

IN THE HIGH COURT OF ORISSA AT CUTTACK

O.J.C. No.3092 of 1996

Gadadhar Nayak

....

Petitioner

Mr. B. Routray, Sr. Advocate.

-versus-

State of Odisha and others

....

Opp.Partes

Mr.D.K.Mohanty, A.G.A.

Mr. S.P. Mishra, Sr. Advocate
for OP.No.4

**CORAM:
CHIEF JUSTICE
JUSTICE A.K. MOHAPATRA**

JUDGMENT

25.01.2022

Order No.

1. At the outset, we are reminded of the erudite words written by Justice A.K.Ganguly, a former Chief Justice of this Court and former Judge of the Supreme Court of India in ***Dalip Singh -vrs.- State of Uttar Pradesh & others: (2010) 2 Supreme Court Cases 114***, which has been extracted and reproduced here in below:

“For many centuries Indian society cherished two basic values of life i.e. “Satya” (truth) and “ahimsa” (non-violence), Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of the justice-delivery system which was in vogue in the pre-Independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, the post-Independence period has seen drastic changes in our value system. The materialism has overshadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take

shelter of falsehood, misrepresentation and suppression of facts in the court proceedings. In the last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final.”

2. The present writ application has been filed assailing the order dated 27th June 1992 passed by the Additional Tahasildar-cum-O.E.A. Collector- Banpur, in O.E.A. Case No.95 of 1987 (Annexure-3), order dated 22nd August, 1995 passed by the O.E.A. Collector-cum-Additional Tahasildar, Banpur in O.E.A. Misc. Case No.1 of 1995 (Annexure-4) and order dated 30th March, 1996 passed by the learned Member, Board of Revenue, Odisha, Cuttack in O.E.A. Revision Case No.20 of 1995 (Annexure-5).

3. Initially the above noted writ petition was filed by one Gadadhar Nayak in the year 1996. During the pendency of the present writ petition, Gadadhar Nayak has died on 5th August, 2011 leaving behind his only daughter namely, Sujata Mohapatra as his only legal heir. On an application bearing Misc. Case No.251 of 2013 filed at the instance of said Sujata Mohapatra, this Court vide order dated 30th November, 2016 has allowed the application for substitution bearing Misc. Case No.251 of 2013 and accordingly she has been substituted in place of the deceased original Petitioner.

4. The factual backdrop of the Petitioner's case as culled out from the writ Petition is that the disputed property relates to village Banpur, Sabik Khata No.1, Plot Nos.431,433,434 and 435 measuring a total area of Ac.0.285 dec. which corresponds to Hal Khata No.59/28, Plot No.431 Ac.0.12 dec, Plot No.433 Ac.0.35 dec., Plot No.434 Ac.0.224 dc. Plot No.435 Ac.0.14 dec. The *kisam* of the land has been recorded as *gharbari*. The disputed land was originally recorded in the name of the deity Dakheswar Bhagabati, marfat, Trust Board, Banpur (Opposite Party No.4) and the status of the land was intermediary interest (Nij Dakhal) status and the deity was the intermediary.

5. The original Petitioner was a Mali by caste and his ancestors were *Sebayats* of the Opposite Party No.4 deity. The then Trust Board of the deity had allowed the grandfather of the original Petitioner to construct their dwelling house on the case land and with such permission, the grandfather of the original Petitioner had constructed the dwelling house and started staying there with his family members. It is also stated that the grandfather of the original Petitioner and after him his successors were/are in exclusive possession of the case land for last 33 years.

6. By virtue of a Notification dated 18th March, 1974 issued under section 3 of the Estate Abolition Act, the trust estate vested in the State. Where after no application under Sections 6 & 7 of the O.E.A Act was filed by the Ex-intermediary. Therefore, the right, title and interest of the deity, if any, prior to the vesting have been

extinguished.

7. The original Petitioner, who had claimed to be in exclusive possession of the case land made an application in the year 1987 for settlement of the case land on lease in his favour. The said application of the Petitioner was registered as Vesting Case No. 95 of 1987 before the Tahasildar, Banpur. Thereafter a general notice was issued inviting public objection. Further, notices were also issued to the Endowment Inspector of *Dakheswar Bhagabati*, who was in charge of the deity. The Revenue Inspector (R.I.), Banpur was also asked to submit a report after visiting the spot.

8. After service of notice, the Revenue Inspector, Banpur was reminded by order dated 20th November, 1987 to submit the report as had been directed. The Revenue Inspector, Banpur had enquired into the matter in presence of the local gentlemen and submitted his report stating therein that the disputed plots are in physical possession of the original Petitioner prior to 1962. The Revenue Inspector had also indicated that the plots in question have been given to the original Petitioner by the Trust Board for rendering *Sebapuja* of the deity and as such the original Petitioner had constructed the dwelling house from his forefathers' time and was living there with his family.

9. Pursuant to the notice, the Endowment Inspector appeared and submitted that the Trust Board has allotted these plots to Sri Nayak for performing *sebapuja* of the deity long since.

10. After due enquiry and after hearing the parties, the

Tahasildar, Banpur by order dated 28th November, 1987 held that the original Petitioner is physically in possession over the suit plot since more than 25 years and using the same as *gharbari* and has further held that the original Petitioner is in possession over the case land prior to the date of vesting i.e., 18th March, 1974 and that the Ex-intermediary is not in possession over the case land. With such said findings, the Tahasildar, Banpur settled the case land in favour of the original Petitioner with a further direction to the original Petitioner to pay *Salami* and the arrear rent from the year 1974.

11. As against the aforesaid order dated 27th June, 1992 passed in OEA Case No.95 of 1987, no appeal or revision has been preferred by anybody. After expiry of the appeal period on 26th November, 1991, the Tahasildar directed the Revenue Inspector for realization of Government dues from the original Petitioner and further directed to send the case record for correction of the Record of Rights after realization of Government dues. It is further stated that after the aforesaid order, the original Petitioner had paid the arrear rent and other dues. Thereafter, pursuant to the direction of the Tahasildar, Record of Right was corrected in respect of the case land. After such correction of Record of Right, the Revenue Inspector had accepted the rent from the original Petitioner and granted receipts thereof. Copies of the corrected Record of Right as well as the rent receipts have been filed along with the writ application.

12. While this was so, after a gap of five years, the Opposite

Party No.4 filed an application purported to be an application under Section 6 & 7 before the O.E.A. Collector, Banpur for settlement of the case land. Again on 27th June, 1992 the Opposite Party No.4 filed a Petition for review of the order passed in O.E.A. Case no.95 of 1987 and to settle the case land in favour of the deity instead of the original Petitioner. The Additional Tahasildar-cum-O.E.A. Collector on 27th June 1992 passed an order to the effect that;

“Since the original CR is not readily available and could not be traced out, no correction to the ROR should be made. The rent roll issued by this office for realization of back rent and salami is recalled, Sri *Gadadhar* Mahapatra, Opp. Party to this case did not attend the Court nor could produce any documentary evidence. Hence, he is not being treated as tenant in respect of the above plots.”

13. The Petitioner has further stated that the aforesaid order was passed behind his back and the original Petitioner had absolutely no knowledge about such order.

14. Thereafter another application was filed bearing OEA Misc. Case No.1 of 1995 before the Additional Tahasildar, Banpur by the present Opposite Party No.4 with a prayer to set aside the correction made by virtue of the order passed in O.E.A. Case No.95 of 1987. It has been further stated that though notices were issued in the said OEA Misc. Case No.1 of 1995, but the Additional Tahasildar passed an order behind the back of the original Petitioner on 22nd August, 1995 declaring that the order passed after 27.06.1992 in OEA Case No.95 of 1987 to be

erroneous.

15. Thereafter, an eviction proceeding was initiated against the original Petitioner bearing Endowment Misc. Case No.18 of 1995 by the Collector, Khurda at the instance of Opposite Party No.4. In the said Endowment Misc. Case No.18 of 1995 notice was issued to the original Petitioner for eviction on the basis of the order passed by the Additional Tahasildar in favour of the deity and by treating the Opposite party No.4 deity as the owner of the case land.

16. Being aggrieved by the initiation of the aforesaid eviction proceeding, the original Petitioner had moved the Member, Board of Revenue (Opposite Party No.2) by filing a revision application under Section 38-B of the O.E.A. Act against the order passed by the Additional Tahasildar, Banpur on 22nd August, 1995 in OEA Misc. Case No.1 of 1995. The Member, Board of Revenue by order dated 18th November, 1992 called for the records of Vesting Case No.95 of 1987 and order dated 20th October, 1987, 28th November, 1987 and 27th June, 1992. However, very shockingly the record of OEA Case No.95 of 1987 could not be produced on the plea that the same is missing in the Tahasil Office. The Member, Board of Revenue issued notice to one Brajabandhu Subudhi, the then Senior Clerk of Banpur Tahasil, who was in charge of that file. Despite such notice neither the Tahsildar nor Sri Subudhi had any explanation to offer about the missing records. However, both of them admitted that order dated 28th November, 1987 had been passed by the Additional Tahasildar.

17. The Member, Board of Revenue, Odisha proceeded on the basis of the certified copy of the order produced by the original Petitioner. Finally, the Member, Board of Revenue dismissed the revision filed by the original Petitioner with the finding that the Additional Tahasildar has inherent jurisdiction to recall the earlier order and that the order dated 28th November, 1987 is fraudulent in nature. It is alleged by the Petitioner that the Member, Board of Revenue while finally disposing of the revision application has not decided the right, title and interest of the Opposite Party No.4 over the case land and moreover, he has not taken into consideration the report of the Endowment Inspector, which shows that the original Petitioner was in possession over the case land on the date of vesting.

18. That the Opposite Party No.4 has controverted the allegations made by the original Petitioner in the writ Petition by filing a counter affidavit. In the counter affidavit, it has been specifically stated that Plot Nos.431, 433, 434, 435 under C.S. Khata No.1, amongst other plots, was the property recorded in the name of Sri Dakheswar Bhagabati Marfat Trust Board in the Sabik Settlement R.O.R. The case land along with other properties are the trust estate and by virtue of the blanket Notification dated 18th March, 1974 under the O.E.A. Act, the said properties vested in the State free from all encumbrances. Further the case land recorded under Khata No.1 of C.S. R.O.R. is the Debottar Lakhraj Bahel Nijdakhal land of the deity and the same was in khas possession of the deity prior to as well as on the date of vesting. In

the Counter Affidavit, it has also been sated that in a Suo motu proceeding under the O.E.A. Act bearing Suo Moto Vesting Case No.143 of 1981 which was initiated at the instance of the Additional Tahasildar-cum-O.E.A. Collector, Banpur and after due enquiry and after following due procedure of issuing proclamation inviting objections from the public and with proper notice to the parties, by its order dated 11th November, 1982 settled the case land in favour of Sri Dakheswar Bhagabati Marfat Trust Board. A certified copy of the order dated 11th November, 1982 passed in Suo Motu Vesting Case No.143 of 1981 has been filed by Opposite Party No.4 along with his counter affidavit.

19. It is further stated by the Opposite Party No.4 in its counter affidavit that the original Petitioner claimed to be a tenant in possession of the case land in lieu of his service to the deity and although he claims benefit under Section 8(1) of the O.E.A. Act, but he had raised a claim in 1987 for settlement of the land in his favour and accordingly by order dated 28th November, 1987 the then Tahasildar settled the case land in his favour under Section 6 & 7 of the O.E.A. Act. The Opposite Party No.4 has also contended that order dated 20th October, 1987 and the subsequent orders are *per se* not in consonance with the statutory provisions under the O.E.A. Act and as such the same cannot confer any right in favour of the Petitioner. It is further contended in the said counter affidavit that no order of settlement under Seton 6 & 7 of the O.E.A. Act could be passed in favour of a tenant save and except under Section 8(3) of the O.E.A. Act. Since the case land is admittedly a Trust estate, as per the proviso to Section 8(3) of

the O.E.A. Act, the provision envisaged in Section 8(3) of the Act is not applicable to the facts of the Petitioner's case.

20. When the fact of the aforesaid illegal and fraudulent settlement in favour of the original petitioner came to the knowledge of the Opposite Party No.4 in the year 1992, the Opposite Party No.4 moved an application seeking review of the order in O.E.A. Case No.95 of 1987, which was filed to recall the order passed in O.E.A. Case No.95 of 1987. Thereafter the OEA Collector-cum-Additional Tahasildar, Banpur vide order dated 27.06.1992 under Annexure-3 directed that the R.O.R. should not be corrected and the order passed for issuance of rent roll and realization of back rent was recalled. It is further stated by the Opposite Party No.4 that despite order dated 27th June, 1992, the Office of the Tahasildar, for reasons best known to it corrected the record of right.

21. The Executive Officer of the Opposite Party no.4 after coming to know about such illegal and fraudulent correction of the Record of Rights, moved an application before the OEA Collector-cum-Additional Tahasildar, Banpur with a prayer to record the name of the deity in the Record of Rights by setting aside the previous order passed in O.E.A. Case no.95 of 1987. Such prayer made at the instance of the Opposite Party No.4 was allowed vide order dated 22nd August, 1995. It is further stated in the Counter Affidavit that the order of settlement under the O.E.A. Act dated 11th November, 1982 in favour of the deity could not be brought to the notice of the Additional Tahasildar-cum-O.E.A. Collector

inadvertently. However, both the O.E.A. Collector as well as the Member, Board of Revenue upon scrutiny of the records realized that the original Petitioner by practicing fraud had obtained order of settlement which is *per se* void. Therefore, the order of O.E.A. Collector recalling the order of settlement in favour of the original petitioner obtained by fraud has been supported and defended by the Opposite Party No.4 in its Counter Affidavit. It is further submitted that there is no bar in law for the authority to recall its own order when the same is legally void and has been obtained by suppression of facts and by practicing fraud upon the Court. Furthermore, it has been stated in the counter affidavit that the case record of O.E.A. Case No.95 of 1987 was deliberately suppressed and despite an order the same could not be produced before the Member, Board of Revenue although the Petitioner has filed the certified copy of the order sheet of the year 1995, but the Petitioner could obtain the same in the year 1993. It has also been stated in the counter affidavit that the original Petitioner has not produced any material to show that he was at any point of time a tenant under the deity (Opposite Party No.4). Further, when the property has been settled in favour of the deity in the year 1981, the question of entertaining any further application by the O.E.A. Collector under any provisions of the O.E.A. Act is absolutely unjust, unfair and improper.

22. Heard Mr.J.Biswal, learned counsel for the Petitioner, Mr.S.P.Mishra, Senior Advocate for Opposite Party No.4 and Mr.D.K.Mohanty, learned Additional Government Advocate on behalf of the Sate-Opposite Parties. Perused the records as well as

the impugned orders.

23. The main plank of argument of Mr.J.Bswal, learned counsel appearing on behalf of the Petitioner is that the power of review any judgment/order being a creature of Statute has to be exercised strictly in accordance with the provisions governing the exercise of such power. It is further submitted that by exercising inherent power, judgment/order could not have been reviewed by the authorities. He further submits that the O.E.A. Collector cannot exercise inherent power under Section 151 of the Code of Civil Procedure to review his own order. As such the impugned order passed in exercise of review power by the O.E.A. Collector is bad in law.

24. Learned counsel for the Petitioner further submits that Section 38-A of the O.E.A. Act only confers power on the O.E.A. Collector for correction of clerical and arithmetical mistake and further in view of the statutory provisions, such power is available to be exercised by the O.E.A. Collector only within a period of one year from the date of the order, which is sought to be reviewed. Therefore, the O.E.A. Collector-cum-Additional Tahasildar, has exceeded his jurisdiction conferred upon him by a statutory provision and as such by reviewing its own order, the O.E.A. Collector has exercised the power under Section 38-A read with Section 151 of the Code of Civil Procedure, even though there is no clerical and arithmetical error apparent in the order sought to be reviewed. He further submits that the order dated 27th June, 1992 passed by the O.E.A. Collector does not reveal anything about the

misrepresentation of fact or any fraud that was practiced upon the Court while passing order dated 28th November, 1987. In such view of the matter, he further submits that the impugned order passed by the Member, Board of Revenue holding that the Additional Tahasildar-cum-O.E.A. Collector has the power to recall earlier order dated 28th November, 1987 is absolutely illegal and without jurisdiction.

25. On behalf of the Petitioner, it was also contended that there is absolutely no material available on record to come to a conclusion that the order dated 28th November, 1987 passed by the O.E.A. Collector settling the case land in favour of the original Petitioner was based on either misrepresentation of fact or the same is an outcome of fraud. Therefore, the finding of the Member, Board of Revenue that the order was passed by misrepresentation of facts and by practicing fraud upon the court is not only perverse but the same has caused miscarriage of justice. Learned counsel for the Petitioner further submits that the order dated 28th November, 1987 is in accordance with law and the same has been passed in presence of Opposite Party No.4 and that the said order having not been challenged in any higher forum by Opposite Party No.4, the Opposite party No.4 is legally estopped to challenge the said order by filing an application for review of order dated 28th November, 1987. It was also contended on behalf of the Petitioner that the Petitioner had filed an application seeking exercise of suo motu revision power under section 38-B of the O.E.A. Act by the Member, Board of Revenue. The Member, Board of Revenue (Opposite Party No.2) while exercising such

revision power under section 38-B has exceeded his jurisdiction and has made out a third case which is not permissible in law.

26. It is also contended by the learned counsel for the Petitioner that the power of review under section 38-A of the O.E.A. Act has been exercised by the O.E.A. Collector beyond the period of limitation as provided under the O.E.A. Act. Further, the O.E.A. Collector before passing order dated 29th April, 1992 has not given any opportunity of hearing to the original Petitioner and that the finding of the Member, Board of Revenue (Opposite Party No.2) that notice was served by registered post on the original Petitioner is illegal and baseless.

27. Learned counsel for the Petitioner also contended that Opposite Party No.4 had not filed any application under Section 6 & 7 of the O.E.A Act for settlement of the case land in their favour. As such the properties vested in the State Government free from all encumbrances and the State has become the owner of the case land. Therefore, no fault can be found with the Additional Tahasildar-cum-O.E.A. Collector in settling/leasing out the case land in favour of the original Petitioner.

28. Mr.S.P.Mishra, learned senior counsel appearing on behalf of the Opposite Party No.4 submitted that the case land had been recorded in Khata No.1 under C.S. Record of Right as Debottar Lakhraj Bahel Nijdakhal land of the deity and the same was under the khas possession of the deity prior to as well as on the date of vesting. Thus, the case land stood recorded in the name of Sri

Dakheswar Bhagabati Marfat Trust Board in the Sabik Settlement Record of Rights.

29. Mr. Mishra further emphatically submits that the original Petitioner by suppressing material facts and by practicing fraud has managed to get the case land settled in his favour behind the back of Opposite Party No.4. He further submits that after the case land which is admittedly a Trust estate, vested in State by virtue of a blanket Notification dated 18th March 1974 under the O.E.A. Act free from all encumbrances. Thereafter, a Suo Motu Proceeding under the O.E.A. Act bearing Suo Motu Vesting case No.143 of 1981 was initiated by the then Additional Tahasildar-cum-O.E.A. Collector, Banpur in the year 1981 and after due enquiry and after issuing proclamation inviting objections from the Public and after due notice to the Commissioner of Endowment, the case land was settled in favour of Sri Dakheswar Bhagabati Marfat Trust Board by order dated 11th November, 1982. A copy of the said order has been filed along with the Counter Affidavit.

30. Further, referring to the said order dated 11th November, 1982, Mr. Mishra, submits that the said order was suppressed by the original Petitioner and that the Additional Tahasildar had also not taken note of the order dated 11th November, 1982 while passing order dated 20th November, 1987. He further submits that when the records of the O.E.A. Case No.95 of 1987 was called for by the Member, Board of Revenue in exercise of Suo Motu power of revision, the records could not be produced and a strange plea was taken before Opposite Party No.2 that the case record relating to

OEA Vesting Case No.95 of 1987 is missing. Relying upon all these facts, learned Senior Counsel appearing for Opposite Party No.4 submitted that order dated 28th November, 1987 settling the case land in favour of the original Petitioner is an outcome of suppression/ misrepresentation of facts and the order has been obtained by practicing fraud upon the Court.

31. It was also submitted by him that once the case land was settled in favour of the Opposite Party No.4 deity in Suo Motu Vesting Case No.143 of 1981 by order dated 11th November, 1982, it is no more open to the Additional Tahasildar-cum-O.E.A. Collector, Banpur to again settle the very same case land in favour of the original Petitioner. Therefore, the order dated 28th November, 1987 is absolutely illegal and void one. In course of his argument, learned Senior counsel appearing for Opposite Party No.4 read out the entire order sheet of Suo Motu Vesting Case No.143 of 1981 to convince this Court that the order dated 11th November, 1982 under Annexure-D/1 was passed after complying with all the statutory requirements and strictly in accordance with the provisions of the O.E.A. Act.

32. Mr.Mishra, learned Senior Counsel, further submitted that there can be no order of settlement under sections 6 & 7 of the O.E.A. Act in favour of the original Petitioner even accepting for a moment but not conceding that he was a tenant under Opposite Party No.4, save and except under section 8(3) of the O.E.A. Act. Since the case land is admittedly a Trust estate, in view of the proviso to Section 8(3) of the O.E.A. Act, the case land could not

have been settled in favour of the original Petitioner. In reply to the Petitioner's contention of power of review under section 38-A of the O.E.A. Act, the learned Senior Counsel submitted that the application which was filed before the Additional Tahasildar-cum-O.E.A. Collector is actually an application to recall the order dated 28th November, 1987 as the same was obtained by suppressing facts and practicing fraud upon the Court. He further submits that it is well settled proposition of law that every Court has inherent power to recall its own order in the event it is detected by the concerned Court/authority that the order has been obtained by suppression/misrepresentation of facts and by practicing fraud. He further submits that the Member, Board of Revenue (Opposite Party No.2) being the highest revenue authority of the State has been conferred with power to call for any record and examine the same on its own motion for the purpose of satisfying itself as to the regularity of such proceeding or correctness, legality or propriety of such decision or order and if in any case it appears to the Member, Board of revenue that any such decision or order ought to be modified, annulled, reversed or remitted, it may pass order accordingly. Therefore, the order passed by the Member, Board of Revenue which is sought to be challenged in the present writ Petition is perfectly legal, proper and valid.

33. Having heard learned counsel for the Petitioner and learned Senior Counsel appearing for Opposite Party No.4, we will now examine the contentions raised by the learned counsel for the Petitioner. The main plank of argument on behalf of the Petitioner is that the order dated 27th June, 1992 passed in O.E.A. Case No.

95 of 1987 by the O.E.A. Collector, Banpur is beyond his jurisdiction and not in conformity with the provisions contained under section 38-A of the O.E.A. Act. Learned counsel for the Petitioner calls in question the very conduct of the O.E.A. Collector in entertaining the review application under Section 38-A of the O.E.A. Act that too beyond the period of limitation prescribed in the Statute. In this regard Section 38-A of the O.E.A. Act may be referred to, which is quoted herein below:

“38-A. Review- Any decision made or order passed under this Act, whether before or after the commencement of the Orissa Estate abolition (amendment) Act, 1973 (other than a decision or order against which an appeal or revision has been preferred under this Act may, within one year from the date of the decision or order, as the case may be, and after giving all persons interested an opportunity of being heard, be reviewed by the officer who made the decision, or passed the order, or his successor in office on the ground that there has been a clerical or arithmetical mistake in the course of any proceeding under this Act.”

34. Upon a perusal of the aforesaid provisions conferring the power of review on the authorities under the O.E.A. Act, it can be seen that any decision made or order passed under the O.E.A. Act (other than the decision and order against which an appeal or revision has been preferred) could be reviewed within a period of one year from the date of such decision or order after giving all persons interested an opportunity of being heard. Further, such power of review as provided under section 38-A could be used on the ground that there has been a clerical or arithmetical mistake in the course of any proceeding under the O.E.A. Act.

35. In the aforesaid context, it would be fruitful to refer to a judgment of the Hon'ble Supreme Court of India in the matter of *Budhia Swain and others -vrs.- Gopinath Deb and others:* reported in **1999(II) OLR (SC) 151**. In the reported decision, the appellants, who are resident of village Panibhandar in the district of Puri filed an application seeking review of order of settlement dated 2nd April, 1966 in favour of the deity on the ground that the public notice was not served in the locality as prescribed. The O.E.A. Collector exercising the power of review set aside the order of settlement. In Appeal, the A.D.M. sustained the order of setting aside dated 2nd April, 1966. Thereafter the deity preferred a writ application under Articles 226 and 227 of the Constitution of India to this Court. This Court while setting aside the order passed by both the O.E.A. Collector and A.D.M. held that the power of review as assumed by the O.E.A. Collector did not exist and the circumstances of the case did not warrant the exercise of power to recall earlier order passed by the O.E.A. Collector which was one passed under the jurisdiction of the O.E.A. Collector. Further, this Court held that when the averments made in the application seeking review/recall did not go beyond alleging an irregularity merely or at the worst an illegality, thereafter the villagers preferred a SLP before the Hon'ble Supreme Court of India. The Hon'ble Supreme Court of India dismissed the matter holding that the order dated 2nd April, 1966 did not suffer from lack of jurisdiction or error from jurisdiction much less an inherent one. While upholding the order passed by this Court, Civil Appeal was dismissed with the finding that the order passed by the O.E.A.

Collector was without jurisdiction and the O.E.A. Collector has exercised jurisdiction which by law did not vest in him. Therefore, in view of the aforesaid judgment of the Hon'ble Supreme Court, it is well settled by now that power under section 38-A of the O.E.A. Act is limited to correct the clerical or arithmetical mistake.

36. In the above referred judgment of the Hon'ble Supreme Court while dealing with the scope of review under Section 38-A of the O.E.A. Act, in Paragraph-8 of the judgment (*supra*) it has been observed as follows:

“8. In our opinion a Tribunal or a Court may recall an order earlier made by it if

(i) the proceedings culminating into an order suffer from the inherent lack of jurisdiction and such lack of jurisdiction if patent,

(ii) there exists fraud or collusion in obtaining the judgment.

(iii) There has been a mistake of the Court prejudicing a party, or

(iv) A judgment was rendered in ignorance of the fact that a necessary party had not been served at all or had died and the estate was not represented. The power to recall a judgment will not be exercised when the ground for reopening the proceedings or vacating the judgment was available to be pleaded in the original action but was not done or where a proper remedy in some other proceeding such as by way of appeal or revision was available but was not availed. The right to seek vacation of a judgment may be lost by waiver, estoppels or acquiescence.”

Therefore, in the aforesaid judgment, the Supreme Court of India has approved the proposition of law that a Tribunal or Court may recall an order earlier made by it where there exists fraud or collusion in obtaining the judgment, where there has been a mistake of the Court causing prejudice to a party. The proceeding culminating into an order suffers from inherent lack of jurisdiction and such lack of jurisdiction if patent.

37. In the light of the proposition of law laid down by the Hon'ble Supreme Court, the facts of this case are required to be relooked to find out whether the conduct of the Additional Tahasildar-cum-O.E.A. Collector, Banpur in recalling its earlier order dated 28th November, 1987 is legal, correct and valid and sustainable. A bare perusal of the order sheet in Suo Motu Vesting Case No.143 of 1981 filed by Opposite Party No.4 as Annexure-D/1 to the Counter Affidavit clearly reveals that the case land was settled in favour of Opposite Party No.4 deity much prior to the proceeding which was initiated by the original Petitioner in the year 1987 and in which an order of settlement dated 28th November, 1987 was passed in his favour. This Court upon careful examination of the entire order sheet is of the opinion that the same is absolutely valid, legal and passed in accordance with O.E.A. Act and Rules framed there under. Further, the order of settlement under Annexure-D/1 vide order dated 11th November, 1982 settling the land in favour of Opposite Party No.4 is legal, valid and the said order dated 11th November, 1982 having not been challenged before any higher forum either by filing an appeal or revision, the same has attained

finality and as such binding on the parties.

38. Further, once the case land was legally and validly settled in favour of Opposite Party No.4 by order dated 11th November, 1982 in Suo Motu Vesting Case No.143 of 1981 by the Additional Tahasildar-cum-O.E.A. Collector, Banpur, the case land was no more open to be settled in favour of any other person than the Opposite Party No.4 deity. As such, the very conduct of the Additional Tahasildar-cum-O.E.A. Collector in entertaining an application for settlement of the case land in the year 1987, vide O.E.A. Case No.95 of 1987 is null and void. By entertaining such an application filed by the original Petitioner in the year 1987 and settling the case land, which was no more available to be settled in favour of the original Petitioner, the Additional Tahasildar-cum-O.E.A. Collector, Banpur has committed grave jurisdictional error. Moreover, such an order which was passed without notice to a valid settllee under the O.E.A. Act like the Opposite Party No.4 has caused miscarriage of justice and serious prejudice to the Opposite Party No.4. Therefore, in view of the principle of law laid down in Paragraph-8 of the judgment of the Hon'ble Supreme Court (supra) the O.E.A. Collector has not committed any illegality in recalling the earlier order dated 28th November, 1987 in exercise of power conferred on him by virtue of Section 38-A of the O.E.A. Act. Thus, the main plank of argument of the learned counsel for the Petitioner that the O.E.A. Collector by exercising power under section 38-A to either review or recall his earlier order is illegal and without jurisdiction is bound to fail.

39. The order passed by the O.E.A. Collector in O.E.A. Case No.95 of 1987 dated 27th Jun, 1992 was carried in revision to the Member, Board of Revenue, Odisha, Cuttack bearing O.E.A. Revision Case No.20 of 1995. The Member, Board of Revenue decided the case while exercising his power under section 38-B of the O.E.A. Act. Section 38-B of the O.E.A. Act reads as follows:

“38-B. 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.*

(2) *The Board of Revenue shall not*

*[(i) ***]*

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

40. The provisions contained in Section 38-B of the OEA Act confers a sweeping power on the highest revenue authority of the State i.e. Member, Board of Revenue to correct jurisdictional error committed by subordinate revenue authorities, the Member, Board of Revenue, Odisha has examined the entire matter very carefully and meticulously and finally dismissed the revision petition at the instance of the Revision Petitioner by holding that the order dated

28th November, 1987 has been obtained by misrepresentation of facts and by practicing fraud on the Court. After careful examination of the order passed by the Member, Board of Revenue vide order dated 30th March, 1996 in Revision Case No.20 of 1995, this Court is convinced that the Member, Board of Revenue while passing order dated 30th March, 1996 has not committed any illegality at all, rather the order passed by him helps to secure the ends of justice.

41. After analyzing the facts and circumstances involved in the present case, the question that arises now is when can it be said that a person is guilty of playing fraud upon the Court? In this context it would be fruitful to refer to the landmark judgment of the Hon'ble Supreme Court of India in the matter of ***S.P.Chengalvaraya Naidu Vs. Jagannath reported in (1994) 1 SCC 1***. In paragraph 6 of the said judgment it has been observed as follows;

“6. The facts of the present case leave no manner of doubt that Jagannath obtained the preliminary decree by playing fraud on the court. A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. Jagannath was working as a clerk with Chunilal Sowcar. He purchased the property in the court auction on behalf of Chunilal Sowcar. He had, on his own volition, executed the registered release deed (Ex. B-15) in favour of Chunilal Sowcar regarding the property in dispute. He knew that the Appellants had paid the total decretal amount to his master Chunilal Sowcar. Without disclosing all these facts, he filed the suit for the partition of the property on the ground that he had

purchased the property on his own behalf and not on behalf of Chunilal Sowcar. Non-production and even non-mentioning of the release deed at the trial is tantamount to playing fraud on the court. We do not agree with the observations of the High Court that the Appellants-Defendants could have easily produced the certified registered copy of Ex. B-15 and non-suited the Plaintiff. A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party.”

Further, in *Indian Bank vs. Satyam Fibres (India) (P) Ltd.: reported in (1996) 5 SCC 550*, the Hon’ble Supreme Court of India in paragraph 21 of the judgment has observed as follows;

“21. In *Smith v. East Elloe Rural Distt. Council [1956 AC 736 : (1956) 1 All ER 855 : (1956) 2 WLR 888]* the House of Lords held that the effect of fraud would normally be to vitiate any act or order. In another case, *Lazarus Estates Ltd. vs. Beasley [(1956) 1 QB 702 : (1956) 1 All ER 341 : (1956) 2 WLR 502] (QB at p. 712), Denning, L.J.* said:

No judgment of a court, no order of a Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything.”

In the matter of *Ram Chandra Singh vs. Savitri Devi: reported in (2003) 8 SCC 319*, it has been held by the Supreme Court of India that a fraudulent misrepresentation can also be construed as fraud in law. In paragraph 18 of the said judgment it has been observed as follows:

“18. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by willfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party

makes representations which he knows to be false, and injury ensues therefrom although the motive from which the representations proceeded may not have been bad.”

Further in *Meghmala vs. G. Narasimha Reddy* reported in (2010) 8 SCC 383 the Supreme Court of India has observed:

“28. It is settled proposition of law that where an Applicant gets an order/office by making misrepresentation or playing fraud upon the competent authority, such order cannot be sustained in the eye of the law. "Fraud avoids all judicial acts, ecclesiastical or temporal." (*Vide S.P. Chengalvaraya Naidu v. Jagannath* (1994) 1 SCC 1 : AIR 1994 SC 853]. In *Lazarus Estates Ltd. v. Beasley* [(1956) 1 QB 702 : (1956) 2 WLR 502 : (1956) 1 All ER 341 (CA)] the Court observed without equivocation that: (QB p. 712) "No judgment of a court, no order of a Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything.”

It has also been held by the Supreme Court of India in *Bhaurao Dagdu Paralkar vs. State of Maharashtra*: reported in (2005) 7 SCC 605, that suppression of a material document would also amount to fraud on the Court. Although, negligence is not fraud but it can be evidence on fraud.

42. In the light of the law laid down by the Supreme Court of India as discussed here in above, the next question i.e. required to be considered here is whether the conduct of the original Petitioner and the manner in which order dated 28th November, 1987 has been passed by the Additional Tahasildar-cum-O.E.A. Collector, Banpur constitutes misrepresentation/suppression of facts and

fraud on Court? As discussed herein above, the case land was settled in favour of Opposite Party No.4 deity by a valid and legal proceeding and by order dated 11th November, 1982. The R.O.R. stood in the name of Opposite Party No.4 deity. Therefore, it is difficult to believe that such fact was not within the knowledge of the original Petitioner. Further, the application which was filed by the original Petitioner in the year 1987 and order of settlement passed therein by order dated 28th November, 1987 in favour of the Petitioner is shrouded by a dense cloud of doubt. The very same O.E.A. Collector, who had passed earlier order on 11th November, 1982 settling the land in favour of Opposite Party No.4 deity could not have again settled the very same land in favour of the original Petitioner. This Court is unable to persuade itself to accept the contention of the Petitioner that the order dated 11th November, 1982 and the settlement of the case land pursuant thereto was not within the knowledge of either the original Petitioner or the O.E.A. Collector. Moreover the said order dated 11th November, 1982 or any fact relating thereto were never brought to the notice of any of the authorities concerned by the original Petitioner. Anyways, the O.E.A. Collector, Banpur while passing order dated 11th November, 1982 settling the land in favour of the original Petitioner has been misled by suppression of material facts to believe that the case land has not been settled in anybody's favour.

43. Further while hearing the revision petition, the Member, Board of Revenue called for the case record in O.E.A. Case No.95 of 1987. Hearing of the revision petition by Member, Board of Revenue, Odisha was unnecessarily delayed and held up due to

non-production case records of O.E.A. Case No.95 of 1987. The Tahasildar, Banpur in his letter dated 21st December, 1995 reported the Member, Board of Revenue that the case record had not been handed over by one Brajabandhu Subudhi, the then Senior Clerk of Banpur Tahasil. The said Brajabandhu Subudhi was noticed by Member, Board of Revenue to appear in his Court. Further, the Member, Board of Revenue in his order has specifically observed, which is quoted herein below:

“On verification of the records of movement of papers, I came to a prima facie finding that Shri Subudhi had the custody of the case record and thereafter it was missing. Taking into account the entries in the relevant registers dealing with movement of case record in the Tahasil Office I had directed Collector, Nayagarh in my order dated 23.2.1996 to place Shri Subudhi under suspension and proceed against him departmentally. That was done with the hope that faced with the ultimate prospect of a major penalty in a Departmental Proceedings the record may come to light eventually. But that has not happened yet and one has to take the story further on the basis of the certified copy of the order sheet in O.E.A. Case No.95/87 which has been filed in this case.”

44. The Member, Board of Revenue, Odisha while examining the order sheet in O.E.A. Case No.95 of 1987 has pointed out many glaring illegalities in its order dated 30th March, 1996. The Member, Board of Revenue has further observed that when the Executive Officer of the Trust Board filed an application for reviewing the order passed in O.E.A. Case No.95 of 1987 and to settle the land in deity's favour, the Additional Tahasildar, Banpur verified the R.O.R. and found that even though the order had been

passed earlier on 28th November, 1987 to settle the land in favour of the original Petitioner, but the Record of Rights had not been corrected. The Member, Board of Revenue has also referred to the order of the Tahasildar where it has been stated that in the last Settlement which took place in the year in 1961, the property in question was recorded in the name of the deity as Trust property and the name of the recorded tenant cannot be changed, therefore, he had ordered that the Record of Rights should stand as it was at that time. Despite the aforesaid order dated 27th June, 1992, the Record of Rights was surreptitiously corrected in the name of the original Petitioner i.e. the Record of Right was corrected unauthorisedly even after order dated 27th June 1992. It is further observed by Member, Board of Revenue referring to Tahasildar's order that even after the order dated 27th June 1992 was passed recalling the order dated 28th November, 1987 settling the land in favour of the original Petitioner on 19th September, 1992, the Record of Rights was unauthorisedly corrected in the name of the original Petitioner. Further, it has been observed by the Member, Board of Revenue that after passing order dated 28th November, 1987 surprisingly the Additional Tahasildar, Banpur had ordered to put up the file on 26th November, 1991 i.e. after a gap of four years.

45. Now, reverting back to the issue of the conduct as well as the power, scope and authority of the Addl. Tahasildar cum OEA, Collector, Banpur to review/recall his earlier order dtd.28.11.1987, this court is of the considered view that the said order is an outcome of fraud and misrepresentation/suppression of material

fact by the original petitioner. As has been held by the Supreme Court of India in the case ***Budhia (supra)*** in paragraph 8 of the judgment that the review/recall application filed by the OP No.4 in the present case is maintainable in law under section 38~A of the O.E.A. Act. Even assuming that such an application is not maintainable also, then the Courts/Tribunals are not devoid of power to recall their order passed earlier once it comes to their notice that the order passed has been obtained fraudulently and by committing a jurisdictional error. By now it is a well accepted position of law that every court has inherent power to set aside an order obtained by practicing fraud upon that Court. In this context it would be gainful to refer to a latest judgment of the Hon'ble Supreme Court of India in the matter of ***Smriti Madan Kansagra vs. Perry Kansagra: reported in AIR 2021 SC 5423***. In Paragraphs 22 and 23 of the judgment it has been observed as follows;

“22. The judiciary in India also possesses inherent power, specially Under Section 151 Code of Civil Procedure, to recall its judgment or order if it is obtained by fraud on court. In the case of fraud on a party to the suit or proceedings, the court may direct the affected party to file a separate suit for setting aside the decree obtained by fraud. Inherent powers are powers which are resident in all courts, especially of superior jurisdiction. These powers spring not from legislation but from the nature and the constitution of the tribunals or courts themselves so as to enable them to maintain their dignity, secure obedience to its process and rules, protect its officers from indignity and wrong and to punish unseemly behaviour. This power is necessary for the orderly administration of the court's business.

23. Since fraud affects the solemnity, regularity and orderliness of the proceedings of the court and also amounts to an abuse of the process of court, the courts have been held to have inherent power to set aside an order obtained by fraud practised upon that court. Similarly, where the court is misled by a party or the court itself commits a mistake which prejudices a party, the court has the inherent power to recall its order. (See: Benoy Krishna Mukerjee v. Mohanlal Goenka: AIR 1950 Cal 287]; Gajanand Sha v. Dayanand Thakur: AIR 1943 Pat 127: ILR 21 Pat 838]; Krishnakumar v. Jawand Singh : AIR 1947 Nag 236 : ILR 1947 Nag 190]; Devendra Nath Sarkar v. Ram Rachpal Singh : [ILR (1926) 1 Luck 341 : AIR 1926 Oudh 315]; Saiyed Mohd. Raza v. Ram Saroop : ILR (1929) 4 Luck 562 : AIR 1929 Oudh 385 (FB)]; Bankey Behari Lal v. Abdul Rahman [ILR (1932) 7 Luck 350 : AIR 1932 Oudh 63]; Lekshmi Amma Chacki Amma v. Mammen Mammen : 1955 Ker LT 459], The court has also the inherent power to set aside a sale brought about by fraud practised upon the court (Ishwar Mahton v. Sitaram Kumar : AIR 1954 Pat 450] or to set aside the order recording compromise obtained by fraud. (Bindeshwari Pd. Chaudhary v. Debendra Pd. Singh : AIR 1958 Pat 618 : 1958 BLJR 651]; Tara Bai v. V.S. Krishnaswamy Rao : AIR 1985 Kant 270 : ILR 1985 Kant 2930]

Further in paragraph 36 of the judgment in ***Smriti Madan Kansagra's case (supra)*** the Supreme Court of India has observed as follows;

“36. From the above, it is evident that even in judicial proceedings, once a fraud is proved, all advantages gained by playing fraud can be taken away. In such an eventuality the questions of non-executing of the statutory remedies or statutory bars like doctrine of res judicata are not attracted. Suppression of any material fact/document amounts to a fraud on the court. Every court has an inherent power to recall its

own order obtained by fraud as the order so obtained is nonest.”

46. The observation of the Member Board of Revenue, Odisha to the effect that every Court/Tribunal/Authority has inherent power to review/recall its own order in the event it is found that the order has been obtained by misrepresentation/ suppression of facts or by practicing fraud upon the Court, gets support from a judgment of the Supreme Court of India in ***A.V. Papayya Sastry and Ors. vs. Government of A.P. and Ors.***: reported in (2007) 4 SCC 221, at Para 22 of the judgment it has been observed by the Apex Court in the following words;

“22. It is thus settled proposition of law that a judgment, decree or order obtained by playing fraud on the Court, Tribunal or Authority is a nullity and nonest in the eye of law. Such a judgment, decree or order --by the first Court or by the final Court-- has to be treated as nullity by every Court, superior or inferior. It can be challenged in any Court, at any time, in appeal, revision, writ or even in collateral proceedings.”

47. In reply to the Petitioner's contention that he was not noticed and as such was deprived of an opportunity of hearing before recalling the order of settlement in his favour, the Member, Board of Revenue, Odisha in its order dated 30th March, 1996 has categorically observed as follows:

“11 xx xx xx

In this case I find from the order dated 22.8.95 that notices to Sarat Chandra Mahapatra, Gaddhar Nayak @ Gadadhar Mahapatra, the present revision petitioner and Susil Mahapatra were sent through registered post. These registered letters were also received by these

persons through Banpur Sub-Post Office vide their receipt Nos.4367,4368 and 4369. In reply Susil Kumar Mahapatra submitted a petition stating that he had nothing to say as he was not a party to the original O.E.A. case. The other O.P. Gadadhar Nayak alias Gadadhar Mahapatra did not appear in spite of receipt of notice. As such, it is not open for him to say that the order was passed behind his back.”

In view of the aforesaid findings, the ground taken by the original Petitioner that he was not given any notice or opportunity of hearing is not sustainable in law.

48. The facts and circumstances as discussed herein above and as borne out from the record, it is manifest that the original Petitioner colluded with the staff of Tahasil Office particularly, Brajabandhu Subudi to gain undue advantage against the deity, who in law considered to be a perpetual minor, and as such suppressed material facts and indulged in fraudulent practice. The aforesaid analysis of facts and circumstances compel this Court to believe that as a result of misrepresentation/ suppression of facts and fraud committed upon the Court, the direct benefit goes to the original Petitioner. Therefore, this Court is of the considered view that the original Petitioner is guilty of suppression/misrepresentation of facts as well as practicing fraud upon the Court. In such view of the matter, the Petitioner is not entitled to any relief whatsoever in law.

49. In view of the aforestated facts and circumstances and in view of the conclusion of this Court that orders were obtained by practicing fraud and by suppressing material facts, this Court is not

inclined to interfere with the orders impugned in this Writ Petition and accordingly the Writ Petition is, hereby, dismissed.

50. In the facts and circumstances of the case, the Petitioner is directed to pay a cost of Rs.10,000/- (Rupees ten thousand) to Opposite Party No.4 Trust within a period of four weeks from the date of this judgment.

51. As the restrictions due to resurgence of COVID -19 situation are continuing, learned counsel for the parties may utilize a print out of the order available in the High Court's website, at par with certified copy, subject to attestation by the concerned Advocate, in the manner prescribed vide Court's Notice No.4587, dated 25th March, 2020 as modified by Court's Notice No.4798, dated 15th April, 2021 and Office Order dated 7th January, 2022.

(A.K. Mohapatra)
Judge

(Dr. S. Muralidhar)
Chief Justice