

ORISSA HIGH COURT : C U T T A C K

O.J.C. NO.5147 OF 2000

In the matter of an application under Articles 226 & 227 of the Constitution of India.

Kailash Chandra Sahu & ors.

: Petitioners

-Versus-

State of Orissa & Others

: Opp.Parties

For Petitioners : M/s.A.Mohanty, T.Rath, S.Natia,
J.Sahu & H.K.Tripathy

For O.Ps.1 to 5 : Mr.S.Ghosh, AGA

For O.Ps.6(a) to 6(f) : None

**CORAM :
JUSTICE BISWANATH RATH**

Date of Hearing : 05.09.2022 & Date of Judgment : 21.09.2022

1. The Writ Application involves the following prayer :-

“It is, therefore, humbly submitted that your Lordships be graciously pleased to admit the writ application, issue a Rule Nissi asking the Opp. Parties to show cause as to why the order under Annexure-2 shall not be quashed and if the Opp. Parties fail to show cause or show insufficient cause to make the said Rule absolute and issue a writ in the nature of Mandamus quashing the order under Annexure-2.

And or pass any other order/orders affording complete relief to the petitioners.”

2. Reading the prayer portion and looking to Annexure-2 since there arose confusion as to whether the Petitioners are permissible to challenge Annexure-2 as a whole, a clear statement is made by Mr.A.Mohanty,

learned senior counsel for the Petitioners that the Writ Application may be confined to Revision Petition Case No.1043/1991. On perusal of the position of the Parties in Revision Petition Case No.1043/1991, this Court finds, the said R.P. Case involved State of Orissa represented through the Collector, Puri, as the Petitioner and in the O.P. side, the following are the Opposite Parties.

1. Addl.Settlement Officer
2. Ullasmini Dei alias Mohanty,
W/o.Radhashyam Mohanty,
Vill.-Guhapur,
P.S.-Konark,
Dist.-Puri

3. Looking to the Cause Title of the Writ Application, this Court finds, the present Petitioners and Opposite Parties are as follows :-

1. Kalilash Chandra Sahu
2. Rameshh Chandra Sahu
3. Subash Chandra Sahu
4. Suresh Chandra Sahu

..... Petitioners

-VRS-

1. State of Orissa represented through the Secretary,
Revenue Department, Orissa.
2. Tahasildar, Nimapara
3. Revenue Inspector, Konarak
4. Commissioner, Land Records and Settlement, Cuttack
5. Addl.Settlement Officer, Puri
6. Bula Behera, S/o.Bisu Behera, Vill-KOnark, PS-Gop
(Konark) Dist.-Puri since dead the following are the
legal heirs.

6(a).Padi Behera, aged about 86 years, W/o.Late Bula Behera

6(b).Khetra Mohan Behera, aged about 66 years, S/o.Late Bula Behera

6(c).Gobardhan Behera, aged about 61 years, S/o.Late Bula Behera

6(d).Jugal Charan Behera, aged about 51 years, S/o.Late Bula Behera

6(e).Laxmidhar Behera, aged about 46 years, S/o.Late Bula Behera

6(f).Surendra Behera, aged about 44 years, S/o.Late Bula Behera All are At-Konark Samili Srikanthapur, PO/PS-Konark, Dist.-Puri

..... O.Ps.

This Court records the statement of Mr.Mohanty, learned Senior Counsel appearing for the Petitioners that the Petitioner in original stage was the Vendor, who transferred the disputed property to the father of these Petitioners through two sale deeds during pendency of Revision and one after Revision got disposed of.

4. The basis of challenge to the aforesaid judgment, as submitted by way of pleadings that the father of the Petitioners had purchased an area of Ac.0.20 dec. from the Hal Plot No.995 under Khata No.643, vide Registered Sale Deed dated 17.3.1993 from one Bula Behera who was the recorded land owner. Similarly vide another sale deed dated 24.3.1993 an area of Ac.0.10 dec. from the aforesaid plot was purchased by their father from one Bilasini Nayak who allegedly had purchased the same from said

Bula Behera vide Registered Sale Deed dated 17.3.1993. Subsequently on 15.11.1995 Bula Behera sold an area of Ac.0.10 dec. from the said plot to the Petitioners, vide Registered Sale Deed. On the basis of the aforesaid three Registered Sale Deeds, Petitioners here raised a claim that they had acquired right, title and interest over the aforesaid properties and therefore, the decision in the Revision Petition having been arrived in their absence was not sustainable in the eye of law. Besides the above according to the Petitioners pursuant to such sale transactions they were staying over the case land by constructing house till they faced an eviction proceeding in Encroachment Case No.13/2000. Having received the notice of eviction the Petitioners could ascertain that the R.P.Case No.1006/1991 instituted against their Vendor by the Government had been allowed on 18.3.1994.

5. This Court here takes into account the plea of the State that the Collector, Puri had instituted as many as sixteen Revision Cases under Section 32 of the O.S.S. Act including R.P. Case No.1006/1991 against the Vendor of the Petitioners. In the aforesaid Revision Case, the legality and propriety of the order dated 10.2.1988 passed in Appeal Case No.2247/133 of 1983 wherein in exercise of power under Section 22(2) of the Act, the Appeal preferred by the Tahasildar, Nimapara was disallowed and the Vendor of the Petitioners, namely, Bula Behera was directed to be recorded the name of Bula Behera, as tenant with

occupancy right with stitiban status. It is further contended that since the Revision was taken up against the Vendor of the present Petitioners, who was the recorded tenant as per the order passed by the Additional Settlement Officer in Appeal as stated above, the question of providing opportunity to the Petitioners did not arise at all in the hearing of the Revision. These Petitioners simply step into the show of their Vendor got the opportunity of contest in the Revision also remains undisputed.

6. From the rival contentions of the Parties, this Court finds, the so-called Registered Sale Deeds referred to by the Petitioners in their rejoinder executed by Bula Behera were dated 17.3.1993, 24.3.1993 & 15.11.1995. It is an admitted case of the Petitioners that the judgment in the R.P. Case delivered on 18.3.1994 on contest in presence of the Vendor, Bula Behera and the alleged Sale Deed was prepared on 17.3.1993 & 24.3.1993, i.e., during pendency of the Revision Petition. But no such disclosure was deliberately made before the Revisional Court. The third Registered Sale Deed was executed much after the delivery of the judgment i.e., on 18.3.1994. Thus there was clear suppression of fact at the instance of the Vendor at the stage of hearing of the Revision. Besides the above, as it appears from the impugned judgment, the plea sought to be raised by the present Petitioners was also raised by the Vendor and it was thoroughly examined by the Revisional Court.

7. This Court here finds, the learned Revisional Court has held that the Vendor of the Petitioners, namely, Bula Behera was not the Jamabandi Holder. Therefore, recording of name in the Appeal Case was contrary to law. Besides the Tahasildar, who is the custodian of Revenue Records of the Tahasil, had denied the existence of Ekpadia issued in favour of the father of the Vendor of the present Petitioners by means of an affidavit in Revisional Court. The Hal Plot No.995 under Hal Khata No.63 measuring an area of Ac.0.39 dec. which involves the alleged purchase of land by the Petitioners correspondence to Sabbik Khata No.450 and SABik Plot No.1083. The Sabik status of land is “Anabadi” and subsequently on the Hal Record of Right, suit land is kept as “Abad Jogy Anabadi” Khata. Under such circumstances the Petitioners cannot claim any right by virtue of the so-called Registered Sale Deeds, vide Annexure-A/1 to the counter affidavit. The land in question originally belongs to Ch. Jagannath Sahu, who was the ex-intermediary according to the Record of Right of 1929. In course of hearing the judgment passed in Title Appeal No.71/109 of 1985-81 (vide Annexure-D/1 to the counter affidavit) was cited wherein while allowing the Appeal, the Additional District Judge, Puri has held that Jamabandi in Rule-6 without authentication is not genuine. Since the dispute involved in this Appeal also involved a property of the same suit Village-Konark and the Records of so-called ex-intermediary was not accepted by the Civil Court, no right

vested with the Vendor of the Petitioners to deal with the Vendee vis-à-vis the Petitioners so as to transfer right, title and interest by executing the alleged Registered Sale Deed. This Court finds, all the aforesaid aspects have been duly taken note by the Revisional Court.

8. In the above background of the matter and this Court since finds the foundation of these Petitions based on three Sale Deeds, Sale Deeds dated 24.3.1993 & 17.3.1993 having obtained during pendency of the Revision undisputedly involving a clandestine attempt of the Petitioners and their Vendor and last Sale Deed dated 15.11.1995 since obtained much after the date of delivery of judgment in Revision on 18.3.1994 are all not only clandestine transaction but unholy transaction in the involvement of the Vendor of the Petitioners and that too, during pendency of the Revision involved. In the circumstance, the allegation and claim of the Petitioners herein remain unfounded and unjustified as well.

9. The Writ Application thus stands dismissed but however no order as to costs.

.....
(Biswanath Rath, J.)

Orissa High Court, Cuttack.
The 21st September, 2022/M.K.Rout, A.R.-cum-Sr.Secy.