IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.24198 of 2017 &
W.P.(C) No. 23781 of 2017

(Applications under Articles 226 and 227 of the Constitution of India)

A.F.R. **W.P.(C) No. 24198 of 2017**
Pratima Jena & Others ... Petitioner

-versus-
State of Odisha & others ... Opposite Parties

W.P.(C) No. 23781 of 2017
Annapurna Jena and Others ... Petitioners

-versus-
State of Odisha & others ... Opposite Parties

Advocates appeared in the cases through hybrid mode:

For Petitioner(s) : Mr. R.P. Mohapatra, Advocate
[in W.P.(c) No.24198 of 2017]

M/s. Bhakta Hari Mohanty, D.P. Mohanty, R.K. Nayak, T.K. Mohanty, P.K. Swain & M. Pal, Advocate
[in W.P.(C) No.23781 of 2017]

For Opposite Parties : Mr. S.N. Patnaik,
Addl. Govt. Advocate

CORAM:
JUSTICE SASHIKANTA MISHRA

JUDGMENT
12.02.2026

SASHIKANTA MISHRA, J. Both these writ applications are directed against the same order and being heard together are disposed of by this common judgment.

2. The property in dispute relates to Sabik settlement Khata No.56, Plot No.80, measuring Ac.0.120 decimals in the erstwhile Mouza- Sana Jobra in the district of Cuttack. The property stands recorded in the Hal ROR published on 04.01.1974 under Hal Khata No.18 in favour of the petitioners.

3. The facts of the case are that the Collector, Cuttack, filed an application under Section 15(b) of the OSS Act, 1958 in the Court of Joint Commissioner, Settlement and Consolidation, Board of Revenue, Cuttack registered as RP No.483 of 2016 for correction of the Hal ROR in favour of the State by deleting the names of the recorded tenants (present petitioners). It is the case of the Collector that during settlement operation at Khanapuri stage, one Ganesh Chandra Jena produced a registered sale deed bearing No. 3177 dated 13.07.1984 executed in favour of one Narayan Jena. Said Narayan Jena also produced a *chirasthai* patta in

respect of Sabik Plot No.80 under Sabik Khata No.56. The settlement authority, without application of judicial mind and examining the authenticity of the documents, passed order to settle the land corresponding to Hal Plot No.132 in the name of Narayan Jena with *sthitiban* status. Hal ROR was finally published on 04.01.1974. It is stated that Sabik Khata No. 56, Sabik Plot No.80, originally stood recorded in the name of Government of Odisha in *Anabadi* Khata. Therefore, the subsequent recording of the land in favour of Narayan Jena and others conveyed no title in their favour. It was stated that during demarcation of the proposed road from Mahanadi Ring Road to the Cancer Institute, the above fact came to the notice of the State.

3.1. An application for condonation of delay was filed. The petitioners submitted their show-cause reply citing the flow of title in their favour and resisting the application on the ground of delay. Learned Joint Commissioner, by order dated 20.09.2017, allowed the revision by holding that the disputed property stood recorded in the name of the Government and that the opposite parties have taken help of fraudulent methods to record the land in respect of its

corresponding Hal plots. Since the land originally stood recorded in the name of the Government, subsequent recording in the names of the petitioners confers no title on them. The revision was allowed by directing the correction of the ROR as per Sabik and to record the plots in the name of Government by deleting the names of the present petitioner from the Hal ROR and remarks column of the plots. The petitioners have filed this writ application impugning the said order.

Challenge of the petitioners to the impugned order is firstly on the ground of limitation. It is stated that the Hal ROR having been published in the year 1987, the application under Section 15(1)(b) was filed in the year 2016 i.e, after a delay of more than 29 years. The inordinate delay was not explained at all. That apart, though the revision was to be heard on the question of limitation at the outset, learned Joint Commissioner did not hear the parties on such question and went on to pass the impugned order holding that the case was admitted and the delay had been condoned. In the absence of a specific order condoning the delay, the impugned order becomes nullity in the eye of law. It is the

further case of the petitioners that the revision petition was filed alleging that the settlement authority without application of judicial mind and examining the authenticity of documents, directed settlement of land. Not a word alleging fraud was whispered. However, the revisional authority went a step forward to hold that the petitioners had adopted fraudulent means to get the land recorded in their favour, which is not the case of the revision petitioner. That apart, the revisional authority misdirected himself by unnecessarily delving upon the meaning of fraud without taking pain to ascertain as to how the same was alleged and proved in the case. The order is therefore, rendered unsustainable.

On merits, the petitioners contend that the land originally belonged to the ex-intermediary, Ray Bahadur Jogesh Chandra Chandra. After his death, his successor, namely Ray Bahadur Ganesh Chandra Chandra executed a registered deed of permanent lease bearing No.3177 dated 13.07.1984 in respect of the disputed land in favour of one Narayan Jena and delivered possession. Said Narayan Jena paid rent to the ex-intermediary and after vesting of the estate, he continued as a tenant under the State on payment

of rent to the concerned Tahasildar. During the Hal settlement operation, Narayan Jena put forth his claim in respect of the leasehold property. The matter was enquired into by the settlement authorities, who directed recording of his name in the Hal settlement. Such enquiry was based on verification of *Jamabandi*, prepared on the basis of *Ekpadia*, submitted by the ex-intermediary. The property was thus recorded in *sthitiban* status. Narayan Jena also applied to the appropriate authority under Urban Land (Ceiling and Regulation) Act, 1976 for sale of a portion of the property, which was granted by the Collector, Cuttack vide letter dated 09.03.1981. Narayan Jena died leaving behind two sons, Ganesh and Umesh. The petitioners are the legal heirs of Ganesh and Umesh. There have been subsequent sale transactions of different portions of the property. After death of Narayan Jena, all his successors jointly filed application under section 19(1) (c), of the OLR Act for amicable partition of the properties under Hal Khata No.18. The property was divided into two equal shares allotting Ac.0.047 decimals and 5 links each in favour of the successors of late Ganesh and Umesh. Separate record of rights was published accordingly.

The petitioners contend that the land was never recorded in the name of the State.

4. Heard Mr. R.P. Mohapatra, learned counsel appearing for the petitioners in W.P.(C) No. 24198 of 2017, Mr. D.P.Mohanty, learned counsel appearing for the petitioners in W.P.(C) No. 23781 of 2017 and Mr. S.N. Pattnaik, learned counsel appearing for the State.

5. Both Mr. R.P. Mohapatra and Mr. D.P. Mohanty would argue that the revisional authority adopted a novel procedure in dealing with the application filed by the Collector seeking condonation of delay. Admittedly, the revision was filed after more than 29 years and 3 months. No application for condonation of delay was filed. Same was filed only after grant of several opportunities by the revisional authority. Though filed, the petition was never heard nor the case was taken up for hearing on the question of admission. The Revisional Authority however, without condoning the delay by passing appropriate order, reserved the case for orders on 07.09.2017. The impugned order was passed on 20.09.2017 indicating that the case was admitted and delay was condoned. This, according to both counsel is a gross

procedural error, which goes to the root of the matter and the impugned order is liable to be set aside on such score alone.

5.1 Both Mr. Mahapatra and Mr. Mohanty further argue that law is well settled that fraud has to be specifically pleaded and proved. In the instant case, the Collector, in his revision application never raised the question of fraud. The revisional authority made out a third case and held that fraud had been practiced by the petitioners. It was not specified how fraud was practiced. The revisional authority without making any fact-based analysis, unnecessarily dwelt upon the meaning of fraud and its effect. The impugned judgment cannot therefore be sustained for such reason also.

5.2 On facts, both counsel argue that the finding of the revisional authority that the disputed land should be recorded in the name of the State is an error apparent on the face of record as the *Yaddast* clearly shows that the same was under the intermediary administration of Ray Bahadur Jogesh Chandra Chandra. Therefore, the flow of title proved by original documents not having been considered at all by the revisional authority and the disputed property being directed to be recorded in the name of the State without any

valid or justified reason, the impugned order warrants interference.

6. Per contra, Mr. S.N. Pattnaik, learned Addl. Government Advocate would argue that though the ROR was published in the year 1987 yet, the same was not within the knowledge of the revision petitioner. It was only during the demarcation of the proposed road from Mahanadi Ring Road to the Cancer Institute that the same came to its knowledge. Mr. Patnaik submits that it is well settled that delay has to be reckoned from the date of knowledge. This was clearly mentioned in the application seeking condonation of delay. The revisional authority after hearing both sides, was convinced regarding the explanation cited and therefore, condoned the delay. On the question of fraud, Mr. Patnaik would argue that during the settlement operation, the settlement authority without application of judicial mind and examining the authenticity of the documents produced by the predecessor-in-interest of the petitioners directed the recording of the land in their favour. Prior to the settlement operation the land was recorded with *anabadi* status and therefore, purely government land and therefore, the so-called

ex-intermediary cannot be held to have been in possession. The documents produced cannot confer any title as these aspects were ignored by the settlement authorities, who had no jurisdiction under the OEA Act. It is evident that the direction issued to record the name of Narayan Jena was done on account of misrepresentation of facts/material irregularities of procedure by resorting to fraudulent means. The petitioners could not produce a single rent receipt to prove that they were paying rent till the Hal settlement. As per the relevant statutory provisions, the order of the settlement authorities is bad and therefore, no title was acquired by Narayan Jena thereby. Consequently, there is no flow of title in favour of the petitioners, which the revisional authority rightly held.

7. It is common ground that the revision application under section 15(1)(b) of the OSS Act was filed beyond the period of limitation of 30 days. In fact, the delay was 29 years, 3 months and 19 days. Perusal of the certified copies of the order sheets enclosed to W.P.(C) No. 23781 of 2017 (Annexure-15) reveals that the revision was filed on 05.10.2016 without any application seeking condonation of

delay. The revisional authority directed the petitioners to file such petition on 05.10.2016. The matter was adjourned thereafter to 28.10.2016, 17.11.2016, 22.12.2016, 09.02.2017 and ultimately, the petition was filed on 02.03.2017. Notice was issued on that date and the matter suffered some more adjournments and ultimately was purportedly heard on 07.09.2017 and was reserved for order. Whether such hearing was on the question of limitation or on merits is not specified in the order dated 07.09.2017. Be that as it may, the impugned order mentions that "*the case was admitted and the delay has been condoned as per various decisions of the Hon'ble Apex Court submitted by the learned Standing Counsel for the petitioner for the State.*" There is nothing on record or in the order sheet to show that the parties were specifically heard on the question of limitation. That apart, when the delay was condoned and the case was admitted is also not forthcoming. The procedure so adopted is unknown to law and cannot be countenanced. The impugned order becomes vulnerable on such score alone.

8. Such being the position, ordinarily the matter would have been remitted for hearing afresh on the question

of limitation, but then this Court finds from the limitation petition, copy of which has been enclosed in W.P.(C) No. 23781 of 2017 that there is no explanation worth the name regarding the gross delay of more than 29 years in filing the revision petition. It is stated vaguely that recording of the names of the petitioners in the ROR published in the year 1987 was not within the knowledge of the State. This is patently unbelievable as the petitioner himself is the Collector and hence, not acceptable. This Court therefore, finds that the revision application was grossly delayed and such delay has not been satisfactorily explained to have been caused due to sufficient reasons. This Court therefore, holds that the revision could not have been admitted for hearing.

9. Even otherwise, this Court finds considerable force in the submission of learned counsel for the petitioners that the question of fraud was not raised by the revision petitioner in his application at all. What was stated was that the settlement authority had wrongly recorded the land without application of judicial mind and examining the authenticity of the documents produced by Narayan Jena. Obviously, this is not akin to an allegation of fraud. It is well stated that fraud

has to be specifically pleaded and proved. The revisional authority made up a third case altogether by straight-away holding that the petitioners have taken help of fraudulent methods to record the land in their favour. It has not been specified what such fraudulent method was. Evidently, the revisional authority presumed that fraud had been committed. As already stated, there can be no presumption of fraud. This Court further finds that instead of making a fact-based analysis as to how fraud was committed, if at all, the revisional authority has unnecessarily digressed into the meaning of fraud, effect of fraud etc. referring to numerous judgments of the Supreme Court with quotations therefrom. After such reference, the revisional authority abruptly arrived at the conclusion that the allegation of fraud has been clearly established after hearing the parties and perusal of record and report. It is stated at the cost of repetition that there is no allegation of fraud as such, much less any proof thereof. This Court therefore, agrees with the contention raised by the petitioners that the revisional authority entirely misdirected itself in unnecessarily going into the law relating to fraud

instead of making a factual inquiry as to whether fraud was committed or not.

10. Though the impugned order is liable to be set aside on the above grounds, still in order to satisfy itself, this Court has also considered the merits of the rival claims

11. The petitioners have relied upon the *Yaddast*, registered deed of lease dated 13.07.1984, rent receipts from 1965-1966 till 1987 and permission under Urban Land (Ceiling and Regulation Act etc. which clearly show that the successor of ex-intermediary had leased out the land permanently in favour of Narayan Jena, the predecessor-in-interest of the petitioners. The settlement authority took note of all these documents as evident from copy of the *Yaddast*. The Hal ROR was finally published in the year 1987 and carries a presumption of correctness as per Section 35 of the OSS Act. Nothing has been produced to rebut such presumption. There is no reason to ascribe any malafides to the concerned settlement authorities. Under such circumstances, the claim of the Collector is found to be without basis. The other arguments relating to the status of

the property being *anabadi* holds no water in view of the Hal ROR being published with *sthitiban* status.

12. Thus, from a conspectus of the analysis of facts, law and the contentions raised and the discussion made, this Court holds that the impugned judgment is unsustainable in the eye of law.

13. Resultantly, the writ petitions are allowed. The impugned judgment is set aside.

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Sashikanta Mishra,
Judge

Orissa High Court, Cuttack
The 12th February, 2025/ A.K. Rana, P.A.