A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.18667 of 2025
CNR No. ODHC010476122025

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

Diocese of Sambalpur, Chuch of North India, Head Office at Bolangir .... ***Petitioner (s)***

-versus-

State of Odisha & Ors. .... ***Opposite Party (s)***

Advocates appeared in this case through Hybrid Arrangement Mode**:**

For Petitioner (s) : *Mr. Surya Prasad Misra, Sr. Adv.*
along with associates
Mr. Soumya Mishra,
Ms. S. Rout,
Mr. R.K. Agrawal, Advs.

For Opp. Party (s) : *Mr. Gyanalok Mohanty, SC*
Mr. Manoj Misra, Sr. Adv.
along with associates
Mr. Tanmay Mishra, Mr. S.S. Parida,
Ms. S. Das, A.S. Mahaprashasta, Advs.
for O.P.6

CORAM:
DR. JUSTICE SANJEEB K PANIGRAHI

DATE OF HEARING: -09.09.2026
DATE OF JUDGMENT: -20.11.2026

Dr. Sanjeeb K Panigrahi, J.

1. The present Writ Petition has been instituted by the Diocese of Sambalpur, represented through its Secretary, assailing the order dated 21.05.2025 passed by the Tahasildar, Padampur, in E.C. No.144 of 2024-25.

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2. The Petitioner has further sought a direction to the Tahasildar to refer the matter to the Sub-Collector, Padampur, or any other competent authority for consideration of settlement of the land in question in its favour in terms of Section 8-A of the Odisha Prevention of Land Encroachment Act, 1972 (hereinafter referred to as the "OPLE Act") read with Rule 16 of the Odisha Prevention of Land Encroachment Rules, 1985 (hereinafter referred to as the "OPLE Rules").

I. FACTUAL MATRIX:

3. The Petitioner-Society claims to have received the land in question by way of grant from the then Zamindar of Borasambar, Rajendra Singh Bariha, in the year 1905. Since then, it asserts to have remained in continuous occupation of the land, using it for housing a Church, providing residence to Church officials and conducting various religious and community activities. According to the Petitioner-Society, it has also been paying holding tax to the N.A.C., Padampur, in respect of the building standing over the suit land. During the Hamid Settlement, the suit land was recorded as 'Basti' of the Petitioner-Society. During the Major Settlement, though the land was recorded in the Sarbasadharana Khata, it was described as 'Gharabari' and 'Girja Ghara'.

4. In 1995, the Petitioner-Society, through one of its officers, applied to the Tahasildar, Padampur, for mutation of the suit land in its favour in Mutation Case No.1580 of 1995. Upon inquiry, the Tahasildar allowed the mutation vide order dated 28.09.1996 and directed consequential correction of the Record of Rights (R.O.R.). In pursuance of the order

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passed by the Tahasildar, the Petitioner-Society deposited a sum of Rs.1,337.25 towards arrear rent and measurement fee. Subsequently, the R.O.R. of the suit land was corrected and the land was recorded in the name of the Petitioner-Society with Raiyati status under Holding No.1309/903.

5. Subsequently, on 08.12.1997, the Tahasildar, Padampur, suo motu called for the mutation case record for review of his earlier order dated 28.09.1996. By a further order dated 18.12.1997, he recalled the earlier order, annulled the mutation and cancelled the R.O.R. already issued, observing that the Petitioner-Society may seek a declaration of its right and title over the suit land before the competent Civil Court.

6. In March 2002, the District Administration evicted certain persons who had unauthorisedly occupied the roadside land by erecting cabins and running shops thereon. The eviction led to protests and agitations by the affected shopkeepers, following which the District Administration and the N.A.C., Padampur, decided to rehabilitate them by constructing a market complex and allotting shop rooms. It is the case of the Petitioner-Society that, pursuant to this decision, the State authorities selected the suit land as the site for construction of the proposed market complex.

7. According to the Petitioner-Society, when the State authorities attempted to enter the suit land, it approached the Collector by way of a representation, which elicited no response. Left with no alternative, the Petitioner-Society approached this Court in O.J.C. No.5685 of 2002. By order dated 05.06.2002, this Court, as an interim measure, directed

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the State authorities not to disturb the Petitioner's possession over the suit land. By order dated 25.09.2002, the writ petition was disposed of with liberty to the parties to approach the competent Civil Court, as the matter involved disputed questions of fact.

8. It is the further case of the Petitioner-Society that, notwithstanding the interim order passed by this Court, the Executive Officer, N.A.C., Padampur, along with his officials, entered the suit land and commenced excavation. In response to the said incident, proceedings under Section 144 of the Cr.P.C. were initiated, followed by the institution of a complaint case bearing I.C.C. No.12 of 2002 before the learned S.D.J.M., Padampur. Thereafter, seeking protection of its rights and possession over the suit land, the Petitioner-Society instituted C.S. No.45 of 2008 before the learned Civil Judge (Senior Division), Padampur.

9. In the said suit, the Petitioner impleaded the present Opposite Party Nos.2 to 4 and the Executive Officer, N.A.C., Padampur, as Defendant Nos.1 to 4, praying for declaration of its right, title and interest over the suit land, confirmation of possession and permanent injunction against the said defendants. Upon entering appearance, Defendant Nos.1 to 3 filed a joint written statement, while the Executive Officer, N.A.C., Padampur, arrayed as Defendant No.4, filed a separate written statement. In their respective pleadings, they traversed the material averments of the plaint, specifically denied the Petitioner's claim over the suit land and questioned the maintainability of the suit in its present form. On such grounds, they sought dismissal of the suit.

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10. The specific defence of Defendant Nos.1 to 3 was that the Baptist Church, Padampur, was in possession of only Ac.0.04 of land comprising a 'Girja' and Ac.0.06 of land comprising a 'Ghara', aggregating to Ac.0.10, while the remaining extent was lying vacant. They further pleaded that, pursuant to an erroneous report of the Revenue Inspector, the Tahasildar, Padampur, had initially allowed mutation of the land in the name of Baptist Mission Corporation, Padampur, and not the Petitioner-Society. However, the said order was subsequently recalled by the Tahasildar and the mutation case was rejected, thereby restoring the position prior to the grant of mutation.

11. They further pleaded that, in view of public necessity, the District Administration had decided to construct a market complex over a portion of the suit land adjoining the P.W.D. road. They also disputed the Petitioner's claim, contending that the erstwhile Zamindar had neither the right nor the authority to grant or gift the suit land and that the purported deed of grant relied on by the Petitioner was a forged document.

12. The Executive Officer, N.A.C., Padampur, arrayed as Defendant No.4, specifically pleaded that, following the decision to remove the unauthorised roadside shopkeepers, encroachment proceedings were initiated against them and the encroachments were accordingly cleared. Thereafter, after deliberations with local representatives and members of the public, the Collector, Bargarh, decided to establish a market complex for their rehabilitation. The site for the proposed complex was subsequently identified in the presence of the Town

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Planning Authority and possession thereof was handed over to the N.A.C., Padampur, for execution of the project.

13. The Executive Officer further questioned the maintainability of the suit on the ground of non-service of the mandatory statutory notice under the Orissa Municipal Act. He also questioned the correctness of the suit valuation and the adequacy of the court fee paid, besides asserting that the plaint disclosed no cause of action. On these grounds, he sought dismissal of the suit as not maintainable.

14. The Civil Court framed as many as six issues on the basis of the pleadings. By judgment dated 20.04.2010, it decreed the suit in favour of the Petitioner-Society, declaring its right, title and interest over the suit land and confirming its possession. It also permanently restrained the State authorities from entering the suit land or disturbing the Petitioner's possession thereof.

15. Defendant Nos.1 to 3, who are the present Opposite Party Nos.2 to 4, preferred R.F.A. No.11/14 of 2012/2014 before the learned Additional District Judge, Padampur. By judgment dated 11.04.2017, the First Appellate Court reversed the decree passed by the Trial Court. Aggrieved by the said judgment, the Petitioner preferred R.S.A. No.334 of 2017 before this Court.

16. According to the Petitioner, during the pendency of the second appeal, the parties arrived at an amicable settlement. The settlement was brought to the notice of this Court and the R.S.A. was disposed of as withdrawn on 24.08.2021. The settlement was subsequently reduced into writing by way of a Deed of Agreement dated 02.07.2022, wherein

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the Petitioner was the First Party and the Executive Officer, N.A.C., Padampur (Defendant No.4), was the Second Party. Under the said Deed, the Second Party agreed to construct a market complex over Ac.0.22 of land appertaining to M.S. Plot No.1776, M.S. R.O.R. No.1309, Mouza Padampur, and the Petitioner agreed not to claim any right, title, interest or possession over that portion of land. The Second Party, in turn, agreed not to claim any right, title, interest or possession over the remaining portion of Plot No.1776, and the Petitioner was at liberty to apply before the competent authority for recording the remaining portion of the land in its name.

17. It is the case of the Petitioner that, in December 2024, the Tahasildar, Padampur, along with other officials, verbally threatened to dispossess it from the suit land. The Petitioner apprised the Tahasildar of the settlement and the execution of the aforesaid Deed of Agreement. According to the Petitioner, the Tahasildar acknowledged the settlement and assured the Petitioner that he would look into the matter. On 23.03.2025, the Petitioner was served with a notice in Form 'A' dated 18.03.2025, issued by the Additional Tahasildar, Padampur, under Section 9 of the OPLE Act read with Rule 6 of the OPLE Rules, alleging encroachment over Ac.0.50 of land. The Petitioner was directed to show cause by 11.00 A.M. on 24.03.2025 as to why an encroachment proceeding should not be initiated against it. On 24.03.2025, the Petitioner orally sought further time to submit its reply. Thereafter, on 28.03.2025, it submitted a written request addressed to

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the Tahasildar, which was received by the Additional Tahasildar, Padampur.

18. While the Petitioner was collecting documents for submission of its reply, the Tahasildar issued a notice dated 04.04.2025, directing the Petitioner to demolish the alleged unauthorised construction, namely, the boundary wall, and vacate Ac.0.50 of land appertaining to Khata No.1319, Plot No.1776, by 10.04.2025, failing which the Petitioner would be evicted and the boundary wall demolished on 11.04.2025. The Petitioner subsequently learnt that the said notice had been issued in purported compliance with the order dated 12.03.2025 passed by this Court in W.P.(C) No.4092 of 2025 (PIL).

19. The aforesaid Public Interest Litigation (PIL) was filed by one Pradip Kumar Das, claiming to be a public-spirited person, alleging that the present Petitioner had encroached on Government land and that the Tahasildar had not considered his representation in that regard. The present Petitioner was arrayed as Opposite Party No.6 therein. By order dated 12.03.2025, this Court disposed of the PIL at the admission stage without issuing notice to the present Petitioner, directing the Tahasildar to consider the said representation and take appropriate action if the representation was found to have substance, or otherwise communicate the reasons for not taking any action, within four weeks from the date of communication of the order.

20. Thereafter, the Petitioner challenged the notice dated 04.04.2025 issued in E.C. No.144 of 2024-25 by filing W.P.(C) No.9835 of 2025. By order dated 09.04.2025, passed in the presence of the learned State Counsel,

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this Court quashed the said notice, granting liberty to the Petitioner to file a representation before the Tahasildar and directing the Tahasildar to afford an opportunity of hearing to the Petitioner and dispose of the representation by a reasoned order within fifteen days of its filing. This Court further directed that no coercive action be taken against the Petitioner until then.

21. On 23.04.2025, the Petitioner filed a detailed show-cause reply in E.C. No.144 of 2024-25, stating that it had entered into a compromise with the N.A.C., Padampur, and had voluntarily relinquished its claim over Ac.0.22 of land appertaining to M.S. Plot No.1776 in favour of the N.A.C., which, in turn, had agreed not to claim any right over the remaining portion of the said plot. The Petitioner further stated that it had remained in continuous possession of the remaining portion of the land and had constructed the boundary wall without any objection from the authorities. It further claimed that, having been in open, continuous and uninterrupted possession of the land since 1905, to the knowledge of all concerned, including the State authorities, for a period exceeding thirty years, it had acquired prescriptive title over the land and was entitled to settlement thereof under Section 8-A of the OPLE Act. It was further stated that the N.A.C., Padampur, had invited a tender for construction of the market complex over the aforesaid Ac.0.22 of land, thereby acknowledging and acting on the terms of the compromise. Accordingly, the Petitioner sought dropping of the encroachment proceeding as infructuous and unwarranted.

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22. On 02.05.2025, the Sub-Collector, Padampur, issued an intimation to the Petitioner regarding a meeting scheduled to be held on 06.05.2025 at 10.00 A.M. in the office chamber of the Sub-Collector-cum-Sub-Divisional Magistrate, Padampur. The meeting was convened to discuss the issue relating to the alleged encroachment by the Church in E.C. No.144 of 2024-25, and the Petitioner was directed to attend the same. According to the Petitioner, at the said meeting, it was stated that the boundary wall was to be demolished and that the Petitioner could continue its religious activities in the old Church as well as in the new Church, which was under construction.

23. On 21.05.2025, the Tahasildar, Padampur, passed the impugned order in E.C. No.144 of 2024-25, directing the Petitioner to maintain status quo in respect of both the old and the new constructions, refrain from undertaking any further construction over the suit land and remove the boundary wall within fifteen days. However, the said order was communicated to the Petitioner only on 26.06.2025. The Petitioner contended that the impugned order was based on an erroneous appreciation of facts and law and that the delay in its communication was unexplained and arbitrary. The Petitioner further contended that the delay in communication of the impugned order had the direct effect of frustrating its statutory right of appeal under Section 12 of the OPLE Act before the Sub-Divisional Officer, as the prescribed period of limitation had meanwhile expired. It is in these circumstances that the Petitioner has approached this Court by way of the present Writ Petition.

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24. During the pendency of the present writ petition, this Court, by order dated 10.07.2025 passed in I.A. No.11319 of 2025, directed maintenance of status quo. Subsequently, by order dated 20.08.2026, the Executive Officer, N.A.C., Padampur, was impleaded as Opposite Party No.6.

II. SUBMISSIONS OF THE PETITIONER:

25. Learned counsel for the Petitioner Mr. S.P. Mishra, Sr. Advocate made the following submissions in support of his contentions:

i. It was submitted that the impugned order proceeded on a misconstruction of the order dated 12.03.2025 passed by this Court in W.P.(C) No.4092 of 2025 (PIL), thereby rendering its very foundation legally untenable. The direction of this Court was confined to consideration of the representation dated 28.06.2024 received by the Tahasildar, Padampur, and did not amount to a direction for demolition of any existing construction or eviction of the Petitioner from the suit land. The Tahasildar, however, misconstrued the said order and proceeded to direct demolition of the boundary wall without affording a meaningful opportunity of hearing to the Petitioner.

ii. It was further submitted that the Tahasildar, Padampur, while in seisin of the encroachment proceeding, was required to examine the Petitioner's claim of actual, continuous and undisputed occupation of the land for well over thirty years and, on being satisfied as to the existence of the requisite conditions, refer the matter to the Sub-Collector, Padampur, for consideration of settlement under Section 8-A of the OPLE Act read with Rule 16 of the OPLE Rules. The

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failure of the Tahasildar to undertake such an inquiry and initiate the statutory reference mechanism had resulted in denial of consideration of the Petitioner's claim by the competent authority, thereby vitiating the impugned proceedings.

iii. The Petitioner asserted that its possession over the suit land traced back to a grant made in its favour by the then Zamindar of Borasambar in the year 1905. Since then, it had remained in peaceful, open and uninterrupted possession of the land, using it for religious, social and community purposes, including the establishment of a Church and residences for Church officials. On the strength of the original grant and its long-standing possession, the Petitioner claimed to have acquired right, title and interest over the suit land. It was contended that the invocation of the summary provisions of the OPLE Act, without first examining the nature and legal foundation of the Petitioner's claim and the character of its possession, was misconceived and legally unsustainable.

iv. Referring to the Bihar and Orissa Gazette of Sambalpur, it was submitted that the Borasambar Zamindari was the largest of the sixteen Zamindaris in Sambalpur and that Rajendra Singh Bariha was the Zamindar in the year 1905. The grant dated 26.04.1905, marked as Ext.4 in C.S. No.45 of 2008, bore the logogram of the then Zamindar. Relying on Section 90 of the Indian Evidence Act, 1872, the Petitioner contended that the said grant, being more than thirty years old and having been produced from proper custody, was

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entitled to the statutory presumption as to its execution and attestation.

v. It was further contended that the entries in the R.O.R. were maintained primarily for fiscal purposes and did not, by themselves, create or extinguish any right, title or interest in the property. The recording of the suit land in the Sarbasadharana Khata and the absence of any possession note in favour of the Petitioner could not, therefore, displace its claim of long-standing possession originating from the grant of 1905. It was alternatively contended that, even assuming that its title was disputed, the Petitioner's long, uninterrupted and hostile possession over the suit land for more than a century had matured into title by adverse possession.

vi. It was submitted that the Trial Court had rightly decreed C.S. No.45 of 2008 in favour of the Petitioner on consideration of its long-standing possession over the suit land. However, the First Appellate Court had reversed the said judgment on an erroneous appreciation of facts and law. Aggrieved thereby, the Petitioner had preferred R.S.A. No.334 of 2017 before this Court, which was subsequently disposed of as withdrawn on 24.08.2021 in view of the amicable settlement arrived at between the parties.

vii. The Petitioner further relied on the Deed of Agreement dated 02.07.2022 executed between the Petitioner and the Executive Officer, N.A.C., Padampur, in terms of which the N.A.C. was to

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construct a market complex over Ac.0.22 of land appertaining to M.S. Plot No.1776, M.S. R.O.R. No.1309, Mouza Padampur. While the Petitioner agreed not to claim any right, title, interest or possession over the said portion, the N.A.C. agreed not to claim any right, title, interest or possession over the remaining portion of the land. The Petitioner was also at liberty to approach the competent authority for recording the remaining portion in its name. It was submitted that the said agreement had not been disputed by the Opposite Parties until the present proceedings, except for the assertion in the counter affidavit that the Tahasildar, Padampur, was not a party to the agreement.

viii. It was contended that, although the impugned order was passed on 21.05.2025 directing removal of the boundary wall within fifteen days, the same was communicated to the Petitioner only on 26.06.2025. By the time the order was communicated, the prescribed period of thirty days for preferring an appeal under Section 12 of the OPLE Act had already expired. Such unexplained delay in communication of the impugned order had effectively deprived the Petitioner of its statutory right of appeal, while leaving it exposed to the coercive consequences of the direction for demolition.

ix. It was further submitted that the Sub-Collector, Padampur, who was the designated appellate authority under the OPLE Act, had already been involved in the matter concerning the alleged encroachment and removal of the boundary wall, as was evident

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from the proceedings relating to the meeting convened in his office. In such circumstances, recourse to the statutory appellate remedy would not constitute an efficacious remedy available to the Petitioner.

x. The Petitioner disputed the assertion of the Opposite Parties that sufficient opportunity of hearing had been afforded to it. It was specifically contended that the Petitioner had never received any notice in respect of the hearing allegedly fixed on 20.10.2024 and that several of the notices referred to in the counter affidavit had not been served on it. The Opposite Parties had also failed to produce copies of the alleged notices in support of their assertions regarding service thereof.

xi. It was further contended that the impugned order had been passed without furnishing the Petitioner with a copy of the inquiry report or the materials relied on by the Tahasildar, thereby depriving it of a meaningful opportunity to rebut the allegations made against it. Such denial of an effective opportunity of hearing was in direct violation of the principles of natural justice, particularly the rule of audi alteram partem.

xii. It was submitted that where a statute prescribed a particular manner for doing an act, such act was required to be performed in that manner alone and in no other manner. In the present case, the Opposite Parties were duty-bound to comply with the statutory

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requirements before passing the impugned order, and their failure to do so rendered the order legally unsustainable.

xiii. The Petitioner contended that the action of the Tahasildar, Padampur, in passing the impugned order despite the pendency of its representations, without conducting any spot inquiry in its presence and with undue haste, reflected an arbitrary and mala fide exercise of power. It was further submitted that though the right to property was no longer a fundamental right, it remained constitutionally protected under Article 300-A of the Constitution of India, and any action resulting in deprivation of property by way of demolition or eviction was required to be in accordance with the procedure prescribed by law.

xiv. It was further contended that the proposed dispossession of the Petitioner, which had been carrying out religious activities over the suit land since 1905, was not only arbitrary but also injurious to the religious sentiments of the Petitioner-Society. Such action, according to the Petitioner, infringed its fundamental right to freedom of religion guaranteed under Article 25 of the Constitution of India.

xv. In support of its contention that executive action taken contrary to law warranted interference in exercise of writ jurisdiction, the Petitioner relied on the decision of the Supreme Court in ***State of Maharashtra v. Prabhu***[1]. It was submitted that the exercise of writ

[1] (1994) 2 SCC 481.

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jurisdiction in the present case was necessary in the interests of justice, social interest and public good.

xvi. The Petitioner further questioned the maintainability of the reply affidavit dated 06.11.2025 filed by Opposite Party Nos.2 and 4 in response to its rejoinder affidavit. Referring to Rule 10 of Chapter XV of the Rules of the High Court of Orissa, 1948, it was submitted that the Opposite Parties could not, as a matter of right, file a further affidavit without obtaining leave of this Court.

xvii. It was further contended that Opposite Party Nos.2 and 4 had sought to dispute the validity of the Deed of Agreement dated 02.07.2022 for the first time by way of their reply affidavit. Relying on the decision of the Supreme Court in ***Mohinder Singh Gill v. Chief Election Commissioner, New Delhi***[2], the Petitioner submitted that the Opposite Parties could not be permitted to improve their case by way of subsequent affidavits. Accordingly, it was submitted that the said reply affidavit deserved to be disregarded.

xviii. In view of the aforesaid submissions and in the absence of any other adequate and efficacious alternative remedy, the Petitioner sought interference of this Court in exercise of its jurisdiction under Articles 226 and 227 of the Constitution of India, praying for quashing of the impugned order and issuance of a direction to the Tahasildar, Padampur, to refer the matter to the competent

[2] (1978) 1 SCC 405.

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authority for consideration of settlement of the land under Section 8-A of the OPLE Act read with Rule 16 of the OPLE Rules.

III. SUBMISSIONS ON BEHALF OF OPPOSITE PARTY NOS.2 AND 4:

26. Per contra, learned counsel appearing on behalf of Opposite Party Nos.2 and 4 Mr. Gyanaloka Mohanty, Standing Counsel made the following submissions:

i. On receipt of Form-G from the Revenue Inspector, Padampur, Encroachment Case No.144 of 2024-25 was instituted on 14.10.2024 under the provisions of the OPLE Act against the Diocese of Sambalpur, Church of North India, represented by Gyanchand Luhar, in respect of alleged unauthorised occupation of Government land measuring Ac.0.50 out of the total extent of Ac.0.71, appertaining to Khata No.1319, Plot No.1776, Mouza Padampur. Accordingly, notice was issued to the Petitioner fixing 20.10.2024 for hearing. However, the Petitioner did not appear on the date fixed.

ii. Subsequently, on 17.03.2025, the Tahasildar, Padampur, received the order dated 12.03.2025 passed by this Court in W.P.(C) No.4092 of 2025 (PIL), filed by one Pradip Kumar Das. According to the Opposite Parties, the said order required the Tahasildar to take action for removal of the unauthorised encroachment and construction over the suit land within four weeks. In compliance with the said order and for disposal of E.C. No.144 of 2024-25, a second notice was issued to Gyanchand Luhar, Secretary,

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Padampur Church, fixing 24.03.2025 for hearing. However, the Petitioner again failed to appear on the date fixed.

iii. On 28.03.2025, Gyanchand Luhar, Secretary, Padampur Church, appeared before the Tahasildar, Padampur, and submitted an application seeking one month's time to produce the relevant documents. The said request was not acceded to by the Additional Tahasildar in view of the period of four weeks stipulated by this Court in W.P.(C) No.4092 of 2025 (PIL). Accordingly, the date of eviction was fixed for 11.04.2025. However, to afford the Petitioner a further opportunity of hearing, a third notice was issued fixing 09.04.2025 for hearing. As the Petitioner failed to appear on the said date, the hearing could not take place and the proposed eviction was deferred. A fourth notice was thereafter issued fixing 11.04.2025 for hearing.

iv. On 11.04.2025, Gyanchand Luhar, representing the Petitioner, appeared before the Tahasildar, Padampur, and produced the order dated 09.04.2025 passed by this Court in W.P.(C) No.9835 of 2025, whereby the Tahasildar was directed to afford an opportunity of hearing to the Petitioner and pass a reasoned order in accordance with law within fifteen days of filing of the representation. Accordingly, a fifth notice was issued to both parties fixing 23.04.2025 for hearing. On the date fixed, both parties appeared through their respective advocates and produced relevant documents. On perusal of the documents, the Tahasildar

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directed the Revenue Inspector, Padampur, to submit a detailed field report regarding possession over the suit land. However, as the parties appeared at different times on the said date, a joint hearing could not take place. Consequently, a sixth notice was issued fixing 29.04.2025 for hearing.

v. On 29.04.2025, both parties appeared before the Tahasildar, Padampur, and were heard on the basis of the documents produced by them. The matter was thereafter posted to 21.05.2025 for orders. On consideration of the records of the encroachment proceeding and the directions issued by this Court in W.P.(C) No.4092 of 2025 (PIL) and W.P.(C) No.9835 of 2025, the Tahasildar found that the land measuring Ac.0.71, appertaining to Khata No.1319, Plot No.1776, Mouza Padampur, stood recorded in the Sarbasadharana Khata and was described as 'Girjaghara'. The Tahasildar also referred to paragraph 3 of the judgment in C.S. No.45 of 2008, wherein the stand of the State authorities regarding possession of the Baptist Church, Padampur, over Ac.0.04 of land for a Church and Ac.0.06 of land for residential accommodation of Church personnel, with the remaining portion lying vacant, had been recorded.

vi. It was further submitted that there was no entry in the R.O.R. evidencing possession of the Church of North India, Padampur, over the entire extent of Ac.0.71. The inquiry further revealed that certain new structures and a boundary wall had been constructed

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over the disputed land without permission. Accordingly, by order dated 21.05.2025, the Tahasildar directed maintenance of status quo in respect of the existing old and new structures, restrained the Church authorities from undertaking any further construction and directed removal of the boundary wall within fifteen days.

vii. It was contended that the encroachment proceeding had been conducted in accordance with the procedure prescribed under the OPLE Act and the principles of natural justice. The Petitioner had been afforded sufficient opportunities of hearing on five to six occasions before the impugned order was passed. The allegation of denial of a reasonable opportunity of hearing was, therefore, without any basis. The Opposite Parties also specifically denied the allegation that the Tahasildar, Padampur, along with other officials, had verbally threatened to dispossess the Petitioner in December 2024.

viii. It was further contended that the Petitioner-Society had produced no valid document to establish the alleged grant of the disputed land by the erstwhile Zamindar of Borasambar. Nor had it established that the Zamindar possessed the legal authority to make such a grant. The purported deed of grant or gift was alleged to be forged, fabricated and unregistered. Since the alleged grant of 1905, the land had undergone three settlement operations, namely, the Debar, Hamid and Major Settlements. However, the purported grant had never been produced before any settlement

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authority for recording the land in favour of the Petitioner-Society. The R.O.R. contained no entry of 'Dakhal' or 'Jabar Dakhal' recognising the possession of the Petitioner-Society over Plot No.1776, and the kisam of the land had merely been described as 'Girjaghar'.

ix. Referring to the judgment in C.S. No.45 of 2008, the Opposite Parties contended that the Baptist Church, Padampur, was in possession of only Ac.0.10 of the suit land, comprising Ac.0.04 occupied by the Church and Ac.0.06 occupied by the residence of Church personnel. However, the subsequent field report of the Revenue Inspector, Padampur, revealed that the Petitioner-Society had extended its occupation to approximately Ac.0.50 by constructing a boundary wall. Within the enclosed area, an old Church stood over approximately Ac.0.04 of land, a new Church was under construction over approximately Ac.0.05 of land and certain other structures had been constructed, while some portions remained vacant. It was, therefore, contended that the Petitioner-Society had failed to establish its possession over the entire suit land measuring Ac.0.71.

x. It was submitted that the disputed land, situated in a prime locality within the N.A.C., Padampur, adjoining the P.W.D. road, was valuable Government land recorded in the Sarbasadharana Khata and intended for the common benefit of the public. Several public offices, Courts, medical facilities and educational

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institutions were situated in the vicinity of the said road. The District Administration had earlier evicted unauthorised roadside occupants in the larger public interest. Accordingly, removal of the unauthorised boundary wall was necessary to safeguard the interests of the general public of Padampur.

xi. It was further contended that the judgment and decree dated 20.04.2010 and 05.05.2011, respectively, passed by the learned Civil Judge (Senior Division), Padampur, in C.S. No.45 of 2008 were legally unsustainable, as the Trial Court had permanently restrained the State and its authorities from entering the suit land, notwithstanding the absence of a valid R.O.R. recognising the Raiyati status of the Petitioner-Society. According to the Opposite Parties, the suit land was Government land even at the time of the alleged grant in 1905. The judgment and decree of the Trial Court were accordingly challenged in R.F.A. No.11/14 of 2012/2014 before the learned Additional District Judge, Padampur. The First Appellate Court, by judgment dated 11.04.2017, set aside the judgment and decree of the Trial Court. It was, therefore, submitted that the findings of the Trial Court, having been reversed in appeal, could no longer sustain the claim of the Petitioner-Society.

xii. As regards the claim of adverse possession, it was submitted that a person claiming title by adverse possession was required to establish the date of entry into possession, the nature of such

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possession, whether the factum of possession was within the knowledge of the other party, the period for which such possession continued and whether such possession was open and undisturbed. The Petitioner-Society had failed to produce any valid document in support of its claim.

xiii. Reliance was also placed on paragraph 15 of the judgment dated 11.04.2017 passed in R.F.A. No.11/14 of 2012/2014, wherein the learned Additional District Judge, Padampur, had found that the Petitioner had failed to establish the commencement and nature of its alleged adverse possession. Neither the date on which the true owner was dispossessed nor the circumstances in which the possession became adverse had been established. It was accordingly submitted that mere length of possession did not establish adverse possession. The Petitioner-Society, having claimed possession through a grant, had failed to establish when and in what manner such possession became adverse to the title of the true owner.

xiv. As regards the prayer for settlement of the suit land under Section 8-A of the OPLE Act, it was submitted that the Petitioner-Society had not made any application for settlement as contemplated under the said provision. Moreover, its claim of actual, continuous and undisputed possession over the suit land since 1905 had already been disbelieved by the First Appellate Court. The

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Petitioner was, therefore, not entitled to the relief sought under Section 8-A of the OPLE Act.

xv. Referring to the Deed of Agreement dated 02.07.2022 executed between Sandeep Kumar Nag, Secretary, Diocese of Sambalpur, Church of North India, and the Executive Officer, N.A.C., Padampur, it was submitted that the Tahasildar, Padampur, was not a party to the said agreement. Since the suit land was Government land recorded in the Sarbasadharana Khata, the Petitioner-Society had no right, title or interest over the same and, consequently, had no authority to relinquish Ac.0.22 of land in favour of the N.A.C., Padampur.

xvi. It was further contended that the Executive Officer, N.A.C., Padampur, had neither the competence nor the statutory authority to execute any deed of relinquishment or agreement in respect of Government land reserved for the use of the general public. The said Deed of Agreement had neither been registered nor referred to the Government for validation or authorization. Accordingly, the Opposite Parties contended that the said agreement was void ab initio and could not bind the State in any manner.

xvii. In support of the aforesaid contention, reference was made to the letter dated 30.09.2022 addressed by the Executive Officer, N.A.C., Padampur, to the Collector and District Magistrate, Bargarh, seeking advance possession of a portion of the disputed land for construction of a market complex. The said request had been made

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subsequent to the execution of the Deed of Agreement dated 02.07.2022, and no response thereto had been issued by the Collector. According to the Opposite Parties, the said communication demonstrated that the Executive Officer, N.A.C., Padampur, had no authority, either under the statute or from the Government, to enter into such an agreement.

xviii. The Opposite Parties also referred to the communication bearing No.27146/R&DM dated 11.09.2020 issued by the Revenue and Disaster Management Department, Government of Odisha, wherein it was stated that all Tahasildars and Additional Tahasildars had been declared as Estate Officers under Section 3 of the Odisha Public Premises (Eviction of Unauthorised Occupants) Act, 1972, vide Notification No.4439 dated 27.01.2020, for exercising powers within their respective jurisdictions.

xix. It was further submitted that the Petitioner, if aggrieved by the order dated 21.05.2025, had a statutory remedy of appeal under Section 12 of the OPLE Act, which it had not availed. As regards the involvement of the Sub-Collector, Padampur, it was submitted that a meeting had been held on 06.05.2025 in the presence of both parties, including the Petitioner-Society, during which the Petitioner had been directed to remove the boundary wall. However, according to the Opposite Parties, the communication dated 02.05.2025 issued by the Sub-Collector was merely a request to the Petitioner to attend a discussion concerning the alleged

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encroachment and had not been issued in exercise of any statutory power. It was, therefore, contended that the Sub-Collector had not dealt with the matter in his capacity as the appellate authority and that the statutory remedy of appeal remained available to the Petitioner.

xx. It was submitted that the Tahasildar, Padampur, being the lawful custodian of Government land, had passed the impugned order in the larger public interest. The direction for removal of the unauthorised boundary wall, while maintaining status quo in respect of the existing old and new structures, did not interfere with the religious activities of the Petitioner-Society or infringe the religious rights of any particular community. In view of the aforesaid submissions, the Opposite Parties prayed for dismissal of the Writ Petition.

IV. SUBMISSIONS ON BEHALF OF OPPOSITE PARTY NO.6

27. Learned counsel appearing on behalf of Opposite Party No.6, the Executive Officer, N.A.C., Padampur Mr. Manoj Mishra, Sr. Advocate made the following submissions:

i. It was submitted that possession of the land appertaining to Plot No.1776, Khata No.1319, Mouza Padampur, had been delivered by the Government to the Executive Officer, N.A.C., Padampur, on 19.07.2002 for construction of a market complex for rehabilitation of the evicted persons.

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ii. The Petitioner had earlier approached this Court in O.J.C. No.5685 of 2002 challenging the order of the Tahasildar cancelling the R.O.R. issued in its favour. In the said proceeding, the State Government had filed a counter affidavit stating that the suit land was Sarbasadharana land under the control and possession of the Government and had been surveyed and earmarked for construction of a market complex. It had also been submitted on behalf of the State that the land had been fenced and handed over to the N.A.C., Padampur. This Court, by order dated 25.09.2002, disposed of the said Writ Petition directing the Petitioner to seek its remedy before the competent Civil Court.

iii. Thereafter, the Petitioner instituted C.S. No.45 of 2008 before the learned Civil Judge (Senior Division), Padampur, seeking declaration of its right, title and interest over the suit land. The suit was decreed in favour of the Petitioner. Aggrieved thereby, the present Opposite Party No.6 preferred R.F.A. No.47/45 of 2010/2013 before the learned Additional District Judge, Padampur, who set aside the judgment and decree of the Trial Court. It was contended that the Petitioner had failed to establish its right, title, interest and possession over the suit land before the First Appellate Court. The Second Appeals preferred by the Petitioner, bearing R.S.A. Nos.334 and 341 of 2017, were subsequently disposed of as withdrawn vide order dated 24.08.2021.

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iv. It was further submitted that the Petitioner and the then Executive Officer, N.A.C., Padampur, had entered into an agreement dated 06.12.2020, following which the Second Appeals were withdrawn. However, the N.A.C., Padampur, had no title over the disputed land to enter into such an agreement with the Petitioner. Clause 2 of the said agreement merely provided that the Petitioner was at liberty to apply before the competent authority for recording the land in its name. The said agreement was never given effect to by the parties.

v. Subsequently, the Petitioner and the then Executive Officer, N.A.C., Padampur, entered into another agreement dated 02.07.2022, wherein it was stipulated that the N.A.C. would construct a market complex over an extent of Ac.0.22 of land appertaining to M.S. Plot No.1776, M.S. R.O.R. No.1309, Mouza Padampur, and the Petitioner would not claim any right, title, interest or possession over the said portion of land. The agreement dated 02.07.2022 expressly recorded that the earlier agreement dated 06.12.2020 had not been given effect to and was accordingly treated as cancelled.

vi. Reference was also made to the resolution dated 17.08.2024 of the N.A.C., Padampur, whereby it was decided to cancel the earlier agreement dated 06.12.2020 on the ground that the N.A.C. had no title over the disputed land. It was further resolved that the market complex would be constructed over the entire extent of Ac.0.71 of

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the suit land. In view of the said resolution, it was contended that the subsequent agreement dated 02.07.2022 had also lost its relevance.

vii. It was contended that neither of the aforesaid agreements conferred any right or title on the Petitioner, nor had the N.A.C., Padampur, relinquished any right over the disputed land in favour of the Petitioner. The agreements merely provided that the Petitioner was at liberty to approach the competent authority for recording the land in its name. Since the N.A.C., Padampur, itself had no title over the suit land, the agreements entered into with the Petitioner had no legal basis and could not have resulted in the transfer of title in its favour.

viii. It was submitted that the State continued to be the owner of the suit land. Though the N.A.C., Padampur, had no title over the said land, it was entitled to construct the market complex thereon, possession of the land having been delivered to it by the Government for that purpose.

V. COURT'S REASONING AND ANALYSIS:

28. Heard learned counsel for the parties and perused the materials available on record.

29. At the outset, it is necessary to examine the objection raised by the Opposite Parties regarding the availability of a statutory remedy of appeal under Section 12 of the OPLE Act. For ready reference, Section 12(1) of the Act is reproduced hereinbelow:

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> *"**12. Appeal and Revision:***
> *(1) An appeal from any decision or order made under this Act by the Tahasildar shall lie to the Sub-divisional Officer."*

30. Thus, the OPLE Act provides a statutory remedy of appeal against an order passed by the Tahasildar. Where the legislature has prescribed a remedy, Courts ordinarily insist on its pursuit. The rule of alternative remedy is, however, a rule of prudence and not a restriction on the constitutional power of this Court.

31. In ***Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and Others***[3], the Supreme Court recognised certain exceptions to the rule of alternative remedy. The relevant observations are reproduced hereinbelow:

> *"14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for "any other purpose".*
> *15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to*

[3] (1998) 8 SCC 1.

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operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field."

32. The aforesaid principles were reiterated by the Supreme Court in ***Radha Krishan Industries v. State of Himachal Pradesh and Others***[4], wherein the principles governing the exercise of jurisdiction under Article 226 of the Constitution in the presence of an alternative statutory remedy were summarized as follows:

"27. The principles of law which emerge are that:
27.1. The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well.
27.2. The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person.
27.3. Exceptions to the rule of alternate remedy arise where : (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged.
27.4. An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the

[4] (2021) 6 SCC 771.

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Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law.

27.5. When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion.

27.6. In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with."

33. The existence of an alternative statutory remedy, therefore, does not operate as an absolute bar to the exercise of jurisdiction under Article 226 of the Constitution. In the present case, the Petitioner has questioned the efficacy of the statutory remedy on two principal grounds. Firstly, the impugned order was allegedly passed in violation of the principles of natural justice, without furnishing the materials relied on by the Tahasildar. Secondly, the Sub-Collector, before whom the statutory appeal would lie, had participated in the deliberations preceding the passing of the impugned order. Both these contentions require examination.

34. According to the Opposite Parties, Encroachment Case No.144 of 2024-25 was instituted on 14.10.2024 on receipt of Form-G from the Revenue Inspector, Padampur. Notices were thereafter issued fixing 20.10.2024,

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24.03.2025, 09.04.2025, 11.04.2025, 23.04.2025 and 29.04.2025 for hearing. Though the Petitioner disputed the service of several of the aforesaid notices, it is not in dispute that a detailed show-cause reply was filed by the Petitioner on 23.04.2025. According to the Opposite Parties, both parties were thereafter heard on 29.04.2025 and the impugned order was passed on 21.05.2025.

35. It appears from the record that the steps taken by the Tahasildar subsequent to 17.03.2025 proceeded on an erroneous interpretation of the order dated 12.03.2025 passed by this Court in W.P.(C) No.4092 of 2025 (PIL). By the said order, this Court had merely directed the Tahasildar to consider the representation of the Petitioner therein and take appropriate action in accordance with law if the allegations were found to have substance, or communicate the reasons for declining to act. There was no direction for eviction of the present Petitioner or removal of any structure within four weeks. The refusal to grant further time on 28.03.2025 and the issuance of the subsequent notice dated 04.04.2025 were, therefore, based on a mistaken understanding of the said direction.

36. By a subsequent order dated 09.04.2025 passed in W.P.(C) No.9835 of 2025, this Court quashed the notice dated 04.04.2025 and directed the Tahasildar to afford an opportunity of hearing to the Petitioner and pass a reasoned order in accordance with law. The Petitioner thereafter submitted its show-cause reply on 23.04.2025 and produced the relevant documents in support of its claim. The validity of the subsequent order dated 21.05.2025 must, therefore, be examined with

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reference to whether the proceedings conducted pursuant to the directions of this Court satisfied the requirements of the OPLE Act and the principles of natural justice.

37. In examining whether an adequate opportunity of hearing was afforded to the Petitioner, it is necessary to consider the manner in which the field report of the Revenue Inspector, Padampur, was relied on by the Tahasildar. The report, which was called for on 23.04.2025 to ascertain the actual extent of the Petitioner's possession over the suit land, appears to have formed a material basis for the impugned order. There is nothing on record to indicate that the report was made available to the Petitioner to enable it to controvert the findings contained therein. Though the Petitioner had participated in the proceeding and submitted its show-cause reply, the adequacy of such opportunity cannot be assessed without considering whether the material relied on by the Tahasildar in arriving at an adverse finding had been disclosed to the Petitioner.

38. The requirement of affording a reasonable opportunity of hearing necessarily includes an opportunity to controvert the material relied on by the authority in arriving at an adverse finding. The non-disclosure of the field report of the Revenue Inspector, therefore, constitutes a procedural infirmity. In determining the relief to be granted on account of such infirmity, this Court must also consider the prejudice occasioned to the Petitioner and the efficacy of the statutory remedy available to it.

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39. The question of prejudice arising from the non-disclosure of the field report has to be examined in the context of the rival claims regarding the extent of the Petitioner's possession over the suit land. Such an examination would involve consideration of the revenue records, the field report and the other materials available in the encroachment proceeding. Though these matters fall within the scope of examination by the statutory appellate authority, the objection raised by the Petitioner regarding the impartiality of the said authority requires consideration.

40. The apprehension expressed by the Petitioner arises from the participation of the Sub-Collector, Padampur, in the meeting held on 06.05.2025, preceding the passing of the impugned order. Since the appeal under Section 12 of the OPLE Act would lie before the same authority, it is necessary to examine the nature of his involvement in the said meeting and its bearing on the exercise of his appellate jurisdiction.

41. In ***A.K. Kraipak and Others v. Union of India and Others***[5], the Constitution Bench of the Supreme Court held that while a mere suspicion of bias is insufficient, it is not necessary to establish actual bias on the part of the authority concerned. The relevant consideration is whether the facts and circumstances give rise to a reasonable likelihood of bias, having regard to human probabilities and the ordinary course of human conduct.

[5] (1969) 2 SCC 262.

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42. In the present case, the participation of the Sub-Collector in the meeting held on 06.05.2025 is not in dispute. The counter affidavit filed by the Opposite Parties indicates that a direction for removal of the boundary wall was issued by the Sub-Divisional Magistrate in the course of the said meeting. The nature of the direction so issued and its bearing on the subsequent decision of the Tahasildar are relevant considerations in determining whether the apprehension of bias expressed by the Petitioner is justified.

43. While the meeting dated 06.05.2025 was convened by the Sub-Collector in the discharge of his administrative functions in connection with the pending encroachment proceeding, the question that arises is whether his participation therein would affect the subsequent exercise of his appellate jurisdiction. Mere knowledge of the controversy or participation in administrative deliberations need not necessarily imply prejudgment of the issues involved. In the present case, the apprehension of the Petitioner arises from the specific direction issued at the said meeting for removal of the boundary wall, which subsequently formed part of the impugned order.

44. Nevertheless, the apprehension of the Petitioner merits appropriate protection. The principle of natural justice requires that the authority deciding a dispute approach it with an open mind, free from prejudgment or extraneous influence. While examining the efficacy of the statutory remedy available to the Petitioner, this Court must ensure that the appellate jurisdiction created by the legislature is exercised in accordance with law and that the grievances of the Petitioner receive

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independent consideration, uninfluenced by any opinion expressed at the meeting dated 06.05.2025.

45. Having considered the objections of the Petitioner regarding the adequacy of the opportunity of hearing and the efficacy of the appellate remedy, this Court must now examine the effect of the earlier civil proceedings between the parties on the claim raised by the Petitioner in the present writ petition.

46. The Petitioner's claim to the disputed land rests on an alleged grant by the Zamindar of Borasambar in the year 1905 and its asserted uninterrupted possession for over a century. The said claim has already been the subject matter of adjudication before the civil court. The judgment and decree obtained by the Petitioner in C.S. No.45 of 2008 were reversed by the learned Additional District Judge, Padampur, vide judgment dated 11.04.2017. The First Appellate Court found that the Petitioner had failed to establish when its possession became hostile to the true owner or by what acts such hostility was manifested. The Petitioner thereafter preferred R.S.A. No.334 of 2017 before this Court, which, according to the pleadings of the parties, was withdrawn on 24.08.2021 in view of the compromise arrived at between them.

47. The law distinguishes possession as a fact from adverse possession as a source of title. Mere length of possession would not establish adverse possession unless such possession is shown to have acquired a hostile character as against the true owner. In ***Hemaji Waghaji Jat v.***

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Bhikhabhai Khengarbhai Harijan and Others[6], the Supreme Court reiterated that a claim of adverse possession must be founded on specific pleadings and evidence establishing the nature, commencement, continuity and hostile character of such possession.

48. The Petitioner, having initially claimed possession on the basis of a grant made by the erstwhile Zamindar, was required to establish the circumstances in which such possession became adverse to the true owner. The mere fact that the Petitioner has been in occupation of the land for a considerable period would not dispense with the requirement of establishing the essential ingredients of adverse possession. The findings recorded by the First Appellate Court in this regard cannot be overlooked while examining the claim of the Petitioner in the present proceeding.

49. The failure to establish title by adverse possession and the entitlement to consideration for settlement under Section 8-A of the OPLE Act are distinct questions. The latter must be examined with reference to the conditions prescribed under the statute.

50. The decision of the Supreme Court in ***State of Rajasthan v. Harphool Singh (Dead) through His LRs.***[7] also emphasises the necessity of establishing the essential ingredients of adverse possession where title is claimed over Government land. In the present case, the Petitioner's claim of title has already been examined by the competent civil court

[6] (2009) 16 SCC 517.
[7] (2000) 5 SCC 652.

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and the findings recorded by the First Appellate Court have a material bearing on the present controversy.

51. The Petitioner has also placed reliance on the Deed of Agreement dated 02.07.2022. By the said agreement, the Petitioner consented to the construction of a market complex over Ac.0.22 of Plot No.1776, while the Executive Officer, N.A.C, Padampur, agreed not to assert any claim over the remaining land. The question that arises for consideration is whether the N.A.C had the legal competence to enter into such an arrangement in respect of Government land.

52. The land stands recorded under Sarbasadharana Khata. According to Opposite Party No.6, possession of the land was delivered to the N.A.C for the limited purpose of constructing a market complex to rehabilitate evicted persons. Delivery of possession for a specified public purpose did not confer ownership of the land on the N.A.C. The maxim *nemo dat quod non habet*, which means that no one can confer what he does not possess, is relevant in this context. The N.A.C, having no proprietary title of its own, could neither transfer any interest in the land nor surrender the rights of the State over any portion thereof.

53. Nor could the consent of the Petitioner confer on the N.A.C an authority which it did not otherwise possess. An agreement between two parties cannot affect the rights of a third party which has neither authorised the transaction nor consented to its terms. In the absence of approval of the competent authority, the agreement dated 02.07.2022, whatever its effect between the signatories, cannot operate as a source of title against the State.

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54. The terms of the agreement themselves indicate the limits of the authority under which it was executed. The agreement merely permitted the Petitioner to approach the competent authority for recording the land in its name. The said stipulation indicates that the authority to record or settle the land continued to vest in the competent Government authority and not in the N.A.C. The subsequent resolution dated 17.08.2024, proposing construction of the market complex over the entire Ac.0.71 of land, also reflects the subsisting dispute between the parties. Whatever contractual obligations may subsist between the parties to the agreement, the same cannot create proprietary rights enforceable against the State.

55. The Petitioner has also relied on the decision of the Supreme Court in ***Mohinder Singh Gill and Another v. Chief Election Commissioner, New Delhi and Others***[8], in support of its contention that the impugned order cannot be sustained on the basis of reasons subsequently supplied through affidavits. The principle that an order must stand on the reasons recorded therein and cannot be supplemented by fresh reasons through subsequent affidavits is well settled. The relevant observations of the Supreme Court are reproduced hereinbelow:

> *"8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds*

[8] (1978) 1 SCC 405.

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later brought out. We may here draw attention to the observations of Bose, J. in Gordhandas Bhanji [Commr. of Police, Bombay v. Gordhandas Bhanji, 1951 SCC 1088 : AIR 1952 SC 16] :

> *"Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."*
>
> *Orders are not like old wine becoming better as they grow older."*

56. In the present case, while examining the legal effect of the agreement dated 02.07.2022, this Court is not supplementing the reasons assigned by the Tahasildar in the impugned order. The fact that the Tahasildar was not a party to the said agreement is apparent from the instrument itself. There is a distinction between supplying reasons which do not find place in the impugned order and examining the legal consequences of a document relied on by the Petitioner in support of its claim. While the former is impermissible, the latter falls within the scope of judicial scrutiny.

57. Accordingly, while the validity of the impugned order must be examined on the basis of the reasons recorded therein, the principle laid down in the aforesaid decision would not preclude this Court from examining the legal effect of the agreement dated 02.07.2022. In view of

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the fact that the conclusions recorded herein regarding the legal effect of the agreement are founded on the terms of the agreement itself, it is not necessary to enter into the objection regarding the filing of the reply affidavit dated 06.11.2025.

58. Insofar as the Petitioner's contention regarding violation of Article 300-A of the Constitution is concerned, the Supreme Court in ***K.T. Plantation Private Limited and Another v. State of Karnataka***[9] held that deprivation of property must be founded on the authority of a valid law. The OPLE Act provides the statutory mechanism for removal of unauthorised occupation of Government land. Proceedings undertaken in accordance with the provisions of the said Act cannot be said to offend Article 300-A merely on account of the Petitioner's assertion of long-standing possession. The question whether the statutory requirements have been complied with in the present case is, however, a distinct consideration.

59. As regards the alleged infringement of religious freedom, it is pertinent to note that the impugned order directs maintenance of status quo in respect of the existing structures and removal of the disputed boundary wall. There is no direction for demolition of the Church buildings or prohibition of religious worship therein. The right to freedom of religion does not exempt a religious institution from compliance with the statutory provisions governing occupation of Government land.

60. The other substantive relief sought by the Petitioner is for issuance of a writ of mandamus directing the Tahasildar, Padampur, to refer the

[9] (2011) 9 SCC 1.

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matter to the Sub-Collector for consideration of settlement under Section 8-A of the OPLE Act read with Rule 16 of the OPLE Rules, 1985. Before examining the entitlement of the Petitioner to such relief, it is necessary to advert to the relevant statutory provisions.

61. Section 8-A of the OPLE Act provides as follows:

> *"8-A. Settlement of land in cases of encroachment for more than thirty years.*
> *(1) Where in the course of any proceeding instituted under Sections 4, 6, 7 or 8 against any person unauthorisedly occupying any land it is proved by such person that he has been in actual, continuous and undisputed occupation of the land for more than thirty years by the date of institution of the proceeding, the Tahasildar shall refer the case to the Sub-divisional Officer.*
> *(2) On receipt of a reference under Sub-section (1) the Sub-divisional Officer shall give the Department of the State Government (other than the Revenue Department) to which the land belongs, an opportunity to show cause against the settlement of the land and may make such further enquiry as he deems necessary.*
> *(3) If after making such enquiry the Sub-divisional Officer is satisfied that such person has been in such occupation of the land as aforesaid, he may by order, settle the land with him and every such settlement shall be subject to such conditions, regarding assessment and payment of rent (including arrears of rent) as may be prescribed by rules made under this Act."*

62. Rule 16 of the OPLE Rules, 1985, prescribes the manner of settlement of such land and reads as follows:

> *"16. Manner of settlement of encroached land, encroached for more than thirty years. –*

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For settlement of land under Section 8-A the onus of proof that the encroacher has been in actual, continuous and undisputed occupation of the land for more than thirty years by the date of institution of the proceeding shall be on the encroacher. If the Sub-Divisional Officer order settlement of the land under Sub-section (3) of Section 8-A, he shall fix rent of the land in the manner prescribed under Rule 4 and shall direct the person to pay rent for the entire period of occupation subject to the provisions of limitation prescribed under the Orissa Limitation (Recovery of Revenue) Act, 1964 (Orissa Act 14 of 1964). In case no payment is made within the time fixed by the Sub-Divisional Officer, the order of settlement shall not be effected."

63. It is well settled that a writ of mandamus enforces an existing legal right and does not create one. In ***Mani Subrat Jain and Others v. State of Haryana and Others***[10], the Supreme Court examined the requirement of an enforceable legal right and a corresponding legal duty for issuance of a writ of mandamus. The relevant observations are reproduced hereinbelow:

"9. …It is elementary though it is to be restated that no one can ask for a mandamus without a legal right. There must be a judicially enforceable right as well as a legally protected right before one suffering a legal grievance can ask for a mandamus. A person can be said to be aggrieved only when a person is denied a legal right by someone who has a legal duty to do something or to abstain from doing something. (See Halsbury's Laws of England, 4th Edn., Vol. I, para 122; State of Haryana v. Subash Chander Marwaha [(1974) 3 SCC 220 : 1973 SCC (L&S) 488 : (1974) 1 SCR 165] ; Jasbhai Motibhai Desai v. Roshan Kumar Haji Bashir Ahmed [(1976) 1 SCC 671 :

[10] (1977) 1 SCC 486.

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(1976) 3 SCR 58] and Ferris : Extraordinary Legal Remedies, para 198.)"

64. A conjoint reading of Section 8-A of the OPLE Act and Rule 16 of the OPLE Rules, 1985, makes it clear that actual, continuous and undisputed occupation of the land for more than thirty years by the date of institution of the proceeding is a condition precedent for reference, the burden of proof resting on the encroacher. It is only on proof of such occupation that the Tahasildar becomes obliged to refer the matter to the Sub-Divisional Officer. Such reference does not confer an automatic right to settlement. The Sub-Divisional Officer is required to independently examine the claim and determine, after due enquiry, whether the land qualifies for settlement under the Act. The claim for reference under Section 8-A, having been raised by the Petitioner in its show-cause reply, was required to be examined in the course of the encroachment proceeding.

65. In the present case, the extent and continuity of the Petitioner's occupation remain disputed. While the Petitioner claims to have been in continuous occupation of the disputed land since 1905, the Opposite Parties have disputed the extent of such occupation and alleged that the Petitioner has gradually extended its possession over Government land. These disputed questions assume significance in determining whether the statutory requirements under Section 8-A of the OPLE Act have been satisfied.

66. Further, the land stands recorded under Sarbasadharana Khata and, according to Opposite Party No.6, has been earmarked for construction

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of a public market complex. In ***Jagpal Singh and Others v. State of Punjab and Others***[11], the Supreme Court emphasised the obligation of the authorities to protect community land against encroachment and indiscriminate regularisation. It was observed:

> *"23. …Long duration of such illegal occupation or huge expenditure in making constructions thereon or political connections must not be treated as a justification for condoning this illegal act or for regularising the illegal possession. Regularisation should only be permitted in exceptional cases e.g. where lease has been granted under some government notification to landless labourers or members of the Scheduled Castes/Scheduled Tribes, or where there is already a school, dispensary or other public utility on the land."*

67. A claim of prolonged occupation cannot dispense with the statutory conditions prescribed for settlement of Government land. In the present case, the extent, nature and continuity of the Petitioner's occupation are matters which require examination on the basis of the revenue records and other relevant materials. The mere assertion of possession for more than thirty years would not warrant issuance of a mandamus directing reference under Section 8-A of the OPLE Act.

68. In these circumstances, issuance of a mandamus directing reference under Section 8-A of the OPLE Act would require this Court to proceed on the assumption that the statutory conditions have been satisfied. Such satisfaction must be arrived at by the authority entrusted with that function under the Act. It shall be open to the Petitioner to pursue its claim under Section 8-A of the OPLE Act before the competent

[11] (2011) 11 SCC 396.

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authority. Such claim shall be considered on its own merits and in accordance with law. This Court expresses no opinion on the Petitioner's eligibility or entitlement to settlement of the disputed land.

69. Before parting with the matter, this Court must also address the grievance of the Petitioner regarding the delay in communication of the impugned order. Though the order was passed by the Tahasildar on 21.05.2025, the same was communicated to the Petitioner only on 26.06.2025. The delay in communication assumes significance in view of the period of limitation prescribed for preferring an appeal under the OPLE Act.

70. A statutory remedy cannot be rendered ineffective on account of delay on the part of the very authority whose order is sought to be challenged. Section 13(2) of the OPLE Act prescribes the period of limitation for preferring an appeal and empowers the appellate authority to condone the delay on sufficient cause being shown. In ***Raja Harish Chandra Raj Singh v. Deputy Land Acquisition Officer and Another***[12], the Supreme Court recognised the significance of actual or constructive knowledge of an order in determining the commencement of the period of limitation for challenging it. In the present case, having regard to the belated communication of the impugned order and the pendency of the present writ petition, the Petitioner ought not to be deprived of its statutory remedy on the ground of limitation. Accordingly, any appeal preferred within the

[12] AIR 1961 SC 1500.

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period stipulated hereinafter shall be entertained without objection as to limitation.

VI. CONCLUSION:

71. In view of the foregoing discussion, this Court finds no ground to reopen, in exercise of its writ jurisdiction, the claim of title already adjudicated by the competent civil court. Nor can the agreement dated 02.07.2022, executed without the authority of the State Government, confer any proprietary right on the Petitioner over Government land. Further, the materials available on record do not warrant issuance of a mandamus directing reference under Section 8-A of the OPLE Act at this stage.

72. What remains for consideration is the disputed extent of encroachment, the nature and continuity of the Petitioner's occupation and the adequacy of the materials relied on by the Tahasildar. These are matters which can be examined by the statutory appellate authority. The infirmity arising from the non-disclosure of the Revenue Inspector's report must be addressed by affording the Petitioner an effective opportunity to controvert the same.

73. Accordingly, this Court declines to interfere with the impugned order in exercise of its writ jurisdiction, while safeguarding the Petitioner's right to pursue the statutory remedy available under the OPLE Act. The following directions are issued:

a. The Petitioner shall be at liberty to prefer an appeal under Section 12 of the OPLE Act before the Sub-Divisional Officer, Padampur, within thirty days from the date of this judgment. If

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such appeal is preferred within the stipulated period, the same shall be entertained on merits without objection as to limitation.

b. The appellate authority shall furnish to the Petitioner a copy of the Revenue Inspector's report and the other materials relied on by the Tahasildar, afford a reasonable opportunity of hearing to the parties and dispose of the appeal by a reasoned order within eight weeks from the date of its filing.

c. The appellate authority shall decide the appeal independently and in accordance with law, uninfluenced by any opinion expressed at the meeting dated 06.05.2025. The Petitioner's claim under Section 8-A of the OPLE Act shall also be examined in accordance with the statutory requirements.

d. No demolition of the boundary wall shall be undertaken for 15 days or, if an appeal is filed within that period, until the application for interim relief is decided.

e. In the meantime, the Petitioner shall neither undertake further construction nor alter the nature of the land. The direction to maintain status quo over the existing structures shall continue.

74. The Writ Petition is, accordingly, **dismissed**, subject to the aforesaid directions.

(Dr. Sanjeeb K Panigrahi)
Judge

Orissa High Court, Cuttack,
Dated the 20th November, 2026 /

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