

(2026) 01 OHC CK 1798

In the Orissa High Court

Case No : Writ Petition (C) No. 10434 Of 2025

Banishree Vidya Mandir, Ganjam

APPELLANT

Vs

State Of Odisha And Ors

RESPONDENT

Date of Decision : 22-01-2026

Acts Referred:

Constitution Of India, 1950 — Article 226

Orissa Prevention Of Land Encroachment Act, 1972 — Section 6, 8A

Citation : (2026) 01 OHC CK 1798

Hon'ble Judges : Dr. Sanjeeb K Panigrahi, J

Bench : Single Bench

Advocate : Deepali Mahapatra, Sonak Mishra

Final Decision : Allowed

Judgement

Dr. Sanjeeb K Panigrahi, J

1. In this Writ Petition, the petitioner seeks a direction from this Court to quash the encroachment proceeding in LEC No.300/2007, restrain forcible eviction or demolition of the school, and direct consideration and settlement of the land in its favour in accordance with law.

I. FACTUAL MATRIX OF THE CASE:

2. The brief facts of the case are as follows:

(i) The petitioner is a private school established at Village Golanthara, Tahasil Konisi, District Ganjam, which has been functioning since 1992 and presently caters to more than 800 students from Class I to X.

(ii) The school was granted provisional recognition initially for Classes I–III in 1992 by the District Inspector of Schools, Berhampur, and subsequently recognition was extended up to Class VII in 2003 by the Director of Elementary Education, Odisha, and further permissions were granted from time to time.

(iii) The school is presently permitted up to Class IX by the Director of Secondary Education, Odisha, and students are appearing in Board examinations through another recognised school.

(iv) At the time of establishment, the school did not have settled land and was functioning over land described by the petitioner as Khata No.788, Plot No.973/1898, measuring Ac.1.00 dec in Mouza Golanthara.

(v) An Alienation Case bearing No.9/1992 was registered before the Tahasildar for settlement of land in favour of the School, and a recommendation was allegedly made for settlement subject to change of classification of the land.

(vi) During the pendency of the alleged alienation proceedings, an encroachment proceeding bearing LEC No.300/2007 was initiated by the Tahasildar, Konisi, and notice dated 18.06.2007 was issued to the petitioner.

(vii) The petitioner submitted show cause, and by order dated 07.03.2009, the Tahasildar recorded that records of the alienation case had not been received from the Sub-Collector and deferred further action.

(viii) The petitioner claims that no further steps were taken in the encroachment proceeding and the school continued to function uninterruptedly.

(ix) The opposite parties contend that the petitioner is occupying Government land of Kisam Gochar and also encroaching land belonging to a Government High School, and that neither the alienation case nor the encroachment case is traceable in official records.

II. SUBMISSIONS ON BEHALF OF THE PETITIONER:

3. Learned counsel for the Petitioner Ms. Deepali Mahapatra earnestly made the following submissions in support of his contentions:

(i) The petitioner contends that Alienation Case No.9/1992 was duly initiated and recommended by the Tahasildar for settlement of land in favour of the School, subject to change of classification.

(ii) It is asserted that during pendency of the alienation proceedings before the Sub-Collector, initiation and continuation of encroachment proceedings is illegal and arbitrary.

(iii) The petitioner submits that the school has been functioning for more than three decades with continuous governmental recognition and knowledge of authorities regarding the location of the School.

(iv) It is contended that the school is complying with statutory obligations under the Right to Children to Free and Compulsory Education Act, 2009 by providing free education to 10% students.

(v) The petitioner apprehends imminent eviction and demolition of the school building at the behest of local political interference, which would severely

prejudice the education of more than 800 students.

(vi) The petitioner asserts that there is no legal impediment to settlement of the land in favour of the school and seeks quashing of the encroachment proceeding and a direction for land settlement.

III. SUBMISSIONS ON BEHALF OF THE OPPOSITE PARTIES:

4. The Learned Counsel for the Opposite Parties Mr. Sonak Mishra earnestly made the following submissions in support of his contentions:

(i) The opposite parties contend that the petitioner is illegally occupying valuable Government land of Kisam Gochar and has also encroached land belonging to a Government High School.

(ii) It is asserted that no private institution is authorised to run on Gochar land or on land belonging to another Government school.

(iii) The opposite parties deny the existence or pendency of Alienation Case No.9/1992 in both the Tahasil office and the Sub-Collector's office, stating that the records are untraceable.

(iv) It is contended that alienation proceedings are meant for settlement of land in favour of Government organisations and not private institutions.

(v) The opposite parties allege that documents relied upon by the petitioner regarding alienation and change of land classification may be forged or fabricated.

(vi) It is further asserted that Khata No.788, relied upon by the petitioner, is a private Rayati Khata belonging to a private individual and not Government land capable of settlement.

(vii) The opposite parties deny the pendency of Encroachment Case No.300/2007 and state that no such case is available in official records.

(viii) It is contended that the writ petition is devoid of merit and that the petitioner is attempting to legitimise illegal occupation of Government land under the guise of running a private school.

IV. JUDGMENT AND ANALYSIS:

5. Heard Learned Counsel for the parties and perused the documents placed before this Court.

6. The petitioner has invoked this Court's writ jurisdiction under Article 226 of the Constitution seeking quashing of the encroachment proceeding (LEC No.300/2007) and a direction to settle the land in question in its favour. In essence, the petitioner-school asserts a legal entitlement or legitimate expectation to continue its three-decade-old functioning on the disputed land, whereas the State-opposite parties maintain that the petitioner is a rank encroacher with no lawful right or title.

7. The central issues for determination are:

A. whether the petitioner's occupation of the Government land (recorded as Gochar or grazing land) can be regularized or protected in law, particularly given the claim of a pending alienation proposal since 1992; and

B. whether the petitioner is entitled to any relief against the threatened eviction in the facts and circumstances of the case. These issues must be resolved by examining the factual matrix against the applicable legal framework on government land encroachments and the State's duty to facilitate education.

8. At the outset, the Court notes the petitioner's claim that Alienation Case No.9/1992 was initiated for settlement of Ac.1.00 dec. of land in Village Golanthara in favour of the school, and that the Tahasildar had recommended the lease/settlement subject to change of land classification from Gochar (grazing) to homestead or other appropriate category. The record placed before this Court includes a copy of the Tahasildar's order dated 07.03.2009 in Encroachment Case No.300/2007, which explicitly records that the alienation case file had been requisitioned from the Sub-Collector but was not received, and therefore further action in the encroachment proceeding was deferred. This lends some credence to the petitioner's assertion that an alienation proposal was indeed pending consideration at higher levels. It is unacceptable that an official file would go "missing" for decades; if the opposite parties now contend that the alienation case is not traceable, the benefit of such lapse cannot be thrust upon the petitioner, who has been running a school with knowledge of the authorities.

9. In similar circumstances, there are a plethora of judicial precedents have lamented the disappearance of land records and emphasized that encroachments on public land must be dealt with transparently and not by dubious loss of files. The initiation of a valid alienation/lease proceeding would, in law, create a bar against treating the occupant as a wilful encroacher at least until that proceeding is decided one way or the other.

10. In the present case, the Tahasildar's own order effectively put the encroachment proceeding in abeyance pending the outcome of the alienation proposal. Consequently, the hibernation of Encroachment Case No.300/2007 for over a decade was an implied acknowledgment by the authorities that the petitioner's possession was under consideration for regularization. Initiating or reviving summary eviction proceedings in medias res would indeed be arbitrary. Therefore, unless the alienation proposal is lawfully rejected on merits by the competent authority after due process, the petitioner should not be branded as a rank trespasser.

The petitioner is a private unaided school, not a government or aided institution. The opposite parties argue that Government land, particularly Gochar land or land belonging to another government school, cannot be allotted to a private body.

11. It is true that Gochar (common grazing) lands enjoy special protection in law. The Supreme Court in *Jagpal Singh v. State of Punjab*[(2011) 11 SCC 396] elucidated that village commons like Gochar or ponds are generally inalienable and must be preserved for the community. The Court decried the rampant encroachment of such lands by persons with influence and held that no leniency should be shown to illegal occupants, even if they have been in long possession. All State Governments were directed to prepare schemes for eviction of encroachers from Gram Sabha land and to refuse regularization of such illegalities, with only a narrow exception for certain public utilities. The relevant excerpts are produced below:

“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 regularizing the illegal possession. Regularization should only be permitted in exceptional cases e.g. where lease has been granted under some Government notification to landless labourers or members of Scheduled Castes/Scheduled Tribes, or where there is already a school, dispensary or other public utility on the land.”

12. Thus, even the aforementioned landmark judicial precedent’s stern directive against encroachments carves out an exception recognizing that if an educational institution or other essential public utility is already established on the land and serving the community, the State may, in appropriate cases, consider regularizing such use rather than causing abrupt demolition. The present petitioner’s school, by imparting education to local children for over 30 years (including 10% of students free of cost in compliance with the Right to Education Act), prima facie performs a public function.

13. The school’s contribution to the locality’s education, and the reality that over 800 students are studying there, are factors that distinguish this case from an ordinary land-grab for commercial or personal ends. The opposite parties’ blanket assertion that no private entity can ever be settled on Gochar land is not entirely supported by law, government policies (as reflected in the Orissa Government Land Settlement Act and Rules) do permit lease or allotment of land for public purposes including schools, albeit following stringent procedures like de-reservation of Gochar land and approval at high levels.

14. For instance, in *India English Medium School v. State of Orissa*[2013 (10) OLR 493], a Division Bench of this High Court quashed the denial of lease of Gochar land to a private school, noting that the village had surplus grazing land and the need for an educational institution was genuine. It directed the authorities to proceed with allotment of the land to the school, observing that education is as essential to the community as other welfare needs, and that where public interest is served by a school, the State should facilitate rather than frustrate such purpose. The Court in that case rejected the misapplication of the “eminent domain” concept by revenue authorities and underscored that a welfare state must balance community land needs with the community’s educational

needs. The relevant excerpts are produced below:

"The aforesaid view has also been taken subsequently in catena of decisions including the judgments cited by Mr. Mishra. It is stated that out of Ac.2.00, Ac.0.450 dec. was required for construction of 4/6 lane road to AIIMS from Sijua to Bhubaneswar, the balance Ac.1.550 dec. should be considered for allotment in favour of the petitioner-School with the premium, ground rent and cess applicable for such allotment. So far as applicability of equity is concerned, it is stated that the housing accommodation is made for needy people. Equally education is also essential for all categories of people remaining in and around the locality. Therefore, the contention raised that teaching in English medium school is not required for all, is bereft of any substance."

15. In the case at hand, the opposite parties have cast doubt on the very existence of the alienation recommendation and even suggested that documents produced by the petitioner might be forged. Having perused the materials, this Court finds that the petitioner has produced a copy of an official communication from 1992 recommending settlement (subject to reclassification of land), as well as subsequent school inspection/recognition records that reflect the school's long-standing operation at the site. The opposite parties, on the other hand, have not produced any cogent record to show that Alienation Case No.9/1992 was closed or rejected on merits.

16. Their plea that the file is "untraceable" is, frankly, a poor reflection on administrative record-keeping. If the file is truly lost, the authorities ought to reconstruct the proposal from available secondary evidence, including the petitioner's copy and the Tahasildar's 2009 noting, and take a reasoned decision thereon, instead of simply denying its pendency.

Regarding the encroachment proceeding, the Tahasildar's own order of 07.03.2009 (not refuted by opposite parties) indicates that further steps were halted. There is also no evidence that any fresh show-cause notice or eviction order has been issued to the petitioner after 2009 under the Orissa Prevention of Land Encroachment Act, 1972 (OPLE Act). In fact, the writ petition appears to be prompted by an apprehension of forcible eviction without due process, possibly at the instance of local pressure.

17. This Court recently in the case of Bairagi Charan Jena v. State of Odisha[W.P. (C) NO.20200 OF 2019], has held that the law settled that even an encroacher is entitled to notice and opportunity under the OPLE Act before eviction. This Court held as follows:

"16. Under the OPLE Act, the competent authority must issue notice (Section 6) and give an opportunity to show cause. The petitioner has not shown that the authorities have bypassed this requirement. In fact, the petition itself appears anticipatory, filed because the Executive Officer intends to construct a boundary wall. The law presumes that public authorities will act in accordance with statute. If the petitioner receives an eviction notice under Section 6 and believes that

Section 8-A applies, he can place his evidence before the Tahasildar and, if necessary, seek appellate remedy. A writ preventing the authorities from proceeding under the Act is not maintainable.”

18. If no encroachment case is presently pending (owing to the abeyance since 2009), the petitioner justifiably seeks protection from a sudden executive action that would demolish the school and disrupt the education of hundreds of children.

19. The Court is mindful that no person has a legal right to encroach upon Government land, and long occupation per se does not confer ownership. The doctrine of adverse possession against the State is difficult to invoke successfully, as mere possession is not enough to perfect title without open hostility and assertion of exclusive ownership for the statutory period.

20. The petitioner here does not claim adverse possession; rather, it banks on the expectation created by the government’s own past actions. This case therefore hinges on principles of fairness and the State’s obligation to promote education. The petitioner-school, though privately managed, is effectively supplementing the State’s constitutional duty by educating 800+ students in a rural area.

21. The Supreme Court in the recent case of *SASTRA University v. State of Tamil Nadu*[SLP(C) NO. 002359 - 002360 / 2026] stayed the eviction of a 32-acre university campus that had encroached on government land, observing that while encroachment on public land cannot be condoned outright, the case involved a public educational institution (not a commercial enterprise) which had been using the land for decades for a bona fide educational purpose. The Bench, speaking through the Chief Justice of India, highlighted that a welfare State should not treat the matter as one of prestige or rigidity, but must consider the public function being served. It was noted that the State needs to be sensitive in its dealings with such institutions, and solutions like land exchange or regularization on suitable terms should be explored in the public interest.

22. The present scenario is analogous on a smaller scale; the petitioner’s school has become an educational lifeline in its locality over 30 years. Forcible eviction and demolition of the school building would not only undermine the education of the pupils but also run counter to the state’s policy of encouraging schooling in every habitation.

23. Indeed, the opposite parties have not shown any pressing public purpose that would be served by evicting the school at this stage, for example, there is no evidence that the land is immediately required for a paramount public project. On the contrary, the petitioner has pleaded that local political rivalry is driving the threats of eviction. In the absence of a bona fide urgent need for the land’s retrieval, the equity of the situation favours allowing the school to continue, of course subject to the school securing proper legal status on the land which is still pending before the revenue authority.

V. CONCLUSION:

24. In view of the foregoing discussion, the Court is of the opinion that the petitioner has made out a case for intervention to prevent unjust eviction, though a direct mandamus to settle the land in its name can be issued only after due consideration by the competent authority. Accordingly, the writ petition is partly allowed with the following directions, crafted to balance the interests of justice:

a. The encroachment proceeding in LEC NO.300/2007 is hereby quashed. The said proceeding has remained inconclusive for more than a decade and has effectively lapsed. This quashing shall not confer any right or title upon the petitioner but is only to remove a stale proceeding and enable lawful consideration afresh.

b. The Sub-Collector, Ganjam and the Tahasildar, Konisi shall consider the petitioner's request for settlement/lease of the land expeditiously. The authorities shall trace and decide Alienation Case No.9/1992, and if the same is untraceable, shall treat the present writ petition and documents on record as a fresh representation. The decision shall be taken strictly in accordance with law and policy, keeping in view the nature of the land, availability of alternate Gochar land if applicable, and the long-standing functioning of the school. A reasoned order shall be passed and communicated to the petitioner within from the date of communication of this judgment.

c. Until such decision is taken, the petitioner-school shall not be evicted or disturbed except in accordance with law. In the event the decision is adverse, the petitioner shall be granted not less than SIX months' time thereafter to vacate the land peacefully, so as to make alternative arrangements for the students.

25. Before parting, the petitioner, a private school running on Government land, cannot claim an inviolable right to the property, but given its decades-long contribution to public education and the administration's own acquiescence, it deserves a fair chance for regularization. The State, acting as a welfare State, should not mechanically wield the axe of eviction in a manner that sacrifices the education of hundreds of children from different strata of the society.

26. Instead, the authorities must exercise their discretion to promote the common good by accommodating the institution within the legal framework, if feasible.

27. Hence, the Writ Petition is allowed to the extent indicated above.

28. Interim order, if any, passed earlier stands vacated.