(2023) 10 OHC CK 0156

In the Orissa High Court

Case No : Writ Petition (C) No. 11613 Of 2012

Biswanath Sahu (since dead) represented through LRs APPELLANT

Vs

State Of Odisha And Others RESPONDENT

Date of Decision : 05-10-2023

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Code of Civil Procedure, 1908 — Section 114, 141, 151, Order 47 Rule 1
Orissa Board of Revenue Rules, 1959 — Rule 4
Odisha Communal Forest and Private Land (Prohibition of Alienation) Act 1948 — Section 3, 3(1)
Contract Act, 1872 — Section 17
Odisha Board of Revenue Act, 1951 — Section 4, 12(1)
Contempt of Courts Act, 1971 — Section 12
Odisha Government Land Settlement Act, 1962 — Section 7A

Citation : (2023) 10 OHC CK 0156

Hon'ble Judges : Dr. B. R. Sarangi, J;Murahari Sri Raman, J

Bench : Division Bench

Advocate : S.P. Mishra, Soumya Mishra, Ekta Agarwal, A. Mohanta, L. Samantaray

Final Decision : Dismissed

Judgement

Dr. B.R. Sarangi, J

1. Biswanath Sahu, whose legal representatives have stepped into his shoes after his death, filed this writ petition seeking to quash the order dated 02.04.2012 passed in Misc. Case No. 2 of 2009, arising out of Misc.Case No. 1 of 2005 (inadvertently mentioned as Misc. Case No. 9 of 2004) under Annexure-18, by which opposite party no.3-Member, Board of Revenue, Odisha, Cuttack, in exercise of powers conferred under Rule-4 of the Orissa Board of Revenue Rules, 1959, allowed the said misc. case filed by the State and recalled the order dated 14.03.2005 passed by the previous Member, Board of Revenue in Misc. Case No. 1 of 2005 and directed the Tahasildar, Bhubaneswar to ensure that the suit land is kept recorded in Government Khata, and to take appropriate action under the

civil law/criminal law as per the order dated 20.11.2006 passed by this Court in W.P.(C) No. 11271 of 2005.

2. The factual matrix of the case, in brief, is that one Natabar Sahu, father of the original petitioner (Biswanath Sahu) and proforma opposite parties no.4 and 5, claiming to be a landless person applied for lease of a piece of land, basing upon which W.L. Case No. 1094 of 1970 was initiated on the file of the Tahasildar, Bhubaneswar-opp. party no. 2. As per his claim, he was possessing the land by virtue of the lease order dated 11.05.1971. After the death of Natabar Sahu, the petitioner and proforma opposite parties no.4 and 5, succeeded the same. As per the lease order dated 11.05.1971, the land measuring Ac.5.000 dec. appertaining to plot no. 272 under khata no. 303 of Mouza-Chandrasekharpur was settled in favour of Natabar Sahu, since he was a landless person. No objection was received pursuant to the public notice within the stipulated period. Therefore, the Tahasildar, Bhubaneswar directed for lease of the scheduled land and accordingly the record keeper was also directed to correct the ROR. As the same was delayed, Late Natabar Sahu, made an application, which was considered on 15.01.1980 and, thereafter, on considering a further Amin report, the Tahasildar, vide order dated 15.02.1980, also directed for correction of the ROR with due intimation to the General Administration Department. In spite of the efforts made by the petitioner along with proforma opposite parties no.4 and 5, the ROR was neither corrected nor issued in favour of them. Therefore, they filed Misc. Case No. 1 of 2005 before the Member, Board of Revenue, Odisha, Cuttack invoking the administrative powers conferred under Section 4 of the Odisha Board of Revenue Act, 1951 and the rules framed thereunder and seeking direction to the Tahasildar, Bhubaneswar to give effect to the order already passed in W.L. Case No. 1094 of 1970. The Member, Board of Revenue, in exercise of powers conferred upon him under Section 4 of the Odisha Board of Revenue Act, 1951, disposed of the said Misc. Case No.1 of 2005 vide order dated 14.03.2005 and directed the Tahasildar, Bhubaneswar to give effect to his order already passed in the said lease case within a period of sixty days from the date of receipt of the said order. In the guise of continuance of settlement operation and restriction to correct the ROR, pursuant to the notification circulated by the Revenue Department, when no ROR could be corrected for a long time, then on behalf of Late Natabar Sahu, his sons had to move the Member, Board of Revenue to give necessary direction in this regard.

2.1. When no decision was taken, the legal heirs of Late Natabar Sahu approached this Court by filing W.P. (C) No. 11271 of 2005 seeking direction for recording the schedule land in their favour, by correcting the ROR and, thereby, to issue Sthitiban Patta as per the lease order in W.L. Case No. 1094 of 1970. In the said writ petition, a counter was also filed by the State-opposite parties stating that there has been manipulation in the lease case record in question and, accordingly, challenged the claim made in the writ petition for correction of ROR and issuance of Patta. The said writ petition was disposed of, vide order dated 20.11.2006, with a direction to the Tahasildar, Bhubaneswar to act in accordance with the direction issued by the Member, Board of Revenue, Odisha in Misc. Case No. 1 of 2005 or to take such other decisions expeditiously as he deems fit and proper in the facts of the case after giving an opportunity of hearing to the petitioner and proforma opposite parties no.4 and 5 in the matter. It was also kept open to the Tahasildar to take appropriate steps either in civil law or under criminal law, as he would deem fit and proper, if he comes to the conclusion that there was any fabrication or manipulation of the records in the said W.L. Case No 1094 of 1970 in the office of Tahasildar, Bhubaneswar.

2.2. In the counter affidavit filed by the Tahasildar, it was specifically mentioned that the revenue authorities are contemplating to move the Member, Board of Revenue for recalling the order dated 14.03.2005 passed in Misc. Case No. 1 of 2005, even though this Court had already directed the Tahasildar to act in accordance with the direction of the Member, Board of Revenue passed in Misc. Case No. 1 of 2005, keeping the matter open in all respect to take such measures unless it is proved that there is fabrication or manipulation of record. As no stipulated time was granted to implement the same, this Court, on being again moved in Misc. Case No. 1769 of 2007, vide order dated 23.3.2007, directed the authorities to work out the direction issued on 20.11.2006 within a period of six months from the date of passing of the order.

2.3. On receipt of the aforesaid order of this Court, the petitioner and proforma opposite parties no.4 and 5, along with the certified copy of the same, submitted an application dated 27.11.2006 before the Tahasildar requesting him to implement the same, which was also duly acknowledged. After the subsequent order was passed by this Court on 23.03.2007, the petitioner, along with proforma opposite parties no.4 and 5, also submitted another application dated 31.03.2007 along with the certified copy of the order dated 23.03.2007 before the Tahasildar and requested him to implement the order, which was also received on 02.04.2007.

2.4. In spite of the aforesaid order and request made on behalf of the petitioner and proforma opposite parties no.4 and 5, while the order of this Court was not carried out, the Collector, Sub-Collector and A.D.M. were also moved, but the same yielded no result. Consequentially, the petitioner and proforma opposite parties no.4 and 5 filed CONTC No. 1322 of 2007 under Section 12 of the Contempt of Courts Act, 1971 alleging non-compliance of the order of this Court by the Tahasildar, Bhubaneswar, Collector and Sub-Collector, Khurda. In the said contempt petition, the State Counsel took time on several occasions for filing show cause reply and ultimately, this Court granted time for the said purpose vide order dated 11.11.2009 directing to put up the matter in the week commencing from 30.11.2009. During such time, instead of complying the order of this Court passed in W.P.(C) No. 11271 of 2005, the Tahasildar, Collector and the A.D.M., pursued the General Administration Department to move the Member, Board of Revenue to stay the order dated 14.03.2005 passed by his predecessor Member, Board of Revenue in Misc. Case No. 1 of 2005.

2.5. In the meanwhile, the G.A. Department moved the Member, Board of Revenue in Misc. Case No. 2 of 2009 and upon receipt of the same, the Member, Board of Revenue passed the order dated 09.11.2009 by staying operation of the order dated 14.03.2005 passed in Misc. Case No. 1 of 2005 and called for records of the Misc. Case No. 1 of 2005, so also W.L. Case No. 1094 of 1970 and sought for approval of the Government in Revenue and Disaster Management Department. Though it was directed in the said order to inform the petitioner and proforma opposite parties no.4 and 5, who are the sons and successors of Late Natabar Sahu, the notice was not immediately served. This fact came to their notice only when CONTC No. 1322 of 2007 was taken up by this Court and a show cause reply dated 26.11.2009 was served on them wherein the order dated 09.11.2009 of the Member, Board of Revenue was enclosed. In the said show cause notice, it was stated that in view of the order passed by the Member, Board of Revenue staying operation of the previous order dated 14.3.2005 in Misc. Case No. 1 of 2005, no further action can be taken to implement the order dated 20.11.2006 of this Court passed in W.P.(C) No. 11271 of 2005. This position, by no stretch of imagination, can draw inference that the learned Member, Board of Revenue has been dragged to the way adopted by the authorities in not implementing the order of this Court and, thereby, all of them may be responsible and thus, indirectly committing contempt of this Court in not implementing the order. All have now joined together for not implementing the order of this Court. Then, the petitioner and proforma opposite parties no.4 and 5 obtained the copy of the Misc. Case No. 2 of 2009 filed by the G.A. Department and also the order dated 9.11.2009 passed therein in staying operation of the order dated 14.03.2005 passed in Misc. Case No. 1 of 2005. Thereafter, Member Board of Revenue disposed of Misc. Case No. 2 of 2009 by passing the impugned order dated 02.04.2012 under Annexure-18, which is under challenge in the present writ petition. In the meantime, vide order dated 07.09.2017, CONTC No. 1322 of 2007 has also been dismissed.

3. Mr. S.P. Mishra, learned Senior Advocate appearing along with Mr. Soumya Mishra, learned counsel for the petitioner vehemently contended that there was no scope to recall the order dated 14.03.2005 passed by the Member, Board of Revenue after such a long period. As such, the G.A. Department in order to frustrate the order of this Court passed in W.P.(C) No. 11271 of 2005t, filed Misc. Case No. 2 of 2009 before opp. party no.3-Member, Board of Revenue for recalling the order dated 14.03.2005 of the Board of Revenue, which cannot be sustained in the eye of law.

3.1. It is further contended that in the aforesaid Misc. Case No. 2 of 2009 only two sons, i.e., proforma opposite parties no.4 and 5 were made as opposite parties no.1 and 2, leaving aside the other son, i.e., the present petitioner. Therefore, the petitioner filed a writ petition being W.P.(C) No. 749 of 2010 challenging the order dated 09.11.2009 of the opposite party no.3, so also the maintainability of the proceeding. This Court, vide order dated 18.03.2010, disposed of the said writ petition permitting the petitioner to appear before the

Member, Board of Revenue and to be impleaded as a party and pursue his remedy by making all his grievances. Consequentially, the petitioner appeared before opposite party no. 3 and sought for being impleaded as a party in Misc. Case No. 2 of 2009, which was also allowed by order dated 24.05.2010. In Misc. Case No. 2 of 2009, reference was made with regard to judgment dated 13.05.2009 of this Court passed in W.P.(C) No. 337 of 2008 (Chandradhawja Sahu v. Member, Board of Revenue) reported in 2009 (II) OLR 8, so also the decision of this Court in the case of Sarat Chandra Sahu v. A.D.M., Bhubaneswar, 81 (1996) CLT 513, wherein this Court directed to make a review of lease cases. The same was also subject to the limitation as provided under Section 7-A of the Odisha Government Land Settlement Act, 1962 (for short "O.G.L.S. Act, 1962"), which mandates that unless it is established that by fraud the lease has been obtained beyond a period of 14 years. The petitioner on appearing before opposite party no.3 filed an exhaustive objection stating inter alia that the judgment rendered in Chandradhawaja Sahu (supra) was challenged before the apex Court in SLP (Civil) No. 14618 of 2009 and the same was pending after issuance of notice and passing of the order of status quo by the apex Court vide order dated 13.07.2009. It was also contended that the provisions of Odisha Communal Forest and Private Land (Prohibition of Alienation) Act, 1948 has absolutely no application to the present case nor the analysis made by the G.A. Department in the aforesaid misc. case because the O.G.L.S. Act, 1962 being the subsequent legislation envisaged in Section 3 thereof for settlement of such type of waste land/ forest land. Thereby, it is contended that the action taken by opposite party no.3 in passing the order impugned under Annexure-18 cannot be sustained in the eye of law.

3.2. Reliance has also been placed on the decision of the apex Court in the case of M. Meenakshi v. Metadin Agrawal, (2006)7 SCC 470, wherein it was settled that even a void order is required to be set aside by the competent court of law inasmuch as order may be void in respect of one person, but may be valid in respect of another. A void order is necessarily not non est and order cannot be declared to be void in a co-lateral proceeding and, that too, in the absence of the authorities, who were the authors thereof. Reference has also been made to Sneh Gupta v. Devi Swaroop, 2010 (1) CLR (SC) 350.

3.3. By citing the above mentioned decisions, it was contended that in the instant case, the order sought to be recalled, i.e., order dated 14.03.2005, having been passed by the predecessor of the Member, Board of Revenue and the same having not been challenged in the higher forum, even if the same is a void order, by the present co-lateral proceeding, the present Member, Board of Revenue cannot sit over the same to scan it and to find out whether it is valid or not. He further contended that in Sarat Chandra Sahu (supra) this Court held that if the lease order passed by adopting any fraud, fabrication or manipulation of records, the same is only sought to be reviewed, as has been held in various cases of this Court while setting aside the resumption and/or revisional order passed by the Tahasildar and A.D.M. The same view has also been taken in the case of Gopal Das Agrawal v. State of Orissa, 100 (2005) CLT 661.

3.4. Thereby, it is contended that the Member Board of Revenue has no jurisdiction to recall/ review the order dated 14.03.2005 and, as such, the order impugned is liable to be set aside. Though several questions have been raised in the pleadings of the writ petition, but at the time of hearing, Mr. Mishra, learned Senior Advocate appearing for the petitioner laid emphasis only on the jurisdiction of the Member, Board of Revenue to pass the order impugned in Annexure-18 dated 02.04.2012.

4. Mr. L. Samantaray, learned Addl. Government Advocate appearing for the State-opposite parties contended that the writ petition is not maintainable either in facts or in law and the same is wholly misconceived one. Every Court/Quasi Judicial Authority has inherent power to recall its own order under any of the or all of the following circumstances, namely; (1) if the order suffered from lack of jurisdiction; (ii) if the order was rendered without due notice to necessary party; (iii) if the order is obtained by fraud; and (iv) if there was apparent mistake causing prejudice to a party. In the instant case, the order dated 14.03.2005 passed in Misc. Case No. 1 of 2005 suffered from all the above infirmities. Therefore, the Member, Board of Revenue is well justified in passing the order impugned, which does not require any interference of this Court. It was further contended that the settlement had been made on the basis of manufactured documents and the father of the petitioner had played fraud in settlement of the land in his favour. The same cannot be said to be a settlement in accordance with law. Consequentially, while justifying the order passed by the Member, Board of Revenue under Annexure-18, he sought for dismissal of the writ petition.

5. This Court heard Mr. S.P. Mishra, learned Senior Advocate appearing along with Mr. Sohan Mishra, learned counsel for the petitioner and Mr. L.K. Samantaray, learned Addl. Government Advocate appearing for the State-opposite parties in hybrid mode and perused the records. Pleadings have been exchanged between the parties and with the consent of learned counsel for the parties, the writ petition is being disposed of finally at the stage of admission.

6. Before delving into the issue involved, the relevant provisions, basing upon which the order impugned has been passed, are to be taken note of. It is apt to mention here that in exercise of the powers conferred by sub-section (1) of Section 12 read with Section 4 of the Odisha Board of Revenue Act, 1951, the State Government, in supersession of the Rules previously framed from time to time, made The Odisha Board of Revenue Rules, 1959. Rule-4 of the said Rules reads as follows:-

"4. With the prior approval of the State Government, the Member shall in the absence of the authority which passed the original order, hear applications for review in the capacity of his successor in office."

On perusal of the aforementioned rule, it is made clear that with the prior approval of the State Government, the Member, Board of Revenue shall, in absence of the authority which passed the original order, hear applications for review in the capacity of his successor in office. Therefore, such a power is made available to the successor of the Member, Board of Revenue to review the order passed by his predecessor.

7. The above being the procedure for review, at the outset, it is necessary to go through the scope of the petition for review. In this context, it is relevant to refer to Section 114 read with Order-XLVII, Rule-1 of the CPC:-

"114. Review.- Subject as aforesaid, any person considering himself aggrieved- (a) by a decree or order from which an appeal is allowed by this Code, but from which no appeal has been preferred, (b) by a decree or order from which no appeal is allowed by this Code' or (c) by a decision on a reference from a Court of Small Causes, may apply for a review of judgment to the Court which passed the decree or made the order, and the Court may make such order thereon as it thinks fit.

ORDER- XLVII

1. Application for review of judgment. (1) Any person considering himself aggrieved-

(a) by a decree or order from which an appeal is allowed, but from no appeal has been preferred;

(b) by a decree or order from which no appeal is allowed; or

(c) by a decision on a reference from a Court of Small Causes;

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

Explanation - The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment."

8. The apex Court in Gulab Ajwani v. Smt. Saraswati Bai, AIR 1978 SC 326 and Kalabharati Advertising v. Hemant Vimalnath Narichania, (2010) 9 SCC 437 :

[2010] 10 SCR 971 : 2010(II) CLR (SC) 737 clearly laid down that 'review' means a judicial re-examination of the case in certain specified and prescribed circumstances. The power of review is not inherent in a Court or Tribunal. It is a creature of the statute. A Court or Tribunal cannot review its own decision unless it is permitted to do so by statute. The Courts having general jurisdiction have no inherent power under Section 151 of the CPC to review its own order. The Explanation to Section 141 of the CPC clearly lays down that the expression "proceedings" includes proceedings under Order IX, but does not include any proceeding under Article 226 of the Constitution. Therefore, the provisions contained in Section 114 read with Order 47, Rule 1 of the CPC ipso facto may not apply to a proceeding under Article 226 of the Constitution, but its principle will apply.

9. In Chhajju Ram v. Neki, AIR 1922 PC 112, it was held by the Privy Council that analogy must be discovered between two grounds specified therein namely; (i) discovery of a new and important matter or evidence; and (ii) error apparent on the face of record, before entertaining the review on any other sufficient ground.

10. In Rajendra Kumar v. Rambhai, AIR 2003 SC 2095: 2003 AIR SCW 92 : 2002 (3) ACJ 1822; Green View Tea and Industries v. Collector, Golaghat, Assam, (2004) 4 SCC 122 : AIR 2004 SC 1738: 2004 AIR SCW 1347; and Des Raj v. Union of India, (2004) 7 SCC 753 : 2004 AIR SCW 5617 : AIR 2004 SC 5003, the apex Court held that the first and foremost requirement of entertaining a review application is that the order, review of which is sought (a) suffers from any error apparent on the face of the record, and (b) permitting the order to stand will lead to failure to justice.

11. The scope of review has been elaborately considered by the apex Court in Shivdeo Singh and others v. State of Punjab, AIR 1963 SC 1909, Aribam Tuleshwar Sharma v. Aribam Pishak Sharma, AIR 1979 SC 1047 and S.Nagaraj v. State of Karnataka, 1993 Supp.(4) SCC 595.

Considering aforesaid case laws, it has been concluded in S. Madhusudhan Reddy V. Narayana Reddy, (2022) 11 SCR 42 as follows:

"26. As can be seen from the above exposition of law, it has been consistently held by this Court in several judicial pronouncements that the Court's jurisdiction of review, is not the same as that of an appeal. A judgment can be open to review if there is a mistake or an error apparent on the face of the record, but an error that has to be detected by a process of reasoning, cannot be described as an error apparent on the face of the record for the Court to exercise its powers of review under Order XLVII Rule 1 CPC. In the guise of exercising powers of review, the Court can correct a mistake but not substitute the view taken earlier merely because there is a possibility of taking two views in a matter. A judgment may also be open to review when any new or important matter of evidence has emerged after passing of the judgment, subject to the condition that such evidence was not within the knowledge of the party seeking review or could not be produced by it when the order was made despite undertaking an exercise of due diligence. There is a clear distinction between an erroneous decision as against an error apparent on the face of the record. An erroneous decision can be corrected by the Superior Court, however an error apparent on the face of the record can only be corrected by exercising review jurisdiction. Yet another circumstance referred to in Order XLVII Rule 1 for reviewing a judgment has been described as "for any other sufficient reason". The said phrase has been explained to mean "a reason sufficient on grounds, at least analogous to those specified in the rule" (Refer: Chajju Ram v. Neki Ram, AIR 1922 PC 112 and Moran Mar Basselios Catholicos and Anr. v. Most Rev. Mar Poulose Athanasius and Others, (1955) 1 SCR 520)."

12. Therefore, the scope of review is very limited to the extent that (1) if the judgment is vitiated by an error apparent on the face of the record in the sense that it is evident on a mere looking at the record without any long-drawn process of reasoning, a review application is maintainable; (2) if there is a serious irregularity in the proceeding, such as violation of the principles of natural justice, a review application can be entertained and (3) if a mistake is committed by an erroneous assumption of a fact which if allowed to stand, cause miscarriage of justice, then also an application for review can be entertained.

13. In Delhi Administration v. Gurdip Singh Uban., AIR 2000 SC 3737, the apex Court deprecated the practice of filing review application observing that review, by no means, is an appeal in disguise and it cannot be entertained even if application has been filed for clarification, modification or review of the judgment and order finally passed for the reason that a party cannot be permitted to circumvent or bypass the procedure prescribed for hearing a review application.

14. In Subhash v. State of Maharashtra & Anr., AIR 2002 SC 2573, the apex Court emphasized that Court should not be misguided and should not lightly entertain the review application unless there are circumstances fallen within the prescribed limits that the Courts and Tribunal should not proceed to re-examine the matter as if it was an original application before it for the reason that it cannot be a scope of review.

15. In M/s. Jain Studios Ltd. V. Shin Satellite Public Co. Ltd., AIR 2006 SC 2686, the apex Court held that the power of review cannot be confused with appellate powers which enable a superior Court to correct all errors committed by a subordinate Court. It is not rehearing an original matter. A review of old and overruled argument is not enough to reopen concluded adjudications. The power of review can be exercised with extreme care, caution and circumspection only in exceptional cases.

16. In Zahira Habibullah Sheikh v. State of Gujarat, (2004) 5 SCC 353 : AIR 2004 SC 3467 : 2004 AIR SCW 3318, the apex Court referred to its earlier judgments in P.N. Eswara Iyer v. Registrar Supreme Court of India, (1980) 4 SCC

680; Suthendraraja alias Suthenthira Raja v. State, (1999) 9 SCC 323: AIR 1999 SC 3700 : 1999 AIR SCW 3734; Ramdeo Chauhan v. State of Assam, (2001) 5 SCC 714: AIR 2001 SC 2231 : 2001 AIR SCW 2159; and Devender Pal Singh v. State of NCT of Delhi, (2002) 5 SCC 234: AIR 2002 SC 1661: 2002 AIR SCW 1586; and observed that review applications are not to be filed for the pleasure of the parties or even as a device for ventilating remorselessness, but ought to be restored to with a great sense of responsibility as well.

17. In the garb of review, a party cannot be permitted to reopen the case and to gain a full-fledged innings for making submissions, nor review lies merely on the ground that may be possible for the Court to take a view contrary to what had been taken earlier. If a case has been decided after full consideration of the arguments made by a counsel, he cannot be permitted even in the grab of doing justice or substantial justice to engage the Court again to decide the controversy already decided. If a party is aggrieved by a judgment, it must approach the higher Court but entertaining a review to reconsider the case would amount to exceeding its jurisdiction conferred under the limited jurisdiction for the purpose of review.

18. In Kamlesh Verma v. Mayawati and others, AIR 2013 SC 3301, the apex Court held that the jurisdiction and scope of review is not that of an appeal and it can be entertained only if there is an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning can hardly be said to be an error apparent on the face of the record justifying the Court to exercise its power of review. A review is by no means an appeal in disguise whereby an erroneous decision is re-heard and corrected, but lies only for patent error. Error contemplated under the rule must be such which is apparent on the face of the record and not an error which has to be fished out and searched. It must be an error of inadvertence. The power of review can be exercised for correction of a mistake but not to substitute a view. The mere possibility of two views on the subject is not a ground for review. Review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order XLVII, Rule 1 of CPC. In view jurisdiction, mere disagreement with the view of the judgment cannot be the ground for invoking the same. As long as the point is already dealt with and answered, the parties are not entitled to challenge the impugned judgment in the guise that an alternative view is possible under the review jurisdiction. In paragraph 16 of the said judgment, the apex court formulated the following grounds of review:-

“16. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:

(A) When the review will be maintainable :-

(i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;

(ii) Mistake or error apparent on the face of the record;

(iii) Any other sufficient reason.

The words “any other sufficient reason” has been interpreted in Chhajju Ram v. Neki, AIR 1922 PC 112 and approved by this Court in Moran Mar Basselios Catholicos v. Most Rev. Mar Poulose Athanasius and Ors., (1955) 1 SCR 520 : (AIR 1954 SC 526), to mean "a reason sufficient on grounds at least analogous to those specified in the rule". The same principles have been reiterated in Union of India v. Sandur Manganese and Iron Ores Ltd. and Ors., JT 2013 (8) SC 275 : (2013 AIR SCW 2905).

(B) When the review will not be maintainable:-

(i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.

(ii) Minor mistakes of inconsequential import.

(iii) Review proceedings cannot be equated with the original hearing of the case.

(iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.

(v) A review is by no means an appeal in disguise whereby an erroneous decision is re-heard and corrected but lies only for patent error.

(vi) The mere possibility of two views on the subject cannot be a ground for review.

(vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.

(viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.

(ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived."

19. In Budhia Swain v. Gopinath Deb, (1999) 4 SCC 396 : AIR 1999 SC 2089, the apex Court held that a Tribunal or a Court may recall an order earlier made by it if-

(i) the proceedings culminating into an order suffer from the inherent lack of jurisdiction and such lack of jurisdiction is patent,

(ii) there exists fraud or collusion in obtaining the judgment,

(iii) there has been a mistake of the Court prejudicing a party, or

(iv) a judgment was rendered in ignorance of the fact that a necessary party had not been served at all or had died and the estate was not represented.

The power to recall a judgment will not be exercised when the ground for reopening the proceedings or vacating the judgment was available to be pleaded in the original action but was not done or where a proper remedy in some other proceeding, such as, by way of appeal or revision was available but was not availed. The right to seek vacation of a judgment may be lost by waiver, estoppels or acquiescence.

In the opinion of this Court, the present case is categorically covered under clauses (ii) and (iii) of the above principles laid down by the apex Court.

20. In view of above mentioned law, now it is to be examined whether the argument advanced by Mr. S.P. Mishra, learned Senior Advocate appearing for the petitioner, that the Member, Board of Revenue has no power to review and at best it could have recalled its own order, has any force or not. On perusal of Rule-4 of the Odisha Board of Revenue Rules, 1959, it is evident that power has been vested with the Member, Board of Revenue to review the original order passed by the predecessor Member in the capacity of successor in the office. Rule-4 is a statutory rule and that gives power to the Member, Board of Revenue to review the order passed by his predecessor and, as such, the power is well within his jurisdiction which cannot be questioned in the present writ petition, in view of the law discussed hereinbelow.

20.1. In Taylor v. Taylor, (1876) 1 Ch D 426, it was laid down that where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden. This doctrine has often been applied to Courts.

Lord Roche in Nazir Ahmad v. King Emperor, AIR 1936 PC 253 followed the aforesaid principle. Subsequently, the said principle has been well recognized by the apex Court and is holding the field till today, as would be evident from State of Uttar Pradesh v. Singhara Singh, AIR 1964 SC 358; Chandra Kishore Jha v. Mahabir Prasad, AIR 1999 SC 3558, Babu Verghese v. Bar Council of Kerala, (1999) 3 SCC 422; Dhananjay Reddy v. State of Karnataka, AIR 2001 SC 1512; Gujurat Urja Vikas Nigam Ltd. v. Essar Power Ltd., AIR 2008 SC 1921; Ram Deen Maurya v. State of U.P., (2009) 6 SCC 735 and Zuari Cement Limited v. Regional Director, Employes' State Insurance Corporation, Hyderabad and others, (2015) 7 SCC 690. The said principle has also been referred by this Court in the case of Subash Chandra Nayak v. Union of India, 2016 (I) OLR 922; Rudra Prasad Sarangi v. State of Orissa, 2021 (I) OLR 844; Bamadev Sahoo v. State of Orissa, 132 (2021) CLT 927: 2021 (Supp.) OLR 674; and Raj Kishor Deo v. State of Odisha, 2022 (II) OLR 415.

20.2. Thereby, this Court is of the considered view that the Member, Board of Revenue has jurisdiction to interfere with the order passed by its predecessor-Member Board of Revenue, being the successor in office, in view of Rule-4 of the Odisha Board of Revenue Rules, 1959.

21. There is no doubt, that the Member, Board of Revenue exercises the power of

quasi judicial authority, which has the inherent power to review/recall of its own order, (i) if the order suffered from lack of jurisdiction; (ii) if the order was rendered without due notice to necessary party; (iii) if the order is obtained by fraud; and (iv) if there was apparent mistake causing prejudice to a party. In the instant case, the order dated 14.03.2005 of opposite party no.3 passed in Misc. Case No. 1 of 2005 suffered from all the above infirmities. Meaning thereby, opposite party no.3 in the order dated 14.03.2005 clearly misconceived the provisions contained in Section-4 of the Orissa Board of Revenue Act, 1951, as no prior approval of the Government for exercising such jurisdiction was obtained and there was no scope under the aforesaid provisions to interfere with the order passed by the forum below under a specific Act. Secondly, the ROR of the case schedule land stands in favour of the State Government in G.A. Department and the said Department is the lawful owner of the case schedule land consequent upon inclusion of Mouza-Chandrasekharpur within Bhubaneswar Urban Area vide UD Department Notification No.32241 dated 25.11.1972. Therefore, the State Government in G.A. Department was a necessary party to Misc Case No.1 of 2005. In the order dated 14.03.2005, the then opposite party no.3 had not taken into consideration the delay of about 35 years in filing Misc. Case No.1 of 2005 for implementation of the orders passed in W.L. Case No.1094 of 1970 in the year 1970-71. Therefore, without issuing any notice to the Government in G.A. Department in Misc. Case No.1 of 2005, the order dated 14.03.2005 was passed, which prejudiced the State-opposite parties. Thirdly, the report dated 22.06.2011 of opposite party no.2 furnished before opposite party no.3 reveals that the so called record in W.L. Case No. 1094 of 1970 was a manufactured one as the signature of the Tahasildar appeared therein on various dates were found to be forged on verification; no court fee was realised from the said lease applicant; no notice inviting objection from general public as well as local Gram Panchayat was served; no confirmatory order of the Sub-Divisional Officer confirming the lease was obtained; no salami had been realised from the said lessee; and opposite party no. 2 lacked jurisdiction to settle Ac.5.000 decimals of land, that too with forest classification both under the approved leased principles and the O.G.L.S. Act, 1962. Therefore, the order dated 11.05.1971 passed in W.L. Case No.1094 of 1970 was an outcome of fraudulent actions of the parties. Thus, the order dated 14.03.2005, which was passed for implementation of the order passed by opposite party no.2 in W.L. Case No.1094 of 1970, was an outcome of fraudulent actions of the parties. It is well settled principle laid down by the apex Court that fraud vitiates the entire proceeding.

21.1. It is worthwhile to refer to the Judgment of Supreme Court of India in the case of Chandradhoja Sahoo V. State of Odisha, (2012) 9 SCR 1158, whereby the Judgment of this Court in Chandradhoja Sahoo V. State of Odisha, 2009 (II) OLR 8 has been set aside with the following observations:

"14. As already noticed two questions had arisen for determination before the High Court on the conspectus of the facts noted above. The first is whether the case record of W.L. Case No. 71 of 1979, including the reports and orders passed therein, are forged and fabricated. The second is assuming the lease as claimed by the appellant to have been granted whether the same is permissible under the provisions of the Act of 1948. The questions posed above not only indicates that the second may be contingent on an answer to the first and, in any case, as discussed hereinafter, there is a fair amount of co-relation between the two questions though the same may appear to be independent of each other.

***

17. *** In the record of proceedings of W.L. Case No. 71 of 1979, it is also recorded that the aforesaid orders were passed by the Tehsildar upon due service of notice. The State contended that the aforesaid facts are wholly non-existent and the reports mentioned and orders issued in connection with W.L. Case No.71 of 1979 are forged and fabricated. In fact, according to the State, the entire claim of the appellant was based on non-existent facts conceived in fraud and deceit and there was no case registered as W.L. Case No.71 of 1979 in respect of the plot Nos. 516 and 301. If the version put forth by the appellant is correct, the outcome/decision on the second issue before the High Court would have certainly stood answered in his favour inasmuch as in such a situation the question of applicability of the Act of 1948 would not arise. If the answer to the said question was, however, to be adverse to the appellant and in favour_ of the State, the appellant would not be entitled to any relief from the Court on a more fundamental principle than what the second question had raised inasmuch as in that event the principle that 'fraud and justice never dwell together' would come into play. The elaborate discussions on the said principle of law in Meghmala vs. G.Narasimha Reddy, (2010) 8 SCC 383 made by one of us (Sathasivam,J.) may be remembered at this stage with abundant profit. Besides, the additional facts now made available to the court on behalf of the IDCO namely, that a part of the land covered by plot Nos. 516 and 301 had been alienated in favour of IDCO under the provisions of the Orissa Land Settlement Act would require a closer examination of the question as to how such an alienation could have been made in favour of the IDCO if the land was recorded as 'Kanta Jungle' in the Record of Rights published in the year, 1973.

18. The discussions that have preceded reasonably lead to the conclusion that the approach of the High Court in attempting to resolve the conflict between the parties suffer from a fundamental error which would justify a correction. The High Court ought not to have split up the two questions as if they were independent of each other and on that basis ought not to have proceeded to determine the second question without recording acceptable findings on all aspects connected with the first. The extracts from the order of the High Court made above discloses mere acceptance of the version of the State as disclosed in the counter affidavit filed without any attempt to enter into the core questions that the conflicting claims of the parties had thrown up. If required, the High Court could have entrusted the required exercise to be performed by a Court Appointed Committee. In any event, such a Committee had been constituted by

the High Court by its very same order to look into other such cases of grant of leases under the Act of 1948.

19. We also deem it necessary to reiterate herein a fundamental principle of law that all courts whose orders are not final and appealable, should take notice of. All such courts should decide the lis before it on all issues as may be raised by the parties though in its comprehension the same can be decided on a single or any given issue without going into the other questions raised or that may have arisen. Such a course of action is necessary to enable the next court in the hierarchy to bring the proceeding before it to a full and complete conclusion instead of causing a remand of the matter for a decision on the issue(s) that may have been left undetermined as has happened in the present case. The above may provide a small solution to the inevitable delays that occur in rendering the final verdict in a given case."

22. In Webster's Third New International Dictionary "fraud" in equity has been defined as an act or omission to act or concealment by which one person obtains an advantage against conscience over another or which equity or public policy forbids as being prejudicial to another.

22.1. In Black's Law Dictionary, "fraud" is defined as an intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or surrender a legal right; a false representation of a matter of fact whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive another so that he shall act upon it to his legal injury.

22.2. In Concise Oxford Dictionary, it has been defined as criminal deception, use of false representation to gain unjust advantage; dishonest artifice or trick.

22.3. According to Halsbury's Laws of England, a representation is deemed to have been false, and therefore a misrepresentation, if it was at the material date false in substance and in fact. Section 17 of the Contract Act, 1872 defines "fraud" as an act committed by a party to a contract with intent to deceive another. From the dictionary meaning or even otherwise fraud arises out of the deliberate active role of the representator about a fact, which he knows to be untrue yet he succeeds in misleading the representee by making him believe it to be true. The representation to become fraudulent must be of fact with knowledge that it was false.

22.4. In a leading English case i.e. Derry v. Peek, (1886-90) All ER Rep 1 : (1889) 14 AC 337 : 61 Lt 265 (HL) what constitutes "fraud" was described thus : (All ER p.22 B-C)

"Fraud is proved when it is shown that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly, careless whether it be true or false."

“Fraud” and collusion vitiate even the most solemn proceedings in any civilized system of jurisprudence. It is a concept descriptive of human conduct. Michael Levi likens a fraudster to Milton’s sorcerer, Camus, who exulted in his ability to, “wing me into the easy-hearted man and trap him into snares”.

22.5. In Lazarus Estates Ltd. v. Beasley, (1956) 1 QB 702 : (1956) 1 All ER 341 : (1956) 2 WLR 502 (CA) Lord Denning observed at QB pp.712 and 713: (All ER p. 345 C)

“No judgment of a court, no order of a minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything.”

22.6. The apex Court in Elektrim SA v. Vivendi Universal SA, (2010) 8 SCC 383 while considering Section 17 of Contract Act, 1892 held as follows:

“Fraud is an intrinsic, collateral act, and fraud of an egregious nature would vitiate the most solemn proceedings of courts of justice. Fraud is an act of deliberate deception with a design to secure something, which is otherwise not due. The expression “fraud” involves two elements, deceit and injury to the person deceived. It is a cheating intended to get an advantage.”

22.7. It is settled proposition of law that where an applicant gets an order by making misrepresentation or playing fraud upon the competent authority, such order cannot be sustained in the eye of the law. Fraud and justice never dwell together (fraus et jus nunquam cohabitant) and it is a pristine maxim which has never lost its temper over all these centuries. The ratio laid down by the Supreme Court in various cases is that dishonestly should not be permitted to bear the fruit and benefit to the persons who played fraud or made misrepresentation and in such circumstances the Court should not perpetuate the fraud.

22.8. In K.D. Sharma v. SAIL, (2008) 12 SCC 481, the apex Court held as follows:

“Fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. In fraud one gains at the loss and cost of another. Even the most solemn proceedings stand vitiated if they are actuated by fraud. Fraud is thus an extrinsic collateral act which vitiates all judicial acts, whether in rem or in personam.”

22.9. In S.P. Chengalvaraya Naidu v. Jagannath, (1994) 1 SCC 1, the apex Court held as follows:

“A “fraud” is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another’s loss. It is a cheating intended to get an advantage.”

22.10. In Ram Chandra Singh v. Savitri Devi, (2003) 8 SCC 319, the apex Court held as follows:

““Fraud” as is well known vitiates every solemn act. Fraud and justice never dwell together. Fraud is a conduct either by letters or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letters. It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by willfully or recklessly causing him to believe and act on falsehood. It is fraud in law if a party makes representations, which he knows to be false, and injury ensues therefrom although the motive from which the representations proceeded may not have been bad. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including res judicata.”

23. Resultantly, the order dated 14.03.2005 passed by the then Member, Board of Revenue, for implementation of the order passed by opposite party no.2 in W.L. Case No. 1094 of 1970, was an outcome of fraudulent action by the parties. As such, the then Member, Board of Revenue clearly committed a mistake in directing implementation of such a fraudulent and per se illegal order passed about 35 years back that too in ignorance of the recorded owner of the case schedule land. Thereby, all the requirements of law to recall/review of its own order earlier passed were satisfied. When such gross illegalities came to the notice, the same have been rectified/corrected, as fraud vitiates every solemn act. Consequentially, opposite party no.3-Member, Board of Revenue, by exercising its jurisdiction in consonance with the power vested on him under Rule-4 of Odisha Board of Revenue Rules, 1959, has rightly passed the order impugned. Furthermore, the Misc. Case filed by the State-opposite parties for recall of the order dated 14.03.2005 passed in Misc. Case No. 1 of 2005 was to prevent the illegalities committed in passing the order by rectifying/correcting the same, which is well justified, as a result of which, the order dated 02.04.2012 was passed in Misc. Case No. 2 of 2009. The claim for setting aside the order dated 02.04.2012 passed in Misc. Case No.2 of 2009 will restore the illegalities committed in the order dated 14.03.2005, which is not permissible.

24. Above apart, delay in approaching the opposite party no.3 in the year 2005 by way of Misc. Case No.1 of 2005 for implementation of the order dated 11.05.1971 passed in W.L. Case No.1094 of 1970, is also not explained by the then Member, Board of Revenue. In the order dated 14.03.2005 passed in Misc. Case No.1 of 2005 in one hand the then Member, Board of Revenue held that the Revision is not maintainable, yet on the other hand directed opposite party no.2-Tahasildar to give effect to the order passed in W.L. Case No.1094 of 1970. Thereby, the then Member, Board of Revenue was himself confused while passing

the order dated 14.03.2005, as a consequence thereof the same is impermissible in law. Meaning thereby, if it was held that revision is not maintainable, then no direction could have been issued to opposite party no.2-Tahasildar to implement any order passed in the W.L. case after long lapse of 35 years.

25. Furthermore, W.L. Case No. 1094 of I970 was clearly a product of fraud in view of the fact that without obtaining any prior permission of the Collector under Section-3(1) of the Odisha Communal Forest and Private Land (Prohibition of Alienation) Act 1948, the same was allegedly leased out and, as such, the Tahasildar had lacked jurisdiction to lease out the land which has been classified as forest land, i.e., Jhati Jungle appertaining to pre-Sabik Plot No.272, Khata No.303 of Mouza-Chandrasekharpur. Apart from the same, Tahasildar had no jurisdiction to lease out the land to the extent of Ac. 5.000 decimal that too without confirmation of the then SDO concerned. The report dated 22.06.2011 of opposite party no.2 submitted to opposite party no.3 clearly indicates that the signatures appended to the order sheet of W.L. Case No.1094 of 1970 did not tally with the signatures of the then Tahasildar; the lease application did not contain any Court fee; and no signatures of the then Tahasildar on the body of it; there was no copy of general notice duly served by beat of drums and fixture thereof at prominent places as well as in the Gram Panchayat; and there was no report of the Amin with sketch map; further neither any salami was realised nor any intimation to the R.I. in ‘K’ Form was issued. In view of such sequence of illegalities and irregularities, the order passed in W.L. Case No. 1094 of 1970 itself was an outcome of forgery made by the beneficiary with the collusion of the Tahasil staff to grab a valuable Government land measuring Ac.5.000 decimals situated in the heart of the capital city.

26. It is of relevance to note that when the review of all the Waste Land Lease Cases were taken up by the ADM, Bhubaneswar in compliance of order dated 29.01.1996 passed in OJC No.9449 of 1993, the present case i.e. W.L. Case No.1094 of 1970 was not reviewed by the ADM, which proves that no such case record of W.L. Case No. 1094 of 1970 existed at the time of said review. No genuine tenant can sleep over the matter of issuance of ROR in his favour for about 35 years and then approach opposite party no.3 by filing Misc. Case No. l of 2005 for implementation of the order passed about 35 years ago. However, the then opposite party no.3 by misconceiving his jurisdiction available under Section 4 of the Board of Revenue Act, 1951 without obtaining prior approval of the Government and without ensuring due notice to the recorded owner of the case land, i.e. Government in G.A. Department, passed the order on 14.03.2005 in Misc. Case No. 1 of 2005. Since the said Misc. Case No. 1 of 2005 was filed by the petitioner 35 years after passing of the so called order in W.L. Case No. 1094 of 1970, as a matter of prudence a report from the opposite party no.2 should have been called for, but no such report appears to have been called for from opposite party no.2 by the opposite party no.3 while passing the order dated 14.03.2005, which is per se illegal and non est in the eye of law.

27. Much reliance was placed on the order dated 20.11.2006 passed by this Court in W.P.(C) No. 11271 of 2005 filed by pro forma opposite parties no.4 and 5 with a prayer to issue direction to opposite party no.2 to implement the order dated 14.03.2005 passed by the Member, Board of Revenue in Misc. Case No. 1 of 2005. On perusal of the said order, it would be evident that this Court, without expressing any opinion on the merit of the claim of the said petitioners, disposed of the writ petition giving liberty to opposite party no.2 to act in accordance with the direction issued by opposite party no.3 in Misc Case No. 1 of' 2005 or to take such other decision expeditiously as deemed fit in the facts and circumstances of the case after giving an opportunity of hearing to the parties in the matter. Misc Case No. 1769 of 2007 was filed in the said writ petition, which was disposed of vide order dated 23.03.2007 by allowing six months time for implementation of the order dated 20.11.2006. It is not a fact that Misc. Case No. 2 of 2009 was filed by the State-opposite parties as a dilatory tactics to defeat the order dated 20.11.2006 of this Court, but, since the petitioner had not impleaded the G.A. department as an opposite party in Misc. Case No. 1 of 2005, even though the said department was a necessary party, such application was filed. Therefore, question of adoption of dilatory tactics by the State-opposite parties does not arise. Rather, it was brought to the notice of this Court as to how one of the parties will be prejudiced, in view of the fact that actually they are the owner of the property and behind their back and by playing fraud the father of the petitioner and pro forma opposite parties no.4 and 5 was trying to settle the land in question in their favour. As lawful owner and title holder of the case land, opposite party no.1 filed Misc. Case No.2 of 2009 before the opposite party no.2 for recall of the order dated 14.03.2005 passed in Misc. Case No.1 of 2005. As a consequence thereof, opposite party no.3, as an interim measure passed an interim order on 09.11.2009 staying the order dated 14.03.2005 passed in Misc Case No.1 of 2005.

28. On perusal of the record, it is revealed that in Misc. Case No. 2 of 2009, the State-opposite parties had raised two principal grounds, such as:-

(i) Order dated 11.05.1971 being tainted with fraud and passed in excess of jurisdiction vested under the OGLS Act, no valid leasehold rights created over the case schedule land; and.

(ii) Case schedule land being shown as “Jhati Jungle” in the then Record of Rights of 1930-31, grant of lease is void being contrary to the provisions of Odisha Communal Forest and Private Lands (Prohibition of Alienation) Act, 1948.

29. The interim order of the apex Court dated 13.07.2009 in the case of Chandradhoja Sahoo (supra) was not within the knowledge of the State-opposite parties. As already stated hereinabove, the judgment of this Court in Chandradhoja Sahoo, 2009 (II) OLR 8 has been set aside in Chandradhoja Sahoo, (2012) 9 SCR 1158 : AIR 2013 SC 367. Misc. Case No.2 of 2009 was filed on 09.11.2009. The apex Court in paragraph-42 of judgment dated 20.04.2009 in the case of State of Odisha Vs. Harapriya Bisoi, AIR 2009 SC 2991 held that as

per Section-3 of the Odisha Communal Forest and Private Land (Prohibition or Alienation) Act, 1948, grant of lease in contravention of Section-3(l) of the Act 1948 is void and inoperative as per Section-4(1) of the Act. Similarly, in the

case of State of' Odisha v. Nityananda Satapathy, 96 (2003) CLT 720 (SC), the apex Court held that land of communal nature cannot be alienated in any manner. But the contention raised by the petitioner that the Odisha Communal Forest and Private Land (Prohibition or Alienation) Act, 1948 is an obsolete and redundant Act is also not at all correct but totally misconceived, in view of the fact that the said Act was never repealed and in several pronouncements, this Court as well as the apex Court have relied upon the provisions of the said Act. It is a fact that before filing of affidavit in the apex Court in response to the directive dated 12.12.1996 in the case of T.N. Godavarman Thirumulpad v. Union of India and others, (1997) 2 SCC 267, the provisions of the Forest Conservation Act, 1980 was not rigorously followed/ observed. In the instant case, the procedure prescribed in Section 3 of the Act, 1948 has not been followed for the reasons best known to the opposite party no.2, who passed the order in WL Case No.1094 of 1970. Therefore, the so called lease granted in favour of the father of the petitioner and proforma opposite parties no.4 and 5 vide order dated 11.05.1971 has been objected to as prior permission of the Collector as required under Section 3 (1) of the Act, 1948 was not obtained. Therefore, the so called allotment of revenue forest land “Buda Jungle”, “Kanta Jungle” and “Chhota Jungle” for non-forest activities by the Government, after observing due procedure, has no relevance to the case of the petitioner, where the procedure has not been complied with and/or violated. Hence, there is no question of blowing hot and cold simultaneously and showing discriminatory attitude. As a consequence thereof, the petitioner has misconceived himself and, as such, the contention so raised by the petitioner cannot be sustained in the eye of law.

30. So far as SLP (C) No. 14618 of 2009, subsequently numbered as Civil Appeal No.9085 of 2012 (Chandradhoja Sahoo v State of Odisha and others) is concerned, the same was disposed of by the apex Court finally vide order dated 14.12.2012 [(2012) 9 SCR 1158] by setting aside the order dated 13.05.2009 passed by this Court and remanding the case for de novo decision as expeditiously as possible. Thereby, the interim order of status quo dated 13.07.2009 is no more operating in the matter.

31. The impugned order dated 02.04.2012 clearly reveals that the case records of W.L. Case No. 1094 of 1970 and documents were prepared in suspicious circumstances. The case record clearly reveals that the same was manufactured one, as the signatures appended on different dates were not genuine signature of the then Tahasildar. Neither any court fee is there on the application; nor any salami was realised; or was any intimation sent to the concerned RI in Form-K. Thereby, it is absolutely fraudulent document. As a consequence thereof, the order impugned does not require interference by this Court at this stage.

32. In view of the facts and law, as discussed above, this Court is of the considered view that the writ petition merits no consideration and the same stands dismissed. But, however, under the circumstances of the case there shall be no order as to costs.

………………………………….

