





Department as also for a direction to the Tahasildar, Sadar, Cuttack to accept its demarcation application through offline as per Rule-38 of the Orissa Survey and Settlement Rules, 1962 (in short, 'OSS Rules').

2. Facts of the case, briefly stated, are that the petitioner- deity is the recorded tenant of land recorded under Khata No. 29/2 comprising 11 nos. of plots, in all measuring Ac.2.600 dec. The 11 plots are Plot Nos. 98, 99, 100, 101, 102, 104, 105, 106, 107, 108 & 112. It is claimed that a portion of the aforesaid land has been encroached by outsiders and Cuttack Municipal Corporation (CMC) has constructed a road over a portion thereof without any acquisition. The Government, CMC as well as other organizations hold various meetings over a portion of the property without paying anything to the deity. *Baliyatra* is also being organized over a portion of the property. After much persuasion by the trustee, the Government has paid some amount for the last two years for user of the property. Under such circumstances and in order to recover and protect its property, the trustee wanted the



land to be demarcated. His application for demarcation was not accepted on the ground that only online applications would be considered. When the petitioner attempted to apply through the online mode, the system did not accept the single application on the ground that separate applications are necessary for each individual plot along with payment of fees for each. Since the process is expensive, the trustee requested the Tahasildar to accept offline application as the deity is a perpetual minor and without successor. According to the petitioner, fee of Rs.4/- is payable for each plot to be demarcated as per Rule 38 of the OSS Rules, which has not yet been amended. In the meantime, on 15.10.2025, the State Government issued a Standard Operating Procedure (SOP) for demarcation of boundary of plots at the instance of the recorded tenants. In the said SOP, the Revenue Authorities have been directed to accept application for demarcation through online mode by charging Rs.800/- towards user charges for each plot. The State Government issued another notification earlier i.e. on 14.02.2020 for deployment of



Licensed Surveyors in the work of demarcation mentioning that Rs.800/- will be collected per day per application for demarcation of private land. According to the petitioner, both the notifications as above are inconsistent with the OSS Rules. On such facts, the petitioner-deity has approached this Court with the following prayer:

“It is therefore prayed that, this Hon'ble Court may graciously be pleased to admit this writ petition, issue notice to the Opposite Parties and after hearing the counsels for the parties be pleased to quash the Notifications dated 15.10.2025 and 14.02.2020 under Annexure-4 & 5 respectively and further pleased to direct the Tahasildar, Cuttack Sadar/ opp.party No.3 to accept the demarcation application through offline under Annexure-3 as per Rule-38 of OSS Rules, 1962 to secure ends of justice;

And or pass any other order/orders, direction/ directions as deem fit and proper in the facts and circumstances of the case.

And for which kind act the petitioner as in duty bound shall ever pray.”

3. Counter affidavit has been filed by the State-opposite party No.1. It is stated that the petitioner's claim is founded upon complete misconception of the statutory and administrative framework governing measurement and demarcation of land and that the petitioner has erroneously equated the statutory fee prescribed under Rule-38 of OSS Rules with the process fee (user charges)



payable for demarcation of private lands towards remuneration of Licenced Surveyor engaged for conducting demarcation, both of which are distinct in their object, scope, purpose and legal character. It is further stated that Rule-38 prescribes a nominal statutory fee of Rs.4/- per plot only towards measurement or field enquiry arising out of mutation cases required for maintenance of RORs and maps under Chapter-IV of the OSS Rules. Said statutory fee is merely incidental to mutation cases as and when applied by the land owners and has no bearing on the demarcation of private lands applied for by land owners. It is further stated that demarcation of private lands is governed by separate executive guidelines issued by Government from time to time. The guidelines vide letter dated 13.12.2016 provided that every application for demarcation shall be accompanied by the prescribed process fee/user charges. The SOP vide letter dated 15.10.2025 introduced online application and slot-booking system with prescribed process fee and user charges of Rs.800/- per plot, as fixed by notification dated



14.02.2020. In view of the acute shortage of Revenue Inspectors, Asst. Revenue Inspectors and Amins in the State, the policy vide letter dated 14.02.2020 was formulated to engage Licenced Surveyor under the Odisha Special Survey and Settlement Act, 2012 and Rules framed thereunder to ensure expeditious delivery of services. The petitioner has not been denied the service of demarcation, rather it was advised to follow the prescribed online procedure. There is no provision in the executive instruction enabling the Tahasildar to accept offline application or for exemption of user fee.

4. Heard Mr. B.C. Panda, learned counsel for the petitioner and Mr. S.N. Patnaik, learned Addl. Government Advocate for the State. Also heard Mr. Ramakanta Mohanty, learned Senior Counsel, who assisted the Court as *Amicus Curiae* being requested by the Court having regard to the importance of the point involved in the writ application.

5. Mr. Panda would argue that Rule-38 of the OSS Rules provides for measurement/field enquiry for which



the fees chargeable is Rs.4/- per plot. This provision has not been amended as yet. The guidelines issued on 13.12.2016 are executive in nature confirming the fees prescribed under Rule-38 of the OSS Rules. The SOP issued on 15.10.2025 makes a clear departure from the provisions of Rule-38 as well as the guidelines dated 13.12.2016 inasmuch as it has enhanced the fees to Rs.800/-. That apart, the various requirements indicated therein, such as, furnishing of the name, mobile number and other particulars of the boundary tenants are impossible to be complied with on the part of an applicant. According to Mr. Panda, the executive instructions cannot override statutory Rules. The Government can enhance fees only by way of amendment of the Rule and not by executive instructions. He further submits that the stand taken by the State in its counter affidavit that Rule 38 of the OSS Rules provides for measurement arising out of mutation proceeding is entirely misconceived.

6. Learned State Counsel, Mr. S.N. Patnaik argues that Rule-38 occurs in Chapter-IV of the OSS Rules, which



pertains to maintenance of record of rights and map. He further submits that as per Section 2(11) of the Orissa Survey and Settlement Act, (in short, the 'OSS Act'), 'Survey' includes measurement of a boundary. He further refers to Section 3 of the said Act to submit that as per Sub-Section (3), survey can be conducted on the request of any local authority or other persons, who agree to pay such amount as may be directed by the Government towards the cost of survey. According to Mr. Patnaik, Rule-38 of the OSS Rules has to be interpreted in light of these provisions. Since Licensed Surveyors are being utilized in demarcation work, the government decided to collect user fees, which was prescribed for the first time in the notification dated 14.02.2020 and reiterated in the SOP dated 15.10.2025. The statutory fee of Rs.4/- prescribed in Rule-38 relates specifically to cases where measurement and field enquiry is conducted in mutation cases. This cannot be equated with the user fee payable for demarcation of a private land.



7. Mr. Ramakanta Mohanty, learned *Amicus Curiae* submits that Rule-32 mandates that the Tahasildar is responsible for maintaining the finally published map and ROR. In the SOP, it is admitted that Rule-38 empowers the Tahasildar to conduct measurement as well as determining and recording boundaries upon realization of prescribed fees. Such being the case, the Government cannot now take a stand that the fees prescribed in the SOP is not a fee but administrative and supervisory expense incurred for engagement of Licensed Surveyors. Even otherwise, a fee cannot be levied by an executive instruction without being backed by any statutory provision. Mr. Mohanty further contends that the fee prescribed under Rule-38 was enhanced by way of amendment of the Rule in 1992. Referring to Article-265 of the Constitution of India, which prohibits levy of tax except by authority of law, Mr. Mohanty reiterates his argument that a fee needs a statutory foundation. There being no statutory prescription authorizing the State Government to impose a fee otherwise than that imposed under the Statute, the



Government cannot unilaterally prescribe/enhance fees by way of an executive instruction, which is not 'law' within the meaning of Article-13. Article 162 of the Constitution permits the State to issue executive instruction, where the Rules are silent and require supplementation, but under no circumstances can it supplant the statute. It is open to the Government to amend the Rule to enhance the fees but without resorting to the same, the fees cannot be enhanced. Rule-38 is a part of subordinate legislation framed under the Rule-making power prescribed under Section 43 of the OSS Act. Mr. Mohanty sums up his argument by submitting that if a statute prescribes a thing to be done in a particular manner it has to be done in that manner or not at all. Therefore, the executive instructions are ultra vires the provisions of the Act and Rules. However, they can at best be interpreted to act as an alternative mode but cannot take away the right of the applicant guaranteed under Rule-38 of the OSS Rules.

8. Having heard the rival contentions, this Court feels that a brief reference to the relevant statutory provisions at



the outset would be apposite. Undisputedly, neither the OSS Act nor the OSS Rules defines the word 'demarcation'. According to the petitioner as well as learned Amicus Curiae, Rule-38 of the OSS Rules deals with demarcation. According to the State Counsel however, Rule-38 is a process in the mutation. Rule-38 is reproduced below.

"38. Measurement - *Where a measurement or field enquiry is claimed, fees shall, be realized at the rate of four rupees for every plot of land covered by such measurement or enquiry:*

Provided that the fees shall be calculated on the number of plots that are made after the said measurement or enquiry:

Provided further that no measurement fee shall be realized for measurement or field enquiry necessitated in any proceedings commenced otherwise than on an application."

This Rule occurs in Chapter-IV of the OSS Rules, which deals with maintenance of records of rights and map. Rule-32 provides for maintenance of the same by the Tahasildar after final publication in accordance with the provisions of the Act. Rule-34 provides the grounds on which record of rights and map can be corrected. Rule-35, which is reproduced below specifically provides that the proceedings commenced under this Chapter shall be registered as mutation cases.



“35. Registration of proceedings All proceedings commenced on a report, application or otherwise under this Chapter shall be registered as mutation cases and each such case shall be numbered and entered in register in Form No.8 to be called the Mutation Register: Provided that changes in any entry of the record-of-rights arising out of an order to decree of a Revenue or a Civil Court or the order of a Tribunal constituted under any law for the time being in force shall be numbered and entered in the Register as separate cases and carried out by the Tahasildar immediately on receipt of such order or decree, as the case may be, and it shall not be necessary to commence a Mutation Proceeding for that purpose.”

(Emphasis added)

Rule-36 provides for realization of application fees for mutation and Rule-37 provides for realization of process fees. Rule 38 provides for measurement, with realization of fees at the rate of Rs.4/- for every plot of land. Thus, Rule-36, 37 as well as 38 provide for realization of fees separately. This implies that there is an essential distinction between the proceedings referred to in Rule 36, and 37 and Rule 38. Even though Rule-35 provides that all applications under the chapter are to be treated as mutation cases, Rule-38 cannot be interpreted to mean a part of the process of mutation in the sense of correction of ROR and map. This is being said for the reason that



separate fees are payable for measurement under Rule-38. While mutation means correction of ROR and map, measurement within the meaning of Rule-38 obviously means physical measurement of the land in question, which in ordinary parlance goes by the name 'demarcation'. This Court is therefore, unable to accept the argument of the State Counsel that the measurement referred to in Rule-38 is a part of the mutation process relating to ROR and map.

9. The State Counsel has argued that demarcation is a part of survey within the meaning of the OSS Act by referring to Section 2(11) and 3 of the Act. This Court is unable to agree with such contention for the reason that Section 3 empowers the Government to order a survey to be made of any land in the State or the boundary thereof by issuing a notification. For immediate reference, Section-2(11) and Section 3 are quoted in their entirety.

"2. Definitions.

11. "Survey" includes all or any of the operations incidental to the determination, measurement and record of a boundary or boundaries or any part of a boundary and includes a re-survey;



3. Power to order a survey.

[(1) The Government or subject to their control any Officer or Authority empowered by Government may, at any time, by notification, order a survey to be made of any land in the State or the boundary thereof.] [Substituted vide Orissa Act No. 7 of 1962.]

(2) The Government shall be competent at any time during the continuance of the proceedings of any survey to issue an order to stop such survey and, if subsequently so ordered, such proceeding shall be proceeded with from such stage as may be directed.

(3) The Government may also issue a notification ordering a survey:

(a) on the request of -

(i) any local authority; or

(ii) other persons;

who agree to pay such amount as may be directed by the Government towards the cost of survey; or

(b) Where in any local area not less than one-half of the total number of raiyats apply for the survey, depositing or giving security for such amount towards the payment of expenses as the Government may direct."

(Emphasis added)

A conjoint reading of the above provisions makes it clear that the word 'survey' used in these provisions obviously refers to a larger exercise conducted by the Government upon issuance of notification for the purpose of general measurement of any particular land or lands. There is



nothing in Section-3 to indicate that such survey includes demarcation of private lands at the instance of a citizen. Rule-38 on the other hand does not require any notification being issued by the Government for its operation. It comes into operation automatically upon submission of application.

10. Having dealt with the preliminary contentions raised by the State Counsel, it would now be proper to consider whether it is within the competence of the State Government to enhance the fees for measurement (demarcation) prescribed under Rule-38 by an executive instruction. It would be relevant to note that prior to 13.12.2016, there was no executive instructions governing the demarcation. For the first time, the Government issued guidelines for demarcation. What is significant to note is that the said guidelines refer to both Rule-32 and specifically mentions that Rule-38 prescribes the fees for measurement of plot. Therefore, the stand taken by the State that Rule-38 does not apply to demarcation, falls to



the ground automatically being contrary to its own notification.

11. Coming to the SOP dated 15.10.2025, it provides that prescribed process fee under the relevant Rules along with user charges of Rs.800/- per plot is payable. The notification 14.02.2020 provides that in case a Licensed Surveyor is assigned the work of demarcation of a private land by the Tahasildar, then user fee amounting to Rs.800/- per application will be collected from the applicant out of which Rs.700/- will be paid to the Licensed Surveyor as remuneration and Rs.100/- will be deposited to the Government Account. While the decision of the Government to provide for online applications for demarcation cannot be questioned, or the methodology of measurement prescribed therein, facts remain that attempt to realize fees other than what has been prescribed in Rule-38 cannot obviously be countenanced. In fact, the letter dated 15.10.2025 circulating the SOP to all concerned itself refers to Rule-38. As argued by learned Amicus Curiae, it is within the competence of the State to issue



executive instructions but only where the Rule is silent as to procedure and like matters. It is the settled position of law that an executive instruction can only supplement the statute and not supplant it. Reference in this regard may be had to the judgment of the Supreme Court in the case of ***Narendra Kumar Maheswari vs. Union of India***¹.

12. The OSS Rules is a subordinate legislation framed by the State in exercise of its rule-making power conferred by Section 43 of the OSS Act and duly placed before the State legislature. It is 'law' within the meaning of Article-13 of the Constitution of India, whereas an executive instruction is not. Law can only be changed or altered by law and not by executive instruction. If the Government desires to enhance the fees prescribed under Rule-38, it can always do so by resorting to amendment of the said Rules. That not having been done, the Rule shall reign supreme. It goes without saying that any fee levied has to be backed by statutory provision in view of Article-265 of the Constitution of India.

¹ AIR 1989 SC 2138



13. As regards the argument that dearth of Revenue Inspectors, Asst. Revenue Inspectors and Government Amins has necessitated engagement of Licensed Surveyors, the same can only be treated as a procedural/administrative exigency which cannot give a handle to the State to by-pass the statutory provision under any circumstances in the matter of realizing fees for demarcation. The law as it exists has to be respected and followed in letter and spirit.

14. Notwithstanding the findings above, this Court does not consider it necessary to quash the notifications dated 14.02.2020 and 15.10.2025. The engagement of Licensed Surveyors under the Odisha Special Survey and Settlement Act, 2012 and the introduction of an online slot-booking system are measures aimed at expeditious delivery of service, and their validity is not in question. The infirmity lies only in treating these measures as the exclusive mode of demarcation, and in making payment of user charges of Rs.800/- a precondition to the exercise of the right under Rule-38 of the OSS Rules. To that extent



the notifications cannot prevail over the Rule. They can, however, operate validly as an alternative mode, open to an applicant who, of his own volition, chooses to have the demarcation done through a Licensed Surveyor and agrees to pay the user charges for that service. In so far as the prayer for quashment of the impugned notification is concerned, this Court is of the considered view that the same offers an alternative mode of facilitating demarcation through Licensed Surveyor as also for receiving and processing application in the online mode. Since the Rules are silent in this regard, it would be permissible for the State to issue executive instructions in the form of notification (SOP). However, if the executive instructions are intended to provide the only mode, it would come in conflict with the statutory Rules and therefore, cannot be countenanced to such extent. Faced with such situation, this Court would allow the notifications to exist with the strong rider that a citizen cannot be forced to apply for demarcation only through the online mode and/or to pay fees other than what has been prescribed in Rule-38 of the



OSS Rules. The impugned notifications shall be inoperative only to the extent they treat the online mode as the sole mode, or require payment of fees beyond what is prescribed under Rule-38. In other words, (a) the mode of application shall not be restricted to online alone, and (b) no fee beyond what is prescribed under Rule-38 shall be charged from an applicant who does not choose the Licensed Surveyor facility. Even in the online mode, if there is technical difficulty in accepting a single application for multiple plots in a single Khata, the system/portal should be synchronized appropriately but under no circumstances, the applicant should be asked to submit multiple applications for demarcation of plots under the same Khata.

15. Thus, from a conspectus of the analysis of facts, law and contentions raised by the parties, this Court is of the firm view that the Tahasildar committed an illegality in not accepting the application for demarcation of the petitioner offline and insisting upon payment of Rs.800/- for each plot to be demarcated.



16. In the result, the writ petition is allowed in part with the following directions:

(i) The notifications dated 14.02.2020 and 15.10.2025 shall operate only as an alternative mode of demarcation, available to an applicant who voluntarily opts for the same and agrees to pay the user charges prescribed therein.

(ii) To the extent the said notifications make online filing or payment of user charges compulsory, the same shall not be enforced against any person seeking demarcation under Rule 38 of the OSS Rules. Such person shall be entitled to apply offline on payment of the fee prescribed under Rule 38.

(iii) The Tahasildar, Cuttack Sadar (Opposite Party No.3), shall accept the petitioner's application for demarcation in offline mode on payment of the fee prescribed under Rule 38 and shall complete the demarcation, after due notice to



other parties, within a period of four weeks from the date of submission of the application.

(iv) The State shall ensure that the online portal is suitably modified to enable submission of a single application in respect of multiple plots under one Khata.

17. Before parting, the Court places on record its appreciation for the assistance rendered by Mr. Ramakanta Mohanty, learned Senior Counsel, as *Amicus Curiae*.

Sashikanta Mishra
Judge

Orissa High Court, Cuttack
The 1st October, 2026/ A.K. Rana, P.A.

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