IA NO-6315/24

SOUMYA MISHRA, M.MISHRA, R.K.AGRAWAL, A.AGARWAL, G.N.PARIDA

IN THE HIGH COURT OF ORISSA

ORDER SHEET

Case No. - WA / 2385 / 2024

BAJRANG SHARDA AND ORS. ***Petitioner***

Versus

TAPAN KUMAR PANDIT AND ORS. ***Opposite-Party***

Sl. No. of Order	Date of Order	ORDER WITH SIGNATURE	Office note as to action(if any),taken on Order
			CAVEAT CHECKED

(MANDAKINI BEHERA, Date & Time: 2024-08-29 04:33:59pm)

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.A. No. 2385 of 2024

Bajrang Sharda and others .... ***Appellants***

Mr. S.P. Mishra, Sr. Advocate

-versus-

Tapan Kumar Pandit and others .... ***Respondents***

Mr. Saswat Das, Addl. Government Advocate

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MISS JUSTICE SAVITRI RATHO

Order No.

ORDER
29.10.2024

01. **W.A. No. 2385 of 2024 & I.A. No. 6315 of 2024**

This matter is taken up through Hybrid mode.

2. Issue notice.

3. Since learned Additional Government Advocate accepts notice on behalf of respondent nos. 2 to 4, adequate number of extra copies of the writ appeal be served on him within a week.

4. Let notice be issued to the respondent no.1 by Registered Post/ Speed Post with A.D. returnable within six weeks. Requisites be filed within a week.

5. We make it clear that any decision by the Additional Commissioner, Consolidation, Sambalpur-II pursuant to this Court's

order dated 06.08.2024 passed in W.P.(C) No. 34582 of 2023, shall be subject to the final decision in the present writ appeal.

6. List this matter on 10.12.2024.

(Chakradhari Sharan Singh)
Chief Justice

(Savitri Ratho)
Judge

Arun Mishra

ORISSA HIGH COURT

FILING ACKNOWLEDGEMENT SLIP

CNR	**ODHC010634952024**
Filing No	**D- WA/0037439/2024**
Date and Time	**28/08/2024-14:49:56**
Case No	**WA/2385/2024**
Registration Date and Time	**29/08/2024**
Misc Case/IA	6315/2024
Petitioner Name	BAJRANG SHARDA
Petitioner Advocate Name	SOUMYA MISHRA
Respondents Name	TAPAN KUMAR PANDIT
Respondents Advocate	
Amount	
Police Station	
FIR	-

Thursday 29th of August 2024 02:50:26 PM

D - WA/37439/2024

IN THE HIGH COURT OF ORISSA

Case No. WA-2385/2024

OFFICE NOTES

Sl. No. of Order for compliance	Date of Order for compliance	Notes and action taken on order with signature of Dealing Assistant and Superintendent

OGP–MP–DTP-U1-(H.C.) 19–2,00,000–3-11-2021

IN THE HIGH COURT OF ORISSA

Case No. WA-2385/24

OFFICE NOTES

Sl. No. of Order for compliance	Date of Order for compliance	Notes and action taken on order with signature of Dealing Assistant and Superintendent
		Order No.:-01 Memo - 21671 Date - 13.11.2024 Notice on admission & I.A matter issued to R-1 by RP with AD fixing on 09.12.24 fore appearance & show cause 06.11.24 Supdt. 13/11 Order No.:-01 Memo - 21664 Date - 13.11.2024 Relevant portion of the court's order no.:-01 dated 29.10.24 communicated to R-2 fore information & necessary action. 06.11.24 Supdt. 13/11

IN THE HIGH COURT OF ORISSA

Case No. - WA / 2385 / 2024

OFFICE NOTES

Sl. No. of Order for Compliance	Date of Order for compliance	Notes and action taken on order with signature of Dealing Assistant and Superintendent
1	2024-10-26	**For Fresh Admission** **i) I.A. No.- 6315/24 is at flag 'A' for stay.** **Along with WPC- 34582/23 (Disposed of case).** **D.B.** **(WRIT APPEAL Seat: 1, Date & Time: 2024-10-26 12:42:49.195016)**
1	2024-10-29	**Receipt showing service of adequate number of extra copies of the writ appeal on learned A.G.A. is received.** **A.D. from R- 1 returned after valid service.** **For Fresh Admission** **i) I.A. No.- 6315/24 is at flag 'A' for further orders regarding stay.** **WPC- 34582/23 a disposed of case for reference.** **Adjourn to- 10.12.24.** **D.B.** **(WRIT APPEAL Seat: 1, Date & Time: 2024-12-09 11:53:04.074088)**

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High Court of Orissa

Acknowledgement

CNR	: ODHC010634532024		
Filing No.	: D-CRLMP/25990/2024	Date of Filing	: 28-08-2024
Case No	: ---	Time of Filing	: 16:11:31
Petitioner	: SAKUNTALA BEHERA	Respondent	: STATE OF ODISHA
Petitioners Advocate	: DAYANANDA MOHAPATRA		
Police Station	:	FIR No. / Year	:
Amount	: 0.00		

Print

STAMP REPORT

Case No.- D-WA / 37439 / 2024

LIMITATION

Date of Judgement Awards : 2024-08-06

Date of Valid Presentation : 2024-08-28

Total period Occupied : 22 day

Limitation : 30 day

Certified Copy Period : 02 day

Delay in filing : Nill day

1. In time : Yes Expired on

2. Period of Delay : Nill

3. Court Fee : Rs.12/- paid.

4. Authentication fee due on the
(a) Copy of Trial Court Judgement
Rs : x Decree Rs :x
(b) Appellate Court Judgement Rs : 3/- paid.
Decree Rs : x

5. (a) Copy of Trial Court Judgement / Order : x
(b) Appellate Court /Revisional Order Judgement : C copy of order filed.
(c) Second Copy Petition :
(d) Receipt showing copy on A.G. : filed
(e) Vakalatnama properly stamped,
Executed and accepted : Yes

6. (a) Cause Title :
(b) Provisional of Law :

7. Code :

8. Single Judge / Division Bench Case : Division

9. Other Defects :

10. Roster : Writ Appeals (WA) from 2020 onwards.

STAMP REPORTER

(Bikram Sethy, Date & Time: 2024-08-29 01:21:37pm)
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D-WA-37439/2024 9777545960

1. RFA/RSA/FAO/SAO/LPA/SPA/CRP/ Review Pet/O. Ref/EXFA/EXSA/SM/APP/ Tr. P (c) WP (c) WA/SCLP Co . Appl/Co. Pet/Co.Case /Co App / Bkg. P/Mat . A/ Mat Ref/RP (FAMCT) Test Case / intest . Case /L.A. Ref/RCFA / L.A.A. / RCSA / RE Rev / MAC / MAC APP / EL pet / ELAPP / Arb, P / Arb . A / insurance Ref/ Cont. Cas (c) /Coutd . App (c) MFA(name of the Act) MSA/ SP.JC (name of the Act)Crl A / Crl .Rev / CKL.M.C / BLAPL / Cal .MAPPI /WP (crl) CUSREF STREV

Case Type WA No 2385 / 24 Date of Regn

2. if 'state' is party , Name of the Deptt : (pet , Res) [put Mark]

if public Undertakings (Specify Name) : (Pet) (Res) [put Mark]

3. (a) Number of Category under Which the matter Fails :

2	8	9	9	0	0

if others , Specify the Subject

(b) Which is applicable ? [put Mark]

(Single Bench /Div. Bench / Three Judge Bench / Five Judge Bench)

4. Article of the constitution /Act (Central /state) [Put Mark]

Clause 10 of the Letters patent constituting High Court of Judicature at Patna r/w Article 4 of Orissa High Court Orders, 1948 & R.6, C-III of OHC Rules 1948

5. section/Sub-Section involved

6. Rules involved

7. Whether any other Matter is pending in this court on the same point of law :
if So, give the Number of matter : NA

8. Whether any other Matter is pending against the impugned order/ Judgment ?
if So, give the Number of matter : NA

9. Whether the Matter is covered by any Judgment of the supreme Court , this Court or any other high Court, if so, give the details of the Judgment

NA

10. point of law involved in the matter The Appellant is challenging the order dated 06.08.2024 in W.P.(C) NO. 34820 of 2023.

Date 28.08.2024

Signature of the Advocate

IN THE HIGH COURT OF ORISSA, CUTTACK

W.A. No. 2385 /2024

In the matter of: CODE - 389900

Bajrang Sharda & Ors.

.... Petitioner

VERSUS

Tapan Kumar Pandit & Ors.

.... Opposite Parties

INDEX

Cuttack

Date: 28/8/24

By the Appellant through

Advocate

M/s. SOUMYA MISHRA, (ADV.)
EN-No-O-749/2009
Ganesh Ghat, Cuttack-2
Mob:-9937096293

4

SYNOPSIS

This writ appeal has been filed challenging the order dated 06.08.2024, passed by the Learned Single Judge in W.P.(C) No. 34582 of 2023. The impugned order set aside the order dtd. 17.02.2023 by the Additional Commissioner, Consolidation, Sambalpur-II, passed in Settlement Revision Petition No. 651/2021 under Section 15(b) of the Orissa Survey and Settlement Act. The Ld. Single judge remanded the matter for fresh adjudication, with a direction to hear the present respondent no. 1 and other parties.

The present appellants have filed the said R.P. Case No. 651/2021 for recording of the case land exclusively in the name of present appellants as during the settlement operation, purchased land of the present appellants has been recorded jointly along with the name of their vendors (present proforma respondent no. 5 to 9). Therefore, the present appellants have filed the said RP case under section 15 (b) of Orissa Survey and Settlement Act for correction of ROR by impleading their vendors. who are the only necessary party in the said petition. It is pertinent to mention here that since neither the State nor the present respondent no. 1 has any manner of right, title and interest over the suit land and therefore, they were not made party in the said R.P. case. Further, the present appellants right, title and interest over the case land has already been decided in the title suit vide T.S. No. 43/1 of 1981/82

Adv.

where both state authorities as well as the present respondent no. 1 were party to that suit.

Ld. Additional Commissioner, Consolidation and Settlement vide order dtd 17.02.2023 allowed the said revision petition and directed the Tahasildar to record the case land exclusively in the name of the present appellants.

However, respondent no. 1, whose right over the case land by way of auction purchase has already been held to be invalid in T.S. No. 43/1 of 1981/82 filed W.P.(C) No. 34582/2023, for setting aside of the said order dtd. 17.02.2023 passed by the Additional Commissioner, Consolidation & Settlement in RP Case No. 651/2021 on the ground that he was not made a party in the said Settlement Revision.

Ld. Single Judge, under misconception of law and erroneous appreciation of materials available on record vide its order dtd 06.08.2024 set aside the order dtd. 17.02.2023 passed by the Additional Commissioner, Settlement & Consolidation Odisha, Sambalpur – II in RP Case No. 657 of 2021 for non-joinder of necessary party vis a vis the petitioner (present respondent no. 1) and remanded the matter back to the Commissioner for fresh adjudication after giving opportunity of hearing to the petitioner/present respondent no. 1 and other concerned parties.

In view of the aforesaid the present writ appeal has been filed.

M/s. SOUMYA MISHRA, (ADV.)
EN-No-O-749/2009
Ganesh Ghat, Cuttack-2
Mob:-9937096293

C

DATE CHART

Certificate Case Nos. 1/64-65, 3/71 and 4/71 – These certificate cases were initiated by the Certificate Officer, Champua against one V.D. Pandia for realisation of arrear cess under Orissa Mining Development Act. Subsequently these certificate cases were transferred to Certificate Officer, Barbil and renumbered as 150, 151 and 152 of 1974.

22.12.1973 – Matadin Sharda (father of the present appellants) purchased the case land (Sabik Plot No. 487/829 under Sabik Khata No. 312) from the legal heirs of V.D. Pandia by way of registered sale deed for a consideration amount of Rs. 40,000/-.

[Out of the said consideration amount, Rs. 32014.13/- was paid for the clearance of certificate dues of late V.D. Pandia.]

22.06.1974 – Sale Proclamation was made in respect of Sabik Plot number 656, 845, 865. (there was no mentioning of case plot no. 487/829 under Khata no. 312).

28.06.1974 – Auction sale was conducted in respect of the case land. Present respondent no. 1 purchased the said land in the Auction Sale for a consideration of Rs. 60,000/-

Adv.

03.07.1974 – Matadin Sharda raised objection before the Certificate Officer in respect of the said auction sale as no notice was served to the legal heirs of the V.D. Pandia. However, the same was rejected.

D

05.10.1974 – Matadin Sharda filed appeal before the ADM, Keonjhar against the rejection order of certificate officer. ADM allowed the said appeal and set aside the auction sale.

16.11.1974 – Present respondent no. 1 filed certificate revision case no 41/1974 before the Revenue Commissioner, who allowed the said revision vide order dtd. 29.03.1976 holding the auction sale to be valid.

OJC No. 558/1976 – Being aggrieved by the revisional order, Matadin Sharda filed the said OJC case which was disposed of on 08.04.81 by the Hon'ble Court by granting liberty to file the Civil suit.

29.06.1981 – Plaintiff filed the suit vide T.S. No. 43/1 of 1981/82 for declaration of his right, title and interest over the case land along with other consequential reliefs.

03.05.1983 (Judgement) & 13.05.1983 (Decree) – Subordinate Judge, Champua, in T.S. No. 43/1 of 1981-82 decreed the suit in favour of the father of the present appellants, declaring their right, title, and interest over the case land and further declaring the auction sale in favour of the present respondent no. 1 to be invalid.

Adv.

1983 - State authorities filed an appeal vide FA No. 336/83 before the Hon'ble High Court, which was later transferred to the Court of Ld. A.D.J. Champua and renumbered as RFA No.335/139/66 of 1983/2022.

E

2021 - Present Appellants filed a Settlement Revision Petition (SRP No. 651 of 2021) before Additional Commissioner, Consolidation and Settlement for recording the case land in their name.

17.02.2023 - Additional Commissioner, Settlement & Consolidation Odisha, Sambalpur – II allowed the revision petition (RP Case No. 657 of 2021) and directed the Tahasildar to record the case land in favour of the present appellants.

16.03.2023 - Tahasildar, in R.P. Misc Case No. 08 of 2023, recorded the case land in favour of the present appellants.

2023 - Writ petitioner (present respondent no. 1) filed the writ petition vide W.P.(C) No. 34582/2023 praying for quashing the orders dated 17.02.2023 and 16.03.2023.

09.02.2024 - Present appellants filed their counter affidavit in the writ petition.

06.08.2024 - Ld. Single Judge set aside the order dated 17.02.2023 and remanded the matter back to the Commissioner for fresh adjudication after granting an opportunity of hearing to the petitioner and other concerned parties.

..

M/s. SOUMYA MISHRA, (ADV.)
EN-No-O-749/2009
Ganesh Ghat, Cuttack-2
Mob:-9937096293

38103

IN THE HIGH COURT OF ORISSA AT CUTTACK

WRIT APPEAL (W.A.) No. 2385 OF 2024

(Arising out of the W.P. (C) No. 34582 of 2023 disposed of on 06.08.2024)

(CODE 2899 000)

In the matter of:

An appeal under Clause 10 of the Letters Patent constituting High Court of Judicature at Patna read with Article 4 of the Orissa High Court Orders, 1948 and the provisions of Rule 6 of Chapter III of the Orissa High Court Rules, 1948;

And

In the matter of:

An appeal challenging the order dated 06.08.2024 passed by Ld. Single Judge in W.P.(C) No. 34582 of 2023 by which, the application filed by the present respondents no. 1 for setting aside of the order dtd. 17.02.2023 passed by Additional Commissioner, Consolidation, Sambalpur -II in Settlement Revision Petition No. 651/2021 under section 15 (b) of the

M/s. SOUMYA MISHRA, (ADV.)
EN-No-O-749/2009
Ganesh Ghat, Cuttack-2
Mob:-9937096293

Orissa Survey and Settlement Act was allowed and the matter is remanded back to the Commissioner for fresh adjudication after granting opportunity of hearing to the present respondent no. 1 (who does not have any locus in the said proceeding) and other concerned parties.

And

In the matter of:

1. Bajrang Sharda, aged about 59 years,
2. Brajesh @ Brijesh Sharda, aged about 59 years,
3. Santosh Maheswari, aged about 67 years,

   (Sl. No. 1 to 3 are Sons of Late Mahadin Sharda)
4. Rajkumari Sahoo @ Rajani, aged about 70 years,
5. Kanta @ Kagta Maheswari, aged about 65 years
6. Usha Gilra, aged about 69 years
7. Sudha Sarda, aged about 57 years
8. Sarita Sharda, aged about 55 years

   (Sl. No. 4 to 8 are daughters of Late Matadin Sharda)

Adv.

(Sl. No. 1 to 8 are resident of Barbil, PO/PS – Barbil, District – Keonjhar)
(Opposite Parties no. 6 to 12 before the Ld. Single Judge)

.... Appellants

Versus

1. Tapan Kumar Pandit aged about 63 years, S/o – Late Satyanarayan Pandit, ward no. 12, Mrinal Colony, Barbil, Keonjhar, Odisha – 758035.
(Petitioner before the Ld. Single Judge)
2. Additional Commissioner, Settlement and Consolidation, Odisha, Sambalpur II, At/PO/PS/District – Sambalpur
3. Settlement Officer, Keonjhar, At/PO/PS/District – Keonjhar.
4. Tahasildar, Barbil, At/PO/PS – Barbil, District – Keonjhar.
(Sl. No. 2 to 4 were Opposite party no. 1 to 3 before the Ld. Single Judge)

.... Respondents

5. Bijay Bai, Widow of Late V. D. Pandia @ Bishanji Dhanji Pandia
6. Bjiay Kumar Bishanji Pandia

Adv.

7. Chells Shankar Bishanji Pandia, aged about 84 years
8. Ramaniklal Bishanji Pandia, aged about 76 years
9. Manoharlal Bishnaji Pandia, aged about 74 years

(Respondents no. 6 to 9 are sons of Late V.D. Pandia @ Bishanji Dhanji Pandia,

Sl. No. 5 to 9 are R/o -Village/PO/PS – Barbil, District – Keonjhar)

.... Proforma respondents

The matter out of which this writ appeal arises was before this Hon'ble Court in *W.P.(C) No. 34582/2023* disposed of vide order dated 06th August 2024 as per instructions received.

To,

The Hon'ble Chief Justice of the High Court of Orissa and his Lordship companion Justices of the said Hon'ble Court.

Adv.

MEMORANDUM OFAPPEAL

1. That, the present appellants in the present writ appeal are assailing the legality and propriety of the order dtd. 06.08.2024 passed by Ld. Single Judge in W.P.(C) No.

34582 of 2023 by which the application filed by the present respondents no. 1 for setting aside of the order dtd. 17.02.2023 passed by Additional Commissioner, Consolidation, Sambalpur -II in Settlement Revision Petition No. 651/2021 under section 15 (b) of the Orissa Survey and Settlement Act was allowed and the matter was remanded back to the Commissioner for fresh adjudication after granting opportunity of hearing to the present respondent no. 1 (who does not have any locus in the said proceeding) and other concerned parties. The same being against the sound principle of law and contrary to the materials available on record warrants interference of this Hon'ble Court.

2. That, the case of the writ petitioner (the present respondent no. 1) as delineated in the writ petition vide W.P. (C) No. 34582/2023 is briefly stated as follows:

(a) The Collector, Keonjhar initiated certificate case nos. 1/64-65, 3/71 and 4/71 against One V.D. Pandia (Father of present opposite party no. 6 to 9) for realisation of arrear cess. In pursuant to such certificate proceedings, the case land was sold (by way of public auction) to the father of present respondent no. 1.

(b) Father of present appellants (Matadin Sharda) and the legal heirs of said V.D. Pandia challenging the said auction sale filed a suit vide T.S. No. 43/1 of 1981-82 (I) before the Court of Subordinate Judge, Champua impleading the present respondent no. 1 and others as defendants.

Adv.

(c) The Ld. Trial Court decreed the suit of the plaintiffs on 03.05.1983 by declaring the right, tile and interest of the father of the present appellants over the suit land. The state authorities preferred an appeal vide FA No. 336/83 before the Hon'ble High Court which was later transferred to A.D.J Champua and renumbered as RFA No.335/139/66 of 1983/2022 and is still subjudice before the said court.

(d) Meanwhile, present appellants as successor of late Matadin Sharda filed a Settlement Revision Petition vide SRP No. 651 of 2021 for recording of the case land in their name. It was further averred that the present appellants only made the proforma opposite parties (present proforma respondents) as contesting opposite parties and did not make the petitioner (present respondent no. 1) or his father as party in the said revision petition. The Additional Commissioner, Settlement & Consolidation Odisha, Sambalpur – II vide its order dtd. 17.02.2023 allowed the said revision petition and directed the Tahasildar to record the case land in favour of the present appellants and accordingly Tahasildar vide order dtd. 16.03.2023 in R.P. Misc Case No. 08 of 2023 recorded the case land in favour of the present appellants.

Adv.

On the basis of aforesaid pleadings, the petitioner filed the writ petition praying for issuance of writ in the nature of certiorari/mandamus quashing the orders dtd. 17.02.2023 and 16.03.2023 passed by

Additional Commissioner, Settlement & Consolidation Odisha, Sambalpur – II and Tahasildar respectively.

3. That, the present appellants (opposite party no. 5 to 12 in the writ petition) appeared in the said writ petition and filed their counter affidavit on 09.02.2024 by stating the following points:

(a) The writ petition is not maintainable as there is no illegality in the order dtd. 17.02.2023 passed by the Additional Commissioner, Settlement & Consolidation Odisha, Sambalpur – II in RP Case No. 657 of 2021, and the order dtd. 16.03.2023 passed by Tahasildar in RP Misc Case No. 08 of 2023 in recording of land in favour of the present appellants

(b) The present appellants are the lawful owner of the case land having purchased the same by way of registered sale deed dtd. 22.12.1973. Further, the Sub – Judge, Champua in TS No. 43/1 of 1981/82 has also declared the right, title and interest of the present appellants in respect of the case land and held that the petitioner (present respondent no. 1 – whose father was impleaded as defendant no. 1 in the said suit) has not acquired any right, title and interest over the case land. Therefore, the petitioner has no right or claim over the case land and consequently he is not required to be made party in the said revision case (RP Case No. 657 of 2021).

(c) Only the state authorities have preferred the appeal (RFA No. 335/139/66 of 1983/2022) against the said

Adv.

judgement and decree passed by the Ld. Trial Court, and the same is still sub judice. The petitioner (present respondent no. 1) has not challenged the said judgement and decree passed by the Ld. Trial Court, therefore, he is now estopped to challenge the same in any other forum.

(d) The order dtd. 17.02.2023 passed by the Additional Commissioner, Settlement & Consolidation Odisha, Sambalpur – II in RP Case No. 657 of 2021 u/s 15 (b) of the Orissa Survey and Settlement Act is based on the judgement passed by the Ld. Sub – Champua, in T.S. No. 43/1 of 1981/82 and the materials available on record. Therefore, there is no illegality in the said order and the same does not warrants interference of this Hon'ble Court.

On the basis of such pleadings in the counter affidavit, the present appellants prayed for dismissal of the writ petition.

4. That, the Ld. Single Judge, after hearing both the parties under misconception of law and erroneous appreciation of materials available on record vide its order dtd 06.08.2024 set aside the order dtd. 17.02.2023 passed by the Additional Commissioner, Settlement & Consolidation Odisha, Sambalpur – II in RP Case No. 657 of 2021 for non-joinder of necessary party vis a vis the petitioner (present respondent no. 1) and remanded the matter back to the Commissioner for fresh adjudication after giving opportunity of hearing

Adv.

to the petitioner/present respondent no. 1 and other concerned parties.

Copy of the order dtd. 06.08.2024 passed by the Ld. Single judge is annexed herewith as **Annexure -1**.

Being aggrieved by the order dated 06.08.2024 passed by the learned Single Judge of this Hon'ble Court in W.P.(C). No. 34582/2023, the present Appellants begs to prefer this memorandum of writ appeal on the following among other grounds;

GROUNDS

I. For that, the impugned common order dated 06.08.2024 is *per se* illegal, perverse, and cryptic and is liable to be set aside/quashed.

II. For that, the Ld. Single Judge, erred in holding that the respondent no. 1 is the necessary party in the revision petition, when he has no manner of right, title and interest over the case land and hence he has no locus to challenge the order dtd. 17.02.2023 passed by the Additional Commissioner, Consolidation and Settlement in the R.P. Case No. 651/2021.

Adv.

III. For that, the present appellants right, title and interest over the case land has already been decided in the title suit vide T.S. No. 43/1 of 1981/82 with following observations:

a) Proceeding in the certificate cases are illegal and without jurisdiction and void ab initio from its inception as the same have been initiated against a dead person (V.D. Pandia who died on 26.04.1960). therefore, the auction sale in favour of Defendant no. 1 (father of the present respondent no. 1) is bound to be illegal.

b) None of the legal heirs of V.D. Pandia except defendant no. 2/present proforma respondent no. 7 were impleaded as certificate debtors in the said certificate proceedings. Further, there was no due service of notice as mandatorily required under section 6 of the O.P.D.R on defendant no. 2 (one of the sons of V.D. Pandia) in the said certificate proceedings. There is no evidence to show that the attachment of the suit property was prior to the Private sale dtd. 22.12.1973 in favour of the plaintiff no.1(father of the present appellants). Therefore, the prohibition as provided under section 7 of the OPDR Act is not attracted and the transfer of suit property by the successors of V.D. Pandia in favour of the Plaintiff no. 1 (father of the present appellants) is legal and valid.

Adv.

c) Since after the sale of the suit land on 22.12.1973 in favour of the plaintiff no. 1, legal heirs of V.D. Pandia had no title over the suit property, the same

could not have been sold on auction in favour of defendant no. 1 (present respondent no. 1)

d) Suit Plot (Sabik Pl. No. 487/829 under Sabik Khata no. 312 measuring Ac0.20 dec. corresponding to Hal Plot No. 1243, Hal khata No. 1243, Ac0.205 dec.) was not even mention in the sale proclamation dtd. 22.06.1974, yet it was sold without fresh proclamation. Therefore, the auction sale dtd. 28.06.1974 in favour of defendant no. 1/present respondent no. 1 is illegal and fraudulent.

From the aforesaid findings of the Ld. Trial Court, it is clear that the present appellants have valid right, title and interest over the suit land by virtue of the sale deed dtd. 22.12.1973 executed in favour of their father by the present proforma respondent nos. 5 to 9. Therefore, there is no requirement under law to implead the present respondent no. 1 as party in the said R.P. Case No. 651 of 2021 when they have no manner of right, title and interest over the suit land, nor they are in possession of the same. Therefore, the Ld. Single Judge, erred in remanding the matter back to Addition Commissioner, Settlement and Consolidation, Sambalpur - II by holding that the present respondent no. 1 is the necessary party in the said R.P case.

Adv.

IV. For that, the present respondent no. 1 has not preferred any appeal against the said judgement dtd. 03.05.1983 passed by Ld. Trial Court in T.S. No. 43/1 of 1981/82. It is only the state authorities who have filed the appeal vide FA No. 336 of 1983 (renumbered as RFA No. 335/139/66 of 1983/2022) which is still subjudice before the Ld. A.D.J. Champua. Therefore, the present respondent no. 1 is estopped from challenging the said judgement (in T.S. No. 43/1 of 1981/82) in any other forum.

V. For that, after passing of the said judgement dtd 03.05.1983 passed by Ld. Trial Court in T.S. No. 43/1 of 1981/82, the present appellants are well within their right to file the revision petition (R.P. Case No. 651/2021) for correction of records of rights in their favour on the basis of the sale deed dtd. 22.12.1973 which has been held to be valid by the Ld. Trial Court. Neither the State authorities nor the present respondent no. 1 are required to be ~~impleaded~~ as party in that R.P Case since they have no manner of right, title and interest over the case ~~land~~.

Adv.

VI. For that, the present appellants have filed the said R.P. Case No. 651/2021 for recording of the suit land exclusively in the name of present appellants as during the settlement operation, purchased land of the present appellants has been recorded jointly

along with the name of their vendors (present proforma respondent no. 5 to 9). Therefore, the present appellants have filed the said RP case under section 15 (b) of Orissa Survey and Settlement Act for correction of ROR by impleading their vendors, who are the only necessary party in the said petition. It is pertinent to mention here that since neither the State nor the present respondent no. 1 has any manner of right, title and interest over the suit land and therefore, they are not required to be made party in the said R.P. case.

VII. For that, the Ld. Additional Commissioner, issued summons to the opposite parties/vendors of the present appellants (Present proforma respondents no. 5 to 9) and also called for the records from the Tahasildar, Barbil for ascertaining the factum of possession over the case land. The report of the Tahsildar dtd. 25.11.2022 clearly reflects that the present appellants after having purchased the case land from the opposite parties are in possession over the same. In view of the aforesaid, the Ld. Additional Commissioner, Consolidation and Settlement directed the Tahasildar to record the case land exclusively in the name of the present appellants. Therefore, no illegality is committed by the Ld. Additional Commissioner in passing the order dtd. 17.02.2023 as the same has been passed

Adv.

after following due process of law. Thus. Ld. Single Judge erred in remitting the matter back to the Commissioner, Consolidation and Settlement.

VIII. For that, it is the settled position of law that records of right does not create or extinguish the right and title of a person. Therefore, the present respondent no. 1 is in no way prejudiced by the said order dtd 17.02.2023 passed by the Additional Commissioner, Consolidation and Settlement in R.P. Case No. 651/2021 as the entry in records of right will be ultimately governed by the final outcome of the Civil case which is presently pending before the Ld. A.D.J. Champua.

IX. For that, in the event, the impugned Order dated 06.08.2024 is allowed to stand, the same shall cause miscarriage of justice and is accordingly, liable to be set-aside.

RELIEF SOUGHT FOR

Let the memorandum of appeal be admitted, records be called for, respondents be noticed, and after hearing the learned counsels for the parties, the impugned order dated 06.08.2024 passed by the learned Single Judge in W.P.(C) No. 34582 of 2024 vide Annexure – 1 shall not be set-aside/quashed.

Cuttack

By the Appellant through

Date 28/8/24

Advocate

M/s. SOUMYA MISHRA, (ADV.)
EN-No-O-749/2009
Ganesh Ghat, Cuttack-2
Mob:-9937096293

CERTIFICATE

Certified that due to non-availability of cartridge papers, this memorandum of writ appeal has been printed in thick white papers.

Certified that the grounds taken in the memorandum of appeal are good grounds and I undertake to support them at the time of hearing.

Advocate

M/s. SOUMYA MISHRA, (ADV.)
EN-No-O-749/2009
Ganesh Ghat, Cuttack-2
Mob:-9937096293

IN THE HIGH COURT OF ORISSA: C U T T A C K.

W.P. (C) NO. 34582 /2023

Code No. 289900

IN THE MATTER OF An application Under Articles 226 and 227 of the Constitution of India;

AND

IN THE MATTER OF: An application challenging the order dated 17.02.2023 passed by the opp.party no.1 in SRP No.651 of 2021;

AND

IN THE MATTER OF: Tapan Kumar Pandit aged about 62 years, Son of late Satyanarayan Pandit, Ward No.12, Mrinal Colony, Barbil, Keonjhar, Odisha 758035.

... Petitioner

-Versus-

1. Additional Commissioner, Settlement and Consolidation, Odisha, Sambalpur II, At/PO/PS /District – Sambalpur.

2. Settlement Officer, Keonjhar, At/PO/PS/ District – Keonjhar.

Presented in Court B.O. 17/10/23

PRADIPTA KUMAR MOHANTY
Notary, Cuttack Town
Regd. No-ON-04/1995

3. Tahasildar, Barbil, At/PO/PS – Barb9il, District – Keonjhar.

* OPA is deleted Pursuant to Cal's Ord dtd 9.1.24.

4. Shanti Devi, wife of Late Mahadin Sharda.

5. Bajrang Sharda.

6. Brajesh Sharda.

7. Smt. Rajani Kumri Sahoo.

8. Santosh Maheswari

9. Smt. Kagta Maheswari.

10. Smt. Usha Gilra.

11. Smt. Sudha Sharda

12. Sarita Sharda.

Sl. No.4 to 12 are sons and daughters of late Madadin Sharda, resident of Barbil, PO/PS –Barbil, District – Keonjhar.

... Opp.parties

13. Smt. Bijay Bai, Wife of late Bishanji Dhanji pandia.

14. Bijay Kumar Bishanji Pandia.

15. Sri Chela shankaqr Bishanji Pandia.

16. Ramanika Lal Bishanji Pandia.

PRADIPTA KUMAR MOHANTY
Notary, Cuttack Town
Regd. No-ON-04/1995

18

17. Manoharlal Bishanji Pandia.

Sl. No.13 to 17 are sons of late Bishanji Dhanji Pandia, resident of Village/PO/PS – Barbil, District – Keonjhar.

Proforma Opp.parties

19

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.34582 of 2023

Tapan Kumar Pandit .... ***Petitioner***

Mr. A.P. Bose, Advocate

-versus-

Additional Commissioner, Settlement and Consolidation, Sambalpur-II and Others .... ***Opposite Parties***

Mr. S. Ghose, Additional Government Advocate

Mr. Manoranjan Mishra, counsel for O.P. 4 to 12

CORAM:
JUSTICE B. P. ROUTRAY

ORDER
6.8.2024

Order No.

04. 1. The matter is taken up through Hybrid mode

2. Heard Mr. A.P. Bose, learned counsel for the Petitioner, Mr. M. Mishra, learned counsel for private Opposite Parties and Mr. S. Ghose, learned AGA.

3. The order of the revisional authority dated 17th February, 2023 passed in SRP No.651 of 2021 is challenged in the present writ petition.

4. The only intricate question involved in the present writ petition is, whether present Petitioner, who is the auction purchaser, is a necessary party in the revision petition filed by Opposite Parties 4 to 12?

5. It is admitted that the civil suit bearing T.S. No.43/1 of 1981/82-1 was filed concerning the present property involved in

the revision petition, where the State was one of the Defendants. The suit was decreed in favour of the Plaintiffs, i.e. present Opposite Parties 4 to 12. It was carried in appeal in RFA No.335/139/66 of 1983/2022 pending in the Court of Additional District Judge, Champua. It is also an admitted fact that present Petitioner is the auction purchaser of the property from the State.

6. Perusal of the impugned order under Annexure-1 and the revision petition under Annexure-4 reveals that the State was never made a party before the Commissioner in the revision petition. Therefore, neither the Petitioner nor his vendor, i.e. State was aware of the revision petition filed by the present Opposite Parties for correction of the records of right. Since the claim for correction of RoR in favour of the Petitioners is depending on the decree passed in T.S. No.43/1 of 1981/82-1, and present Petitioner is the auction purchaser from the State, he (present Petitioner) is held a necessary party in the revision petition preferred by present Opposite Parties 4 to 12 before the Commissioner under Section 15(b) of the OSS Act for correction of RoR. As such, the impugned order under Annexure-1 is set aside in absence of joinder of necessary party and the matter is remanded back to the Commissioner for fresh adjudication after granting opportunity of hearing to present Petitioner and other concerned parties.

7. The Additional Commissioner, Consolidation, Sambalpur-II (O.P. No.1) is further directed to complete the adjudication afresh within a period of six months from the date of receipt of certified copy of this order.

21

8. The writ petition is accordingly disposed of.

Sd- B.P. Routray. J.

M.K. Panda

Comp by
7-8-24

Date of Application :- 07
Date of Notification :- 00
Date of Supply :- 08 | 08.24
Date of Ready :- 08
Date of Delivery :- 9.

C.A. No- 66797/2024

MEMO OF COSTS

		Rs.	P.
Application Fee.....		10	00
Folios / No. Pages	6 x 2	12	00
Hologram Fees	6 x 1	6	00
Photo Copier Fee	6 x 1	6	00
	Total	34	00

(Rupees Thirty Four only)

08/08/2024

08/08/24

EXAMINER OF COPIES
CUM
SUPERINTENDENT
COPYING SECTION

SO

CERTIFIED TO BE A TRUE COPY
12/8/24
Assistant Registrar (Estt.)
HIGH COURT OF ORISSA
Authorised Under Section-75,
Bharatiya Sakshya Adhiniyam-2023

THE HIGH COURT OF ORISSA

10 Rs. COURT FEE भारत INDIA दस रुपये TEN RUPEES

₹10/- HIGH COURT OF ORISSA LEGAL ASSISTANTS ASSOCIATION WELFARE STAMP TEN RUPEES

2 Rs. ADVOCATE'S WELFARE FUND TWO RUPEES

HIGH COURT OF ORISSA FILED 28 AUG 2024 REGISTRAR (JUDICIAL)

FORM OF VAK[ALATNAMA]

IN THE HIGH COURT OF JUDICATURE, ORISSA, CUTTACK

WA No. 2385 of 2024

Between

Bajrang Sharda & others — Appellant / Pe[titioner]

Versus

Tapan kumar Pandit & others — Respondent / Op[posite Party]

2 Rs. दो रुपये TWO RUPEES COURT FEE कोर्ट फी INDIA

38103

Know all men by these present, that by this Vakalatnama

I/We (1) Bajrang Sharda, (2) ~~Brajesh~~ Brijesh Sharda (3) Santosh Maheswari S/o Late Mahadm Sharda (4) Rajkumari Sahoo (5) Rajani (5) Kanta @ Kanta Maheswari (6) Usha Gilra (7) Sudha Sarda (8) Sarita Sharda, D/o Late Mahadm Sharda At Barbil Po/Ps Barbil ~~Dist~~ Keonjhar..

Appellant / Respondent / Petitioner/ Opposite Party in the aforesaid Writ / Revision / Appeal case do hereby appoint and retain SOUMYA MISHRA (O-749/2009, 9937096293, soumya.mishra@live.com), MANISHA MISHRA (O-170/20, 9938295979), R.K. AGRAWAL (O-6704/A, 7978043841), ABHISEK AGARWAL (O-822/19, 9861910876), G.N. PARIDA (O-1184/18, 8895098098) Advocate (s) to appear for me/us, in the above case and to conduct and prosecute (or defend) the same and all proceedings that may be taken in respect of any a[pplication] connected with the same or any degree or order passed therein including all applic[ations for] return of documents or receipt of any money that may be payable to me/us in the [said case] and also in application for review and appeals. I/we appeals under Orissa High Co[urt ...] and in applications for leave to appeal to Supreme Court. I/We authorise my/our A[dvocate] to admit any compromise lawfully entered in the said case.

ORISSA HIGH COURT BAR ASSOCIATION MEMBERS WELFARE SCHEME HB244305 50

Dated, the 28/8/2024

Received from the executant (s) satisfied and accepted as I hold no brief for the other side.

Advocate
Somya Mishra
Accepted as above

Advocate
[signature]
Accepted as above

Advocate
Accepted as above

Advocate
MMishra
Accepted as above

Abhisek Agarwal
Advocate
Accepted as above

Advocate
Accepted as above

(G.N. PARIDA)
Advocate
Accepted as above

4- राजकुमारी साहु
3- Santosh Maheshwari
5- Kanta Maheshwari
6- Usha Gilra
1- Bajrang Sharda
7- सुधा सारडा
8- सरिता शारदा
2- ब्रिजेश कुमार शारदा

Signature of Executant (s)

OFFICE OF THE ADVOCATE GENERAL, ODISHA

SLNO: 448076 Date: 29-Aug-24 TIME: 10:56

CASETYPE: DWA No: 37439 YEAR: 2024

PETITONER / APPELANT: BAJRANG SHARDA

RESPONDENT / OPP PARTY: STATE

☑ PETITION & MEMO ☑ IA ☐ EXTRA COPY

☐ COUNTER ☐ ADDL SET:

☐ REJOINDER ☐ CONSOLIDATED

MISC. COPY

ADDL. STANDING COUNSEL

IN THE HIGH COURT OF ORISSA, CUTTACK

I.A. No. 6315 **/2024**

(Arising W.A. No. **2385** OF 2024)

In the matter of:

An application under Chapter VI, Rule 27-A of the Rules of the High Court of Orissa, 1948 for r/w Section 151 of C.P. Code for stay operation of the impugned Order dtd. 06.08.2024;

AND

In the matter of:

Bajrang Sharda & Ors.

.... Petitioner

VERSUS

Tapan Kumar Pandit & Ors.

.... Opposite Parties

To,

The Hon'ble Chief Justice of the Hon'ble High Court of Orissa and his Lordships companion Justices of the said Hon'ble Court.

The humble petitioner of the petitioner named above:

M/s. SOUMYA MISHRA, (ADV.)
EN-No-O-749/2009
Ganesh Ghat, Cuttack-2
Mob:-9937096293

28.8.2024

Surendra Prasad Dhal
Advocate
NOTARY, CUTTACK

MOST RESPECTFULLY SHOWETH:

1. That, the captioned Writ Appeal out of which the present I.A. arises has been filed by Appellant/Petitioner before this Hon'ble Court assailing Order dated 06.08.2024 passed by Ld. Single Judge in W.P.(C) No. 34582 of 2023 by which, the application filed by the present respondents no. 1 for setting aside of the order dtd. 17.02.2023 passed by Additional Commissioner, Consolidation, Sambalpur - II in Settlement Revision Petition No. 651/2021 under section 15 (b) of the Orissa Survey and Settlement Act was allowed and the matter is remanded back to the Commissioner for fresh adjudication after granting opportunity of hearing to the present respondent no. 1 (who does not have any locus in the said proceeding) and other concerned parties.

   For the sake of brevity and better appreciation of facts, the contents of the captioned Writ Appeal be read and treated as part and parcel of this present I.A.

2. That, the Ld Single Judge has erroneously remanded the matter back to the Commissioner on the ground that present respondent no. 1 is a necessary party in the Settlement Revision Petition No. 651/2021 filed by the present appellants under section 15 (b) of the Orissa Survey and Settlement Act. However, in view of the judgement passed in T.S. No. 43/1 of 1981-82 (I) it is clear that Respondent no. 1 does not have any right

Adv.

Surendra Prasad Dhal
Advocate
NOTARY, CUTTACK

title and interest over the suit property and therefore he is not a necessary party in the said revision case. Since the impugned order passed is not in conformity with the settled position of law and also is against the material available on record therefore the same warrants interference of this hon'ble court.

3. That, under the premises stated above, it is expedient in the interest of justice to stay operation of the impugned Order dtd. 06.08.2024 till the disposal of captioned Writ Appeal, else the Petitioners/Appellants who are having a prima facie case and have a fair chance in succeeding shall be highly prejudiced and would suffer an irreparable loss and injury which cannot be compensated with cost.

PRAYER

It is therefore, prayed that your Lordships may graciously be pleased to allow the present I.A by directing to stay operation of the impugned Order dtd. 06.08.2024 passed by Ld. Single Judge in W.P.(C) No. 34582 of 2023

till disposal of the captioned the Writ Appeal in the interest of justice, or else the petitioner shall be highly prejudiced;

And may pass any such Order(s), Direction(s), Relief(s), as may deem just and fit;

Adv.

Surendra Prasad Dhal
Advocate
NOTARY, CUTTACK

4288

And for this act of kindness, the appellant as in duty bound shall ever pray;

Date: 28.08.2024 By the Petitioners through

Cuttack Advocate

Ms. SOUMYA MISHRA, (ADV.)
EN-No-O-749/2009
Ganesh Ghat, Cuttack-2
Mob:-9937096293

Surendra Prasad Dhal 4288
Advocate
NOTARY, CUTTACK

5

HIGH COURT OF ORISSA
FILED
28 AUG 2024
REGISTRAR (JUDICIAL)

IN THE HIGH COURT OF ORISSA AT CUTTACK

I.A.No. 6315 of 2024

(Arising out of W.A. No. 2385 of 2024)

In the matter of:

Bajrang Sharda and others

...Petitioners

-Versus-

Tapan Ku. Pandit and others

...Opposite Parties

AFFIDAVIT

1. I, Bajrang Sharda, aged about 59 years, aged about 59 years, At/P.O./P.S. – Barbil, Dist. – Keonjhar, Odisha,758035.
2. S/o. – Late Matadin Sharda
3. Profession – Business
4. Number of proceedings pending in the High Court or would be instituted(Caveat) : No
5. Statement of facts: As per the averments stated in the interim application.
6. The facts stated are true to the best of my knowledge and based on record.

DECLARATION

I, Bajrang Sharda, aged about 59 years, S/o – Late Matadin Sharda, aged about 59 years, At/P.O./P.S. – Barbil, Dist. – Keonjhar, Odisha, PIN – 758035 do hereby solemnly affirm and state that I am the petitioner in this interim application and the facts stated in paragraph 1 to 3 are true to my own knowledge and are based on record, information, which I obtained from personal sources. I am duly

Adv.

Surendra Prasad Dhal
Advocate
NOTARY, CUTTACK

authorised by the other petitioners to swear this affidavit for self and on behalf of the others.

I believe the information to be true for the following reasons: Basing upon official records and information.

The contents of this interim application are read over and explained to me and after understanding the same I have put my signature hereunder.

Identified by

Advocate

DEPONENT

Solemnly affirm before me By Bajrang Sharda, who is identified before me by BIBEKANANDA BEHERA ADV, whom I personally know.
This 28 of Aug, 2024.

Commissioner of Oath/Notary Public

The above named Deponent
Solemnly affirm on 28/8/2024
Being Identified
by Ms. Mishra (Adv)

M/s. SOUMYA MISHRA, (ADV.)
EN-No-O-749/2009
Ganesh Ghat, Cuttack-2
Mob:-9937096293

28/8/2024

Surendra Prasad Dhal
Advocate
NOTARY, CUTTACK

OFFICE OF THE ADVOCATE GENERAL, ODISHA

SLNO: 448076 Date: 29-Aug-24 TIME: 10:56

CASETYPE: DWA No: 37439 YEAR: 2024

PETITONER / APPELANT: BAJRANG SHARDA

RESPONDENT / OPP PARTY: STATE

☑ PETITION & MEMO ☑ IA ☐ EXTRA COPY

☐ COUNTER ☐ ADDL SET:

☐ REJOINDER ☐ CONSOLIDATED

MISC. COPY

ADDL. STANDING COUNSEL

COMPUTERISED FILING COUNTER
ORISSA HIGH COURT,CUTTACK
ACKNOWLEDGEMENT SLIP

Seat No : 1

Branch No : WRIT APPEAL(Paperless)

Receipt No : 135860/2024 Date Of Receiving : 04/11/2024 Time : 05:02:30 PM

Filing No : **D- WA 37439/2024**

Case No : **WA 2385/2024**

Received From : Petitioner

Filed By: ADVOCATE FOR THE PETITIONER

Document(s) Filed :

1- REQUISITE FOR OPS --- Postal Fee -Rs.65

2- RECEIPT (GOVT)

OFFICE OF THE ADVOCATE GENERAL, ODISHA

SLNO: 448101 Date: 04-Nov-24 TIME: 11:14

CASETYPE: WA No: 2385 YEAR: 2024

PETITONER / APPELANT: BAJRANG SHARDA

RESPONDENT / OPP PARTY: STATE

ORISSA HIGH COURT 3rd 04 NOV 2024 DEPUTY REGISTRAR (JE) CLEARANCE

☐ PETITION & MEMO ☐ IA ☐ EXTRA COPY

☐ COUNTER ☐ ADDL SET: 3

☐ REJOINDER ☐ CONSOLIDATED

MISC. COPY

ADDL. STANDING COUNSEL

IN THE HIGH COURT OF ORISSA

MA No 2385/24

Bajrang Sharda ——— Appt

Vs

Tapan Kumar Pandit ——— Resps

MEMO

In the above mentioned case, issue of appeal and stay notice on Respondent No.1 vide registered post with AD has been filed herewith.

WITHER

DATE: 4/11/2024

Advocate for the Appellant

Ptg. 3-179/2022-23, Dt 07.12.2023, Qnty-12,450nos Tulshi International

- अनावश्यक को काट दिया जाए
- Strike out if not relevant

आर.पी.-54 / RP - 54

भारतीय डाक विभाग

DEPARTMENT OF POSTS, INDIA

प्रप्ति स्वीकृति / **Acknowledgement**

भारतीय डाक

India Post

R-1

रजिस्ट्री–पत्र / पार्सल प्राप्त हुआ

Received Registered Letter / Parcel

क्रमांक / No.	तारीख / Dated	का / of

* बीमे का मूल्य रूपयों में (1) Tapan kumar pandit

* Insured of Rupees S/o late satyanarayan pandit

पाने वाले At- ward no-12 Hirmal colony

Addressed to Barbil keonjhar odisha

758035

को / on

बितरण डाकघर की तारीख - मोहर
Date-Stamp of Office of delivery

हस्ताक्षर और नाम / Signature and Name Tapan kmar Pandit

21/11/2024

9091

डाक सेवार्थ
On Postal
Service

To the Hon'ble Court Orissa Cuttack

Superintendent WP Section
WP(C) No 2385/24
Orissa Cuttack.

WP(C) 2385/24

प्रेषक डाकघर की नाम - मोहर
Name-stamp of office of posting

पिन / PIN 753002