



A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.3020 of 2024

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

Niranjan Barik

....

Petitioner

-versus-

**Sri Jambeswar Mahadev
Bije, Jamara, Kendrapara
and others**

**Opposite
Parties**

Appeared in this case:-

For Petitioner

:

Mr. R.K. Mohanty, Sr.
Advocate assisted by Mr.
Soumya Misha, Advocate

For Opposite Parties

:

Mr. B.N. Bhuyan, Advocate
(For Opposite Party Nos.2 and
3)
Mr. Kishore Ku. Jena,
Advocate(Caveator)
Mr. A.P. Bose, Advocate
(For Opposite Party No.4)
Mr. Tej Kumar,
Learned Additional Standing
Counsel
(For Opposite Party Nos.5 to 8)

CORAM:

JUSTICE A.C. BEHERA

JUDGMENT

Date of hearing : 18.07.2025 / date of judgment : 26.08.2025

A.C. Behera, J. This writ petition under Articles 226 and 227 of the Constitution of India, 1950 has been filed by the petitioner



praying for quashing(setting aside) the impugned order dated 12.12.2023(Annexure-14) passed in R.C. No.100 of 2020 by the Additional Commissioner Consolidation and Settlement, Kendrapara(Opposite Party No.5).

2. The petitioner in this writ petition was the Opposite Party No.1, the Opposite Party Nos.1 to 4 as the representatives and the Marfatdar of the deity Sri Jambeswar Mahadev Bije, Jamara were the petitioners and the Opposite Party No.6(Commissioner of Endowments, Odisha, Bhubaneswar) was the Opposite Party No.2 in the revision vide R.C. No.100 of 2020 before the Additional Commissioner Consolidation and Settlement, Kendrapara, (Opposite Party No.5).

3. The case of the petitioner(Niranjan Barik) in this writ petition is that, the case land is Ac.0.260 decimals of Hal Plot No.1623 under Hal Khata No.370 in Mouza-Jamara under Derabish Tahasil in the district of Kendrapara, which corresponds to Sabik Plot No.1119 Ac.0.33 decimals(part) under Sabik Khata No.521.



The Sabik Plot No.1119 Ac.0.33 decimals as Kissam Gharabari under Sabik Khata No.521 in Mouza-Jamara was recorded in the settlement of the year 1929 in the name of the deity Sri Jambeswar Mahadev Bijee, Nijgaon represented through its Sebayat Brajasundar Dev and Marfatdar Parikshita Panda, Kurtibas Panda and Ganesh Panda.

The above Marfatdars of the deity Sri Jambeswar Mahadev Bijee, Jamara executed a permanent lease deed in the form of Chirastaye Patta in respect of the case land in favour of the father of the petitioner, i.e., Ankura Barik receiving Rs.200/- (rupees two hundred) Salami and Rs.3.53 Paise as rent and delivered possession thereof to Ankura Barik and accordingly, the father of the petitioner, i.e., Ankura Barik got the case land through the aforesaid Chirastaye Patta dated 02.03.1960 (Annexure-1) and constructed his residential house on the same in the year 1960 and since then, Ankura Barik and his family members including the petitioner were residing in the same. After the death of Ankura Barik, the petitioner being his son and successor has been residing in the said house on the case land. In the settlement of the year 1960, the case land was



recorded under Bebandabasta status. Thereafter, during consolidation operation, the Parchha of the case land under Section 9(2) of the OCH and PFL Act, 1972 (Annexure-3) was issued in the name of the father of the petitioner, i.e., Ankura Barik under Bebandabasta status.

4. During the said consolidation operation, one Khageswar Jena of village Jamara on behalf of the villagers filed Objection Case No.1555 of 1983 under Section 9(3) of the OCH and PFL Act, 1972 in respect of the case land before the Consolidation Officer, Kendrapara, but, as per order dated 11.06.1986(Annexure-5) passed by the Consolidation Officer, the said Objection Case No.1555 of 1983 filed by Khageswar Jena was rejected and thereafter, the consolidation RoR of the case land under Consolidation Khata No.370(Annexure-6) was published in the name of the petitioner, as by that time, his father Ankura Barik had expired leaving behind him(petitioner) as his successor. After passing of the order dated 11.06.1986 vide Annexure-5 rejecting the Objection Case No.1555 of 1983 of Khageswar Jena by the Consolidation Officer, Kendrapara, Khageswar Jena without preferring any appeal under



Section 12 of the OCH and PFL Act, 1972, he(Khageswar Jena) filed Objection Case No.1353 of 1989 under Section 15(1) of the OCH and PFL Act, 1972 before the A.C.O., Kendrapara, but, that Objection Case No.1353 of 1989 of Khageswar Jena was rejected on dated 07.09.1989, as per Annexure-7 on the ground that, the same was barred under Section 14 of the OCH and PFL Act, 1972.

Thereafter, Khageswar Jena filed Consolidation Appeal No.191 of 1989 before the Deputy Director, Consolidation, Kendrapara, but, that Consolidation Appeal No.191 of 1989 of Khageswar Jena in respect of the case land was dismissed on dated 30.05.1990 as per Annexure-8.

Thereafter, in the year 2020, Opposite Party Nos.1 to 4 as the representatives of the deity Sri Jambeswar Mahadev Bijje, Nijgaon, i.e., Jamara filed Consolidation Revision Case No.100 of 2020 under Section 37(1) of the OCH and PFL Act, 1972 before the Consolidation Commissioner, Odisha, Cuttack praying for recording the case land in the name of the deity Sri Jambeswar Mahadev suppressing the earlier R.C. No.35 of 2019(Annexure-10) filed by them for the self-same relief. Subsequent thereto, R.C. No.100 of 2020 was



transferred from the court of Consolidation, Commissioner, Odisha, Cuttack to the court of Additional Commissioner Consolidation and Settlement, Kendrapara (Opposite Party No.5).

5. After hearing from both the sides and without taking into account to the note of arguments as per Annexure-12 filed by the petitioner of this writ petition, the Additional Commissioner Consolidation and Settlement, Kendrapara (Opposite Party No.5) passed the impugned order on dated 12.12.2023(Annexure-14) in R.C. No.100 of 2020 and allowed that revision filed by the petitioners of that revision (Opposite Party Nos.1 to 4 in this writ petition) and set aside the order dated 11.06.1986(Annexure-5) passed in Objection Case No.1555 of 1983 in respect of the case land in favour of the petitioner of this writ petition and directed Tahasildar, Kendrapara to record the case land in the name of the deity Sri Jambeswar Mahadev Bije, Nijgaon, i.e., Jamara reflecting in the RoR to the name of Endowment Commissioner as the Marfatdar of the deity for the benefit of public at large assigning the reasons that,



“when, there is no dispute that, the case land belong to the deity Sri Jambeswar Mahadev Bij, Jamara, the same cannot be transferred in contravention of the statutory provisions. Because, deity is a juristic person and perpetually minor and also disabled person and in respect of the property belonging to the minor and person incapable to cultivate the holdings by reasons of physical disability or infirmity, the same requires protection.

So, the land of deity, cannot be alienated by Marfatdars by way of Hatapata and the Hatapata issued by the Marfatdar and the case land has not been settled under the provisions of Sections 6 and 7 of the OEA Act. For which, the settlement of the case land in the name of Niranjana Barik(petitioner in this writ petition) during consolidation operation by the consolidation authority without looking to the provisions of the OEA Act is totally wrong. That part, the Hatapata shows that, there was salami of Rs.200/- for the same, for which, the same should have been registered. The deity Sri Jambeswar Mahadev is a public deity and has also been indexed as 214-J.C.(M). For which, for alienation of the case land of the deity, permission under Section 19 of the Odisha Hindu Religious Endowments Act, 1951 was required under law, but, the Consolidation Officer has not followed such law. Therefore, the impugned order dated 11.06.1986 passed in Objection Case No.1555 of 1983 (Annexure-5) by the C.O., Kendrapara in favour of Niranjana Barik(petitioner in this writ petition) is set aside. The same is to be recorded in the name of the deity Sri Jambeswar Mahadev Bij, Nijgaon, Jamara reflecting the name of Endowments Commissioner as the Marfatdar of the deity.”

6. On being aggrieved with the said impugned order dated 12.12.2023(Annexure-14) passed in R.C. No.100 of 2020 by the Additional Commissioner Consolidation and Settlement, Kendrapara (Opposite Party No.5) against the



petitioner(Niranjan Barik), he(petitioner) challenged the same by filing this writ petition praying for quashing(setting aside) that impugned order dated 12.12.2023 (Annexure-14).

7. I have already heard from the learned senior counsel for the petitioner, learned senior counsel for the Opposite Party Nos.2 and 3, learned counsel for the Opposite Party No.4 and learned Additional Standing Counsel for the Opposite Party Nos.5 to 8.

8. During the course of hearing, in order to assail the impugned order dated 12.12.2023(Annexure-14), the learned senior counsel for the petitioner relied upon the followings decisions:-

(i) *Satyadhyan Ghosal Vs. Deorajin Debi : AIR 1960 SC 941.*

(ii) *Direct Recruit Class-II Engineering Officers' Association Vrs. State of Maharashtra: AIR 1990 SC 1607.*

(iii) *Hope Plantations' Ltd. Vrs. Taluk Land Board: (1999) 5 SCC 590.*

(iv) *National Institute of Mental Health & Neuro Sciences Vs. C. Parameshwara: (2005) 2 SCC 256.*

(v) *K.K. Modi Vs. K.N. Modi : (1998) 3 SCC 573.*

(vi) *P.K. Ramachandran Vs. State of Kerala : (1997) 7 SCC 556.*

(vii) *Basawaraj Vs. Special Land Acquisition Officer : (2013) 14 SCC 81.*



(viii) *Ramadhar Vs. Additional Commissioner : 2004 (3) AWC 2311.*

(ix) *Khatri Hotels Pvt. Ltd. Vs. Union of India : (2011) 9 SCC 126.*

(x) *T. Arivandandam Vs. T.V. Satyapal : AIR 1977 SC 2421.*

(xi) *Ghulam Qadir Vs. Special Tribunal : (2002) 1 SCC 33.*

(xii) *Hari Mohan Vs. Gouranga Mohan : AIR 1971 Orissa 137.*

(xiii) *State of Bihar Vs. Radha Krishna Singh : AIR 1983 SC 684.*

(xiv) *Kranti Associates Vs. Masood Ahmed Khan : (2010) 9 SCC 496.*

(xv) *Ravi Yashwant Bhoir Vs. District Collector : (2012) 4 SCC 407.*

(xvi) *State of Punjab Vs. Balkaran Singh : (2006) 12 SCC 709.*

(xvii) *Tata Iron and Steel Co. Ltd. Vs. Union of India : AIR 1996 SC 2462.*

9. On the contrary, in support of the impugned order, learned counsel for the Opposite Party Nos.2, 3 and 4 relied upon the following decisions:-

(i) *2017(Suppl.II) OLR-872(OJC No.13460 of 1998) : Gouranga Ch. Das vrs. State of Odisha.*

(ii) *2017(II) OLR-389(SA No.198 of 1995) : State of Odisha vrs. Pitabasa Swain and others.*

(iii) *2008(Supp.I) OLR-521 : Arikhita Sahu vrs. Krishnaveni (RSA No.162 of 2002)*

(iv) *2017(I) OLR-728(CMP No.1444 of 2016) : Abani Kr. Mehera and others vrs. District Collector, Bargarh.*

(v) *AIR Online 2021 SC-690 = AIR 2021 (SC)-4245(Civil Appeal No.4850 of 2021 dated 06.09.2021) : State of M.P. vrs. Pujari Utthan AVAM Kalayan Samiti.*

(vi) *103(2007) CLT-296(OJC No.2089/1992) : Khetramohan Dwary and others vrs. SDO, Baripada.*

(vii) *2015(II) OLR-311 = AIR 2015(NOC) 75 (Ori.) : Niranjan Mekap vrs. State of Odisha.*

(viii) *AIR Online 2024 Orissa-467(S.A. No.186 of 1999) : Kanhu Majhi vrs. Kartik Dehury.*



(ix) AIR 1964 Patna-1 : 1963 BLJR-895 : Ram Nath Mandal and others vrs. Jojan Mandal and others.

(x) AIR 1955 S.C.-328(Civil Appeal No.81 of 1952 dated 03.02.1955) : Sri S.Sita Manharani and others vrs. Chhedhi Mahto and others.

10. On the basis of the impugned order dated 12.12.2023(Annexure-14) passed in R.C. No.100 of 2020 by the Additional Commissioner Consolidation and Settlement, Kendrapara(Opposite Party No.5) and the rival submissions of he learned counsels of both the sides, the crux of this writ petition are :-

(i) Whether the deity Sri Jambeswar Mahadev Bijje Nijgaon is a public deity or a private deity?

(ii) Whether an un-registered Chirastaye Patta(Annexure-1) issued by Sri Parikhita Panda, Madhusudan Panda projecting them as the representatives of the deity Sri Jambeswar Mahadev(owner of the case land) in favour of the father of the petitioner, i.e., Ankura Barik is valid under law and whether by such un-registered Chirastaye Patta dated 07.03.1960 vide Annexure-1, title and possession of the case land was transferred in favour of the father of the petitioner as per law?

(iii) Whether an order for recording the case land in the name of the petitioner passed in Objection Case No.1555 of 1983 (Annexure-5) and preparation of the consolidation RoR as per Annexure-6 in the name of the petitioner by the consolidation authorities without recording the same in the name of the deity Sri Jambeswar Mahadev is valid under law?

(iv) Whether the impugned order dated 12.12.2023 vide Annexure-14 passed in R.C. No.100 of 2020 by the Additional Commissioner Consolidation, Kendrapara (Opposite Party No.5) in setting aside the order dated 11.06.1998 passed in Objection Case No.1555 of 1983 by the C.O., Kendrapara and directing for recording of the case land in the name of Sri Jambeswar Mahadev is legally sustainable under law?



11. In order to have a better appreciation and so also for just decision of this writ petition under Articles 226 and 227 of the Constitution of India, 1950, the above four points fixed for determination are required to be discussed and analysed serially and chronologically one after another.

12. So far as the 1st point, i.e., whether the deity Sri Jambeswar Mahadev Bijje Nijgaon is a public deity or a private deity is concerned !

The petitioner in this writ petition, i.e., Niranjan Barik has specifically stated in Para No.3 of his writ petition that, the case land is Hal Plot No.1623 under Hal Khata No.370, which corresponds to Sabik Plot No.1119(part) under Sabik Khata No.521.

The Sabik Khata No.521 was recorded in the name of the deity Sri Jambeswar Mahadev Bijje, Nijgaon represented through Sabayat and Marfatdars indicated therein.

It appears from the Sabik RoR vide Annexure-A under Sabik Khata No.521 that, the said Sabik Khata No.521 of the case land was recorded in the name of the deity Sri Jambeswar Mahadev Bijje, Nijgaon, Sebayat Brajasundar



Dev, Marfat Parikhita Panda, Krutibas Panda and Ganesh Panda as Chirastayi Niskar land.

13. Now, it will be seen, whether the deity Sri Jambeswar Mahadev Bijе, Nijgaon is a private deity or a public deity.

As per Lexicon of Revenue terms, Bijе means—Abbreviated form of Bijesthali or appearance of an idol or idols at a chosen place.

‘Bijesthali’ means—Capital seat of an idol, the holly place where an idol is worshiped.

‘Nijgan’ means—The village, to which, the record belongs, a resident of the village, to which, the record relates.

A private deity has not been defined in Orissa Hindu Religious Endowments Act, 1951. But, deity or endowment, which is not a religious institution, is to be considered as a private deity.

14. On this aspect, the propositions of law has already been clarified in the ratio of the following decision:-

- (i) In a case between **Basanta Kumar Pradhan vs. Sri Laxmidhar Sahoo and others** : reported in **2006(Supp.II) OLR-558(Para-10)**—That, as “private deity” has not been defined in the Act. A deity or endowment, which is not a religious institution, is to be considered as a private deity.

The meaning of “institution” has been clarified in the Law Lexicon.



As per Law Lexicon—"Institution" means, an establishment of a public character, i.e., whose cause is not personal, but, public.

So, an institution is one, whose cause is not personal, but, public and which does not carry on business, making profits and whose benefit be not made in private account.

The meaning of an institution, has already been clarified in the ratio of the decision between ***K.V. Mathew vs. District Manager, Telephones, Ernakulam*** : reported in ***AIR 1984 (Kerala)-40*** that,

"An institution is one, whose cause is not personal, but public, and which does not carry on business, making profits and whose profit be not made in private account."

When, Bijestali of an idol, i.e., deity, i.e., Sri Jameswar Mahadev Bije is Nijgan, i.e., village Jamara to be worshiped by all the villagers of Jamara and its nearby villagers and it is a religious establishment of public character, but, not a personal in character, then, at this juncture, by applying the meanings of the words clarified above in the Lexicon of revenue terms, it is held that, the deity Sri Jambeswar Mahadev Bije, Jamara is not a private deity, but, a public deity.



For which the observations made by the C.O. in Annexure-5 that, the deity Sri Jambeswar Mahadev is a private deity cannot be held as correct. Therefore, the findings given by the revisional authority in the impugned order vide Annexure-14 that, the deity Sri Jambeswar Mahadev is a public deity is held to be correct.

15. *So far as the 2nd point, i.e., whether an un-registered Chirastaye Patta(Annexure-1) issued by Sri Parikhita Panda, Madhusudan Panda projecting them as the representatives of the deity Sri Jambeswar Mahadev in favour of the father of the petitioner, i.e., Ankura Barik is valid under law and whether by such un-registered Chirastaye Patta dated 07.03.1960 vide Annexure-1 title and possession of the case land was transferred in favour of the father of the petitioner as per law is concerned !*

When, as per the discussions and observations made above in the forgoing point no.1, it has already been held that, the deity Sri Jambeswar Mahadev is a public deity and the case land belong to the deity Sri Jambeswar Mahadev, then, in order to transfer or alienate the case land of the deity by anybody, prior permission of the Endowments Commissioner was/is necessary.



16. On this aspect, the propositions of law has already been clarified in the ratio of the following decisions:-

(i) In a case between **Chintamani Sahoo(dead) and after him Subodh Kumar Sahoo and others vrs. Commissioner of Orissa Hindu Religious Endowments, Orissa and others** : reported in **56(1983) CLT-47(D.B.)** that, as per Section 58 of the Hindu Religious Endowment Act, Orissa 1939-alienation of endowment property without permission of Endowment Commissioner over though for consideration is void ab initio, i.e., alienation made in contravention of the statutory provisions, which is enacted for public interest is void. Because, Section 58(1) prohibits grant of lease more than five years without prior permission. For which, the transfer by permanent lease without prior permission of the Endowment Commissioner is void.

(ii) In a case between **Padma Charan Sahu and another vrs. Khageswar Patra and others** : reported in **2024(2) OLR-808** that, prior permission under Section 19(1) of the Orissa Hindu Religious Endowments Act, 1951 is necessary for alienation / transfer of the properties of the deity. So, alienation of the properties of the deity in contravention of Section 19(1) of the Orissa Hindu Religious Endowments Act, 1951 is invalid/illegal and void.(**Para Nos.19 and 20**)

It appears from the impugned order vide Annexure-14 that, Sri Jambeswar Mahadev being a public deity has been indexed as 214-J.C.(M) before the Commissioner, Orissa Hindu Religious and Endowments. For which, in view of the propositions of law enunciated in the ratio of the aforesaid decisions, the transfer of the case land of the deity Sri Jambeswar Mahadev made by Parikhita Panda and Madhusudan Panda stating them as the representatives of the deity Sri Jambeswar Mahadev through unregistered Chirastaye Patta dated 07.03.1960



vide Annexure-1 in favour of the father of the petitioner, i.e., Ankura Barik without prior permission of Commissioner of Endowments as per Section 19(1) is void.

17. It appears from the Annexure-A(Sabik RoR of the case land) that, the names of Parikhita Panda, Krutibasa Panda and Ganesh Panda were reflected as Marfatdars of the deity Sri Jambeswar Mahadev and the name of Brajasundar Dev was indicated/reflected as Sebayat of the deity Sri Jambeswar Mahadev, but out of the above Marfatdars, i.e., Parikhita Panda, Krutibasa Panda and Ganesh Panda, only Parikhita Panda has executed the unregistered Chirastaye Patta dated 07.03.1960(Annexure-1) in respect of the case land in favour of the father of the petitioner, i.e., Ankura Barik.

18. Law on this aspect regarding the power of alienation of the properties of a deity by its Marfatdars has already been clarified in the ratio of the following decisions:-

- (i) In a case between **Sairendri Devi and others vrs. Kamuna @ Kamrunisha and others** : reported in **2018(1) CLR-1228(Para 10 and 11)** that, Marfatdar cannot alienate the property belonging to Deity without permission under Section 19 of the Orissa Hindu Religious Endowments Act, 1951.



(ii) In a case between **Smt. Bimala Kabi Satapathy vrs. Collector, Khurda and others** : reported in **2014(1) OLR-602(D.B.)(Para-19)** that, sale of the land belonging to the deity without sanction is expressly barred under Section 19—Such sanction can be accorded, when sale is necessary for the beneficial of the institution—Provisions for seeking permission under Section 19(1) are mandatory in nature and any alienation made in contravention of the said provision is void.

(iii) In a case between **Sri Mangala Thakurani Bije, Kakatpur and others vrs. State of Orissa and others** : reported in **110(2010) CLT-574** that, when the land recorded in the name of the deity represented through its Marfatdars, the said land belong to the deity not to the marfatdars.

(iv) In a case between **Deben Sethi and others vrs. State of Orissa and others** : reported in **2012(Supp.1) OLR-656(Para-12)** that, land belonging to the deity cannot be subject to alienation in violation of statutory requirement.

(v) In a case between **Sarata Chandra Mohanty and another vrs. Administrator of Jagannath Temple, Puri** : reported in **42(1976) CLT-1241** that, the word 'Marfatdar' is applied to those, who look-after the management and routine duties in connection with the endowment. The marfatdars, therefore, cannot take up the position that, the said properties are their own properties.

19. In view of the propositions of law enunciated in the ratio of the aforesaid decisions, alienation of the case land of the deity Sri Jambeswar Mahadev in favour of the father of the petitioner, i.e., Ankura Barik through an unregistered Chirastaye Patta vide Annexur-1 by Parikhita Panda(one among the Marfatdars) and Madhusudan Panda(who is not the Marfatdar) stating/projecting them, as the representatives of the deity Sri Jambeswar Mahadev without prior permission of the Endowments Commissioner is void and non-est in the eye of law.



20. That apart, as per Sections 107 and 117 of the T.P. Act, 1882 read with Section 17 of the Indian Registration Act, 1908, a lease of immovable property other than agriculture purpose for a term exceeding one year without registered instrument is void.

Likewise, Section 107 of the T.P. Act, 1882 read with Section 17 of the Registration Act also provides that, a conveyance through a written instrument of immovable property for more than Rs.100/- must be registered.

21. Here, in this matter at hand, it appears from the so-called Chirastaye Patta(Annexure-1) said to have been executed in respect of the case land in favour of the father of the petitioner, i.e., Ankura Barik that, the same was for homestead purposes(which is other than agriculture) for Rs.2,000/-. For which, without registration of that Annexure-1, as per law, the same cannot transfer the title of the case land in favour of Ankura Barik.

22. On this aspect, the propositions of law has already been clarified by the Apex Court in the ratio of the following decisions :-



(i) In a case between **Samir Mukherjee vs. Davinder K. Bajaj and others** : reported in **AIR 2001 S.C.-1696**, in a case between **Shri Janki Devi Bhagat Trust, Agra vs. Ram Swarup Jain(dead) by LRs.** : reported in **AIR 1995 SC-2482** that, a lease of immovable property from year to year or for a term exceeding one year can be made only by registered instrument and any lease of this kind would be void, unless it is created by a registered instrument.

(ii) In a case between **State of Orissa and others vs. Harapriya Bisoi** : reported in **2009(II) OLR (SC)-229(D.B.)** that, Section 107 of the T.P. Act read with Section 17 of the Indian Registration Act—It mandates that, the conveyance of title through legal a written instrument of any immovable property worth more than Rs.100/- for a period of one year or more must be registered.

23. As per the discussions and observations made above, due to lack of registration of Annexure-1, the same does not enure any benefit in favour of the petitioner in respect of the case land.

24. So far as the third point, i.e., whether an order for recording the case land in the name of the petitioner passed in Objection Case No.1555 of 1983 (Annexure-5) and preparation of the consolidation RoR as per Annexure-6 in the name of the petitioner by the consolidation authorities without recording the same in the name of the deity Sri Jambeswar Mahadev is valid under law is concerned !

As per Sabik RoR as well as own admission of the petitioner in the writ petition, the Sabik RoR of the case



land under Khata No.521 was recorded in the name of the deity Sri Jambeswar Mahadev as Chirastaye Niskar.

25. The meaning of 'Charastayi Niskar' as per Lexicon of the revenue term is that,

permanently rent free, a kind of tenancy, where no rent was accessible.

If a particular tenancy was found to be rent free in perpetuity, an entry "*Chirastaye Niskar was made in the rent columns of the Khatian.*"

If it was rent free, only when settlement was made, but assessable to rent at a future date, in that case, entry is to be made as Niskar Jamadharjya."

26. It is the own case of the petitioner, according to the averments made in Clause-(IV) of Para-3 of his writ petition that, in the Hal Settlement, the case land was recorded in Khata No.2 as 'Bebandabasta', but, the petitioner has not annexed the Hal RoR of the said Khata No.2 of the case land in his writ petition.

27. When, it is the own case of the petitioner that, the case land was Bebandabasta land, i.e., without rent in the Hal RoR under Khata No.2, then, it pre-supposes that, the same was a rent free land without being settled.



In case of Bebandabasta land, powers of settlement thereof lies with the OEA Tribunal under Orissa Estate Abolition Act, but, not with the consolidation authorities.

The consolidation authorities have no jurisdiction to enter into the arena/jurisdiction of the OEA Tribunals or the authorities under OEA Act.

Because, as per law, the consolidation authorities are bound by the orders passed by the authority in any State Act like orders passed under Sections 6, 7 and 8 of the OEA Act.

28. On this aspect, the propositions of law has already been clarified in the ratio of the following decisions:-

- (i) In a case between ***Bijay Ketan Brahma and others vrs. State of Orissa and others*** : reported in **108(2009) CLT-657 (Para-12)** that, law is well settled that, the consolidation authorities are bound by any order passed under any of the State Act like under Section 8(1) of the O.E.A. Act.

29. When, it is the own case of the petitioner that, in the Hal Settlement, the case land was recorded as 'Bebandabasta' land, i.e., as rent free land and the case land has not been settled in the name of the petitioner under OEA Act as yet and when, in the Sabik and Hal



Settlement, the case land was recorded in the name of the deity Sri Jambeswar Mahadev Bije, Nijgaon, Jamara, then at this juncture, the consolidation officer had no jurisdiction to pass an order in Objection Case No.1555 of 1983 vide Annexure-5 to record the case land in the name of the petitioner. For which, the order passed by the Additional Commissioner Consolidation and Settlement, Kendrapara (Opposite Party No.5) as per Annexure-14 setting aside the order passed by the Consolidation Officer (Opposite Party No.7) under Annexure-5 and passing order for recording the case land in the name of the deity Sri Jambeswar Mahadev cannot be held as illegal.

30. In order to assail the impugned order passed by the Additional Commissioner Consolidation and Settlement, Kendrapara (Opposite Party No.5), the learned senior counsel for the petitioner contended that, when the revision under the R.C. No.100 of 2020 was filed by the petitioner, 29 years after passing of the order under Annexure-5 by the Consolidation Officer in Objection Case No.1555 of 1983 in favour of the petitioner, then, the revision under Section 37



of the OHC and PFL Act before the Commissioner was not entertainable under law.

31. On this aspect, the propositions of law has already been clarified in the ratio of the following decisions:-

(i) In a case between ***Siba Muduli and others vrs. Director, Consolidation, Odisha, Cuttack and others*** : reported in **2021(II) CLR-957(D.B.)** that, the Commissioner/Director can entertain a petition under Section 37 of the OCH and PFL Act, 1972 at any point of time, as there is no period of limitation prescribed for the same in that Section. The Commissioner/Director can exercise jurisdiction under Section 37 of the Act within a reasonable time which may extend even to 20 to 30 years in cases where the fact of the case involved any of the following factual/legal aspects, i.e.,:-

(a) When the order impugned is passed on the basis of fraud or fraudulent mis-representation made by a party or based on a fraudulent document;

(b) When the order was passed is inherently without any jurisdiction or is passed by a person, who has no authority to pass such an order;

(c) When an order is passed adversely effecting the interest of a minor without being represented by legal guardian and **it includes the perpetual minor like deity;**

(d) When any Government land or community land has been grabbed by an abuse of process of law; and

(e) When the order impugned before the Revisional Authority is passed in complete disregard to the provisions of law guiding the field. **(Para Nos.11 & 12)**

(ii) In a case between ***Sri Brajabandhu Pati vrs. Collector-cum-Trustee, Debattar, Dhenkanal and others*** : reported in **2010(1) CLR-27(Para-10)** that, since the deity is a perpetual minor and the property belonging to a minor requires protection, it is the obligation of the authorities to protect the interest of the minor.

(iii) In a case between ***Niranjan Mekap and others vrs. State of Orissa and others*** : reported in **2015(1) CLR-998 (Para-34)** that, deity being a perpetual minor, it is the primary duty of the State and its authorities to protect the interest of the deity. In a case of any allegation of failure on the part of the State and its instrumentalities to do so,



finally, the Court has to protect the interest of the deity, who is a perpetual minor.

32. When, as per the in the findings and observations given in the forging point nos.1, 2, and 3, it has already been held that, an order, which was passed in Objection Case No.1555 of 1983 passed by the C.O., Kendrapara as per Annexure-5 was inherently illegal and when, the case land belong to the deity Sri Jambeswar Mahadev, (who is a perpetual minor) and when, such order vide Annexure-5 was passed in respect of the case land adversely affecting the interest of the minor, i.e., deity Sri Jambeswar Mahadev, then at this juncture, by applying the principles of law enunciated in the ratio of the aforesaid decisions, it is held that, the impugned order vide Annexure-14 passed by the Additional Commissioner Consolidation and Settlement, Kendrapara (Opposite Party No.5) in R.C. No.100 of 2020 is neither illegal nor unreasonable. For which, the question of interfering with the same through this writ petition filed by the petitioner does not arise.

33. Therefore, the decisions relied by the learned counsel for the petitioner indicated in Para No.8 of this judgment



are not applicable to this matter at hand on facts and law as discussed above.

As such, there is no merit in the writ petition filed by the petitioner. The same must fail.

34. In result, the writ petition filed by the petitioner is dismissed on contest.

35. Accordingly, this writ petition filed by the petitioner is disposed of finally.

(A.C. Behera)
Judge

Orissa High Court, Cuttack
The 26th of August, 2025/ Jagabandhu, P.A.