

**IN THE HIGH COURT OF ORISSA AT CUTTACK**  
**I. A. No. 3477 of 2022 and I.A. No.3478 of 2022**  
**in W.A No.1366 of 2022**

***Khitindra Kumar Dutta &  
Others***

.... ***Appellants***

Mr. D. P. Mohanty, Advocate

***-versus-***

***Nanda Dutta & Others***

.... ***Respondent***

Mr. L. Samantaray, AGA (for State)

**CORAM:**  
**JUSTICE JASWANT SINGH**  
**JUSTICE M.S. SAHOO**

**ORDER**  
**14.11.2022**

**(Hybrid mode)**

**Order No.**

**03.**

**I. A. No. 3477 of 2022**

1. The instant application has been filed by the applicant Tarak Chandra Bose for maintaining the present appeal on behalf of his late father Kedarnath Bose, who is Writ Petitioner No.2 before the learned Single Judge and is stated to have died on 25<sup>th</sup> October, 1999 leaving behind no other legal heirs except him.

2. In view of the contents of the application supported by the affidavit dated 03.11.2022 of the applicant, the application is allowed subject to just exception.

3. The applicant Tarak Chandra Bose is permitted to be brought on record to maintain and pursue the

present *lis* on behalf of the original Writ Petitioner No.2- Kedarnath Bose.

4. Accordingly, the I.A. is disposed of.

**I. A. No. 3478 of 2022**

1. The instant application has been filed by the applicant Sadaya Kumar Bose for maintaining the present appeal on behalf of his late father Ganeshnath Bose, who is Writ Petitioner No.3 before the learned Single Judge and is stated to have died on 17<sup>th</sup> December, 1999 leaving behind no other legal heirs except him.

2. In view of the contents of the application supported by the affidavit dated 03.11.2022 of the applicant, the application is allowed subject to just exception.

3. The applicant Sadaya Kumar Bose is permitted to be brought on record to maintain and pursue the present *lis* on behalf of the original Writ Petitioner No.3- Ganeshnath Bose.

4. Accordingly, the I.A. is disposed of.

**W.A. No.1366 of 2017**

1. The present intra-court appeal has been preferred by the appellants against the order dated 21<sup>st</sup> September, 2022 passed by the learned Single Judge of this Court in OJC No.17326 of 1997.

**2.** The brief facts of the case are that the O.P. Nos.1 to 3-herein i.e. i) Nanda Dutta, ii) Krishna Dutta and iii) Himadri Ranjan Dutta had preferred a R.P. No.3304 of 1997 under Section 15(b) of the Orissa Survey & Settlement Act, 1958 (for short, “Act, 1958”) to revise Hal R.o.R. Khata No. of 1114, 1127, 1128 & 1193 of Cuttack (hereinafter, “disputed property”) and record their names in place of the names of the Appellant Nos.1 to 6 herein or their lineage before the Commissioner, Land Records and Settlement, Orissa, Cuttack/ O.P No. 4.

**3.** The O.P. Nos. 1 to 3-herein claim to have bought the disputed property from Bhramar Senapati vide Registered Sale Deed (RSD) No.1944 dated 28.03.1966 who in turn had purchased the said disputed property on 05.12.1951 through Court auction sale. Also, Bhramar Senapati was delivered the possession of the property through the Court on 26.06.1956. The auction was confirmed uptill this Court vide Civil Revision no. 47/55. Hence, the O.P. Nos. 1 to 3 claimed their title from Bhramar Senapati. *Per Contra*, the Appellant Nos.1 to 6-herein laid claim to the disputed property based upon the fact that the ROR reflected their father’s or grandfather’s name.

**4.** The Commissioner Land Records and Settlement, Orissa, Cuttack/ O.P. No. 4 vide order dated 26<sup>th</sup> November, 1997 accepted the prayer of the O.P. Nos.1 to 3 and ordered substitution of their

names in place of the Appellants Nos.1 to 6 herein.

The relevant portion is reproduced below:

*“.....In view of the analysis made above, the recording of the names of the O.P’s in the impugned R.O.R. of mauza Cuttack sahar, unit no.23 Samantasahi Khata No.1193, consisting of Hal Plot no.1114, Hal Plot no.1127 and Hal Plot no.1128 **is not sustainable in absence of any valid title and their names be deleted from the said Hal R.O.R. and the names of the petitioners be recorded as Sthitiban raiyats.***

*The revision is allowed.”*

5. Aggrieved by the Revision Order dated 26<sup>th</sup> November, 1997, the appellants Nos. 1 to 6 herein preferred an Original Jurisdiction Case numbered O.J.C. No.17326 of 1997 before this Court to challenge the aforementioned Revision Order. An argument was raised that despite the appellants having secured the right, title and interest over the property by succession, no consideration was paid to such factors in deciding the Revision case. The learned Single Judge vide its order dated 21<sup>st</sup> September, 2022 rejected the above arguments and held that an application under Section 15(b) of the Act, 1958 has no scope to determine the right, title and interest of any property and is limited to correction of record-of rights. The relevant portion is reproduced below:

*4. Considering the rival contentions of the parties, this Court finds petitioners claim on the basis of right, title and interest created in their favour and the attempt of the petitioners in 15(b) proceeding appears to be seeking adjudication on declaration of right, title and interest. **For the nature of proceeding under Section 15(b) of the O.S.S. Act, this Court is of the opinion that the Commissioner in exercise of***

***power under Section 15(b) of the Orissa Survey & Settlement Act, 1958 has no scope to get into declaration of right, title and interest of parties as this proceeding is aiming to correction of record-of-right based on existing right, if any. In the event the petitioners were in requirement of consideration of the right, title and interest aspect, nothing prevented the petitioners to approach under the appropriate provision of law before appropriate court in at least getting a declaration of right, title and interest of the party involved. In the circumstance, this Court finds there is no scope for interfering in the impugned order. Consequently, the writ petition stands dismissed.***

6. In the present intra-Court appeal, prayer is made to set aside the order of the learned Single Judge dated 21<sup>st</sup> September, 2022 as also the revisional order dated 26<sup>th</sup> November, 1997.

7. Heard learned counsel for the parties at length.

8. The object of the Act, 1958, shows that, its scope is limited to determining/correcting the record-of-rights of the parties. The object is reproduced below for clarity:

*“An act to consolidate and amend the laws relating to survey, record-of-rights and settlement operations in state of Orissa.”*

9. The Commissioner/O.P. No.4 in its order dated 26<sup>th</sup> November, 1997 was asked to substitute the name of the O.P. Nos.1 to 3-herein in place of the Appellant Nos.1 to 6 and their lineage under Section 15(b) of the Act, 1958. However, the Commissioner while exercising its power, did get into the question of determining the title of the property before

substituting the record-of-rights. The question frames is reproduced below:

“.....the sole question that comes up for consideration is whether the petitioners acquire title to the suit land on the basis of auction purchase as confirmed by the Hon’ble High Court with its delivery of possession to the Vendor of the petitioners through the Court or whether the O.P’s acquire title to the suit land on the basis of stepping into the shoes of Krisha Chandra Dutta, their grandfather who was recorded as Darpattadar in the sabik R.O.R. of 1932.”

**10.** The Commissioner observed that any changes to the record-of-rights can be made based upon the prima facie title of the property. Further, mere possession cannot confer the title.

**11.** The Commissioner/ O.P. No. 4 held that the title of the property was vested upon certain Bhramar Senapati (Auction Purchaser) by order of this Court in Civil Revision No.47 of 1955. Further, possession was also granted to the auction purchaser. The O.P. Nos.1 to 3 purchased the land from the auction purchaser on 28.03.1966 and thus became the rightful owner. Relevant portion of order of commissioner dated 26.11.1997 is reproduced below:-

**“Once the suit land is put to auction sale for non-payment of rent and the said auction sale is held to be valid by the Hon’ble High Court in civil Revision No.47 of 1955 and delivery of possession made over to the auction purchaser through court, the right if any of any person on the suit land prior to such auction sale stands extinguished and a new right is created in favour of the auction purchaser which the settlement authorities cannot ignore specially in the back ground that delivery of possession is made over to the auction purchaser through the court.**

..... The present petitioners having purchased the suit land from the said auction purchaser (who is held to

*be the rightful owner) through the R.S.D. no.1944 dt 28.03.66 have become the rightful owners in respect of the suit land and..."*

**12.** We, upon carefully examining the material on record find that there is no fault with the revisional order dated 26<sup>th</sup> November, 1997 passed by the Commissioner/O.P. No.4 as it does not suffer from any legal infirmity warranting interference by this Court. Any rights of the Appellant Nos.1 to 6 or their lineage stand extinguished after the successful Court auction sale way back on 5<sup>th</sup> December, 1951 in favour of Bhramar Senapati duly confirmed uptill this Court in Civil Revision No.47/55. We further find that O.P. Nos.1 to 3 became the lawful owners of the disputed property on execution of the registered sale deed dated 28<sup>th</sup> March, 1966 on purchase from Bhramar Senapati. However, the names of O.P. Nos.1 to 3 were not reflected in the revenue records. Therefore, their claim for substitution of their names in the revenue record based on lawful purchase was meritorious and thus allowed. We also find no fault with the order of the learned Single Judge.

**13.** In view of the above, the present Writ Appeal stands dismissed.

**(Jaswant Singh)**  
**Judge**

**(M.S. Sahoo)**  
**Judge**