Settlement  
Bhubaneswar

**R.P. Case No-2123/2015**

**Decided on 31.12.2018**

(Order by Sri Muralidhar Mallik, OAS (SS),  
Commissioner ,Consolidation & settlement,  
Odisha, Bhubaneswar)

Ashok Kumar Parida .....Petitioner.

-Vrs.-

Baikuntha Muduli and others .....Opposite Parties

Advocate for Petitioner - Mr. S.K. Samantaray  
Addl. Standing Counsel for State - Mr. B.K. Samantaray

**ORDER**

The Case in brief is that the Petitioner had filed one petition U/s-15 (b) of OS&S Act., 1958 with prayer to allow the revision by directing the Tahasildar, Ranpur for issueof a separate ROR in his for the suit area of Ac.0.190 dec., of the Hal Plot No.78 of Hal khata No.279, on the strength of R.S.D. and long standing possession.

**SCHEDULE OF PROPERTY**

Mouza- Brajaballavpur, Tahasil/ PS-Ranpur, Dist. Nayagarh.

<b>SabikKhata No.</b>	<b>Plot No.</b>	<b>Area</b>
25	258	Ac.0.190dec.
<b>Hal Khat No.</b>	<b>Plot No.</b>	<b>Area</b>
279	78	Ac.0.190dec.

Basing on the aforesaid petition of the petitioner, one case had been registered vide R.P. No.2123/2015 U/s-15 (b) of OS&S Act., 1958. Notice had been issued to the opposite parties by Regd. Post. In spite of service of notice to the Opposite Parties by Regd. Post, none of them had appeared for which they had been set ex-parte.

The petitioner had filed one petition u/s-5 of the Indian limitation Act, for condonation of delay due to delay in filling this case. The petition had been accepted. Delay had been condoned and the case had been admitted on 06.01.2018.

The petitioner has submitted certified copy of sabikKhata No.25, Xerox copy Hal ROR of Khata No.279, Sabik to Hal co-relation information, original RSD No.2383 dtd.28.12.1992 and original RSD No.740 dtd.07.06.1995 in support of his claim.

On verification of the Sabik ROR Khata No.25 containing Plot No.258 with an area of Ac.24.20 dec., it reveals that the same stands recorded in the name of Gopinath Singhdeo, DamodarSinghdeo S/o- Harihar Bidyadhar Singha Samant of Village-Ranpur Gad.

As per RSD No.2383 dtd.28.12.1992, Harihar Palei, Arjun Palei S/o Late Nath Palei had transferred an area of Ac.0.19 dec out of Ac.24.20 dec. out of Ac.19.70 dec. excluding Ac.1.00 from western side pertaining to Sabik plot no. 258 under SabikKhata No. 25 of village Brajaballavpur in favour of BaikunthMuduli and Kailash Chandra Muduli, S/o- RahasMuduli. The above R.S.D had been executed by the above vendors basing on the R.S.D No 2541 dtd.27.10.1961 vide which the case land had been transferred by the recorded tenants in favour of father of the vendors.

Subsequently,for legal necessity, BaikunthMuduli and Kailash Chandra Muduli, S/o- RahasMuduli had transferred the suit land to Sri Ashok Kumar Parida S/o-BaikuntanathParida, present petitioner for a consideration money of Rs.7000/- (Rupees seven thousand) only vide RSD No.740 dtd.07.06.1995.

The settlement operation of Mouza- Brajaballavpurwas going on during 1995. Since, the present petitioner could not take steps for correction of record in his name, the Hal khata No.279 containing Plot No.78 with an area of Ac.0.190 dec. had been recorded in the name of BaikunthaMuduli, Kailash Chandra Muduli, S/o- RahasMuduliwho were the vendors of the present petitioner. The Hal ROR has been finally published on 27.02.1997

The Sabik to Hal correlation information furnished by OIC., Record Room, Ranpur reveals that Sabik Plot No.258 (P) corresponds to Hal plot No. 78 of Mouza-Brajaballavpur.

Para wise report has been received from the ASO, Puri.

Counsel for the Petitioner submits that the prayer of the Petitioner be allowed as he has validly acquired right, title and interest over the case land by virtue of purchase through Registered Sale Deed and long possession.

Gone through the Case Record, documents filed by the Petitioner and the Para wise Report received from the A.S.O., Puri. From the above, it is clear that the title has rightly been transferred in favour of the Petitioner. The Petitioner has acquired right, title and interest over the suit land by virtue of purchase through Registered Sale Deed and Possession of the same.

In view of the above, I am of the opinion that the prayer of the petitioner merits consideration. Hence, I am inclined to allow the Revision case No.2123/2015 in favour of petitioner Sri Ashok Kumar Parida, S/o- Baikuntha Nath Parida of Mouza-Brajaballavpur, PS/Tahasil- Ranpur, Dist.- Nayagarh.

The Hal Plot No. 78 with an area of Ac.0.190 dec. under Hal khata No.279 of Mouza-Brajaballavpur, PS/Tahasil- Ranpur, Dist.-Nayagarh be recorded in the name of the present petitioner by deleting the name of O.Ps. and keeping other entries intact.

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

Order pronounced in the open Court today the 31st day of December 2018.

Sd/-  
Commissioner,  
Consolidation & Settlement  
Bhubaneswar

**READY REFERENCES / RECKONERS  
BY JAGANNATH RATH, ADVOCATE  
(STANDING COUNSEL)**

**(A) UNDER ORDER – 5 – RULE 20 OF CPC, 1908.**

**Revision U/s 15(b) of OSS Act, 1958- Summons to Opp. Parties- Substituted service under Order-5 Rule-20 of CPC, 1908- Applicable where court is satisfied that the defendant is keeping out of the way for the purpose of avoiding service or that for any reason the summons cannot be served in the ordinary way as prescribed under CPC. Provisions of Order-5 Rule-20 of CPC is not applicable where defendant is not avoiding service – petition for substituted service before summons on ordinary service is rejected.**

Order 5 Rule 9 of CPC provides delivery of summons by Court through its officer or the services of summons may be made by delivering or transmitting a copy thereof by Regd. Post with A/D addressed to the defendant or his agent empowered to accept the service.

Order 5 Rule 20 of Civil Procedure Code 1908 says about substituted notice. Provisions of Rule-20 is not applicable where defendant is not avoiding service.

Order 5 Rule 20(1A) of Civil Procedure Code 1908 says –"Where the Court is satisfied that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding service, or that for any other reason the summons cannot be served in the ordinary way, the Court shall order the summons to be served by affixing a copy thereof in some conspicuous place in the Court-house, and also upon some conspicuous part of the house( if any) in which the defendant is known to have last resided or carried on business or personally worked for gain, or in such other manner as the Court thinks fit"



(1-A) Where the Court acting under Sub-rule(1) orders service by an advertisement in a newspaper, the newspaper shall be a daily newspaper circulating in the locality in which the defendant is last known to have actually and voluntarily resided, carried on business or personally worked for gain”

The learned Standing Mr. J. Rath further submits that unless the conditions indicated in Rule 20(1) are satisfied, substituted service cannot be adopted and the Court has to be satisfied on allegation made by the plaintiff that such circumstances exists where substituted service should be ordered. Law is well settled by the Hon'ble Court reported in 1973(2) CWR page 1234.

The Hon'ble High Court in the case reported in Vol. 52 (1981) CLT 493 held that provisions of Rule 20 of Order 5 of CPC 1908 is not applicable where defendant is not avoiding service.

In view of the above settled position of law it is clear that Order 5 Rule 9 will come into operation first and in the event the Notice / summon is avoided or un-served, then Order 5 Rule 20(1A) of CPC,1908 will come into operation.

**(B) NECESSARY PARTIES – ORDER -1, RULE 10 OF CPC, 1908**

**Revision has been filed under Section-15 (b) of OSS Act, 1958- whether Tahasildar and Settlement officer, Major Settlement, Cuttack are necessary parties and while exercising the power under order 1 Rule 10 of CPC, 1908 they can be added as O.Ps. Since, their presence is necessary for an effect and complete adjudication of the case as they are the persons in the ground level with field enquiry report and records and can assist the Revisional Authority for proper adjudication of the lis, they are therefore proper parties. Scope of Order 1 Rule 10 of CPC, 1908 is very wide. Wherever the court feels a persona presence is necessary for effective adjudication of the case, necessary directions can be issued for impleading him as one of the parties to the lis - Direction was given to the petitioner to implead the Tahasildar and Settlement Officer, Major Settlement, Cuttack as parties.**

While deciding the matter on merit detailed report from the Tahasildar with field enquiry report is always called for from the concerned Tahasildar under whose jurisdiction the suit schedule land is situated. Simultaneously, a detailed parawise comment with full fledged report is also always called for from the Settlement Officer, Major Settlement. Before imparting final decision all the above reports are to be examined thoroughly and in most of the cases an Amin knowing about the details of area extraction is also directed to remain present to apprise the Revisional authorities.

This aspect has been taken care of in **AIR 1987 Supreme Court at page 1970**. Even further the learned standing counsel submitted that the Hon'ble Court in various cases while dealing with Order 1 Rule 9 and Order 1 Rule 10(2) of CPC have laid down the following principles on the question of necessary and proper party;

1. **Order 1 Rule – 9 of CPC, 1908** reads as follows-

Mis-joinder and non-joinder – No suit shall be defeated by reason of the mis-joinder or non-joinder of parties, and the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it.

2. **Order 1 Rule 10(2) of CPC, 1908** - reads as follows-

Court may strike out or add parties - The Court may at any stage of the proceeding either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined. Whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

3. The power vested under the Rule is discretionary and wide. Whether a person will be impleaded as a party in the suit or not does not merely depend on the wish of the plaintiff. **(Vol 32 1990 OJD)(Civil) 539 & 1984 II OLR 714.**

4. For ensuring due dispensation of the justice if the Court is satisfied to implead a person one of the O.P and to set right the matter can also give such direction for addition of party **(AIR 1987 SC. 1970).**

5. The Court has power to suo motu implead a party, if it seems to be so necessary for effective adjudication of the rights of the parties, it is not necessary that for impleadment of such party any application is required from the parties. **(Vol. 74 (1992) CLT 963)**

6. Necessary party is one without whom no order can be made effectively and proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision of the question in the proceeding **(1992) 2 SCC 524; Ramesh Hirachand Kudanmal –Vrs- Municipal Corporation of Greater Bombay.**

7. Therefore a person is a necessary party in whose absence no effective order can be passed and if the presence is necessary for an effectual and complete adjudication of the case and to avoid multiplicity of litigation **Vol. 56 (1983) CLT 517.**

8. The object of Order 1 Rule 10, the scope and character of the case by adding new parties or to enable them to litigate their own independent claims but simply to help for avoiding further litigation **(1989 I OLR 582).**

9. Court has power to direct a person to be made as a party to a case if such a person is a necessary party or that the Court feels the necessity of impleading him with a view to adjudicate upon all the question involved in the case **(1989 Vol- I OLR 582)**

10. In support of this contention a decision of Madras High Court reported in **A 1950 Mad 659 (661)** will through light on this aspect..

From the aforesaid citations it is clear that a person is a proper party if his presence before the court is necessary to enable it to effectually and completely adjudicate upon and settle all the questions involved in the cases.

**(C) SECTION – 5 OF LIMITATION ACT, 1963**

**Petition under Section 15 (b) of OSS Act, 1958, prescribed period of Limitation is within one year from the date of final publication U/s 12-B- Petition for correction of ROR. The present ROR has been challenged after more than 60 years of publication- unnecessary delay has been caused– petition U/s 5 of Limitation Act, 1963 filed for condonation of said delay- No cause has been shown in the petition for condonation of delay- Revenue Authorities created under OSS Act do not decide right title and interest and only to exercise power for correction of ROR. Prayer for Condonation of delay is rejected. Prayer of the petitioner to withdraw the limitation petition allowed with liberty to file better petition.**

Various decisions on limitation, are there wherein the Hon'ble Courts have laid down principles for such condonation of delay and the principle to be followed while condoning a delay of more than 60 years. Dozen of decisions of the Hon'ble Supreme Court and decisions of our own High Court and Hon'ble Member, Board of Revenue are there on the issue of condonation of delay. The decisions are produced herein below for reference;

U/s.36 & 37 of Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 the power of revision and power to call for records has been vested with the Commissioner, Consolidation for the purpose of exercising the power to revise the order of Subordinate Authority Under Section 36 such power can be invoked to revise the decision within 90 days. But under Section 37 no such limitation has been prescribed to prefer such an application or to exercise such power. In a reported decision of our own High Court in **2011 OLR (Vol-I)-990** their Lordships were pleased to hold that U/s.37 though no limitation has been prescribed and even though the jurisdiction is very wide but still then it cannot be exercised in a unfettered manner to condone the delay. The Hon'ble High Court in a decision reported in **2009 Supl. OLR (Vol. II ) – 257** was pleased to hold that to exercise the revisional power after passage of 20 years is improper and without jurisdiction.

A decision of a revisional authority dismissing the revision on the ground of Limitation for filing of the same long lapse of 12 years has been confirmed by our own High Court which is reported in **2003 Supl. OLR - 882**.

Furthermore, our own High Court in a decision reported in 1995 Vol. I OLR a- 516 has been pleased to hold that for the ends of justice the revisional authority are not to act as a camouflage to get over the statutory bar and prohibition. This should not be exercised in a routine manner.

U./s.38- (A) of O.E.A Act power of review has been given.

U/s.38- (B) of O.E.A. Act power of revision has been given to the competent authorities.

U/s. 38 -(A) the Limitation has been prescribed as one year for exercising the power of review. There in the statute, there is no such provision for entertaining an application for review by condoning the delay, if it is not filed within one year from the date of order.

But while giving the power to Board of Revenue to exercise the revisional power U/s.38 (b) of O.S. S Act, no limitation has been prescribed. Once in the case of Brundaban Sharma-Vrs. State of Orissa our own High Court allowed the application of Brundaban Sharma condoning delay of 27 years in filing the revision u/s.38- (B) before the Member, Board of Revenue. The revision was dismissed on the ground of delay only. Against the said order of High Court State of Orissa preferred SLP before the Hon'ble Supreme Court.

The Hon'ble Supreme Court set aside the order of the High Court holding that when the statute is silent about such specific term of limitation for preferring appeal / revision then it becomes mandate on the part of the Constitution makers / Law makers / Legislation specifying or stipulating such a condition for barring to prefer an appeal/ revision.

But where the period of limitation has been prescribed then it should be preferred within that period or in otherwise, if it is filed beyond the prescribed period then it should accompany with an application for condonation of delay. The learned authorities / Courts before going to the merit of the case 1<sup>st</sup> considered the question of limitation and in the event the authorities / Courts are satisfied that there is sufficient grounds / reason has been explained in the Revision which in ultimate gives a handle to the concerned authorities / Courts in preferring the revision, then after condonation of delay in preferring the revision it is open for the authorities / Courts to pass an order for condonation of delay and to proceed further with the matter for hearing the same on merit.

In the case of Nityananda Satpathy and others –Vrs- Member, Board of Revenue and other, reported in 1996(II) OLR 262, a Division Bench of our High Court relying on an of quoted decision of the Appex Court reported in A 1983 SC 1239 (Mansaram –Vrs- S.P. Pathak) held that even though no time limit is fixed U/s 38-B of OEA Act but the power should be exercised in a reasonable manner in a reasonable time. It does not matter if any objection is raised or not. Court thus set aside the order of Board of Revenue entertaining a revision after 25 years.

In the case of Labanyabati –Vrs- Member, Board of Revenue, reported in 76 (1993) CLT 937 a Division Bench of our High Court quashed the order on the ground that the Board of Revenue exercised suo motu revisional jurisdiction u/s 59(2) of the OLR Act after lapse of twelve years.

Liberal approach should be adopted with reasonableness, it is not with unreasonableness. Reasonableness, means it would be preferred with a reasonable period and not with a delay of un-reasonable period. Like Section 38(B) of the O.E.A. Act, 1951 Section 15(a) O.E.A. Act 1958, there no prescribed period for limitation.

If it is a case Under Section 15(b) preferred after final publication then should be filed within the mandatory stipulated period of one year from the date of publication if filed or beyond the period of one year, a limitation petition for condonation of delay is mandatory.

Section 5 of the Limitation Act 1963 prescribed the extension of the prescribed period of limitation in certain cases. In the said Section the statute is very clear that there must be sufficient cause to satisfy the Court to condone the delay.

This power for condonation of delay is a discretionary power and to be liberally construed.

Even the Hon'ble Apex Court has gone to extent of saying that even though there is mention of sufficient cause in limitation petition to exercise the discretion still then it is open for the Court to decide whether in the peculiar facts and circumstances such a discretion is to be exercised or not. It has been explained in a reported decision **AIR 1962 Supreme Court, page -361** i.e. Ram Lal- Vrs. R. Coal Field and others.

Board of Revenue in a decision reported in **2006 Sup. OLR 904** was please to dismiss the revision preferred u/s15(b) after a delay of 26 years.

Here is a case which has been preferred after a delay of nearly about 90 years if the 1927 ROR is taken into account or a delay of more than 60 years from the date of preparation of sale deed. In a decision reported in **2013 Vol. IV SCC Page 52 and 56**, the Hon'ble Supreme Court was pleased to set aside the order of High Court wherein the Hon'ble High Court condoned the unreasonable delay without any cogent reasons.

Even in **2013 Vol. X at page 627** the Hon'ble Supreme Court was pleased to hold a person aggrieved by any order must approach to the Court within a reasonable time and the reasonable time must not be a unreasonable delay without any reasonable ground.

But in case of Govt. land the Orissa Prevention of Land Encroachment Rule, 1985 , Rule16 clearly says that if property belongs to Govt. and if the Encroacher could able to establish that he has more than 30 years of continuous possession then Rule 16 comes to its rescue to adopt the procedure for settlement of such land in favour of the encroachers.

From the schedule period of limitation it can be well read that the period of limitation for dispossession of a person claiming adverse possession on private properties, it should be within 12 years.

Therefore after efflux of more than 60 years, if the Courts are condoning the delay then legal legitimate right of the other side who is raising objection not to condone the delay will cause irreparable loss and substantial injury.

Therefore, time and again our ;authorities under Board of Revenue, our own High Court and Hon'ble Apex Court in clear terms had explained that for condonation of delay of a unreasonable period there must sufficient cogent reasons which needs to be reflected in the petition for condonation of delay and not in a eye brush manner.

In AIR **1996 Supreme Court 1623** their Lordships hold that the expression "sufficient cause" should therefore, be considered with pragmatism in justice oriented approach rather than the technical detention of sufficient cause for explaining every day delay..

In AIR **2013 Vol. IV SCC page-52** it is held that in absence of sufficient cause Court should not take liberal approach in the matter of condonation of delay – delay in filing proceedings / petitions need to show sufficient cause.

**2013 Vol. IV SCC page 57** it is held that if no sufficient ground was shown for delay then High Court is justified in dismissing the appeal. The decision of the High Court in dismissing an application on the ground of preferring the same with a delay having no sufficient ground was confirmed by the Supreme Court.

**2011 Vol. VIII SCC page 656** the Hon'ble Supreme Court has gone to the extent on relying on Article 137 of the Limitation Act, to hold that where no period of limitation is prescribed such a power of condonation of delay cannot be exercised by Revisional authority indefinitely and it has to be exercised within a reasonable period of time i.e. three years and also it should depend on facts and circumstance of each case."

**(D) REVIEW OF OWN ORDERS / MISTAKES**

The 'officers' who are conferred powers of review can exercise them only in case of 'mistakes or errors apparent on the face of the record'. In our considered opinion, the Board's review powers under the 1951 Act are also intended for correction of 'mistakes or errors apparent on the face of the record'. On that basis the powers of the Board's delegate, namely the Commissioner.

If a Court is constituted by law and matters go before it under a special law, then that Court can also exercise various other general powers attached to that Court by other statutes. This aspect has been taken care of in a reported decision reported in AIR 1953 SC 357 (National Sewing Thread Co. Ltd. Chidambarman – Vrs- James Chadwick & Bros Ltd.)

The same principle, it is contended, will apply to quasi- Judicial tribunals also. Once the revision goes to the Board under Section 15 of the 1958 Act, the Board can, it is contended, exercise its review powers under the 1951 Act. This submission, in our view, is corrected and is required to be accepted as an additional ground to support the review powers of the Board.

(A) Orissa Board of Revenue Act, (23 of 1951), S.7- Review- Powers of – Are intended for correction of “mistake or errors apparent on the face of the record”- Power of revision under S.7 is not wider than O.47, R.1, CPC.

(B) Orissa Board of Revenue Act (23 of 1951), S.7- Review- Powers of- Orders passed by Board in revisional jurisdiction under Ss.6D, 15, 25 and 32 of 1958 Act- Can be reviewed by Board under S.7- However orders passed by its delegate, the Commissioner in revisional jurisdiction can be reviewed by Commissioner and not by Board.

**Reported in AIR 1998 Supreme Court 3067**

**E. ON REMAND- BY REVISIONAL COURTS WHILE EXERCISING THE POWER CONFERRED UNDER SECTION 15(B) OF OS & S ACT, 1958 AND THE RULES THEREUNDER:-**

Commissioners while deciding a revision Under the Orissa Survey and Settlement Act, 1958 cannot remand the matter to the Tahasildar for final decision. He can call for a report from the Tahasildar for final decision. This view has been taken care of by following the decisions cited herein below:-

1. **1998 (II) OLR 495 (Harihar Mohapatra and others -Vrs- Commissioner of Land records and settlements Orissa and others.) (Division Bench)**
2. **2000 (II) OLR 349 (Smt Bijaya Chaterjee –Vrs- Commissioner of Land records and settlements Orissa and others.)**
3. **Vol. 82, (1996) CLT 321 (Sarat Chandra Sahoo –Vrs- Commissioner of Land records and settlements Orissa and others.) (Division Bench)**

**Cuttack**

**Date: 24.04.2019**

**Jagannath Rath  
(Standing Counsel)**

1. **OGLS Act-1962** –Government Land leased out for agriculture purposes- Lessee transferred the same for valuable consideration – Subsequent transferee has only right what the lessee has – Kism of land shall be remain what was at the time of lease – Recording of land in settlement shall be in the name of subsequent transferee as per lease hold status i.e, non-transferable and non-heritable-not Sthitiban status. Para-10, 11.
2. **OLR Act Section 8 (A)** –Government land leased out for agriculture purposes- conversion of land into Gharabari status – Indicates violation of lease terms – There is no bar on the authorities concerned to initiate resumption proceeding under OGLS Act. Para-11(1) & (3).
3. The right that a lessee did not have, could not have legally been passed on to his successors-in – interest or his transferee. Para-10.
4. **“Dakhal Satwa Sunya”** to “Free Hold” status i.e, with alienable right-nothing stops the government from bringing in a policy by which such transformable right can consciously be given to a lessee against some consideration of payment of premium/ fee at notified rates to permit such changes of classification. Para-8.

5. "Chandana" status land of sabik is to be recorded as "Stithiban" status land in the subsequent Hal records- Para 21.5 of the **Rayati Jami Record Kariba Pranali 'O' Swatwaswatwa niyamabali** published in the year 1990.

6. **Proviso to Section 6(1) of Hindu Succession Act, 1956 (Ammended in 2005)** - Alienation made prior to 24.12.2004 in respect of joint co-parcenary property shall not be affected.

**Cuttack**

**Date: 09.05.2019**

**Suvendu Kumar Routray**

**(Addl. Standing Counsel)**

### **Information on Un-surveyed villages / Patches of Land**

The following 283 nos. of un-surveyed villages / Patches / Tracks of land have been notified for survey and settlement operation vide Notification No. 13494/R dated 15.03.2003 and No. 3974/R dated 30.01.2012 U/S 36(1)(c) of OS&S Act, 1958.

The Hon'ble Member, Board of Revenue vide DO Letter No. 1702/LR&S dated 17.03.2015 has suggested to Govt. in Revenue & DM Department for undertaking survey and settlement operation in traditional method with available staff.

#### **Notification No. 13494/R dated 15.03.2003**

<b>Name of the District</b>	<b>Name of Tahasil</b>	<b>Name of Villages/ Patches</b>	<b>PS No.</b>	<b>Area in Acre</b>
Khordha	Banapur	Dariamal	1	14565.163
	Banapur	Budhapada	2	1163.020
Balasore	Basudevpur	Radhamathpur	72	95.00
	Basudevpur	Nandapatna	203	180.00
	Basudevpur	Balimunda	198/188	253.00
	Basudevpur	Bandhabalisahi	-	15.00
	Basudevpur	Badabahalsahi	-	87.00
	Basudevpur	Bideipur	126	438.00
	Chandabali	Karanpalli	42	539.98
	Chandabali	Kuamara	48	17.22
	Chandabali	Bainch	50	216.17
	Chandabali	Dhankuta	92	167.40
	Chandabali	Karanjmala	94	179.80
	Chandabali	Hrudayaprasad	100	193.40
	Chandabali	Gouraprasad	101	150.38
	Chandabali	Kishoreprasad	102	54.02
	Chandabali	Saratprasad	142	141.63
	Chandabali	Kandaprasad	144	224.30
	Chandabali	Pradyutnagar	158	-
Ganjam	Chandabali	Narendrapur	93	253.96
	Sorada	Haripur JB	57(A)	453.26



Gajapati	Sorada	Bhagabanpur JB	57(B)	57.95
	R-Udaygiri	JB No. 20(B)	-	304.04
	R-Udaygiri	Paikhol JB	21(B)	4244.89
	R-Udaygiri	Lathur JB	45(B)	1937.43
	R-Udaygiri	J No. 54	-	8126.37
	R-Udaygiri	Lambaguda JB	52	2970.00
Kandhamal	R-Udaygiri	Bengiliguda	-	77.24
	Balliguda	Gatipanga	-	125.00
	Balliguda	Uhangapata	-	375.00
	Balliguda	Janabira	-	119.00
	Balliguda	Suratgaon	-	80.00
	Balliguda	Lengarsua	-	220.00
	Balliguda	Badakhallia	-	250.00
	Balliguda	Bengargudari	-	375.00
	Balliguda	Lingarmaha	-	700.00
	Balliguda	Dadipadar	-	73.00
	Balliguda	Lainifinary	-	109.00
	Balliguda	Kudurballi	-	85.00
	Balliguda	Kahampadi	-	153.00
	Balliguda	Titamaha	-	145.00
	Balliguda	Dubulmaha	-	270.00
	Balliguda	Sikarpada	-	80.00
	Balliguda	Dundikeri	-	13.00
	Balliguda	Adangipadar	-	51.00
	Balliguda	Padiabahal	-	142.00
	Balliguda	Janagada	-	300.00
	Balliguda	Patangasuga	-	72.00
	Balliguda	Ganjusuga	-	60.00
	Balliguda	Singikhuti	-	150.00
	Balliguda	Pajimaha	-	81.00
	Balliguda	Dujangi	-	97.00
	Balliguda	Sologuda	-	126.00
	Balliguda	Dendepata	-	15.00
	Balliguda	Kandhabaragan	-	30.00
	Balliguda	Betabadi	-	375.00
	Balliguda	Parampanga	-	150.00
	Balliguda	Kadaumaha	-	165.00
	Balliguda	Danapadar	-	100.00
	Balliguda	Koherapadar	-	40.00
Balliguda	Mundapadar	-	50.00	
Balliguda	Gadi	-	625.00	
Balliguda	Dabulkia	-	500.00	

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	Balliguda	Kadampadar	-	375.00
	Balliguda	Karadudi	-	25.00
	Balliguda	Surat	-	150.00
	Balliguda	Kotali	-	326.00
	Balliguda	Redapaduland	-	12.50
	Balliguda	Lambapatta	-	80.00
	Balliguda	Kuledkamba	-	200
	G Udaygiri	Kambarigochha	-	80.00
	Daringbadi	Kumbheripanga	-	300.00
	Daringbadi	Simelpadar	-	30.00
	Daringbadi	Pajedani	-	12.00
	Daringbadi	Kamadani	-	15.00
	Daringbadi	Markadathua	-	15.00
	Daringbadi	Dangargan	-	35.00
	Daringbadi	Rangagudi	-	41.00
	Daringbadi	Adigudi	-	63.00
Rayagada	Gunupur	Bisam Cuttack PS	23 Patches -	106650.72
	Gunupur	Ambadola PS	- -	
	Gunupur	Muniguda PS	- -	
	Gunupur	Rayagada PS	9 Patches -	34416.64
	Gunupur	K Singhpur PS	- -	
	Gunupur	Gudari PS	21 Patches -	102950.68
Koraput	Koraput	Koraput PS	7 Patches	3712.00
	Koraput	Laxmipur PS	28 Patches	28083.20
	Koraput	Dasamantpur PS	40 Patches	66442.28
	Koraput	Pattangi PS	15 Patches	99705.47
	Koraput	Nandapur PS	11 Patches	17423.36
	Koraput	Padua PS	1 Patches	985.6
	Narayanpatna	Narayanpatna PS	22 Patches	-
Jharsuguda	Hirakud Dam	Ralinguisnd land of Hirakud Dam Water Resource Deptt. Letter No.18968/28.6.94	-	446.00
	Lakhanpur	Barangmal	-	205.00
	Lakhanpur	Batili	-	200.00
	Lakhanpur	Sartam	-	50.00
	Lakhanpur	Batlang	-	116.00
	Lakhanpur	Vegikud	-	75.00
	Lakhanpur	Chhadarama	-	80.00
	Lakhanpur	Binika	-	55.00
	Lakhanpur	Limitikira	-	12.00

	Lakhanpur	Duanmunda	-	83.00
	Lakhanpur	Rampaloga	-	10.00
	Lakhanpur	Lachipalli	-	175.00
	Lakhanpur	Kapapur	-	55.00
	Lakhanpur	Sahabag	-	48.00
	Lakhanpur	Pujaripalli	-	80.00
	Lakhanpur	Gudum	-	162.00
Kalahandi	Dharmagarh	Patialapada	-	19.95
	Dharmagarh	Gobindimunda	-	9.65
	Dharmagarh	Bengtisahaj	-	800.00
	Dharmagarh	Tingiri	-	1022.30
	Dharmagarh	Dhu	-	46.38
	Dharmagarh	Hennegit (New)	-	61.75
	Dharmagarh	Kandugada	-	44.28
	Dharmagarh	Charchikna	-	762.18
Bhadrak	Chandabali	Kanikabali Island	-	Notified vide Govt. Notification No.3947/R dt. 30.01.2012
		3 Wheeler Island	-	-

### Status of the Survey and Settlement Operation of the pending villages as on 18.04.2019.

#### Ganjam District

#### (A) Village – Singhpur :

1420 numbers of appeal cases pending for hearing. After disposal of the appeal cases the village will be finally published.

(B) Aska NAC : The following five villages of Aska NAC notified by Govt. in Revenue & DM Department vide Notification No. 36245/R&DM dated 31.10.2017.

- (i) Khabeswri Patna – PS No. 129
- (ii) Pankalapalli – PS No. 87
- (iii) Narsinghpalli – PS No. 121
- (iv) Sunomba – PS No. 88
- (v) Aska – PS No. 128

Camp for the purpose has been fielded at Aska NAC on 25.01.2018. Due to some technical difficulty and deployment of non-ministerial employees, the survey work actually started on 27.03.2018.

(C) Further, the Govt. in Revenue & DM Department have notified under section 36(1)(c) of OS&S Act 1958 for taking survey and settlement operation in respect of villages. i.e. Gothagaon, Gobindpur and Padampur of Sheragada Tahasil in Ganjam District vide notification no. 7466/RDM dated 1.3.2019. No work has been started yet.

**Jaipur District :**

Five villages namely Chorda, Umapada, Mundamal, Rampas and Darpani are pending for final publication and patta distribution. The Hon'ble Member has instructed not to publish the villages namely Chorda, Umapada and Mundamal until disposal of OSS remanded cases relating to Govt. land.

299 number of appeal cases are pending with Additional Sub-Collector, Jajpur for disposal.

**Village Sampur :**

About 2300 numbers of Appeal cases under section 22 of OS&S Act 1958 are pending for disposal with Additional Sub-Collector, Bhubaneswar.

**Puri District :**

The following 8 villages of Puri district are pending for hearing of appeal cases.

Extract of Appeal case under section 22 & S. Act 1958 pending the court of Additional Sub-Collector, Puri.

<b><u>Sl. No.</u></b>	<b><u>Name of the village</u></b>	<b><u>Appeal Case Pending</u></b>
1.	Matipada	428
2.	Beruhan	28
3.	Konark	28
4.	Chakratirtha	115
5.	Khalkata	18
6.	Talabania Unit 28	195
7.	Gadabangar	228
8.	Madhipur	39
	<b>Total</b>	<b>1079 as on 31.12.2018</b>

All total 123 number of OSS remanded cases from the court of Hon'ble Member have been pending with the Additional Sub-Collector, Puri for disposal as on 25.10.2018.

The village wise breakup are given below.

<u>Sl. No.</u>	<u>Name of the village</u>	<u>OSS Case pending for disposal</u>
1	Matiapada	Nil
2	Beruhan	03
3	Konark	13
4	Chakratirtha	Nil
5	Khalkata	01
6	Talabania Unit -28	Nil
7	Gadabangar	94
8	Madhipur	12
	TOTAL	123

The Hon'ble High Court has also given stay orders in 92 WP(C)/OJC cases on the above villages for which Final Publication and Patta Distribution has not been made. Counter affidavit has been submitted in 29 numbers of the cases. PWC submitted in 70 cases.

### **Survey / Re-Survey using Modern Technology**

The Odisha survey and settlement Act, 1958 recommended for survey and settlement Operation in the state through 04 methods of survey namely, (a) Prismatic compass Traverse (b) Theodolite Traverse (c) Plane Table Traverse (d) Chain Triangulation Method. These processes are resource hungry (Time, Cost and Manpower). These methods were not capable of survey the area having slopes beyond 300. The National Land Records Modernisation programme (NLRMP) also envisages deployment of such Modern equipment and methodology to bring efficacy in survey and creation and updation of Land Records with shorter time span with perfection and accuracy compared to old method of survey and record preparation and prescribes the following three Hi-Tech Survey methods for cadastral map preparation and consequential generation of RoR.

- Method I Pure ground Method using ETS and DGPS
- Method II Hybrid Method using Aerial Photographs supported by Ground Truthing using Differential Global Positioning System(DGPS) and/or Total Station
- Method III Method using High Resolution Satellite Imagery supported by Ground Truthing using Differential GPS and/or Total Station.

Keeping in view of the drawbacks of the Traditional methods of survey and the availability Modern Technologies and methods of survey enumerated in NLRMP guidelines, the Government of Odisha enacted Odisha Special Survey and

Settlement Act, 2012 and Rules 2012 thereof to take up Hi-Tech Survey through Morden Technologies to minimize the time span without compromising the quality, transparency and grievance redressal with involvement of lesser manpower.

Accordingly, the Government have decided to carry out the survey operation in the rural villages of 04 districts namely Ganjam, Keonjhar, Khordha and Cuttack district using High Resolution Satellite Imagery (HRSI) combined with Ground Truthing by DGPS & ETS and in the districts of Sundargarh, Deogarh, Sambalpur, Bolangir and Subarnapur using Aerial Photography followed by Ground Truthing by DGPS & ETS under the National Land Records Modernization Programme.

### **Status of Hi-Tech survey**

#### **a. Bolangir, Deogarh, Sundargarh, Subarnapur and Sambalpur district Status:-**

- \* Aerial photo acquired for the 05 districts by the Private Agency M/s IIC Technologies Ltd., Hyderabad. (28054 Sq. Km.)
- \* Security Clearance for the Aerial photo acquired has been obtained from Ministry of Defence, Survey of India and Ministry of Home Affairs, Government of India
- \* Ground Control Points monumented in 05 districts by the above Agency – 1585 (Primary – 129, Secondary – 1456)
- \* DGPS observation of the Ground Control Points taken and co-ordinate of the Ground Control Points have been determined by the above Agency.
- \* Ortho photo generation has been completed from the Aerial photography by the above Agency under supervision of ORSAC for 05 districts.

The above works have been completed during the previous year and the Ground Truthing and field verification of the survey and settlement process were substantially achieved during the year 2018-19 and the status of different phases of Hi-Tech Survey is indicated in the following table;

Name of the district	No. of the Tahasil	No. of villages Notified for survey	No. of village preliminary map submitted by Agency	9 (4) verification by Tahasil office	LPM and Preliminary RoR distributed to Tenants	Draft RoR and map published	Final RoR and map ready for publication
Sundargarh	18	1463	883	115	38	10	02
Subarnapur	6	956	903	307	195	80	0
Sambalpur	9	1258	648	16	05	0	0
Deogarh	3	710	710	199	112	75	10
Bolangir	14	476	179	0	0	0	0
Total	<b>50</b>	<b>4863</b>	<b>3323</b>	<b>637</b>	<b>350</b>	<b>165</b>	<b>12</b>

**b. Cuttack, Keonjhar, Khordha and Ganjam District Status :-**

- \* Satellite data procured by ORSAC through National Remote Sensing Agency Centre for the 04 districts. (16285 Sq. Km.)
- \* Ground Control Points monumented by ORSAC in 04 districts – 1402 (Primary – 89, Secondary – 1313)
- \* DGPS observation of the Ground Control Points taken and co-ordinate of the Ground Control Points have been determined.
- \* Ortho photo generation has been completed from the Satellite data procured by ORSAC for the above districts.

Sl. No.	Name of the district	No. of the Tahasil	No. of Villages Notified
01	Cuttack	15	1981
02	Keonjhar	13	2077
03	Khordha	10	1523
04	Ganjam	22	3125
	<b>Total</b>	<b>60</b>	<b>8706</b>

N.B.:- The contract with the Agency M/s TRICAD Designs Consultants Pvt. Ltd. engaged for the work in the district of Cuttack, Ganjam, Khordha and Keonjhar was cancelled for breach of contract and error in survey. Step is being taken for selection of new Agency.

### **Licensed Surveyor**

The Government of Odisha enacted Odisha Special Survey and Settlement Act 2012 and Rule 2012 thereof to undertake Survey and Settlement Operation in the State by adopting Modern Technology (Differential Global Positioning System (DGPS), Electronic Total Station (ETS) , High Resolution Satellite Imagery (HRSI) and Aerial Photography and to prepare Digital Map and Record of Right(RoR).

The said Act defines the Licensed Surveyor as a person Technically qualified to measure, draw sketch map or map according to the scale of plots and holding License from the Director to carry out work relating to survey and settlement and other such work as may be assigned to him from time to time.

Section 15, 16, 17 and 18 of the said Act read with Rule 18, 19, 20 describe the the method of granting of License and enrolment, duties of the Licensed Surveyor, distribution of the work among them, fees and remuneration and cancellation of license in detail.

The basic qualification of an applicant for grant of license has been decided as Diploma in Engineering in any branch or Bachelor Degree in any stream of Science. The applicant should have a certificate of completion of Licensed Surveyor course from any recognised institutes / Universities.

As per the direction of the Government in Revenue and DM Department, Odisha, the Director, Land Records and Surveys, Odisha, Cuttack has already

started a short term course on “Licensed Surveyor” on self finance basis to create a pool of human resources with adequate expertise and knowledge so as to grant them License of “Licensed Surveyor” on pilot basis. A syllabus has been prepared by State Council of Technical Education and Vocational Training (SCTE&VT), Odisha the course is being imparted at Revenue Officers’ Training Institute (ROTI), Gothapatna, Bhubaneswar and 39 applicants have enrolled them self for the course. After successful completion of the course and evaluation made by SCTE&VT, the successful candidate will be given the Certificate of completion of the course “Licensed Surveyor” by SCTE&VT, Odisha and licensed will be provided by the Director, Land Records and Surveys, Odisha to the candidates. It is also decided that the short term course of the Licensed Surveyor will be introduced in the curriculum of the Diploma in Engineering courses in the State by the Skill Development and Technical Education Department in the state to create a pool of technically qualified and skilled human resources. The course may be introduced for skill development by any recognised Private and Government Universities.

**Important letters from Revenue & Disaster Management Department****By FAX / e-mail**

Government of Odisha

Revenue &amp; Disaster Management Department

No. SM-48/2017- 26534 / R&amp;DM Dated 11.08.2017

From

Sri Sashadhar Nayak, OAS (SAG),  
Additional Secretary to Government

To

The Secretary, Board of Revenue, Odisha, Cuttack

**Sub : Payment of revenue dues by tenants through other Tahasils and amendment of MTA Rules**

Sir,

In inviting reference to your letter No. 01 dated 26.07.2017 on the above mentioned subject, I am directed to say that Government in Revenue & Disaster Management Department have been pleased to approve the procedure for payment of revenue dues by tenants through other Tahasils and amendment of Manual of Tahasil Accounts (MTA) Rules by inserting new Rules. For the above purpose, the government have also approved the Rules from 155 to 159 under Chapter –V (Accounts of Collection of Other Tahasils) along with a format of new Register No. 16 (Under Rule-157). The same is enclosed here with for your reference and issuing of necessary correction slips at your end. Besides, all the Tahasildars may be instructed to follow the same without fail.

Yours faithfully

Sd/- 10.08.2017

Additional Secretary to Government



**A New Chapter-V shall be inserted to the Manual of Tahasil Accounts below Rule- 154 as follows.**

### **Chapter-V**

#### **Accounts of Collection of Other Tahasils**

**155-** A Tenant can deposit his dues at any Tahasil as per his convenience. Tahasildars are authorised to receive the payment from tenants or their representatives relating to other Tahasilds also. He shall authorise his Nazir to receive the dues relating to other Tahasils on his behalf. Tahasildar shall issue RR books to Nazir for collection of revenue dues exclusively for other Tahasils. Nazir Shall not use this Rr book for any other purpose except the collection of dues or outside Tahasilsa.

**156 -** A tenant desiring to make payment in any Tahasil other than the Tahasil in which his holdings are located, shall produce the original or the copy of the Rent Receipt of his previous payment made before the Nazir of the Tahasil where he intends to pay his dues. Accordingly the Nazir shall collect the dues and issue Rent receipts from the Rent Receipt Books supplied to his by the Tahasildar for the purpose. He shall serially use the Rent Receipts of a single book for different Tahasils till it is exhausted. He is strictly prohibited to use different RR Books for different Tahasils. After collection of dues he shall issue the Rent Receipt to the tenant / payee and keep the counterfoil with him. Detail procedures mentioned in Ruse-70, 71, 72 and 73 shall be scrupulously followed by the Nazir for the purpose. In the Rent Receipt, name of the District and Tahasil shall be clearly mentioned under the heading of District. The payee shall be asked to furnish his mobile number which shall be mentioned by the Nazir at the bottom of the RR.

**157-** Nazir shall maintain a Subsidiary Cash Book for collections from other Tahasils in the format prescribed as Register No. 16 (Register of Collections from other Tahasils). He will post the daily total of collection from other Tahasil dues in this Subsidiary Cash Book in the Main Cash Book. He will make a weekly deposit of collections from other Tahasils in Challan from to the Treasury in the proper Head of Account and intimate the details of deposit to the concerned Tahasildars in the following manner.

**158-** Nazir will prepare Tahasil wise abstract from Register No. 16 on weekly basis exactly in the same format as prescribed in the Register No. 16 and get it attested by the Tahasildar. This abstract along with corresponding individual Rent Receipts with a forwarding letter of the Tahasildar shall be scanned and e-mailed to the Tahasildar concerned.

**159-** After receipt of intimation of collection through other Tahasils, a guard file shall be maintained by the Touzi section of the Tahasil where the payee's land is located. Within three days of receipt of intimation, the Tahasildar shall prepare the abstract RI Circle wise and send the authenticated RI Circle wise abstract along

with the scanned copies of Rent Receipts to concerned RI. The Touzi Section shall retain a copy of this abstract to maintain Register No. 12A as per Rule-130. Within three days of receipt of intimation from Tahasil, the RI shall post the collection in concerned Tenants' Ledgers. The abstracts and copies of Rent Receipts shall be pasted in a separate Guard File earmarked as collection through outside Tahasils. The RI shall SMS the tenant about accounting of his dues.

Date and receipt No.	Name of the tenant and mobile No.	Name of the District	Name of the Tahasil	Name of the RI circle	Name of the village	Khata No.	Rent	Water Tax	Cess	Nistar cess	Interest	Other item	Total
			<b>Total</b>										

**By FAX / e-mail**

**GOVERNMENT OF ODISHA  
REVENUE AND DISASTER MANAGEMENT DEPARTMENT**

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No. RDM-CHS-CLRFIC-0004-2018 16449 / R&DM dated 07.05.2018

From

Dr. Chandra Shekhar Kumar, IAS  
Principal Secretary to Government

To

The Secretary, Board of Revenue  
All Collectors

**Sub : Rejection of Mutation cases on various grounds : clarifications thereof.**

Sir,

Maintenance of Record of Rights and keeping it up-to-date is the primary responsibility of Tahasildars. Records are updated through mutation proceedings. For timely delivery of Public Services, timeline for uncontested mutation cases is ninety days. It has been brought to notice of this Department that Tahasildars are rejecting mutation cases on various flimsy grounds which is detrimental to the updation of land records. The following instructions are issued for the guidance of Tahasildars.

1. In some instances, Tahasildars are rejecting mutation cases presuming that the sale deed relating to a particular transaction is fraudulently made and void thereby. In this connection, it is reiterated that once a sale deed is registered under the provisions of the Registration Act, 1908, the sale deed remains valid in the eye of law, unless such instrument of sale is declared void or cancelled by the competent Civil Court under section 31 of the Specific Relief Act, 1963. Consequently, the allegation of fraud does not render the transaction or the deed void *ab initio* before the Revenue Officer who is considering mutation. A person who is aggrieved by the sale deed can only approach the competent Civil Court for relief and unless the sale deed is declared void by the Civil Court, mutation cannot be rejected.

2. Rejection of mutation case instituted on the basis of Form-3 in e-Mutation process, due to absence of the vendee / purchaser on the date for hearing of the case or non production of registered sale deed by the purchaser is strictly prohibited. Since e-Mutation has been rolled out in all Tahasils, the registered sale deeds can be viewed on-line in LRMS software. Hence, the necessity of the presence of vendee / purchaser or production of documents shall be dispensed with at the time of disposal. Only in case of any mutation, where the interim sale deeds are required to assess the flow of title in favour of the purchaser, the production of document shall be insisted upon. The reasonable opportunity of being heard is to be provided to the applicant / purchaser.

3. After passing of the Registration (Odisha Amendment) Act, 2013, the Registering Officer has been mandated U/s-22-A(1) of the Act to refuse to register-

(a) any instrument relating to the transfer of immovable properties by way of sale, gift, mortgage, exchange or lease-

(i) belonging to the State Government or the Local Authority;

(ii) belonging to any religious institution to which the Odisha Hindu Religious Endowment Act, 1951 is applicable;

(iii) belonging to or recorded in the name of Lord Jagannath, Puri;

(iv) donated for Bhoodan Yagna and vested in the Odisha Bhoodan Yagna Samiti established under the Wakf Act, 1995;

(v) belonging to Wakfs which are under the supervision of the Odisha Wakf Board established under the Wakf Act, 1995;

unless a sanction in this regard is issued by the competent authority as provided under the relevant Act or in absence of any such authority, an authority so authorized by the State Government for this purpose, is produced before the registering officer.

4. Besides, the Registering Officer shall refuse to register any instrument relating to transfer of immovable property, the alienation or transfer of which is prohibited under any State or the Central Act.

5. In view of the above, while adjudicating mutation case, Tahasildar shall not reject the mutation case unless the registering Officer has allowed registration in violation of the provisions of the Registration Act as mentioned in paragraph-4 & 5.

6. In case of a Will which is not probated, the mutation shall be rejected. Even in case of a Will which is probated, mutation shall not be allowed in Scheduled Area, if the immovable property contained in the Will belongs to person belonging to Scheduled Tribe.

7. The mutation for flats under Real Estate may be rejected in absence of definite policy on the matter.

8. Any application received through SWO for mutation of land where cause of action relates to pre-final publication, the case shall be dropped and applicant may be advised to file revision cases under section 15(b) of OS&S Act, 1958 before the Board of Revenue.

9. In case, where application for mutation is filed on the basis of Court Order directing mutation of Government land in the name of private person, the concerned Tahasildar shall file appeal in consultation with Government Pleader.

10. Mutation cases may be dropped where the stay has been obtained from higher courts.

Above instruction may please be brought to the notice of all Tahasildars. Any deviation from the instruction shall be viewed seriously.

Yours faithfully

Sd/-

07.05.2018

Principal Secretary to Government

Memo No. 16450 / R&DM dated 07.05.2018

Copy forwarded to all Sub-Collectors / Tahasildars for information and necessary action.

Sd/-

07.05.2018

Additional Secretary to Government

Memo No. 16451 / R&DM dated 07.05.2018

Copy IMU Cell for information and necessary action.

Sd/-

07.05.2018

Additional Secretary to Government