

**(2025) 05 OHC CK 1223**  
**In the Orissa High Court**  
**Case No : Writ Petition (C) No. 20465 Of 2012**

Ghanashyam Mallick

APPELLANT

Vs

Collector, Bhadrak & Ors Vs

RESPONDENT

**Date of Decision :** 09-05-2025

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227  
Odisha Prevention of Land Encroachment Act, 1972 — Section 3, 3(a)(1) 3(a)(2), 7, 7(2), 9(3), 12(2)  
Orissa Prevention of Land Encroachment Rules 1985 — Rule 15

**Citation :** (2025) 05 OHC CK 1223

**Hon'ble Judges :** Dr. S.K. Panigrahi, J

**Bench :** Single Bench

**Advocate :** N. K. Sahu, J. Sahoo, Prafulla Kumar Rath

**Final Decision :** Disposed Of

## Judgement

Dr. S.K. Panigrahi, J.

1. The Petitioner, in the present Writ Petition, challenges the order dated 11.05.2012 passed by the Collector, Bhadrak in OPLE Revision Case No. 2 of 2010, which confirms the order dated 12.12.2009 passed by the Additional Sub-Collector, Bhadrak in Encroachment Appeal Case No. 15/2007.

I. FACTUAL MATRIX OF THE CASE:

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

(i) The Petitioner is a permanent resident of Village Rahania in the district of Bhadrak. The Petitioner claims to be landless and without a homestead., and that he has been in continuous possession of land measuring Ac.0.2 dec. since 1980. The said land consists of MS Plot No. 2654 measuring Ac.0.1 dec. and Plot No. 2655 measuring Ac.0.1 dec., both under Khata No. 728, recorded in the name of the Government and classified as AbadaJogya Anabadi.

(ii) In the year 2000, the then Tahasildar, Dhamnagar initiated Encroachment Case No. 54/2000 under Section 7 of the Odisha Prevention of Land Encroachment Act, 1972, directing the Petitioner to show cause as to why he should not be evicted from the disputed land.

(iii) Upon receipt of the said notice, the Petitioner submitted an application before the Tahasildar seeking settlement of the aforesaid land in his favour under Section 7(2) of the Odisha Prevention of Land Encroachment Act, 1972.

(iv) On receipt of the Petitioner's application, a lease case bearing Lease Case No. 54/2000 was registered, and the Revenue Inspector of Rahania Circle was directed to conduct an enquiry and submit a report regarding the Petitioner's status, along with details of his annual income.

(v) In pursuance of the order passed by the Tahasildar, the Revenue Inspector of Rahania submitted his report on 19.06.2000, which clearly indicated that the Petitioner was a landless person, residing in a single-family unit and earning his livelihood as a daily agricultural labourer, with an annual income of less than Rs. 5,000 from all sources. Simultaneously, a public notice in Form-J, in accordance with Rule 15 of the OPLE Rules, 1985, was issued by the Tahasildar, inviting objections from the general public of the locality regarding the proposed settlement of the government land in favour of the Petitioner. No objection was filed before the Tahasildar by any member of the public opposing the Petitioner's claim for settlement of the disputed land in his favour.

(vi) The learned Tahasildar, Dhamnagar, upon perusal of the report submitted by the Revenue Inspector and in the absence of any objections, being satisfied that the record showed that the Petitioner was a landless person, directed the settlement of the disputed land measuring Ac. 0.2 dec. in favour of the Petitioner vide his order dated 15.07.2000, in Lease Case No. 54/2000.

(vii) The disputed land was recorded in the name of the Petitioner under Sabik Khata No. 708/37, Plot Nos. 2654 and 2655, measuring Ac. 0.2 dec., and the corrected ROR was issued in favour of the Petitioner under the status of Stitiban. The Petitioner paid rent for the disputed land to the State and has been residing on the land, having constructed a house for himself and his family.

(viii) In the meantime, consolidation operations commenced in the area, and during this process, the land register for the disputed land was prepared in the name of the Government, despite the fact that the land had already been settled in the name of the Petitioner under stitiban status.

(ix) Upon discovering the irregularity in the preparation of the land register by the consolidation authority, the Petitioner filed an objection bearing Objection Case No. 1064 of 2000 under Section 9(3) of the OCH&PFL Act, before the Consolidation Officer, Bhadrak, seeking the necessary correction in the register and requesting that his name be recorded as the owner of the disputed property, in light of the order passed by the Tahasildar, Dhamnagar, in Lease Case No.

54/2000. No one raised any objection to recording the Petitioner's name over the disputed land. Ultimately, the Consolidation Officer, Bhadrak, vide his order dated 19.07.2001, directed the recording of the disputed land in the name of the Petitioner under stitiban status.

(x) Accordingly, the final consolidation ROR was published and issued to the Petitioner by the Consolidation Authority on 01.04.2003 under Section 22(2) of the Consolidation Act, recording the disputed land under PCS Khata No. 219, Plot Nos. 2559 and 2560, totaling an area of Ac. 0.2 dec. No appeal was preferred against the order dated 19.07.2001 passed by the Consolidation Officer in Objection Case No. 1064/2000, and the said order thus attained finality.

(xi) While the Petitioner was in possession of the disputed land, residing there with a dwelling house constructed, and having been recorded as the owner of the property in the ROR prepared by the Consolidation Authority, a group of villagers filed an Encroachment Appeal bearing Appeal Case No. 50 of 2001 before the Sub-Collector, well beyond the prescribed period of limitation for filing such an appeal, challenging the order of settlement passed by the Tahasildar.

(xii) The learned Sub-Collector allowed the appeal vide order dated 15.04.2003, directing the Tahasildar, Bhadrak, to re-examine the eligibility criteria for settling the land in favour of the Petitioner.

(xiii) In pursuance of the order of remand dated 15.04.2003 passed by the appellate authority, the Tahasildar reopened Lease Case No. 54/2000, and a notice was served on the Petitioner to appear before him for the fresh adjudication of the dispute.

(xiv) On the Petitioner's appearance, the case was heard on 27.04.2007. Despite the Petitioner submitting relevant documents, the learned Tahasildar, relying on a report from the Revenue Inspector, Bhandaripokhari, concluded that the Petitioner was not landless or homestead-less, citing ownership of 0.19 dec. and 1.50 dec. of irrigated agricultural land. The Tahasildar further found that the Petitioner was neither in possession nor had constructed a dwelling house, and the disputed land was being used by villagers for the "Sapta Festival." Based on these findings, the Tahasildar dismissed Lease Case No. 54/2000 on 27.04.2007 and ordered the correction of the record to reflect the Petitioner's name.

(xv) After the dismissal of the case, the Petitioner, aggrieved by the Tahasildar's order, filed Encroachment Appeal No. 15 of 2007 before the Sub-Collector. The learned Appellate Authority confirmed the Tahasildar's order and rejected the Petitioner's appeal by its order dated 12.12.2009.

(xvi) The Petitioner, aggrieved by the order of the Appellate Authority, filed OPLE Revision Case No. 2 of 2010 under Section 12(2) of the Odisha Prevention of Land Encroachment Act, 1972, raising legal and several grounds. However, the learned Revisional Court, by its order dated 11.05.2012, dismissed the revision, concluding that the Petitioner was not a homestead-less person and, therefore,

ineligible to receive Government land for house-site purposes.

(xvii) Aggrieved by this decision and finding no alternative efficacious remedy, the Petitioner has now filed the present writ petition.

## II. SUBMISSIONS ON BEHALF OF THE PETITIONER:

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

(i) The Petitioner submitted that the learned revisional authority erred in concluding that the Petitioner is neither landless nor without a homestead. The authorities mistakenly stated that the Petitioner owns certain parcels of land, however the records regarding the extent of this land are inconsistent. For example, the Tahasildar's report claims the Petitioner owns Ac. 0.19 dec for a homestead and Ac. 1.50 dec for agricultural purposes, whereas the Collector's report states the Petitioner owns only Ac. 0.0125 dec for a homestead and Ac. 0.2725 dec for agricultural purposes. These conflicting findings are based on unreliable records and a lack of proper judicial review. Therefore, the decision should be quashed due to these contradictions and the absence of sufficient evidence.

(ii) The Petitioner submitted that the learned Tahasildar and the appellate authority erroneously relied on the purported report submitted by the R.I. dated 11.3.2007, despite it lacking supporting records. This report contradicted the earlier inquiry report submitted by the Revenue Supervisor on 13.1.2005, which clearly stated that the Petitioner's father owned only 1.09 acres of agricultural land, and the homestead property was recorded under multiple names, none of which solely belonged to the Petitioner.

(iii) The Petitioner submitted that the learned courts below misinterpreted the definition of a "landless" person under Section 3 of the Odisha Prevention of Land Encroachment Act, 1972, which applies to individuals owning less than one standard acre of land, excluding homestead property. The Revenue Supervisor's report, which indicated that the Petitioner's father's land holdings were below the threshold for "landless" status, was overlooked, leading to the erroneous conclusion that the Petitioner did not qualify as "landless." This misinterpretation, coupled with the failure to consider crucial evidence, resulted in the reversal of the settlement of the disputed land in the Petitioner's favor.

(iv) The Petitioner submitted that the learned courts below erred by failing to consider the legal effect of the ROR prepared by the consolidation authority. It is well-established that the ROR issued by the consolidation authority cannot be equated with that of the settlement authority, as the consolidation authority holds the power to determine rights, title, and interest over properties within its jurisdiction. In this case, after the disputed property was settled in the Petitioner's name, the Petitioner filed Objection Case No. 1064/2001, and by order dated 19.07.2001, the consolidation officer recognized the Petitioner's title

and possession. This order, which was not challenged by the Government, is binding and operates as *res judicata*. The learned courts below, by failing to consider this binding order, passed the impugned orders that are barred by *res judicata* and estoppel, rendering them liable to be quashed.

(v) The Petitioner further submitted that the learned Courts below committed a gross error of law and procedure in setting aside the order of settlement passed in favor of the Petitioner on 15.07.2000, despite the land in question being recorded in the Petitioner's name under *sthiban* status in the ROR prepared by the consolidation authority in 2001. The cancellation of this ROR by the Tahasildar, based on a purported proceeding under the Odisha Prevention of Land Encroachment Act, 1972, entirely without jurisdiction and is grossly barred by the law of limitation. The learned Courts below failed to consider this vital legal aspect, rendering the impugned orders liable to be quashed.

(vi) The Petitioner further submitted that the learned Courts below erred in law by finding that the disputed property falls under the category of "objectionable land." A simple review of the record clearly shows that the land was originally recorded under the status of "AbadaJogyaAnabadi," which does not fall within the definition of "objectionable land" as per Section 7(2), Second Proviso of the Odisha Prevention of Land Encroachment Act, 1972. Therefore, the findings made by the learned Courts below are legally untenable, and the impugned orders, based on these erroneous findings, are liable to be quashed.

### III. SUBMISSIONS OF THE OPPOSITE PARTIES:

4. Per contra, the learned counsel for the Opposite Parties earnestly made the following submissions in support of his contentions:

(i) The Petitioner is neither homestead-less nor landless, as sufficient land is recorded in his name under the BhandaripokhariTahasil. This is evidenced by the RORs bearing Nos. 52, 109, 110, 220, 269, 597, 598, 672, 673, 720, and 971/106.

(ii) The disputed land is Government land. Considering the Petitioner's ownership substantially recorded land, he was ineligible for settlement of the disputed property in his favor. The Tahasildar wrongly settled and recorded the land in the Petitioner's name without conducting proper verification. As a result, the Petitioner's claims before various forums under the Odisha Prevention of Land Encroachment Act, 1972, were ultimately unsuccessful.

(iii) The Collector, Bhadrak, after hearing OPLE Revision No. 2 of 2010 under Section 12(2) of the Odisha Prevention of Land Encroachment Act, 1972,, passed a reasoned order on 11 May 2012, affirming the earlier orders dated 27 April 2007 of the Additional Tahasildar in Encroachment Case No. 54 of 2000 and 12 December 2009 of the Additional Sub-Collector in Encroachment Appeal No. 15 of 2007. The Collector concluded that the Petitioner is not eligible to receive Government land for house-site purposes.

(iv) The Petitioner is in unauthorized possession of Plot Nos. 2654 and 2655, each measuring 0.01 acre, classified as Patita under Khata No. 728, AbadaJogya Anabadi, in Village Rahania, which corresponds to Consolidation Khata No. 219, Plot Nos. 2559 and 2560. The petitioner already owns stitiban land.

(v) The Sub-Collector, Bhadrak, in Encroachment Appeal No. 8 of 2001, remanded the matter to the Tahasildar, Dhamnagar, with directions to re-examine the Petitioner's eligibility in light of the objections raised by one Prahallad Rout and four others from Village Rahania. The Revenue Inspector, Rahania, conducted an inquiry into the land holdings of the Petitioner, including his paternal property, and submitted a report dated 14 December 2023, bearing Letter No. 198. The report included a genealogy chart and RORs confirming the Petitioner's recorded share in several plots, with the following measurements: 0.17.500 acres, 0.27.250 acres, 0.00.250 square links, 0.12 acres, 0.01 acres, 0.03.333 acres, 0.06.875 acres, 0.11.666 acres, 0.00.750 square links, 0.00.156 square links, and 0.00.666 square links.

(vi) The Opposite Parties 4 to 8, residents of Village Rahania, filed Consolidation Revision Case No. 187 of 2015 before the Additional Commissioner of Settlement and Consolidation, Balasore, against Ghanashyam Mallick, the present Petitioner. By order dated 6 October 2016, the revision was allowed, with a clear finding that the Petitioner is not entitled to have Hal Plot Nos. 2559 and 2560, each measuring 0.01 acres, recorded in his name under Hal Consolidation Khata No. 219 of Mouza Rahania. The Tahasildar, Bhandaripokhari, was directed to record the said plots in the name of the State Government under the AbadaJogya Anabadi Khata, after deleting them from the Petitioner's Khata.

#### IV. COURT'S REASONING AND ANALYSIS:

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

6. The primary issue for adjudication in this case is whether the Tahasildar, Additional Sub-Collector, and Collector erred in their conclusion that the Petitioner did not qualify as a homestead-less person. This conclusion ultimately rendered the Petitioner ineligible for settlement of Government land in his favour for the purpose of establishing a house-site.

7. In order to determine eligibility, it is essential to first examine the legal framework governing the criteria for such a claim.

8. Section 7(2) of the Orissa Prevention of Land Encroachment Act, 1972 provides a mechanism for the settlement of land occupied by a landless or homestead-less person, subject to certain conditions, including the extent of land and the intended use.

9. In particular, Sections 3(a-1) and 3(a-2) of the Orissa Prevention of Land Encroachment Act, 1972 define the terms "landless person" and "homestead-less person," respectively, thereby establishing the criteria that must be met for a

person to qualify for land settlement under the Odisha Prevention of Land Encroachment Act, 1972.

10. Upon a careful perusal of the case records and the authorities' findings, it appears that the Tahasildar, Additional Sub-Collector, and Collector evaluated the Petitioner's land holdings and concluded that the Petitioner did not meet the criteria of a "homestead-less person." This conclusion was based on the Petitioner's own written admission that they possessed a small parcel of homestead land and agricultural land recorded in their father's name.

11. The authorities, in their determination, relied on the legal definition of "homestead-less person" as provided under the Orissa Prevention of Land Encroachment Act, 1972. Specifically, the Petitioner's admission of possessing Ac.0.0125 dec. of homestead land and Ac.0.2725 dec. of agricultural land, even though recorded in the name of the Petitioner's father, led to the conclusion that the Petitioner did not fulfil the threshold criteria to be classified as homestead-less.

12. The specific requirement is that where any land is in the unauthorized occupation of a homestead-less person, which is being utilized by him as homestead, the Tahasildar shall, instead of evicting such person, settle the same with him, provided that the land so settled with him shall not exceed one-tenth of an acre. In this case, the threshold has been exceeded.

13. This Court, upon reviewing the records, finds that the Tahasildar, Additional Sub-Collector, and Collector conducted a meticulous examination of the Petitioner's case, and their decisions are grounded in a well-reasoned interpretation of the statutory provisions. There is no indication of any error or perversity in their findings.

14. Consequently, this Court agrees with the conclusion that the Petitioner is not eligible for the settlement of government land for house-site purposes, as they do not meet the criteria of being a homestead-less person.

#### V. CONCLUSION:

15. In light of the foregoing, this Court finds that the conclusions drawn by the Tahasildar, Additional Sub-Collector and the Collector are legally sound and based on a correct interpretation of the applicable statutory provisions. The Petitioner has not met the criteria of being a homestead-less person as defined under the Orissa Prevention of Land Encroachment Act, 1972.

16. Accordingly, this Writ Petition is dismissed.

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

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