

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.15076 of 2008

(In the matter of an application under Articles 226 and 227 of the
Constitution of India.)

Bachana Kumari Dei ***Petitioner***

-versus-

State of Orissa & Others ***Opposite Parties***

Appeared in this case:-

For Petitioner : Mr. Bibekananda Bhuyan, B,N,
Das, A.K. Rout, B.N. Mishra and
Smt. P. Mohapatra

For Opp. Parties : Mr. D.K. Mohanty,
learned Addl. Govt. Advocate for
Opposite Party Nos.1 to 3

Appeared in this case:-

CORAM:
THE CHIEF JUSTICE
JUSTICE A.K. MOHAPATRA

JUDGMENT

Date of hearing : 03.03.2022 | Date of Judgment : 25.03.2022

A.K. Mohapatra, J.

1. The present writ petition has been filed questioning the legality, validity and propriety of order dated 26th April, 2008 passed in O.E.A. Revision No.52 of 1999 (Annexure-7) by the learned Member, Board of Revenue, Odisha, Cuttack where under order dated 14th November, 1979

(Annexure-1) passed by the O.E.A. Collector-cum-Tahasildar, Kujanga in O.E.A. Misc. Case No.15 of 1979 has been set aside by the learned Member, Board of Revenue, Odisha, Cuttack.

2. Upon a careful examination of the impugner order dated 26th April, 2008 passed by the Member, Board of Revenue, Odisha, Cuttack, it is seen that the revision petition was initially dismissed for default on 24th August, 2002 and thereafter the same was restored by order dated 15th September, 2006. The said order further reveals that after the OEA Revision Case was dismissed for default, the original case record of OEA Misc. Case No.15 of 1979 was returned to the office of the Tahasildar, Kujang vide Memo No.1344 dated 9th October, 2002 and the same was received on 21st October 2002 by the Nazir of Kujang Tahasil.

3. However, after restoration of the O.E.A. Misc. Case No.15 of 1979, the original record was again called for from the office of Tahasil, Kujang. The Tahasildar, Kujang vide letter dated 14th November, 2007, reported that the original case record of the above noted case is not traceable in his office. When reminders were given to send the original record of the above noted O.E.A. Misc. Case, the Tahasildar, Kujang reiterated the previous reply and took a stand that the original records are not traceable in his office.

4. Considering the nature of allegation, this Court is of the considered view that the learned Member, Board of Revenue, Odisha, Cuttack should have taken stern action against the official due to whose negligence the record was misplaced and later on could not be traced out. However, the order-sheet does not reveal as to what action was taken by the learned Member, Board of Revenue, Odisha, Cuttack being the highest revenue authority of the State in the matter of misplacement of

record in the office of the Tahasildar, Kujang. In the aforesaid facts and circumstances, this Court now proceeds to adjudicate the writ petition filed by the Petitioner challenging the impugned order passed by the leaned Member, Board of Revenue, Odisha, Cuttack.

5. The factual background of the case, in brief, is that the RoR of village Bijayachandrapur (now coming under Paradeep Town) under Kujang Tahasil was published in the year 1929-30, Khata No.59 of the said village consisting of area measuring Ac.159.58 of land recorded as 'Anabadi' in favour of the Ex-estate known as Burdhaman Estate. The aforesaid Khata No.59 consists of large number of plots. The said Ex-estate, namely Burdhaman Estate had vested in the State of Odisha in the year 1951.

6. After the Orissa Estate Abolition Act came into force in the year 1951, no "Ekpadia" was submitted by ex-Intermediary in respect of the case land which is a part of Khata No.59 of village Bijayachandapur. Therefore, it is presumed that the ex-Intermediary had not settled, leased out or transferred any portion of the land under Khata No.59 of village Bijayachandraur. Further, the Sabik RoR published in the year 1929-30, is the last published RoR in respect of the aforesaid village. The above noted Khata No.59 of village Bijayachandrapur also includes Plot No.426 measuring an area Ac.8.85 decimals as borne out from the record. The said land has been classified as "Jhada Jungle".

7. The predecessor in interest of the proforma-opposite parties, namely one Hadibandhu Singh claimed that he was possessing an area Ac.0.30 decimals of land as a tenant since 1942 under Khata No.59 of Mouza Bijayachandrapur and that the ex-Proprietor had recognized said Hadibandhu Singh as a tenant by accepting "salami and "khesare" and

rent in respect of the case land. Hadibandhu Singh filed a petition in the year 1979 for settlement of Ac.0.30 decimals of land out Plot No.426 in his favour under Section 8(1) of the Orissa Estate Abolition Act, 1951.

8. On filing of such petition for settlement of the land, the Tahasildar, Kujang-cum-OEA Collector, issued notice to the petitioner (Hadibandhu Singh) to appear in the matter before him along with documentary evidences for verification of the same. Simultaneously a public notice was ordered to be issued inviting objections to the proposed settlement. And further field enquiry report was also called for from the concerned Revenue Inspector.

9. The petition, which was filed by late Hadibandhu Singh for settlement of the land, was allowed by the OEA Collector-cum-Tahasildar vide his order dated 14th November, 1979 passed in O.E.A. Misc. Case No.15 of 1979 on the ground that the said petitioner (late Hadibandhu Singh) was a tenant under the ex-Proprietor and as such, he continued to be the tenant as provided under Section 8(1) of the O.E.A. Act. Further after examination of the land receipt produced by late Hadibandhu Singh before the then O.E.A. Collector-cum-Tahasildar, Kujang, the said authority had concluded that late Hadibandhu Singh had paid “salami”, “Khesare” and the rent to the ex-Proprietor and that he was in possession over the land for more than 30 years and as such, the O.E.A. Collector had come to a conclusion that late Hadibandhu Singh had acquired the right, title and interest over the property in question by way of adverse possession and accordingly it was held that he can be considered as an occupancy tenant in respect of the land. Thereafter, the O.E.A. Collector-cum-Tahasildar, Kujang went on to fix the rent @ Rs.6/- and cess of Rs.3/- and accordingly directed for collection of the rent and cess from

late Hadibandhu Singh. The record further reveals that the rent and cess were received from late Hadibandhu Singh in the year 1983.

10. The order dated 14th November, 1979 passed by the O.E.A. Collector-cum-Tahasildar, Kujang settling the case land in favour of late Hadibandhu Singh holding that he had acquired occupancy right in the case land by adverse possession was challenged before the Sub-collector, Jagatsinghpur by filing O.E.A. Appeal Case No.8 of 1998. The said appeal remained pending before Sub-collector, Jagatsinghpur from 26th October, 1998 to 18th October, 2005. On 18th October, 2005, the Sub-collector, Jagatsinghpur realized that he had no appellate jurisdiction in the matter and therefore, passed necessary orders for transmission of the case record to the court of Additional District Magistrate, Jagatsinghpur. Upon transmission of the record, the same was renumbered as O.E.A. Appeal No.19 of 2005, which was acknowledged by Additional District Magistrate, Jagatsinghpur vide his order dated 24th November, 2005. Thereafter, the case record was summoned by the Member, Board of Revenue, Odisha, Cuttack and the same had reached the office of the Member, Board of Revenue, Odisha, Cuttack on 22nd October, 2007.

11. Heard learned counsel for the Petitioner as well as learned Additional Government Advocate for the State. Perused the case record, impugned order passed by the learned Member, Board of Revenue, Odisha, Cuttack as well as written note of submissions filed on behalf of the Petitioner on 04.03.2022.

12. Leaned counsel for the Petitioner contends that the impugned order passed by the learned Member, Board of Revenue, Odisha, Cuttack is being assailed on the following grounds:-

a) The case was initiated in the year 1999 i.e. almost 20 years after the order was passed by the Tahasildar, without recording any reason for the condonation of delay. The initiation of the case under Section 38(B) by the Member BOR, Odisha at the instance of Private Opposite Parties is not maintainable being barred by law of limitation.

b) Hadibandhu Singh being an agricultural tenant, such tenancy can be created by mere induction and acceptance of rent and he having held the said property for more than the statutory period has acquired occupancy right under Section 22 of the Orissa Tenancy Act.

c) It was further challenged that the order of the Tahasildar under Section 8(1) being an administrative order, Board of Revenue has got no jurisdiction to annul the same in exercising the power under Section 38(B) of the O.E.A. Act.

13. It is further submitted by learned counsel for the Petitioner that upon a bare perusal of Section 38(B), it would be crystal clear that the Member, BOR, Odisha either on his own motion or on being approached by the Collector can exercise the power to call for records of any case decided by any authority subordinate to it. In other words, he submits that the aforesaid provision, the Member, BOR, Odisha, Cuttack can either act on his own motion (suo motu) or being moved by the Collector and not otherwise. Therefore, he submits that initiation of the case under Annexure-7 at the instance of the private parties is something unknown to Section 38(B) of the O.E.A. Act.

14. Learned counsel for the Petitioner further relies upon well settled principles of law i.e. “if a statute requires a particular thing is to be done in a specified manner, the same has to be done in the manner/way provided in the statute or not at all.” Accordingly, he submits that the

said proposition of law squarely applies to the facts of the present case inasmuch as the present revision have been entertained by the Member, BOR, Odisha, Cuttack at the instance of some private parties which is contrary to section 38(B) of the OEA Act.

15. It is further submitted by leaned counsel for the Petitioner that Section 38(B) of the O.E.A. Act does not prescribe any limitation within which the learned Member, BOR, Odisha, Cuttack, can exercise his Revisional power under Section 38(B) of the Act. However, he further submits that by no stretch of imagination, such period of limitation would extend up to 20 years.

16. It is further submitted by learned counsel for the Petitioner that the Revisional power under Section 38(B) of the O.E.A. Act should be exercised by the learned Member, BOR, Odisha, Cuttack within a reasonable period of time and such reasonable period would be determined by taking into consideration provisions contained in Article 137 of the Limitation Act, which provides that where no period of limitation is prescribed in the Act itself, then in view of the Article 137 of the Limitation Act, the period of limitation shall be construed to be three years.

17. In the said context, leaned counsel for the Petitioner relies upon the judgment of the Hon'ble Supreme Court rendered in the matter of ***S.B. Gurbaksh Singh vrs. Union of India*** : reported in (1976) 2 SCC 181 and in the matter of ***Rajeswar Baburao Bone vrs. State of Maharashtra and another*** : reported in (2015) 14 SCC 4497. By referring to the aforesaid two judgments of the Hon'ble Supreme Court of India, the learned counsel for the Petitioner tried to impress upon this Court that reasonable time has to be construed in such a manner that the same shall

come under the Article 137 of the Limitation Act and accordingly, the period of limitation in the present case should have been three years from the date of the order. Therefore, the exercise of Revisional power by the learned Member, BOR, Odisha, Cuttack after expiry of a period of 20 years from the date of order is hopelessly barred by limitation.

18. The last ground of attack of the learned counsel for the Petitioner is that the order passed by the O.E.A. Collector-cum-Tahasildar under Annexure-1 is an administrative order and as such the same is not amenable to the Revision jurisdiction of the learned Member, BOR, Odisha, Cuttack under Section 38(B). In the said context, the learned counsel for the Petitioner had relied upon a judgment of this Court reported in **Volume 100 (2005) CLT 329** to support his contention that the order passed by the Tahasildar accepting somebody as deemed tenant under Section 8(1) of the O.E.A. Act and acquired occupancy right under the Odisha Tenancy Act is an administrative order and hence, the Member BOR, Odisha has got no jurisdiction under Section 38(B) of the O.E.A. Act to interfere with the order of settlement passed by the O.E.A. Collector-cum-Tahasildar, Kujang.

19. The most important ground of attack to the impugned order by learned counsel for the Petitioner is that the learned Member, BOR, Odisha has committed a gross error of law by entertaining an application under Section 38(B) of the O.E.A. Act. It is submitted by learned counsel for the Petitioner that the Revisional power conferred under Section 38(B) of the O.E.A. Act could be exercised by the learned Member, BOR, Odisha under two contingencies (i) On its own motion, (ii) On a report from the Collector. Therefore, it is submitted that the exercise of power as has been done in the present case by the learned

Member, Board of Revenue, Odisha at the instance of a private party is beyond the scope and authority conferred under Section 38(B) of the O.E.A. Act upon learned Member, BOR, Odisha, Cuttack. For easy reference, the provision contained under Section 38(B) of the O.E.A. Act is quoted herein below :-

“38B. Revision. - (1) The [Board of Revenue] may, on its own motion or on a report from the Collector, call for and examine the record of any proceeding in which any authority subordinate to the [Board of Revenue] has made any decision or passed an order under this Act (not being a decision against which an appeal has been preferred to the High Court or the District Judge under Section 22) for the purpose of satisfying itself as to the regularity of such proceeding or the correctness, legality or propriety of such decision or order and if in any case it appears to the [Board of Revenue] that any such decision or order ought to be modified, annulled, reversed or remitted, it may pass order accordingly.”

[(i) x x xx]

(ii) revise any decision or order under this Section without giving the parties concerned an opportunity of being heard in the matter.”

20. A plain reading of Section 38(B) of the OEA Act gives an impression that the Revisional power conferred upon learned Member, Board of Revenue, Odisha could be exercised under the aforesaid two contingencies. However, there is no power in law to draw the attention of the learned Member, Board of Revenue, Odisha to the irregularities committed by the authorities sub-ordinate to him at the instance of the private parties. In such eventuality, the learned Member, Board of Revenue, Odisha after conducting an enquiry from time to time and

subject to his satisfaction can initiate a *suo motu* proceeding to rectify the illegalities/irregularities committed by his sub-ordinate authorities. Therefore, it would not be appropriate on the part of this Court to give a restrictive interpretation to the provisions contained under Section 38(B) of the O.E.A. Act.

21. A similar view has been taken by the Full Bench of this Court in the matter of ***Debaki Jani vrs. The Collector and another*** : reported in ***2014(I) OLR(FB)-867***. In ***Dabaki Jani*** (supra) a full bench of this Court was dealing with an issue under Section 26 of the Orissa Grama Panchayats Act, 1964 wherein a similar ground was raised that *suo motu* power conferred under Section 26(2) of the Grama Panchayat Act (in short 'the O.G.P. Act'), could not have been invoked at the instance of a private party. The Full Bench of this Court while resolving the said issue in paragraph-9 of the judgment has observed that the power conferred upon the Collector under Section 26(2) of the O.G.P. Act to enquire into the matter *suo motu* cannot be cabined, cribbed or confined and that the power is wide enough. The observation of the Full Bench of this Court in paragraph-9 of the judgment in ***Debaki Jani's*** case (supra) has been quoted herein below:

“9. While under Sub-section (1) of Section 26 of the Act, the categories of persons enumerated therein apply to the Collector for a decision on the allegation or doubt whether or not he is or has become so disqualified; under Sub-section(2) the Collector may *suo motu* or on receipt of an application under Sub-section(1), make an enquiry as he considers necessary. The power of the Collector to enquire into the matter *suo motu* cannot be cabined, cribbed or confined. The power is wide enough. But then the same cannot be exercised in a routine manner. The power has to be exercised with great care and circumspection. In the elegant words Bengamin N.

Cardozo in the legal classic “The Nature of the Judicial Process”

“The Judge, even when he is free, is still not wholly free. He is not to innovate at pleasure. He is not a knight-errant roaming at will in pursuit of his own ideal of beauty or of goodness. He is to draw his inspiration from consecrated principles. He is not to yield to spasmodic sentiment to vague and unregulated benevolence. He is to exercise a discretion informed by tradition, methodized by any analogy, disciplined by system, and subordinated to “the primordial necessity of order in the social life”. Wide enough in all conscience is the field of discretion that remains.”

The collector has to *prima facie* satisfy himself and apply his mind before issuing any notice to the person whose disqualification is in question. The only rider is to observe principles of natural justice. The legislature in its wisdom thought it proper to grant ample power to the Collector to see that purity and sanctity in the election process is maintained and no unqualified person holds the post. The same also does not exclude any other person to bring the notice of the Collector about the disqualification incurred by any Sarpanch or Naib-Sarpanch or any other member of the Grama Panchayat. The Collector exercising the *suo motu* power is not debarred from obtaining information and materials from various sources.”

22. Applying the law laid down by a Full Bench of this Court in ***Debaki Jani's*** case (supra) with regard to exercise of *suo motu* power by an authority, this Court is of the considered view that under the first contingency as narrated hereinabove, the private parties can always bring the illegalities/irregularities to the notice of the learned Member, Board of Revenue, Odisha. The highest revenue authority of the State, is duty bound to examine the illegalities / irregularities committed by Sub-ordinate authorities. Thereafter, the learned Member, Board of Revenue, Odisha, upon preliminary enquiry and subject to the satisfaction may call

for records from the Sub-ordinate authorities and he may exercise the Revisional Power as conferred upon him under Section 38(B) of the Orissa Estate Abolition Act (in short 'the O.E.A. Act'). Therefore, this Court is of the considered view that the learned Member, Board of Revenue, Odisha has not committed any illegality while exercising his *suo motu* power of revision under Section 38(B) of the O.E.A. Act while passing the impugned order and as such, the first ground of attack of the learned counsel for the Petitioner is bound to fail.

23. The 2nd ground of attack by learned counsel for the Petitioner is based on a judgment of this Court in ***Daitary Rout vs. State of Orissa and others*** ; reported in ***Vol.100(2005) CLT 329***. Relying upon the said judgment, learned counsel for the Petitioner submitted that the order under Section 8(1) of the O.E.A. Act being an administrative order, the same is not revisable under Section 38(B) of the O.E.A. Act.

24. Upon detailed analysis, this Court found that the ratio in ***Daitary Rout vs. State of Orissa and others*** (supra) is based on a Full Bench Judgment of this Court in ***Smt. Basanti Kumari Sahu vs. State of Orissa and others*** : reported in ***Vol.-73 (1992) CLT 868(FB)***. There is no quarrel with regard to the proposition laid down by the Full Bench of this Court in the case of ***Smt. Basanti Kumari Sahu*** (supra).

25. The law laid down by the Full Bench in the said judgment has also been followed by this Court in subsequent judgment. However, so far as the present case is concerned, it is to be seen as to whether the ratio laid down in the above noted two judgments applies to the facts of the present case or not? The case relied upon by learned counsel for the Petitioner i.e. reported in ***Vol.100(2005) CLT 329***, in paragraph-2 of which it has been observed that after vesting of the Ex-intermediary

interest in the State, the Ex-intermediary submitted 'Ekpadia' in which the name of the Petitioner in the above noted case had been shown as a tenant in respect of the case land involved in that case.

26. Further after vesting of the land, the Petitioner established that he is in possession over the case land as a tenant, therefore, the only issue that was left to be adjudicated in *Daitary Rout vrs. State of Orissa and others* (supra) is as to whether the Petitioner in that case is to be recognized as a tenant under the State after vesting of property in view of deeming provision under Section 8(1) of the O.E.A. Act.

27. Therefore, this Court applying the law laid down by the Full Bench of this Court in *Smt. Basanti Kumari Sahu* (supra) accepted the contention of the Petitioner in that case, and held that the order under Section 8(1) of the Act passed by the O.E.A. Collector cannot be construed to be an order creating any right in favour of the Petitioner for the first time and therefore, cannot be subjected to the Revisional jurisdiction of the learned Member, Board of Revenue, Odisha under Section 38(B) of the O.E.A. Act and accordingly, quashed the impugned order.

28. The ratio laid down in *Smt. Basanti Kumari Sahu* (supra) which was followed in the case of *Daitary Rout vrs. State of Orissa and others* (supra) is not applicable to the facts of the present case. In the case at hand, from the materials available on record, it appears that the land in question was recorded as "Jhada Jungle" and further no "Ekpadia/Tenant Ledger" was submitted by the Ex-intermediary at the time of vesting indicating the name of the predecessors in the interest of the claimants. Although vesting took place in the year 1951, after a gap of almost 28 years an application was filed by one Hadibandhu Singh before the Tahasildar-cum-O.E.A. Collector for settlement of land in his favour.

29. Further, the predecessor of interest of the claimants had also taken a ground that he had perfected his title by way of adverse possession over the case land by the time when he had filed an application for settlement of case land before the O.E.A. Collector-cum-Tahasildar. Therefore, it cannot be said that the order of settlement in favour of the predecessor of the claimant was strictly under Section 8(1) of the O.E.A. Act. In such view of the matter, this Court is of the considered view that the judgments relied upon by the Petitioner in the present case rendered by this Court in the case of *Smt. Basanti Kumari Sahu* (supra) and *Daitary Rout vrs. State of Orissa and others* (supra) are not applicable to the facts of the present case since the decision of this Court in those two reported cases are distinguishable on facts and as such, the 2nd ground of attack by learned counsel for the Petitioner is also bound to fail.

30. The 3rd major ground of attack to the exercise of power under Section 38(B) of the OEA Act by the learned Member, Board of Revenue, Odisha and the consequential passing of the impugned order is on the ground that the order of settlement was challenged first time in the year 1999 i.e. after a gap of almost 20 years. It is true that no period of limitation has been provided under Section 38(B) of the O.E.A. Act for exercising the Revisional Power conferred upon the learned Member, Board of Revenue, Odisha, the same has to be exercised within a reasonable time. Such a proposition of law cannot be disputed by anybody.

31. However, the exercise of Revisional Power depends on the facts and circumstances of each case. In this context, learned counsel for the State submits that the predecessors of the Petitioner had no right, title and interest over the case land and moreover, settlement order which was

passed by the O.E.A. Collector-cum-Tahasildar in favour of Hadibandhu Singh has been passed in collusive manner basing upon a fake and false report submitted by the concerned Revenue Inspector. Therefore, he further submits that the order of settlement passed by the O.E.A. Collector is an outcome of forgery and mis-representation of fact and no sanctity is to be attached to such order of settlement.

32. Learned Additional Government Advocate further submits that submission of “Ekpadia/Tenant Ledger” as provided under Section 5(j) of the O.E.A. Act by the Ex-intermediary to the State is mandatory procedure before applying the provisions under Section 8(1) of the O.E.A. Act. In the present case, since “Ekpadia/Tenant Ledger” has not been submitted by the Ex-intermediary at the time of vesting, the order of settlement is based on a tainted report of the Revenue Inspector, therefore, the order of settlement is a vague and fraudulent one.

33. Further it is made very clear that the right of the tenant/raiyat under the Ex-intermediary, who continued to remained in exclusive possession over the case land even after vesting of the Ex-intermediary Estate, a right would be crystallized under Section 8(1) of the O.E.A. Act by virtue of deeming provision provided the Ex-intermediary submits the “Ekpadia/Tenant Ledger” to the state, which is prescribed under Section 5(j) of the O.E.A. Act. On failure to comply with the mandatory provision of Section 5(j) O.E.A. Act by the Ex-intermediary, no vested right is conferred upon the Tenant/Raiyat, who claims to be in possession as indicated by the Ex-intermediary and after vesting continued to remain in exclusive possession over the case land.

34. Likewise, some similarly situated persons who were claiming right of a Raiyat/tenant on the basis of ‘Hata patta’ issued by the Ex-

intermediary with the production of “Ekipadia/Tenant Ledger” came up for adjudication before this Court as well as before the Hon’ble Supreme Court of India in the matter of *State of Orissa and others vrs. Harapriya Bisoi* : reported in (2009) 12 SCC 378 and *State of Orissa and another vrs. Fakir Charan Sethi* : reported in (2015) 1 SCC 466 Hon’ble Supreme Court of India has taken note of the illegalities or irregularities committed in settlement of vast patches of Ex-intermediary land by taking resort to fraudulent means and mis-representing facts before the Court.

35. So far the delay in preferring the revision petition before the Member, Board of Revenue, Odisha is concerned, learned counsel for the State referring to the judgment of the Hon’ble Supreme Court in Civil Appeal Nos.827 and 828 of 1994 (in the matter *State of Orissa & Ors vrs. Brundaban Sharma & another* : reported in (1995) Supp.(3) SCC 249 submitted that under the O.E.A. Act, revisional Power was conferred upon the Member, Board of Revenue, Odisha for effective adjudication of disputes. The revisional power so conferred has to be exercised carefully and cautiously and within a reasonable time.

36. Moreover, the absence of any limitation for exercise of such revisional power makes it abundantly clear that by incorporating such a provision in the O.E.A. Act, the legislatures had intended to confer a revisional power on the Member, Board of Revenue for preventing miscarriage of justice or violation of any of the provisions of the Act by the sub-ordinate authorities and to prevent fraud and suppression. Such power has to be exercised with a lot of caution and circumspection. Notwithstanding any delay in assailing any order by the sub-ordinate authority, further reasonable time should be granted within which the

revision has to be preferred and which depends on the facts and circumstances of each case. Moreover, the issue of limitation will not stand in the way to exercise the revisional power under Section 38-B of the O.E.A. Act. Whenever the Member, Board of Revenue comes to a conclusion that an order has been obtained by practicing fraud or by suppressing material fact, he could always exercise the Revisional power conferred on him by the statute to rectify the mistake and unearth the fraud.

37. The Supreme Court of India in Civil Appeal Nos.827 and 828 of 1994 (*State of Orissa & Ors vs. Brundaban Sharma & another* : reported in (1995) Supp. (3) SCC 249 while dealing with the issue of delay in preferring Revision Petition before the Member, Board of Revenue u/s 38-B of the OEA Act, the court has observed as follows;

“16. It is, therefore, settled law that when the revisional power was conferred to effectuate a purpose, it is to be exercised in a reasonable manner which inheres the concept of its exercise within a reasonable time. Absence of limitation is an assurance to exercise the power with caution or circumspection to effectuate the purpose of the Act, or to prevent miscarriage of justice or violation of the provisions of the Act or misuse or abuse of the power by the lower authorities or fraud or suppression. Length of time depends on the factual scenario in a given case. Take a case that patta was obtained fraudulently in collusion with the officers and it comes to the notice of the authorities after a long lapse of time. Does it lie in the mouth of the party to the fraud to plead limitation to get away with the order? Does lapse of time an excuse to refrain from exercising the revisional power to unravel fraud and to set it right? The answers would be No.”

Further in paragraph 19 and 20, the Hon'ble Supreme Court of India went on to observe as follows;

“19. Under these circumstances, it cannot be said that the Board of Revenue exercised the power Under Section 38-B after an unreasonable lapse of time, though from the date of the grant of patta by the Tehsildar is of 27 years. It is true that from the date of the alleged grant of patta 27 years did pass. But its authenticity and correctness was shrouded with suspicious features. The records of the Tehsildar were destroyed. Who is to get the benefit that was responsible for it? The reasons are not far to seek. They are self-evident. So we hold that the exercise of revisional power Under Section 38-B by the Board of Revenue was legal and valid and it brooked no delay, after it had come to the Board's knowledge. That apart as held by the Board of Revenue, the order passed by the Tehsildar without confirmation by the Board is non est. A non est order is a void order and it confers no title and its validity can be questioned or invalidity be set up in any proceeding or at any stage.

20. So, we hold that the High Court is not right or justified in opining that the exercise of the power Under Section 38-B is not warranted. It committed illegality in quashing the order of the Board of Revenue. The order of the High Court is set aside. The order of the Board of Revenue is restored. Consequently we hold that the Government, being the owner, need not acquire its own land and need not pay compensation to an illegal or wrongful occupant of the Government land. The direction or mandamus to acquire the land and to pay the compensation to the Respondent is set aside.”

The above noted observation has been quoted with approval by the Hon'ble Supreme Court of India in a subsequent judgment in the matter of **The Inspector General of Registration, Tamil Nadu and Ors. vs. K. Baskaran** reported in (2020) 14 SCC 345.

38. In the above case of *State of Orissa and others vrs. Brundaban Sharma and another* (supra), the Hon'ble Supreme Court of India while

deciding a similar issue has observed that the length of time depends on factual scenario in a given case where patta was obtained fraudulently in collusion with the officers, and once it comes to the notice of the authorities after long lapse of time; Can a party who is a direct beneficiary of fraud or suppression of fact take the ground of limitation to get away with the order? Is lapse of time an excuse to refrain from exercising the revisional power to unravel fraud and to set it right? The answer to the aforesaid questions would be no.

39. Referring to Section 5(j) of the O.E.A. Act, learned State Counsel submits that upon vesting of the Ex-Intermediary land in the State, the necessary records for administration and the management of the State be either handed over to the O.E.A. Collector or same may be seized in the manner as prescribed under Section 5(j) of the O.E.A. Act. The legislative intention behind such a provision is that the Raiyats under the Ex-Intermediary were also continuing as Raiyat after the vesting and as such, they would continue in possession of the land in their Khas possession and to pay the rent as would be fixed by the State.

40. The records as referred to hereinabove would also contain the names of the tenants, who were also the tenants of the Ex-Intermediary. Such a provision has been incorporated in the statute, as in the absence of such records particularly tenants ledger, it would be impossible on the part of the State to administer / manage the properties after vesting. Therefore, the failure on the part of the Ex-Intermediary to submit 'Ekpadia' / tenant ledger clearly indicates that there was no such register in existence at the time of vesting and that the Petitioner was not a tenant/raiayat under the Ex-Intermediary and the existence of a 'Hata patta' as claimed by the Petitioner is a false and frivolous one. Once a 'Hata patta' is issued by

the Ex-Intermediary, the same is recorded either in the 'Ekipadia' or tenant ledger maintained by the Ex-Intermediary. In such view of the matter, no provision has been made in the O.E.A. Act to call for any application from the tenants to recognize their tenancy or to adjudicate their right under Section 8(1) of the O.E.A. Act.

41. Therefore, the settlement as provided under Section 8(1) of the O.E.A. Act, is automatic and without any application of mind at the instance of the tenants. Therefore, the pre-vesting rights of the genuine tenants would find place in the record of rights prepared by the Tahasildar after receiving the records like Ekipadia / Tenant Ledger once those were transferred by the Ex-Intermediary to the concerned Tahasildar soon after the vesting of the case land.

42. Having heard learned counsels for the parties, this Court is of the considered view that Member, Board of Revenue, i.e. the revisional authority, has not committed any illegality in dismissing the revision petition of the Petitioner. The learned Member, Board of Revenue, Odisha while dismissing the revision petition has observed that so far as the case land is concerned, the rent was not assessed prior to vesting. Accordingly, the Petitioner was not paying the rent, Ex-Intermediary had not submitted 'Ekipadia' or tenant ledger to the State at the time of vesting or after vesting of the case land to the State.

43. In view of the above Tahasildar had no authority to assess the rent afresh in respect of the tenants of the ex-estate. However, the Tahasildar-cum-OEA Collector, Sukinda had assessed rent in respect of the case land illegally without authority and further the same goes a long way to prove the fact that rent has not been assessed earlier. Moreover, the fact of such non-assessment of rent prior to vesting of Ex-Intermediary land

is supported by the fact that no 'Ekpadia' or tenant ledger in respect of the case land had been submitted by the Ex-Intermediary. Such ground realities bring the 'Hata patta' produced by the Petitioner under a cloud of doubt/suspicion. In other words, in the absence of 'Ekpadia' or tenant ledger prepared and submitted by the Ex-Intermediary, 'Hata patta' produced at the instance of the Petitioner is a false and frivolous one. Therefore, no legal sanctity is attached to such a document.

44. The learned Member, Board of Revenue has rightly come to a conclusion that the finding of the O.E.A. Collector-cum-Tahasildar, Sukinda to the effect that the rent was paid and that the Opposite Party was in possession of the case land are collusive and mala fide. Moreover, if any tenant is aggrieved by non-acceptance of rent from him, then he should have made a representation or approached the authority immediately after vesting of Ex-Intermediary land and should have immediately after vesting sought for correction of record of right. In the case in hand, the Petitioner having not done that, it can be safely presumed that he did not have any tenancy right nor he was in occupation of the case land on the date of vesting.

45. Another major plank of argument of the learned counsel for the petitioner is that Late Hadibandhu Singh being an agricultural tenant, such tenancy can be created by mere induction and acceptance of rent and he having held the said property for more than the statutory period has acquired occupancy right under Section 22 of the Orissa Tenancy Act. Such a proposition of law is not legally acceptable and tenable in view of the settled position of law that Late Hadibandhu could not have claimed both occupancy right as well as claimed to have perfected his right, title and interest over the case land by way of adverse possession.

An occupancy right over the suit land cannot be acquired by adverse possession as held by this Court in the case of **Champa Bati Bewa @ Kabi and others Vs. Kanhu Mallik and others**, reported in **Vol. 33 (1991) O.J.D. 154 (Civil)**. In paragraph 9 of the said judgment this court has observed as follows;

"9. The learned lower appellate court has held that defendant No. 1 acquired occupancy right by adverse possession. The finding is against law because occupancy right cannot be acquired by adverse possession. It was alternatively held that defendant No. 1 being settled raiyat of the village acquired occupancy right under Sections 24 and 25 read with Section 23 of the Orissa Tenancy Act by being in possession for more than 25 years. There is no pleading to that effect. Hence, the finding of the lower appellate court that defendant No. 1 acquired occupancy right cannot be sustained. In *Lachmllal and Ganesh Chamar* : AIR 1932 Patna 259, it has been held that status of a tenant on notice to quit is that of a trespasser."

In view of the aforesaid position of law, the finding of the Tahasildar cum OEA Collector, Kujanga that the claimant had acquired occupancy right over the case land by remaining in possession over the case land and that he has perfected his right, title and interest by remaining in adverse possession over the case land is contrary to the law laid down by this court in the above referred judgment in *Champa Bati Bewa's Case* (Supra). Moreover, there is no pleading and no material to establish the possession/ adverse possession of the claimant over the case land.

46. The decision of this court in **Champa Bati Bewa's** case (supra) has been followed by this court in a recent judgment in the matter of **Dasharath Sharma Vs. State of Odisha** reported in **2021(I) OLR 1005**. In paragraph 17 of the judgment it has been held as follows;

“17. It is held by this Court in the case of Champa Bati Bewa (supra), an occupancy right cannot be claimed by adverse possession. It necessarily infers that the requirements for claim of title as an occupancy rayat and that of adverse possession are not one and the same and in fact are mutually opposite. Thus, in view of the ratio in the case of Praful Manohar Rele (supra), the claim of title by adverse possession cannot be raised as an alternative plea of occupancy rayat.”

47. In such view of the matter, this Court found no illegality with the order passed by the Revisional authority, which is impugned in the present writ petition. Moreover, the views of the Hon’ble Supreme Court in the matter *State of Orissa and others vrs. Burndaban Sharma and another* : reported in (1995) Supp.(3) SCC 249 fully supports the view taken by this Court on the plea of limitation raised by the Petitioner in the present writ petition.

48. Resultantly, the order dated 14th November, 1979 passed in O.E.A. Misc. Case No.15 of 1979 by the O.E.A. Collector-cum-Tahasildar, Kujang is non-est in the eye of law and accordingly, the same is liable to be set aside and is hereby set aside. Therefore, the present writ petition challenging the impugned order dated 26th April, 2008 passed by the Member, Board of Revenue in O.E.A. Revision Case No.529 of 1999 is devoid of any merit and as such the same is hereby dismissed. However, there shall be no order as to cost.

(*A.K. Mohapatra*)
Judge

(*S. Muralidhar*)
Chief Justice