

**(2009) 10 OHC CK 0004**

**In the Orissa High Court**

**Case No :** Writ Appeal No. 108 of 2009. (Arising out of the order Dated 21.11.2008 Passed by the learned Single Judge in Writ Petition (C) No. 9069 of 2008)

Laxmi Narayan Das and Others

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

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**Date of Decision :** 30-10-2009

**Acts Referred:**

Constitution of India, 1950 — Article 226

Orissa Survey and Settlement Act, 1958 — Section 15

**Citation :** (2009) 2 ILR (Ori) 703

**Hon'ble Judges :** I.M. Quddusi, Acting C.J.; Sanju Panda, J

**Bench :** Division Bench

**Final Decision :** Allowed

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## **Judgement**

I.M. Quddusi, A.C.J.

1. In this writ appeal challenge has been made to the order dated 21.11.2008 passed by the learned Single Judge of this Court in W.P.(C) No. 9069 of 2008 with regard to correction of Record of Rights in respect of the Petitioners' Plot No. 1516 in 1962 Settlement Operation which was a sthitiban land in Mouza-Nayapalli within the Bhubaneswar Municipality.

2. The facts as narrated in the record are as follows:

Originally as per the ROR published in the 1930-31 Settlement Operation, the disputed land belonged to Harekrushna Nisank, Jayakrushna Nisank and Dinakrushan Nisank. At a subsequent stage, the said land was bifurcated into two plots. Due to non-payment of the land revenue the Government started Certificate Case No. 514 of 1932 and vide order dated 3.4.1932 the said property was put into public auction. In the public auction on 25.8.1932, one Radhanath Parija of village Nayapalli took the property. Thereafter, Auction Certificate and possession thereto was granted on 22nd of November, 1932 whereafter

Radhanath Parija became the owner in possession of the said property having right, title and interest over the same. After death of said Radhanath Parija, his wife Radhamani Dei succeeded to the property and her name was reflected in Jamabandi Khatiyan of the year 1937. Subsequently, Radhamani Dei sold the property to one Smt. Sulochana Devi, the wife of one Balamukund Das (the predecessor-in-interest of the present Appellants) and delivered possession of the said land in favour of the purchaser vide registered sale deed No. 175 dated 16.1.1946. The purchaser- Sulochana Dei's name was found in the Jamabandi Register Continuous Khatiyan in the year 1951 as recorded tenant in pursuance to the registered sale deed following delivery of possession. She being an old lady ignorant of law, could not take any proper step to get her name recorded in the Record of Right during 1962 Settlement Operation. In the said Settlement Operation one of the bifurcated plots having an area of Ac.0.735 decimals was recorded in the name of the Forest Department. The said plot was numbered as Plot No. 1516 in 1962 Settlement Operation. When it came to the knowledge of the Appellants that the land had been erroneously recorded in the name of the Forest Department, they raised objection and Appellant No. 3 filed Settlement Appeal No. 537 of 1990 before the Settlement Officer. In the said appeal the Settlement Officer observed that Hal Plot No. 1506 had already been given to the Reserve Bank of India for construction of staff quarters and the quarters had already been constructed. Since this was his sthitiban plot he could raise a claim with the GA Department but in view of the statement of R.I. it might not be proper for him to record Hal Plot No. 1506 in the name of the Petitioner though it was his sthitiban plot. The balance area of Ac.0.134 in Plot No. 1506/1 should be recorded in the sthitiban khata of the Petitioner. Similarly, Hal Plot No. 660/01 area Ac.2.493 decimals and Hal Plot No. 629/01 area Ac.0.105 decimals should also be recorded in the name of the Petitioner. The area of the plot should be corrected as necessary. With the above observations, the settlement appeal was disposed of on 1.3.1990.

3. After disposal of the said appeal, the Appellants approached the GA Department and issued legal notice to the Director, Estates of GA Department for allotment of equal extent of land in exchange of their land which had been illegally allotted to the Reserve Bank of India by the GA Department. In spite of several approaches, since no action was taken, the Appellants made a representation to the Chief Minister of Orissa on 18.11.2001 and prayed for allotment of Ac.0.400 decimals of land from Plot No. 1474 on payment of usual premium and an area of Ac.0.430 decimals of land from Plot Nos. 1474(P) and 1493(P) which are adjacent to Plot No. 1495 in Mouza Jayadev Vihar over which they have constructed residential house and made different plantation over the said plot in exchange of the land taken away by the G.A. Department for allotment of the same to the Reserve Bank of India. However, the GA Department started OPP. Case No. 92 of 2002(L) against Appellant No. 3-Biranchi Narayan Das for unauthorized occupation of Government land to the extent of Plot Nos. 1474(P) and 1493(P) at Mouza-Jayadev Vihar Unit-16, Bhubaneswar. In

the said proceeding restraint order was passed not to make any construction over the said plots, While the matter stood thus, these Appellants approached the Minister of Urban Development and Public Enterprises, Orissa with a representation on 26.8.2006 for allotment of Ac.0.400 decimals of land to them in exchange from Plot No. 1474(P) which is adjacent to Plot No. 1495 as described above. The Minister, in his turn, vide letter dated 26.8.2006 (Annexure-5) recommended the case of the Appellants to the Special Secretary to Government, G.A. Department, for consideration of the prayer of the Appellants and allotment of the land. Since there was no response from the GA Department, the Appellants submitted another letter to the GA Department and came to know that their representation was duly processed in the file and the Department recommended their case to the Chief Minister of Orissa for allotment of the said Ac.0.400 decimals from Plot No. 1474(P) in their favour in exchange of their aforesaid land. As there was some mistake, it was clarified and the record was again processed for allotment of the Ac.0.401 decimals of land. The GA Department allotted the same to the Reserve Bank of India and tried to forcibly dispossess the Appellants. Since correspondences were being made with the GA Department, the Appellants were assured that a plot in exchange of their plot will be allotted in their favour, they did not take any legal action for declaration of their right title and interest in proper court of law. It is pertinent to mention here that the Appellants also filed Civil Suit No. 48 of 2003 before the learned Civil Judge (Senior Division), Bhubaneswar and obtained an order of status quo and since they were assured that they would be allotted the plot as stated in the above paragraph, the said suit was withdrawn and as it was withdrawn with the consent of the GA Department, the learned Civil Judge did not give permission to the Appellants to re-file the suit if occasion so arose. Therefore, the Appellants were not in a position to approach the civil court.

4. Having no other alternative, the present Appellants approached this Court by filing a writ application, i.e., W.P.(C) No. 9069 of 2008 with a prayer for recording in their names the sthitiban land measuring an area of Ac.0.518 decimals allotted to the Reserve Bank of India and another measuring Ac.0.083 decimals allotted to some others, or in the alternative, allotment of plots to the extent of Ac.0.601 decimals of land in their favour and favourable consideration of their representation and allotment of Ac.0.401 decimals of land from Plot No. 1474(P) Mouza Jayadev Vihar which is in their possession. In the said writ application the Government- opposite parties though received notice did not file their counter. The writ application was disposed of on 21.11.2008 on the submission of the learned Additional Government Advocate and this Court held that since the final Record of Right had already been published by that time, it was incumbent upon the Appellants to file appropriate revision u/s 15(b) of Orissa Survey and Settlement Act before the Commissioner of the Settlement for correction of the said ROR. There was no scope to interfere with the order of the settlement officer, which was passed during the course of the settlement in a writ application under Article 226 of the Constitution of India. It was further observed therein

that the observation made by the settlement officer that the Appellants may file a representation before the GA Department was also without any authority of law, as the GA Department has no jurisdiction to look into the grievance of the Appellants.

5. In this writ appeal, the Appellants have challenged the finding of the learned Single Judge of this Court vide order dated 21.11.2008 passed in W.P.(C) No. 9069 of 2008 in exercise of jurisdiction under Article 226 of the Constitution of India. Learned Counsel for the Appellants submitted that the writ court did not take into consideration the fact that mere recording of name in the ROR neither creates any title nor extinguishes the title of a person over a sthitiban property.

6. Learned Additional Government Advocate supported the judgment rendered by the learned Single Judge and submitted that the same needs no interference reiterating the stand taken in the counter affidavit. Respondent No. 1-G.A. Department has filed its counter affidavit stating therein that the Settlement Officer passed the order in Settlement Appeal No. 537 of 1990 with regard to certain plots which are altogether different from the plots against which the present Appellants claimed for adjustment. The Estate Officer of G.A. Department vide order dated 15.3.2003 passed in OPP Case No. 92/2002(L) under the provisions of the Orissa Public Premises (Eviction of Unauthorised Occupations) Act, 1972 directed to vacate the case and involved in the said OPP case appertaining to Plot Nos. 1474(P) and 1493(P) under Khata No. 1427 of Mouza Jayadev Vihar, treating opposite party, i.e., Appellant No. 3 as rank trespasser. It is further submitted that the Appellants had filed Civil Suit No. 48 of 2003 before the learned Civil Judge (Senior Division), Bhubaneswar claiming declaration of title by adverse possession and for permanent injunction and the suit was subsequently dismissed on 28.7.2007 as withdrawn by the Appellants-Plaintiffs.

7. On perusal of the record, it appears that the land in question has been recorded in the name of the Government in the final ROR in Hal Settlement. Prior to that, it was recorded in the name of the predecessor-in-interest of the Appellants and it was of sthitiban status as described in the above paragraphs and they are in possession of the said land from the date of their purchase in the year 1946. However, this position has not been refuted by the Respondents-opposite parties nor has any document been filed by them rebutting the same. In the meantime, the land has already been allotted by the GA Department-Opposite Party No. 1 to the Reserve Bank of India for construction of staff quarters. There is no material before us except the ROR of the Hal Settlement to show that the Respondents had taken the said land following due process of law. Therefore, the Appellants are the person in whose name the land was recorded with sthitiban status in Jamabandi Register Continuous Khatian in the year 1951 and mere entry in the ROR neither extinguishes their title nor are they deprived of their said right.

8. Since it was within the jurisdiction of the GA Department which could allot the

land in question situated within the Bhubaneswar Municipal area, it was also within the jurisdiction of the said Department to favourably consider the Appellants' representation and allot them a suitable land in exchange of their sthitiban land, but the said fact was not considered by the learned Single Judge. The learned Single Judge in exercise of jurisdiction under Article 226 of the Constitution of India passed the order. Therefore, this writ appeal is maintainable against the said order. Non-consideration of the said fact is an error on the face of the record. The Appellants' right to the said land is also seriously affected as the civil suit for declaration of right, title and interest was withdrawn on consent of both the parties that the Appellants would be allotted a plot in exchange of their sthitiban plot which has been taken away by the GA Department without due process of law. Hence, the order dated 21.11.2008 passed by the learned Single Judge in W.P.(C) No. 9069 of 2008 is set aside.

9. In the result, the writ appeal is allowed. Opposite Party No. 1 is directed to consider the representation of the Appellants in the light of the observation made by this Court above and allot them a suitable plot in exchange of their own sthitiban land within a period of six months from today.