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ORISSA HIGH COURT : CUTTACK

W.P.(C) No.15621 of 2025

CNR No.ODHC01-039096-2025

In the matter of an Application under Articles 226 and 227 of the Constitution of India, 1950

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1. Nilamani Dibya
Aged about 80 years
Wife of Late Baidyanath Satapathy
Of Village: Gopinathpur
P.O.: Singhnathpitha, P.S.: Badamba
District: Kataka, PIN: 754031.

2. Biswaranjan Satapathy
Aged about 42 years
Son of Late Baidyanath Satapathy
Of Village: Gopinathpur
P.O.: Singhanathpitha, P.S.: Badamba
District: Kataka, PIN: 754031.

3. Sarojini Satapathy
Aged about 63 years
Wife of Prafulla Kumar Satapathy
Daughter of Late Bidyanath Satapathy
Of Village: Gopinathpur
P.O.: Singhnathpitha, P.S.: Badamba
District: Kataka, PIN: 754031.

4. Binodini Devi @ Tripathy
Aged about 50 years
Daughter of Late Baidyanath Satapathy
At present:

Wife of Late Sarat Kumar Dash @ Tripathy
At/P.O.: Joranda, P.S.: Athagada
District: Kataka.

5. Kadambini Satapathy
Aged about 46 years
Daughter Late Baidyanath Satapathy
At present:
Wife of Umesh Chandra Satapathy
Of Village: Gopinathpur
P.O.: Singhanathpitha, P.S.: Badamba
District: Kataka, PIN: 754031. ... Petitioners
(Opposite party Nos.2(a) to 2(e) in the Court below).

-VERSUS-

1. State of Odisha
Represented through
The Secretary
Revenue and Disaster Management Department
At: Lok Seva Bhawan
Bhubaneswar, District: Khordha.

2. Member, Board of Revenue, Odisha
At: Rajaswa Bhawan
P.O.: Chandinichowk,
Town/District: Kataka.

3. Sub-Collector, Athagada
At/P.O.: Athagada
District: Kataka.

4. Tahasildar, Badamba
At/P.O./P.S.: Badamba
District: Kataka.

5. Santosh Kumar Satapathy
Aged about 57 years
Son of Late Janardan Satapathy
Resident of Village: Gopinathpur
P.O.: Singhanathpitha, P.S.: Badamba
District: Kataka. ... Opposite parties
(Opposite party No.4
and Opposite party No.5
were Opposite party No.1
and Petitioner
in the Court below
respectively).

Counsel appeared for the parties:

For the Petitioner	:	M/s. Bhaskar Chandra Panda, S. Mishra, J.N. Panda, A. Tripathy, A. Mishra and A.K. Mishra, Advocates
For the Opposite party Nos.1 to 4	:	Mr. Manmaya Kumar Dash, Additional Standing Counsel.
For the Opposite party No.5	:	Mr. Santosh Kumar Satapathy, In person.

P R E S E N T:

HONOURABLE
DR. JUSTICE SANJEEB K PANIGRAHI

AND

HONOURABLE
MR. JUSTICE MURAHARI SRI RAMAN

Date of Hearing : 27.10.2026 :: Date of Judgment : 04.11.2026

JUDGMENT

MURAHARI SRI RAMAN, J.—

The petitioners crave indulgence of this Court to exercise power under Articles 226 and 227 of the Constitution of India and interfere with the Order dated 06.05.2025 of Member, Board of Revenue, Odisha, Kataka passed in OEA Revision Case No.01 of 2022, filed under Section 38-B of the Odisha Estate Abolition Act, 1951, whereby Order dated 31.03.2003[1] of the Tahasildar, Badamba in Bebandobasta Case No.912 of 2001 as confirmed by the Sub-Collector, Athagada by Order dated 09.08.2004, has been directed to be modified.

Case of the petitioner:

2. The opposite party No.5-Santosh Kumar Satapathy filed an application under Section 38-B of the Odisha Estate

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[1] Relevant portion of the Order dated 31.03.2003 passed by the Tahasildar in Bebandobasta Case No.912 of 2001 so far as it relates to present parties is quoted hereunder:

"The case is put up today. Perused the case record and report of Amin. It is revealed that Khata 1370 of Village: Gopinathpur total area Ac.066 stands recorded in Bebandobasta status in the name of Bauri Satapathy, son of Somanath Satapathy of Gopinathpur.

On field enquiry conducted by Amin it is ascertained that the Bebandobasta holder is not in possession of the land. The Bebandobasta land is being possessed by different persons on the strength of registered sale deed. The land has not been settled or alienated otherwise. Spot enquiry memorandum confirms the possession of claimant. The Bebandobasta holder was the recorded tenant in the Sabik Record-of-Right. Proclamation duly served. Objection period is over. No objection received from any quarters.

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Further the land mentioned below is settled in favour of Baidyanath Satapathy, son of Mahadev of Gopinathpur on payment of Rs.112.50 salami and payment of Rs.51.75 as he has been possessing the land by way of purchase vide registered sale deed 1962 dated 03.08.1973.

Land Schedule

Khata No.	*Plot*	*Area*	*Kisam*
1370	*5962*	*Ac.005*	*Gharabari*

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Send the case record to the Sub-Collector, Athagada for favour of confirmation.

Abolition Act, 1951 ("OEA Act", for short), being registered as OEA Revision Case No.01 of 2022, before the Board of Revenue, Odisha, Kataka, challenging the Order dated 31.03.2003 passed by the Tahasildar, Badamba in Bebandobasta Case No.912 of 2001, which was confirmed by Sub-Collector, Athagada on 09.08.2004. Originally the said case was filed against Tahasildar, Badamba and Baidyanath Satapathy. During pendency of the said revision case Baidyanath Satapathy who was opposite party No.2 passed away on 29.08.2022. Consequent upon such eventuality, his legal heirs were substituted as the opposite party Nos.2(a) to 2(e), who are the present writ petitioners.

2.1. The case of the present opposite party No.5, who was petitioner before the Board of Revenue, is that:

(a) Homestead lands bearing Plot No.5961 in Khata No.378 measuring Ac.0.10 decimals stands in the name of Santosh Kumar Satapathy as per records maintained in the settlement operation conducted in the year 1990 and Plot No.5962 measuring Ac.0.04dec. has been in the possession of Baidyanath Satapathy, having purchased by virtue of executing registered sale deed bearing No.1962 dated 03.08.1973 from Bimal Dibya wife of Late Somanath Satapathy, agnatic brother of the grandfather of Santosh Kumar Satapathy.

(b) Subsequently one Title Suit No.10 of 1974 was filed by Janardan Satapathy father of Santosh Kumar Satapathy against Baidyanath Satapathy and others in the Court of the Additional Munsif, Badamba, which stood decreed on compromise on 08.02.1877; whereupon Baidyanath Satapathy relinquished an area measuring Ac.0.006decimals and ½kadi from Sabik Plot No.4023 and No.4024 in favour of Janardan Satapathy.

(c) During Settlement of 1990 an area of Ac.0.05dec. was recorded in Khata No. 1370 under Bebandobasta status in the name of Baidyanath Satapathy. But it was wrongly recorded because an excess area has been carved out from the plot of the revision petitioner, which is adjacent to the said land. Though he is an affected party, having not given opportunity of hearing, an Order dated 31.03.2003 was passed by the Tahasildar in Bebandobasta Case No.912 of 2001, which got confirmed by the Sub-Collector, Athagada *vide* Order dated 09.08.2004.

2.2. Per contra the case of the writ petitioners before the revisional authority was:

(a) Sabik Khata No.84, Plot No.4023, Ac.0.02dec., Plot No.4024, Ac.0.02 dec., Kissam: Gharbari (corresponds to Hal Khata No.1370, Plot No.5962,

Ac.0.05dec.) was originally recorded in the name of Bauri Satapathy, son of Somanath Satapathy. Said plots correspond to Mutation Khata No. 1301/305, Plot No.5962, measuring Ac.0.05dec. stands recorded in the name of Baidyanath Satapathy, son of Mahadev Satapathy.

(b) Baidyanath Satapathy purchased the aforesaid Plots bearing Nos.4023 and 4024 with an area Ac.0.04dec. from Bimala Dibya, wife of Somanath Satapathy *vide* RSD No.l962 dated 03.08.1973.

(c) Janardan Satapathy the father of Sri Santosh Satapathy filed one Title Suit No.10 of 1974 in the Court of Additional Munsif, Badamba for declaration that he is the lawful owner of suit property, *i.e.*, Plot Nos.4023 and 4024, under Khata No.84 and for issue of an order of permanent injunction. The said suit was filed against Baidyanath Satapathy, the father of the present petitioners, along with others. The claim of Janardan Satapathy in the said suit was that Bimala Dibya and one Bhagaban Satapathy father of Swapneswar Satapathy in the said suit were the original owners of aforesaid Plots in Khata No.84. They divided the said suit property equally and possessed separately. Bhagaban Satapathy the father of Swapneswar Satapathy in the said suit

alienated his right, title and interest over his land in favour of Janardan Satapathy and Kasinath Praharaj on 10.12.1955. Similarly Bimala Dibya alienated her right over the suit land on 25.12.1959 in favour of Baidyanath Satapathy, the father of the present petitioners, except a cottage measuring 10ft. X 8ft., where she was residing.

(d) After pleadings being completed in the said suit, the same, however, ended in compromise *vide* Order dated 08.02.1977. As per the terms of compromise the father of the present petitioners left an area of Ac.0.006½kadi out of Ac.0.04dec. from Plot Nos.4023 and 4024 in favour of the plaintiff-Janardan Satapathy, over which he would construct one brick wall and the defendant-Baidyanath Satapathy had right to use the said wall for putting his thatched house. Although the same was decreed, till date Janardan Satapathy or after him his son Santosh Kumar Satapathy has not constructed any brick wall over the same.

2.3. The suit plots (Plot Nos.4023 and 4024 under Sabik Khata No.84 corresponding to Hal Plot No.5962, Hal Khata No. 1370, both measuring Ac.0.04dec.) stood recorded in the Hal Settlement as Ac.0.05dec. depicting Bebandobasta status. However, on the topography as well as in the map the present petitioners have been in

possession of area measuring Ac.0.03dec.3½kadi. As required under Government Notification No.EA-II-16/ 2000/57677/4, dated 06.12.2000, the Tahasildar, Badamba initiated a *suo motu* Bebandobasta Case bearing No.912 of 2001 with respect to the aforesaid land, *i.e.*, Hal Khata No. 1370.

2.4. After initiation of aforesaid Bebandobasta Case the Tahasildar, Badamba made enquiry through Revenue Inspector and after examining all the documents and hearing the parties, *i.e.*, Baidyanath Satapathy, the father of the petitioners, and Santosh Kumar Satapathy, the present opposite party No.5, along with others settled/directed to record the suit land in the name of Baidyanath Satapathy as well as other lands in favour of respective parties, which was confirmed by the Sub-Collector, Athagada *vide* Order dated 09.08.2004. Accordingly Mutation Khata No.1301/305 Plot No.5962 Ac.0.05dec. was maintained by recording the name of Baidyanath Satapathy and Mutation Khata No.378 was maintained in the name of Santosh Kumar Satapathy and other legal heirs of Janardan Satapathy.

2.5. While the matter stood thus, Santosh Kumar Satapathy filed one Civil Suit No. 19 of 2014 before Civil Judge (Junior Division), Badamba, for declaration of his right, title, interest and possession with respect to the present suit schedule property but ultimately the said suit was

withdrawn on 17.05.2022. During pendency of the aforesaid Civil Suit bearing No.19 of 2014, Santosh Kumar Satapathy filed one Mutation Case bearing No.4134 of 2019 on 05.09.2019 before the Tahasildar, Badamba, where an objection being raised by the father of the present petitioners the said case was kept in abeyance till disposal of CMA No.5 of 2017 arising out of the aforesaid Civil Suit No.19 of 2014.

2.6. It is alleged by the petitioners though in the Civil Suit No.19 of 2014 the withdrawal of the suit was permitted by the Civil Judge (Junior Division) on 17.05.2022 for instituting fresh suit on self-same subject-matter, suppressing such vital and pertinent fact, Santosh Kumar Satapathy filed Bebandobasta Revision Case No. 1 of 2022 before the Board of Revenue, challenging the Order dated 31.03.2003 passed by Tahasildar, Badamba in Bebandobasta Case No.912 of 2001 which was confirmed by the Sub-Collector, Athagarh on 09.08.2004. The said revision case was filed after 18 years enclosing therewith petition under Section 5 of the Limitation Act, 1963, for condonation of delay.

2.7. The Member, Board of Revenue, without taking up the petition dated 25.03.2022 for condonation of delay in filing the revision petition, and/or assigning valid grounds/reasons, allowed the revision case by Order dated 06.05.2025.

Counter affidavit of Santosh Kumar Satapathy:

3. Notices were issued in the instant writ petition by Order dated 03.06.2025, pursuant to which having appeared "in-person", Santosh Kumar Satapathy (opposite party No.5), filed counter affidavit supporting the order impugned by stating *inter alia* that:

(a) Though there was delay in filing revision petition, the Member, Board of Revenue exercised power under Section 38-B of the OEA Act rightfully being convinced with the sufficiency of material placed before him and entertained the revision petition "to prevent miscarriage of justice".

(b) It is asserted that the father of the writ petitioner, Baidyanath Satapathy, who being stranger having purchased the land in question, Civil Suit bearing No.10 of 1974 was instituted at the behest of father of Santosh Kumar Satapathy for declaration of lawful owner of the land. Since the father of Santosh Kumar Satapathy got right, title and interest and was in possession of the subject-property in the Title Suit No.10 of 1974, the Civil Suit No.19 of 2004 was withdrawn in order to pursue the matter before the appropriate forum, *viz.*, Board of Revenue, Kataka by way of filing an application under Section 38-B of the OEA Act.

(c) Alleging that the writ petitioners suppressed the material fact before the Tahasildar, Badamba in Bebandobasta Case No.912 of 2001 that there was unassailed decree of the Civil Court in Title Suit No.10 of 1974 and said Tahasildar having conducted enquiry through the Revenue Inspector without issuing summons or notice to the opposite party No.5 (Santosh Kumar Satapathy) could not have relied upon the report submitted by the Revenue Inspector. The Tahasildar having not taken cognizance of the compromise decree of the Civil Court and without appreciating foundational factual aspect that the land measuring Ac.0.04dec. being sold by Bimala Dibya by virtue of RSD No.1962/1973, the land measuring Ac.0.05dec. ought not to have been settled in favour of the father of the writ petitioners. The Member, Board of Revenue, being satisfied that fraud[2] had/has been perpetrated by the petitioners/his predecessor, deemed it apposite to decide the matter strictly on its merits.

Hearing:

4. A short point is raised by the writ petitioners is this, that in absence of specific order condoning the delay in filing the revision petition under Section 38-B of the OEA Act,

[2] Paragraph 36 in *Bachana Kumari Dei Vs. State of Odisha, W.P.(C) No.15076 of 2008, decided by the High Court of Orissa on 25.03.2022 = 2022 (I) ILR-CUT 689.*

the Member, Board of Revenue, Kataka, transgressed his jurisdiction by deciding the merit of the matter before the matter is admitted for hearing and there being unreasonable delay without sufficient explanation there was no plausible reason for entertainment of the revision petition and rendering decision on merits.

4.1. On consent of counsel appearing for the respective parties and the opposite party No.5, this matter is finally heard on 27.10.2026.

4.2. Heard Sri Bhaskar Chandra Panda, learned Advocate for the petitioners; Sri Santosh Kumar Satapathy-opposite party No.5 (appeared in-person) and Sri Manmaya Kumar Dash, learned Additional Standing Counsel for the opposite party Nos.1 to 4.

4.3. Hearing being concluded, the matter stood reserved for preparation and pronouncement of Judgment/Order.

Arguments and submissions:

5. Sri Bhaskar Chandra Panda, learned Advocate submitted that Santosh Kumar Satapathy suppressed material fact that Civil Suit bearing No.19 of 2019 filed at the behest of the opposite party No.5-Santosh Kumar Satapathy stood disposed of as withdrawn by an order dated 17.05.2022 passed by the learned Additional Civil Judge (Junior Division), Badamba on the ground cited by the plaintiff that he “does not want to proceed in this

case further more as the plaint wrongly filed"; yet filed the petition before the Board of Revenue, registered as OEA Revision Case No.1 of 2022.

5.1. However, inordinate delay in pursuing remedy under Section 38-B of the OEA Act being not sufficiently explained, the Member, Board of Revenue failed to exercise his power thereunder inappropriately. The learned counsel would urge that instead of taking up the matter for hearing on the petition for condonation of delay, the Member, Board of Revenue by Order dated 06.05.2025 disposed of the revision petition itself on merit.

5.2. In this respect the argument advanced by the learned counsel was taken note of by this Court which is reflected in Order dated 09.03.2026. It is pertinent to have reference to said order:

> *"3. From the order sheet enclosed to the Additional Affidavit, it appears that the case was taken up on 25th February, 2025 and it was posted to 17th June, 2025 for hearing on admission. But, surprisingly, the case was taken up on 15th April, 2025. An office note has been made by the Court Officer of the Court of learned Member, Board of Revenue in which, it is stated that the case was rescheduled on a memo dated 18th March, 2025 filed by the Petitioners showing urgency. Accordingly, cause list was published on 11th April, 2025. Learned Advocate for Opposite Party Nos.2(a),*

2(b), 2(c) and 2(e) was informed over phone by the Assistant Peshkar regarding the change in date. Although the memo for rescheduling the case is stated to have been filed on 18th March, 2025, but, office note was given by the Court Officer on 11th April, 2025. Further, no order of learned Member, Board of Revenue appears to have been passed preponing the date of hearing on admission. It further appears from the order sheet that the hearing of the revision was closed on 15th April, 2025 and the matter was reserved for orders.

4. Hence, Mr. Mishra, learned Additional Standing Counsel prays for an adjournment to explain the same by filing an affidavit of the competent officer.

5. Let learned Member, Board of Revenue, Odisha, Cuttack file an affidavit explaining the above. The affidavit shall be filed within a period of two weeks hence serving copy thereof on learned counsel for the Petitioners and rest of the Opposite Parties."

5.3. Sri Bhaskar Chandra Panda, learned Advocate with vehemence submitted that unexplained irregularity in the proceeding requires to be dealt with sternly and he strenuously argued that the *quasi* judicial order fixing date could not have been so lightly modified on administrative side.

6. Sri Manmaya Kumar Dash, learned Additional Standing Counsel referring to *"affidavit*[3] *filed on behalf of the*

[3] Sworn to by Sri Lakshmikanta Sethi, OAS (SS), aged about 56 years, son of Late Bhagaban Sethi, working as the Secretary, Board of Revenue, Odisha, Cuttack instead of the Member, Board of Revenue as directed by this Court *vide* Order dated 09.03.2026 passed in the present writ petition. This Court records strong

opposite party No.2 (Member, Board of Revenue, Odisha, Cuttack, pursuant to Order dated 09.03.2026 of the Hon'ble High Court" dated 23.04.2026, explained that in consideration of Memo dated 10.03.2025, Memo dated 18.03.2025 and grievance petition dated 04.04.2025 being filed by Santosh Kumar Satapathy for advancing the scheduled date of hearing, *i.e.,* 17.06.2026, the revision case was posted for hearing and such fact was reflected in the cause list dated 15.04.2025.

6.1. It is further submitted by the learned Additional Standing Counsel that on the date so re-scheduled, the Revision Case No.01 of 2022 was taken up for final hearing on 15.04.2025. On the said date of hearing, Santosh Kumar Satapathy (in person), the Standing Counsel and the Advocate for the writ petitioners herein (opposite party No. 2(a), 2(b), 2(c) and 2(e) in the revision petition) were present.

6.2. The Revision Case No.01 of 2022 was listed on 06.05.2025 for pronouncement of final order and the cause list was published *vide* Memo No.1223/Peskar (Gen.), dated 05.05.2025. Accordingly, the final order was pronounced on 06.05.2025 and the case was closed.

6.3. The learned Additional Standing Counsel would submit that no violation of principles of natural justice could be

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exception to such affidavit being sworn to by the Secretary, Board of Revenue, Odisha instead of Member, Board of Revenue, Odisha as directed in Order dated 09.03.2026.

imputed in the course of proceeding and relied heavily on paragraph 9 of the said affidavit:

"That in view of the above facts and circumstances, it is clear that:

i. *The whole proceeding of the revision case OEA (BB) RC No. 01 of 2022 (Santosh Kumar Satapathy Vs. Tahasildar, Badamba & 5 others) including the preponement of the date of listing of the case was performed as per the kind orders of Hon'ble Member BoR (O). The 'due process' of notifying the other side was satisfied through the phone call and most importantly, the actual appearance of the opposing counsel on that date.*

ii. *Because the opposite parties' advocate was informed via phone and crucially, both parties appeared on the preponed date, the lack of formal written notice was cured by the appearance of the parties, demonstrating no prejudice was caused. If both parties appear and argue, it is treated as consent to the preponement.*

iii. *Allowing 7 days to file written notes after a final hearing is a standard procedure to allow advocates to summarize their oral arguments. The opposite parties were given chance on six (6) different dates to file their written notes of submission. It was ensured that despite the date being advanced, both sides were given a fair opportunity to present their case, adhering to the principles of natural justice.*

Above facts along with the enclosed documents are being placed for kind orders to the Under Secretary (Judl.), Board of Revenue, Odisha, for taking steps to file affidavit

in compliance with the kind orders of Hon'ble High Court in W.P.(C) No.15621 of 2025."

7. *Per contra* Sri Santosh Kumar Satapathy, the opposite party No.5, as a counter-blast to what has been alleged by the learned counsel for the petitioners, submitted that the father of the petitioners had suppressed the material fact of the compromise decree passed in Title Suit 10 of 1974 in the proceeding of Bebandobasta Case No.912 of 2001 before the Tahasildar, Badamba. The petitioners, thus, having played fraud, in view of *S.P. Chengalvaraya Naidu Vrs. Jagannath, (1994) 1 SCC 1* the petitioners are not entitled to maintain the writ petition. This apart, the Tahasildar while finalising the said Bebandabasta Case did not even make attempt to verify that the notice is served on the opposite party No.5.

7.1. Having regard to *Bachana Kumari Dei Vs. State of Odisha, 2022 (I) ILR-CUT 689* it was submitted that restrictive interpretation to the provisions contained under Section 38-B of the OEA Act cannot be given and the power of revision conferred upon the Member, Board of Revenue, Odisha can be exercised by him 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 subordinate authorities. Since fraud unravels every solemn action, no infirmity can be imputed against the

action of the Member, Board of Revenue in exercise of his jurisdiction under Section 38-B of the OET Act.

7.2. Winding up his arguments, Sri Santosh Kumar Satapathy urged that the issue of limitation would not prevent the exercise of power under Section 38-B of the OEA Act, especially when it is invoked to obviate a miscarriage of justice, rectify a statutory violation by subordinate authorities, or prevent fraud from being practised on the Court.

Consideration of arguments and submissions:

8. The impugned Order dated 06.05.2025, being passed by the Member, Board of Revenue in exercise of powers conferred under Section 38-B of the OEA Act, it is of benefit to have cognizance of provisions contained in said section as it stands:

"[4][38B.Revision.—

(1) The [5][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 [4][Board of Revenue] has made any decision or passed an order under this Act (not being a decision against which an appeal has been

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4 Provisions of Section 38-B has been inserted in the OEA Act, 1951, by virtue of the Odisha Estates Abolition (Amendment) Act, 1973, in exercise of powers conferred by Section 3 of the Odisha State Legislature (Delegation of Power) Act, 1973, *vide* President's Act No.21 of 1973.

5 The words "Board of Revenue" are substituted for the word "Board" by virtue of the Odisha Estates Abolition (Amendment) Act, 1976 (Odisha Act 16 of 1976), being published in the Extraordinary issue of the Odisha Gazette dated 27.04.1976.

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 [4][Board of Revenue] that any such decision or order ought to be modified, annulled, reversed or remitted, it may pass orders accordingly.

[6][(2) The Board of Revenue shall not,—

[(i) [7][***]

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

9. By way of filing written note of submission, Sri Santosh Kumar Satapathy, the opposite party No.5, laid stress only on one point that once civil court passes a decree/ compromise decree in Title Suit No.10 of 1974, which attained finality for all practical purposes, by altering map to claim Ac.0.05dec., the Tahasildar, Badamba in

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6 Sub-section (2) of Section 38-B has been substituted by virtue of the Odisha Estates Abolition (Amendment) Act, 1976, and the said sub-section (2) as inserted by virtue of the Odisha Estates Abolition (Amendment) Act, 1973, stood thus:

"(2) The Board of Revenue shall not revise any decision or order under this section,—

(i) after the expiry of one year from the date of such decision or order; and

(ii) without giving the parties concerned an opportunity of being heard in the matter."

7 Clause (i) of sub-section (2) of Section 38-B of the OET Act, 1951, as inserted by virtue of the Odisha Estates Abolition (Amendment) Act, 1973, and later substituted by the Odisha Estates Abolition (Amendment) Act, 1976, has been deleted by virtue of the Odisha Estates Abolition (Amendment) Act, 1979 (Odisha Act 22 of 1979), with effect from 15.10.1979. Prior to such deletion, said clause stood thus:

"Initiate any proceeding under this section after the expiry of one year from the date of such decision or order; and"

Bebandobasta Case No.912 of 2001 transgressed his jurisdiction and acted contrary to decree of the civil court. Such an act would tantamount to "commission of fraud". It is the contention of the opposite party No.5 that suppression of material fact before the authority concerned would not save the petitioner to claim what it is not entitled to, inasmuch as "fraud" avoids all judicial acts and, thus, consideration of petition for condonation of delay under Section 5 of the Limitation Act, 1963, would be redundant in such eventuality, particularly when in order to exercise of power under Section 38-B of the OET Act under which no period of limitation is envisaged.

9.1. Examining the scope for consideration of element of "fraud" on the facts and in the circumstances of the case, it emanates from the Order dated 06.05.2025 of the Member, Board of Revenue that non-reflection of "unchallenged civil court decree in Title Suit No.10 of 1974 in the land records since decades" [*vide* paragraph 7 of said impugned order] gave rise to suspicion in the mind of aforesaid revisional authority to hold that:

"Further, an angle of fraud/misrepresentation of facts/ deceit cannot be ruled out altogether specifically when either there is suppression of facts by the private opposite parties or the obvious facts in the primarily relied upon documents like RSD and Civil suit decree have been overlooked by the revenue officials. Citing the legal precedent in Ram Chandra Singh Vrs. Sabitri Devi &

others, Hon'ble Supreme Court held that misrepresentation constitutes fraud and fraudulent misrepresentation leads to deceit. It will not be out of place to cite the judgement in S.P. Chengalvaraya Naidu Vs. Jagannath, (1994) 1 SCC 1 where it has been held by the Hon'ble Apex Court as follows:

*'Fraud avoids all judicial acts, ecclesiastical or temporal" observed Chief Justice Edward Coke of England about three centuries ago. It is the settled proposition of law that a judgment or decree obtained by playing fraud on the court is a nullity and non-est in the eyes of law. Such a judgment/decree by the first court or by the highest court has to be treated as a nullity by every court, whether superior or inferior. It can be challenged in any court even in collateral proceedings.' ***"*

9.2. By taking note of said judgment, the Member, Board of Revenue jumped to the conclusion without making any endeavour to find out the positive act of the petitioners or their predecessor-in-interest in the commission of such fraud. On proper scrutiny of the impugned Order, it emerges that the Member, Board of Revenue conspicuously ignored to address on the point, the effect and impact of Order dated 17.05.2022 passed by the Civil Judge (Junior Division), Badamba passed in Civil Suit No.19 of 2014, whereby Santosh Kumar Satapathy was specifically *"permitted to withdraw the suit with liberty to file the fresh suit in the self-same subject matter"*. This apart, the contention of Sri Santosh Kumar Satapathy that no notice was served on him in the Bebandobasta Case by the Tahasildar should have been

considered. In this respect having glance at Order dated 31.03.2003 of the Tahasildar, Badamba it is unequivocally stated that "Proclamation duly served" and field enquiry was conducted. Such order was passed by the Tahasildar on the status of the land after taking into account not only the lands of the petitioners, but also others in the Village: Gopinathpur.

9.3. It is pertinent to take note of that the order does not transpire whether the entries made in the land records was a outcome of fraud/misrepresentation or mistake. This is being said for the reason that fraud has to be specifically pleaded and proved. "Fraud" cannot be presumed. The very use of expression in the impugned order that "*an angle of fraud/misrepresentation of facts/ deceit cannot be ruled out*" goes to speak for itself that no verification or examination was undertaken by the Member, Board of Revenue to demonstrate, much less *prima facie,* that the petitioners have active role in misleading the Tahasildar, Badamba and the Sub-Collector, Athagada. Rather the pleading in the revision petition does not spells out fraud being played by the petitioners. No specific instance to influence the authority has been cited by the opposite party No.5 (Santosh Kumar Satapathy). No finding based on evidence has been returned by the Member, Board of Revenue to indicate that the petitioners practised fraud or misrepresentation in maintaining the land records.

9.4. The legal perspective in this regard has been ignored by the Member, Board of Revenue. There has to be very strong and convincing evidence to establish the allegations of *mala fides* or misrepresentation. It has to be specifically alleged in the petition as the same cannot merely be presumed. The presumption is in favour of the *bona fides* of the order unless contradicted by acceptable material. [*Vide, State of U.P. Vs. Dr. V.N. Prasad, 1995 Suppl (2) SCC 151; Arvind Dattatraya Dhande Vs. State of Maharashtra, (1997) 6 SCC 169; Utkal University Vs. Dr. Nrusingha Charan Sarangi, (1999) 2 SCC 193; Kiran Gupta Vs. State of U.P., (2000) 7 SCC 719; Netai Bag Vs. State of W.B., (2000) 8 SCC 262*].

9.5. In the instant case the Member, Board of Revenue has failed to discuss the circumstances under which the authorities and/or the officials were "influenced" by the writ petitioners/respondent, arrayed as party to the revision proceeding. Of course, suppression of material particular or concealment of necessary details does tantamount to fraud. A perusal of the pleading titled "Consolidated Plaint" filed by Sri Santosh Kumar Satapathy, the opposite party No.5, before the Board of Revenue in Bebandobasta Revision Case No.1 of 2022 reveals not an iota of averment, much less proof, to indicate that the petitioners or their predecessors-in-interest played an active role in causing the alleged erroneous recording in the land records made by the

Tahasildar, which was subsequently affirmed by the Sub-Collector. On a careful reading of contents of said plaint/revision petition on the whole, especially paragraph 6 thereof, as filed by Santosh Kumar Satapathy, opposite party No.5, it is found that the following allegation is made against the writ petitioners (respondent in the revision):

"That, the respondent being failed to record the land in his favour in spite of the repeated attempt, finally in the year 2001 by influencing the Tahasil Officials a Suo Moto Bebandobasta case was initiated vide B.B. Case No. 912 of 2001 by the Tahasildar, Badamba to settle the land in favour of the Bebandobasta holders and after verification of the land sold by the recorded tenants had been settled in favour of different persons. But the respondent though in possession of ac.0.04decimals of land influenced the Government Amin who had submitted the report that Baidyanath Satapathy is in possession of Ac0.05decimals of land on the strength of R.S.D. No. 1962 dated 03.08.1973. Hence basing on the report of the R.I. AcO.05 decimals of land has been settled illegally in his favour, which is without the knowledge of the appellant and the Hal R.O.R. has been published vide Hal Khata No. 1301/305, Hal Plot No.5962 Area: Ac.0.05decimals having Kissam: Gharabari which is purely illegal. Baidyanath actually purchased an, area of Ac.0.04 decimals of land from Bimala Dibya on the strength of Regd. Sale Deed No.l962 dated 03.08.1973."

9.6. The aforesaid paragraph and/or none of the pleadings/ grounds in the revision petition demonstrates factually nor circumstantially that Baidyanath Satapathy has

influenced the Officials of the Tahasil to make erroneous entries in the land records. The impugned order of the Member, Board of Revenue does not reflect as to whether and why the concerned officials are not made parties in person, when scurrilous attack is made against the functionaries of the Tahasil including the Sub-Collector who affirmed such alleged erroneous factual entry, if any.

9.7. There is no cavil for the proposition that when a party alleges *mala fide* against a statutory authority, burden falls heavy on him who alleges it. It is a settled law where a *mala fide* is alleged, the authority, who has passed the order, which is said to be the result of the *mala fide* exercise of power, has to be impleaded *eo nominee*. In the absence of such impleadment, the Court neither can look into the plea of *mala fide* nor can consider the issue raising *mala fide*. In the case at hand, none of the persons/authorities, against whom unsubstantiated, uncalled for and unwarranted allegations have been made, has been impleaded. [See, *Tara Chand Khatri Vs. Municipal Corporation of Delhi, AIR 1977 SC 567; J.N. Banavalikar Vs. Municipal Corporation of Delhi, AIR 1996 SC 326 = 1995 Supp.4 SCR 1; First Land Acquisition Collector Vs. Nirodhi Prakash Gangoli, (2002) 4 SCC 160; Jasvinder Singh Vs. State of J&K, (2003) 2 SCC 132; Union of India Vs. Ashok Kumar, (2005) 8 SCC 760*].

9.8. It has been settled legal proposition that in case allegations of *mala fide* are made against any person he is to be impleaded by name, otherwise the allegations cannot be considered. [*Vide, State of Bihar Vs. P.P. Sharma, IAS of Delhi and another, AIR 1996 SC 326; All India State Bank Officers Federation and others Vs. Union of India and others, (1997) 9 SCC 151; and I.K. Mishra Vs. Union of India and others, (1997) 6 SCC 228*].

9.9. In the case of *A.C. Ananthaswamy Vs. Boraiah, (2004) Supp.3 SCR 649* it has been held that:

> *"We do not find any merit in this appeal. Firstly, in the present case, Patel Chikkahanumaiah had moved an application under Order 9, Rule 13, CPC for setting aside the ex-parte decree on the ground of non service of summons in which fraud was not alleged. As stated above, Patel Chikkahanumaiah had moved R.A. No.54 of 1977 in which there was no such allegation. Secondly, the present suit has been instituted to set aside the ex parte decree on the ground that the decree was obtained by fraud and misrepresentation. Fraud is to be pleaded and proved. To prove fraud, it must be proved that representation made was false to the knowledge of the party making such representation or that the party could have no reasonable belief that it was true. The level of proof required in such cases is extremely higher. An ambiguous statement cannot per se make the representor guilty of fraud. To prove a case of fraud, it must be proved that the representation made was false to the knowledge of the party making such representation. [See: Pollock & Mulla on Indian Contract & Specific Relief Acts (2001) 12th Edition page 489].*

In the present case, there is no evidence of fraud. The present case is a matter of non-service of summons. In the present case, there is a bare allegation of fraud. In the case of Choksi Bhidarbhai Mathurbhai Vs. Purshottamdas Bhogilal Shah reported in AIR 1962 Gujarat 10, it has been held that where the only fraud alleged is a bare non service of summons then such a suit to set aside the decree on alleged ground of fraud was not maintainable. Lastly, no substantial question of law arises in this appeal.

For the aforesaid reasons, we do not find any merit in this civil appeal and the same is accordingly dismissed, with no order as to costs."

9.10. This Court is not unmindful of the settled proposition of law that "fraud" unravels all solemn acts. Any action or the benefit derived from an act of fraud, the same is always frowned upon by the Court and the benefits or the actions are brought to its original position. Mere alleging commission of fraud is not enough as particulars of the fraud should be explicitly, clearly and elaborately pleaded in the petition. The challenge can be made on a ground of fraud in a collateral proceeding as well, but the foundation thereof must have been laid therein.[8]

9.11. Misrepresentation itself amounts to fraud. A fraudulent misrepresentation is called deceit. It is a fraud in law, if a party makes representation, which he knows to be

[8] See, observations made by this Court in *Bijay Kumar Prusty Vrs. State of Odisha, D-WA No.3377 of 2026, vide Order dated 28.01.2026.*

false. However, fraud is proved only when it is shown that a false representation has been made:

(i) knowingly, or

(ii) without belief in its truth, or

(iii) recklessly, careless whether it be true or false.[9]

9.12. Hon'ble Supreme Court in the case of *Anand Nishikawa Co. Ltd. Vrs. CCE, (2005) 7 SCC 749* observed that,

> *"26. *** This Court in the case of Pushpam Pharmaceuticals Co. Vrs. CCE, 1995 Supp (3) SCC 462 while dealing with the meaning of the expression "suppression of facts" in the proviso to Section 11-A of the Act (Central Excise Act, 1944) held that the term must be construed strictly, it does not mean any omission and the act must be deliberate and wilful to evade payment of duty. The Court further held:*
>
> *'In taxation, it ['suppression of facts'] can have only one meaning that the correct information was not disclosed deliberately to escape payment of duty. Where facts are known to both the parties the omission by one to do what he might have done and not that he must have done, does not render it suppression."*

9.13. In the case of *Bibhas Ranjan Prusty Vrs. The Senior Divisional Manager, Life Insurance Corporation of India, 2015 (II) ILR-CUT 574* this Court referring to *Life*

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[9] See, *Ram Chandra Singh Vs. Savitri Devi, (2003) 8 SCC 319; State of Odisha Vrs. Harapriya Bisoi, (2009) 7 SCR 34.*

Insurance Corporation of India and others Vrs. Asha Goel, (2001) 2 SCC 160, held as follows:

*"*** the contracts of insurance including the contract of life assurance are contracts uberrima fides and every fact of material (sic. material fact) must be disclosed, otherwise, there is good ground for rescission of the contract. The duty to disclose material facts continues right up to the conclusion of the contract and also implies any material alteration in the character of the risk which may take place between the proposal and its acceptance. If there are any misstatements or suppression of material facts, the policy can be called into question. For determination of the question whether there has been suppression of any material facts it may be necessary to also examine whether the suppression relates to a fact which is in the exclusive knowledge of the person intending to take the policy and it could not be ascertained by reasonable enquiry by a prudent person."*

9.14. In the case of *Indian Bank Vrs. Satyam Fibres (India) Pvt. Ltd., (1996) 5 SCC 550*, the Hon'ble Supreme Court of India held as follows:

"By filing Letter No.2775 of 26.08.1991 along with the Review Petition and contending that the other letter, namely, Letter No.2776 of the even date, was never written or issued by the respondent, the appellant, in fact, raised the plea before the Commission that its judgment dated 16.11.1993, which was based on Letter No. 2776, was obtained by the respondent by practising fraud not only on the appellant but on the Commission too as Letter No.2776 dated 26.08.1991 was forged by the respondent for the purpose of this case. This plea could not have been legally ignored by the Commission which needs to be

reminded that the Authorities, be they Constitutional, Statutory or Administrative, (and particularly those who have to decide a lis) possess the power to recall their judgments or orders if they are obtained by fraud as 'fraud' and 'Justice' never dwell together (fraus et jus nunquam cohabitant). It has been repeatedly said that fraud and deceit defend or excuse no man (fraus et dolus nemini patrocinari debent)."

9.15. It may not be out of place in the present context to refer to a decision of Hon'ble Supreme Court of India in the case of *Badami Vrs. Bhali, (2012) 11 SCC 574* to consider the effect of withholding vital information. The said Hon'ble Court held as follows:

"29. Presently, we shall refer as to how this Court has dealt with concept of fraud. In S.B. Noronah Vrs. Prem Kumari Khanna, (1980) 1 SCC 52 = AIR 1980 SC 193 while dealing with the concept of estoppel and fraud a two-Judge Bench has stated that:

'20. It is an old maxim that estoppels are odious, although considerable inroad into this maxim has been made by modern law. Even so, 'a judgment obtained by fraud or collusion, even, it seems, a judgment of the House of Lords, may be treated as a nullity'. (See Halsbury's Laws of England, Vol. 16, 4th Edn., para 1553.) The point is that the sanction granted under Section 21, if it has been procured by fraud or collusion, cannot withstand invalidity because, otherwise, high public policy will be given as hostage to successful collusion.'

30. *In S.P. Chengalvaraya Naidu Vrs. Jagannath, (1994) 1 SCC 1 this Court commenced the verdict with the following words:*

> *'1. 'Fraud avoids all judicial acts, ecclesiastical or temporal' observed Chief Justice Edward Coke of England about three centuries ago.* ***It is the settled proposition of law that a judgment or decree obtained by playing fraud on the court is a nullity and non est in the eye of the law.*** *Such a judgment/decree— by the first court or by the highest court— has to be treated as a nullity by every court, whether superior or inferior. It can be challenged in any court even in collateral proceedings.'*

In the said case it was clearly stated that the courts of law are meant for imparting justice between the parties and one who comes to the court, must come with clean hands.

31. *A person whose case is based on falsehood has no right to approach the court. A litigant who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If a vital document is withheld in order to gain advantage on the other side he would be guilty of playing fraud on court as well as on the opposite party.*

32. *In Shrisht Dhawan Vrs. Shaw Bros., (1992) 1 SCC 534 = AIR 1992 SC 1555 it has been opined that the fraud and collusion vitiate even the most solemn proceedings in any civilised system of jurisprudence. It has been defined as an act of trickery or deceit. The aforesaid principle has been reiterated in Roshan Deen Vrs. Preeti Lal, (2002) 1 SCC 100 = AIR*

2002 SC 33, Ram Preeti Yadav Vrs. U.P. Board of High School and Intermediate Education, (2003) 8 SCC 311 and Ram Chandra Singh Vrs. Savitri Devi, (2003) 8 SCC 319.

33. *In State of A.P. Vrs. T. Suryachandra Rao, (2005) 6 SCC 149 after referring to the earlier decision this Court observed as follows:*

> *'16. In Lazarus Estates Ltd. Vrs. Beasley, (1956) 1 QB 702 = (1956) 2 WLR 502 = (1956) 1 All ER 341 Lord Denning observed at 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.'*
>
> *In the same judgment Lord Parker, L.J. observed that fraud* ***'vitiates all transactions known to the law of however high a degree of solemnity'*** *(Lazarus case, (1956) 1 QB 702 = (1956) 2 WLR 502 = (1956) 1 All ER 341, QB p. 722).'*

34. *Yet in another decision Hamza Haji Vrs. State of Kerala, (2006) 7 SCC 416 = AIR 2006 SC 3028 it has been held that no court will allow itself to be used as an instrument of fraud and no court, by way of rule of evidence and procedure, can allow its eyes to be closed to the fact it is being used as an instrument of fraud.* ***The basic principle is that a party who secures the judgment by taking recourse to fraud should not be enabled to enjoy the fruits thereof.***

***

38. *All these reasonings are absolutely non-plausible and common sense does not even remotely give*

consent to them. It is fraudulent all the way. The whole thing was buttressed on the edifice of fraud and it needs no special emphasis to state that what is pyramided on fraud is bound to decay. In this regard we may profitably quote a statement by a great thinker:

*'Fraud generally lights a candle for justice to get a look at it; and rogue's pen indicts the warrant for his own arrest.' ***"*

9.16. This Court does not find appropriate and specific pleading in the revision petition to establish that there was involvement of fraud element. No specific instance or allegation/circumstance with material particular being pleaded indicating the officials of the Tahasil were influenced by the petitioners or their predecessor-in-interest for making entries in the land records which in the view of the Member, Board of Revenue was erroneous and irregular. Rather from the Order dated 31.03.2003 of the Tahasildar in the Bebandobasta Case it is discernible that on the basis of field enquiry report being submitted to him and after Proclamation being completed, the order in Bebandobasta case was passed. This Court appreciates ground No.8 taken in the revision petition based on which the opposite party No.5 sought to modify the entries in the land records, which is as follows:

"For that the order passed by the learned Tahasildar, is contrary to law as Judgement passed in T.S.No.10 of

1974 in respect to the landed property settled illegally in favour of Baidyanath Satapathy has not been dealt with, hence the settlement is infructuous as it goes against the decision of the Civil Court."

9.17. Nevertheless, nothing is spelt out by Santosh Kumar Satapathy before the revisional authority with respect to permission granted in the Civil Suit No.19 of 2014. The Additional Civil Judge (Junior Division), Badamba while permitting withdrawal of suit granted leave to file suit on self-same subject-matter (but not any other remedy). Therefore, the revisional authorityw was required to examine whether sufficient reason was placed on record explaining (contradistinguished with the term "excuse") the unusual time consumed in approaching the Board of Revenue. It is also to be verified, therefore, by the Member, Board of Revenue whether the matter agitated in the revision comes within the scope of the Odisha Estates Abolition Act, 1951, or the Odisha Survey and Settlement Act, 1958, which would determine the jurisdiction of the authority competent to carry out any mistake or error crept in the recording of entries in the land records. It is also necessary for the Member, Board of Revenue to examine whether at this stage it is apposite to unsettle the physical position and nature of use of the land in question over these years.

10. Another facet which is arduously argued by Sri Bhaskar Chandra Panda, learned Advocate for the petitioners

gains significance for delving into merit of the matter is the plea of limitation.

10.1. Referring to copy of petition dated 25.03.2022 titled "An application under Section 5 of the Limitation Act, 1963", (Annexure-10) filed by Sri Santosh Kumar Satapathy before the Member, Board of Revenue in connection with Bebandobasta Revision Case No.1 of 2022, Sri Bhaskar Chandra Panda, learned Advocate laid much emphasis on the aspect that without condoning the delay in filing the revision petition, the revisional authority erred in deciding the matter on merit.

10.2. Furthermore on scrutiny of papers enclosed with the writ petition, it is observed that in Mutation Case No.4134 of 2019 filed by Santosh Kumar Satapathy-the opposite party No.5, the Tahasildar, Badamba has observed in record of proceeding dated 22.10.2020 that:

"This Case involves in the decree in Title Suit No.10/74 and Civil Suit No.19/2014 and CMA No.03/2017 in the Civil Judge, (Junior Division), Badamba.

The petitioner submits that this CMA No.05/17 is only intended to set aside an order of injunction in the C.S No.19/14 and not the right, title, interest and possession declared in C.S. No.10/1974. He further submitted that the present proceeding relates to correction of record where entitlement of such prayer is available in the decree passed in C.S. No.10/1974 which is not ever challenged or a question of title and possession is under any dispute pending before any court and prayed for

correction of R.O.R as per the decree passed in T.S No.10/74.

The learned advocate for the O.P. submits that the matter in issue being sub judice in court of Civil Judge (Junior Division), Badamba in CMA No.03/2017 as well as Execution Case No.02/2016, the Case should not be entertained. The decree passed in Title Suit No.10/74 is barred by limitation since this case has been filed after 45 years. He has also relied on the recording of the Hal settlement authority. He has further submitted that they are in exclusive possession over the land and the order in B.B Case No.912/2001 has also not been set side and this court has no jurisdiction to set aside his own order and prayed to dismiss the case.

Under the above premises, I am of the opinion that the case land involves civil litigations and sub judice in the Civil Court vide CMA No.05/2017 in Court of Civil Judge (Junior Division), Badamba. It is a fact that a compromise petition filed in Civil Suit No.10/1974 which corroborates that Ac.0.006.½ out of Plot No.5962 has been left to be used as passage from danda to his own' plot but this court has limited jurisdiction to decide to fact in issue while the matter is sub judice in the court of law. So the fate of the case depends upon outcome of the decree the come out CMA No.03/2017 in the Court of Civil Judge (Junior Division), Badamba.

So, I am inclined to close the Case till disposal of the CMA."

10.3. Such factual scenario as described by the Tahasildar, Badamba manifestly not to have been taken into account by the Member, Board of Revenue. While recording that the petitioners herein have suppressed

fact, the Member, Board of Revenue conveniently ignored to notice that Sri Santosh Kumar Satapathy in the revision petition has concealed the factum of withdrawal of C.S. No.19 of 2014 before the Civil Judge (Junior Division), Badamba. Order dated 17.05.2022 passed in C.S. No.19 of 2014, runs as follows:

"The plaintiff files a petition under Order 23, Rule 1(3) of the Code of Civil Procedure supported by an affidavit with a prayer to withdraw the suit on the ground stated therein. Copy served. Heard the learned counsel for the plaintiff. The plaintiff does not want to proceed in this case further more as the plaint wrongly filed this Court.

Perused the petition as well as case record. Taking into consideration of submission of the learned counsel for the plaintiff, ***I am to view the plaintiff is permitted to withdraw the suit with liberty to file the fresh suit in the self-same subject matter****."*

10.4. As it appears Sri Santosh Kumar Satapathy was granted liberty to file fresh suit on the self-same subject matter, but not to pursue matter before the Member, Board of Revenue by way of invoking Section 38-B of the OEA Act. By not mentioning about the reason for which withdrawal of civil suit was permitted the Member, Board of Revenue was misguided to look into the merit of the revision against the Order dated 31.03.2003 of the Tahasildar which was confirmed by the Sub-Collector way back in the year 2004 by Order dated 09.08.2004. Careful reading of Order dated 17.05.2022 passed in

Civil Suit No.19 of 2014 would show that permission was granted for limited purpose, but not to widen the horizon. The permission for withdrawal of suit granted by the Civil Judge (Junior Division) was restricted to filing of fresh suit on self-same subject-matter.

10.5. Be that be.

10.6. No limitation is prescribed under the OEA Act restraining the Member, Board of Revenue to entertain revision petition. However, dispute raised after a long period is required to be considered by said authority whether to entertain or not.

10.7. In this regard the view expressed by a coordinate Bench of this Court in the case of *Anadi Charan Sahoo Vs. State of Odisha, 2020 (I) ILR-CUT 444* is considered significant. It has been observed as follows:

> *"4. There is no dispute that the impugned order under Annexure-7 has been passed in exercise of the power conferred under Section 38-B of the O.E.A. Act which was about fifteen years after the passing of the order by Tahasildar, Bhubaneswar in the vesting case. The section clearly states that for the purpose of satisfying itself regarding the regularity of any proceeding in which any subordinate authority has made any decision or passed an order under the O.E.A. Act and also for verifying the correctness, legality or propriety of the decision taken by such subordinate authority, the Board of Revenue can call for and examine the record of such*

proceeding on its own motion or on a report submitted by the Collector. If the revisional authority feels that any decision or order passed by the subordinate authority needs to be modified, annulled or remitted, it may pass the order accordingly which can be done only after giving opportunity of hearing to the concerned parties.

In the case of: Sri Laxman Kanda Vs. State of Odisha, 1991 (II) OLR 50 which was relied upon by the learned counsel for the petitioners, taking into account the fact that the petitioner in that case was a tribal and he was in possession of the land since 1945 and since 1965 his sons were in possession of the land, it was held that ordinarily a person who has continued in possession for such length of time is not to be disturbed even if he is not a tribal and that more weightage is to be attached when the person concerned is one such. The initiation of the proceeding by the Revenue Divisional Commissioner under section 12(3) of the Odisha Prevention of Land Encroachment Act, 1972 against the petitioners in the year 1983 was held to be erroneous in law and accordingly quashed.

In the case of Mst. Surya Rana Vs. State of Odisha, 1996 (I) OLR 180 it is held that the legality of the order passed by the Revenue Divisional Commissioner in exercise of the power conferred under Rule 38-A(2)(bb) read with Rule 38-A(10)(bb) of the Odisha Land Reforms (General) Rules, 1965 framed under the Orissa Land Reforms Act, 1960 has to be tested on touchstone of reasonableness of time. Even though no period of limitation is prescribed, power has to be exercised in a reasonable manner which inheres the concept that it

must be done within a reasonable time. Absence of a provision prescribing a period 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 misuse or abuse of the power by lower authorities. It is true that when benefit has been obtained by fraud, it does not lie in the mouth of the party to the fraud to plead limitation to get away with the order. Lapse of time is no excuse to refrain the authority exercising statutory powers to unravel fraud and set the matter right.

In the case of Labanyabati Devi Vs. Member, Board of Revenue, 76 (1993) CLT 937, it is held that since the learned Member, Board of Revenue exercised his suo motu jurisdiction under Section 59(2) of the Odisha Land Reforms Act, 1960 after a lapse of twelve years, it was held to be a case of unreasonable delay and accordingly, the order passed by learned Member was quashed.

A Division Bench of this Court in the case of Nityananda Satpathy Vs. Member, Board of Revenue, 1996 (II) OLR 262 held that the power of the Board of Revenue under Section 38-B of the O.E.A. Act to revise a decision or order of any authority subordinate to it, has to be exercised in a reasonable manner within a reasonable time and no hard and fast rule can be laid down as to what should be the reasonable time as each case has to be decided on facts and circumstances peculiar to it. In that case since the power under Section 38-B was exercised more than a quarter of century, it was held that during such long years, the lands might have suffered transfer from one hand to another creating

new rights and liabilities amongst themselves and unsettling a settled position in abject disregard of consequences cannot be countenanced and accordingly, the entire proceeding before the Member, Board of Revenue was quashed on the ground that the revisional authority failed to exercise the power in a reasonable manner within a reasonable time. The decision rendered by this Court in Nityananda Satpathy's case was set aside on some other grounds by the Hon'ble Supreme Court in Civil Appeal No.7670 of 1997 decided on 31.07.2003 which is reported in (2003) 7 Supreme Court Cases 146 [State of Odisha Vrs. Nityananda Satpathy].

In the case of State of Odisha Vs. Brundaban Sharma, 1995 Supp.(3) SCC 249, a question arose before the Hon'ble Apex Court as to whether Board of Revenue was justified in exercising its jurisdiction under Section 38-B of the O.E.A. Act after a lapse of twenty seven years. The Hon'ble Court held 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. It was further held that 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 grant of patta by the Tehsildar was of twenty seven

years. In the case of Ibrahimpatnam Taluk Vyavasaya Coolie Sangham Vs. K. Suresh Reddy and others reported in (2003) 7 Supreme Court Cases 667, the Hon'ble Apex Court had the occasion to consider Section 50-B(IV) of the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950, which provides that the Collector might suo motu at any point of time, call for and examine the record relating to any certificate issued or proceedings taken by the Tahasildar under the section for the purpose of satisfying himself as to the legality or propriety of such certificate or as to the regularity of such proceedings and pass such order in relation as he may think fit. Exercise of suo motu power at any time only means that no specific period such as days, months or years are not prescribed reckoning from a particular date but that does not mean that at any time should be unguided and arbitrary. In this view, at any time must be understood as within a reasonable time depending on the facts and circumstances of each case in the absence of prescribed period of limitation.

In the case of Santoshkumar Shivgonda Patil and others Vs. Balasaheb Tukarm Shevale and others reported in (2009) 9 Supreme Court Cases 352, the Hon'ble Apex Court held that it seems to be fairly settled that if a statute does not prescribe the time-limit for exercise of revisional power, it does not mean that such power can be exercised at any time; rather it should be exercised within a reasonable time. It is so because the law does not expect settled things to be unsettled after a long lapse of time. Where the legislature does not provide for any length of time within which the power of revision is to be exercised by the authority, suo motu or otherwise, it

is plain that an exercise of such power within reasonable time is inherent therein.

Thus the legal principle which is set out from the above citations is that even though no period has been prescribed for exercising the power under Section 38-B of the O.E.A. Act, the revisional authority has to exercise the same within a reasonable time and that to in a reasonable manner. It depends upon the facts and circumstances of each case as to what would be the reasonable time. There cannot be any hard and fast rule for that. However, when fraud has been committed in obtaining an order or the decision of the subordinate authority is based on forged documents or there is suppression of material facts or there is violation of the provision of the Act, the revisional authority would be fully justified in exercising its power under Section 38-B at any point of time in order to prevent miscarriage of justice or misuse or abuse of the power committed by the subordinate authority in granting relief to any party."

10.8. In *Madan Mohan Jena Vs. State of Odisha, 2016 SCC OnLine Ori 359* it has been observed as follows:

"7. Section 38-B of the Act provides that 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 it has made any decision or passed an order under this Act for the purpose of satisfying itself as to the regularity of such proceeding or the correctness, legality or propriety of such decision or order. Admittedly, fixation of fair rent under Section 8(1) of the Act is an administrative order and the same is

not amenable to the jurisdiction of the Member, Board of Revenue under Section 38-B of the Act. The said view has been taken in the cases of Chandra Sekhar Rath Vs. Collector, Dhenkanal, reported in 1988 (II) OLR 572 and State of Orissa Vs. Baidyanath Jena, reported in 2013 (II) OLR 780. But, when the OEA Collector usurps jurisdiction conferred on him under Section 8(1) of the Act and passes an order, the same shall be treated to be a proceeding under the Act and Section 38-B of the Act would be attracted. The Board of Revenue in exercise of power conferred by Section 38-B of the Act can test the veracity of the same. Thus, exercise of power under Section 38-B depends upon the facts and circumstances of each case and the nature of the order passed under Section 8(1) of the Act. Accordingly, initiation of the proceeding under Section 38-B of the Act cannot be said to be wholly without jurisdiction at the threshold. The conclusion with regard to jurisdiction can be arrived at after assessment of the facts involved and the nature of the order passed in each case. Further, there is no dispute to the settled law that when the land is settled under the lease principles as per the Government instruction extending the time to make an application for settlement of the land already vested in Government, the same cannot be treated to be a settlement under the Act. (See 1988 (I) OLR 520). Thus, Section 38-B of the Act cannot have any application since the settlement in question was not under the provisions of the said Act. (See 63 (1987) CLT 526). The petitioners claim that the balance Ac.1.31 decimal of land out of the case land was settled in their favour by way of lease in O.E.A. Case No. 2045 of 1970 by order dated 16.04.1973

(Annexure-7). Perusal of Annexure-7 reveals that the said proceeding was initiated pursuant to an application under Sections 6, 7 and 8(3) of the Act by the petitioners. Though Mr. Mohanty, learned Senior Advocate submitted that the said application was filed by the petitioners in terms of provisions made in G.O. No. 14399/R dated 02.03.1964, no material is available on record in support of the same. On the other hand, order sheet under Annexure-7 reveals a different state of affairs. Nomenclature of an application, of course, is not material for consideration. It is the subject matter of the petition and prayer made therein are the guiding factor for consideration of an application. In the facts and circumstances and more particularly in absence of sufficient material on record to reach at a conclusion, the Member Board of Revenue, before whom the revision is pending should examine the matter in detail.

8. *Mr. Mohanty, learned Senior Advocate for the petitioners vehemently argued that initiation of the proceeding under Section 38-B of the Act suffers from delay and latches. He submitted that no period of limitation has been provided for initiation of a proceeding under Section 38-B of the Act. However, it should be within a reasonable time and period of 40 years and 37 years cannot, at all, by no stretch of imagination, be said to be a reasonable period under Section 38-B of the Act. He verily relied upon the decision of this Court in the case of Nityananda Satpathy Vs. Member, Board of Revenue, reported in 1996 (II) OLR 262, wherein it has been held that no time limit is fixed to initiate a proceeding under Section 38-B of the Act, but the power should be exercised in a reasonable manner within a*

reasonable time which depends on facts and circumstances of each case. It should not be done arbitrarily. Similar view has also been taken in the decision in the cases of Labanybati Devi Vs. Member, Board of Revenue, reported in 1993 (II) OLR 365 and Smt. Parbati Mohapatra Vs. State of Odisha, reported in 2014 (I) OLR 825. He also relied upon the decision in the case of Chennai Metropolitan Water Supply and Sewerage Board Vs. T.T. Murali Babu, AIR 2014 SC 1141, wherein the Hon'ble Supreme Court at paragraph-16 held as follows:

'16. Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the Court would be under legal obligation to scrutinize whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the Court. Delay reflects inactivity and inaction on the part of a litigant— a litigant who has forgotten the basic norms, namely, "procrastination is the greatest thief of time"

and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis. In the case at hand, though there has been four years' delay in approaching the court, yet the writ court chose not to address the same. It is the duty of the court to scrutinize whether such enormous delay is to be ignored without any justification. That apart, in the present case, such belated approach gains more significance as the respondent-employee being absolutely careless to his duty and nurturing a lackadaisical attitude to the responsibility had remained unauthorisedly absent on the pretext of some kind of ill health. We repeat at the cost of repetition that remaining innocuously oblivious to such delay does not foster the cause of justice. On the contrary, it brings in injustice, for it is likely to affect others. Such delay may have impact on others' ripened rights and may unnecessarily drag others into litigation which in acceptable realm of probability, may have been treated to have attained finality. A court is not expected to give indulgence to such indolent persons - who compete with 'Kumbhakarna' or for that matter 'Rip Van Winkle'. In our considered opinion, such delay does not deserve any indulgence and on the said ground alone the writ court should have thrown the petition overboard at the very threshold.'

9. *He also relied upon the decision in the case of Jt. Collector, Ranga Reddy Dist. Vs. D. Narsing Rao, 2015 SC 1021, wherein the Hon'ble Supreme Court at paragraph-24 held as follows:*

'24. To sum up, delayed exercise of revisional jurisdiction is frowned upon because if actions or transactions were to remain forever open to challenge, it will mean avoidable and endless uncertainty in human affairs, which is not the policy of law. Because, even when there is no period of limitation prescribed for exercise of such powers, the intervening delay, may have led to creation of third party rights, that cannot be trampled by a belated exercise of a discretionary power especially when no cogent explanation for the delay is in sight. Rule of law it is said must run closely with the rule of life. Even in cases where the orders sought to be revised are fraudulent, the exercise of power must be within a reasonable period of the discovery of fraud. Simply describing an act or transaction to be fraudulent will not extend the time for its correction to infinity; for otherwise the exercise of revisional power would itself be tantamount to a fraud upon the statute that vests such power in an authority.'

10. The aforesaid principles laid down by the Hon'ble Supreme Court set out a guideline for consideration of issue of limitation. Further, in the case of State of Orissa Vs. Brundaban Sharma, 1995 Supp(3) SCC 249, it has been held that revisional power conferred on the Board of Revenue under Section 38-B of the Act should be exercised in a reasonable manner which inheres the concept of exercising power 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. Length of time depends on the factual scenario in a given case. Thus, the question of limitation, which is

necessarily an issue involving mixed questions of fact and law, has be scrutinized taking into consideration the aforesaid guidelines set out by the Hon'ble Supreme Court."

10.9. This Court finds no sufficient material in the pleading available in the revision petition filed before the Member, Board of Revenue to establish element of "fraud" or alleged influence being exerted by the petitioners on the officials of the Tahasil compelling them to act contrary to report and material available on record. While disposing of revision petition, the Member, Board of Revenue in his order failed to apply conscientious mind to scrutiny the involvement of the writ petitioners or their predecessor-in-interest in influencing any of the officials of the Tahasil. The impugned Order dated 06.05.2025 in Bebandobasta Revision Case No.01 of 2022 is silent with respect to analysis of material facts based on evidence to prove fraud by the parties. Consequent upon above discussion with legal perspicuity, the order of the Member, Board of Revenue deserves to be interfered with.

Conclusion:

11. Given the factual scenario and on the afore-discussed legal perspective coupled with reasons ascribed hitherto, this Court finds the Order dated 06.05.2025 in Bebandobasta Revision Case No.1 of 2022 passed by the

Member, Board of Revenue untenable and cannot be countenanced in law.

12. *Ergo*, Order dated 06.05.2025 in Bebandobasta Revision Case No.1 of 2022 passed by the Member, Board of Revenue (Annexure-1) is hereby set aside and the matter is, thus, remitted to the Member, Board of Revenue to take a decision on the revision petition along with the petition dated 25.03.2022 (Annexure-11) afresh after affording reasonable opportunity of being heard to the affected parties taking into account the legal position as discussed above. It is also desirable that the Member, Board of Revenue shall also consider the maintainability of the revision proceeding under Section 38-B of the OEA Act. Accordingly, the writ petition, being W.P.(C) No.15621 of 2025, stands allowed to the extent indicated above and pending Interlocutory Application(s), if any, is also disposed of, but in the circumstances, there shall be no order as to costs.

Signature Not Verified
Digitally Signed
Signed by: ASWINI KUMAR SETHY
Designation: Personal Assistant (Secretary-in-charge)
Reason: Authentication
Location: ORISSA HIGH COURT, CUTTACK
Date: 04-Nov-2026 18:55:50

(MURAHARI SRI RAMAN)
JUDGE

DR. SANJEEB K PANIGRAHI, J.— I agree.

(Dr. SANJEEB K PANIGRAHI)
JUDGE

High Court of Orissa, Cuttack
The 04th November, 2026//Aswini/ Bichi/Laxmikant