

(2025) 11 OHC CK 1951

In the Orissa High Court

Case No : Writ Petition (C) No. 448 Of 2017

Sailendra Kumar Singh & Another

APPELLANT

Vs

Kamala Kanta Sahoo & Others

RESPONDENT

Date of Decision : 28-11-2025

Acts Referred:

Constitution Of India, 1950 — Article 226, 227

Orissa Consolidation Of Holdings And Prevention Of Fragmentation Of Land Act, 1972
— Section 37(1)

Orissa Land Reforms Act, 1960 — Section 4(1)(i), 4(5), 4(6), 4(7), 4(8)

Citation : (2025) 11 OHC CK 1951

Hon'ble Judges : Ananda Chandra Behera, J

Bench : Single Bench

Advocate : D.P.Mohanty, M. Mishra, J. Sahoo

Final Decision : Disposed Of

Judgement

Ananda Chandra Behera, J

1. This writ petition under Articles 226 and 227 of the Constitution of India, 1950 has been filed by the petitioners praying for quashing the impugned order dated 07.12.2016 (Annexure-13) passed in Revision Case No.165 of 2007 under Section 37 (1) of the OCH & PFL Act, 1972 by the Joint Commissioner, Settlement and Consolidation, Cuttack (Opp. Party No.13).

2. The factual backgrounds of this writ petition, which prompted the petitioners for filing of the same is that, as per Sabik Settlement of the year 1929, the case land was Plot Nos.1201 and 1199 under Sikim Khata No.15.

In the Hal Settlement of the year 1977, the said case land became Plot Nos.1419, 1420, 1421 and 1422 under Hal Sikim Khata No.2 (Annexure-7).

The said case land became consolidation Plot Nos.1605 and 1604 under Consolidation Sikim Khata No.3 (Annexure-9) published in the year 1986.

3. Sabik Sikim Khata No.15 of the year 1929 was in the names of Bauri Sahoo S/o-Paramananda Sahoo, Raghu Sahoo S/o-Bikala Sahoo, Bidyadhar Sahoo S/o-Narana Sahoo, Gobinda Sahoo and Chakradhar Sahoo Sons of Nidhi Sahoo as sikim tenants.

The landlord of the same was Raysaheb Nanda Kishore Bal and Others.

4. The Sikim tenants in Hal Khata No.2 (Annexure-7) were Kailash Chandra Singh & Kapilash Singh Sons of Suryamani Singh. Krushna Chandra Jena S/o-Kashinath Jena Natabara Jena S/o- Raghunath Jena Ratnakar Sahu S/o- Raghu Sahu.

5. The consolidation sikim Khata No.3 (Annexure-9) was published in the year 1986 in the names of Kailash Chandra Singh & Kapila Singh Sons of Suryamani Singh. Krushan Chandra Jena S/o- Kashinath Jena Natabara Jena S/o- Raghunath Jena Ratnakar Sahu S/o- Raghu Sahu.

6. The Opp. Party No.1 in this writ petition is Kamalakanta Sahu S/o- Late Ratnakara Sahu, who was the petitioner in Revision Case No.165 of 2007 under Section 37 (1) of the OCH & PFL Act, 1972 before the Opp. Party No.13.

In Revision Case No.165 of 2007, the petitioner thereof Kamalakanta Sahu (Opp. Party No.1 in this writ petition) had prayed for deletion of the names of Kailash Chandra Singh (father of the petitioners in this writ petition), Kapila Singh, Krushna Chandra Jena and Natabara Jena from the Hal R.o.R vide Khata No.2 (Annexure-7) as well as from consolidation R.o.R vide Khata No.3 (Annexure-9) on the ground that, he (Kamalakanta Sahu) is the only successor of all the Sabik Recorded Sikim Tenants i.e. (i) Bauri Sahoo (ii) Raghu Sahoo, (iii) Bidyadhar Sahoo (iv) Gobinda Sahoo and (v) Chakradhara Sahoo. For which, the recording of the names of Kailash Chandra Singh, Kapilash Singh, Krushna Chandra Jena and Natabara Jena (those are not their family members) in the Hal R.o.R as well as consolidation R.o.R are illegal and erroneous, because, they are strangers to his family.

The father of the petitioners in this writ petition i.e. Kailash Chandra Singh being the Opp. Party in Revision Case No.165 of 2007 had objected the same stating that,

"their predecessors i.e. Kailash Singh, Kapilash Singh as well as Krushna Chandra Jena & Natabara Jena are the purchasers of the case land from the co-sharers of the father of Kamalakanta Sahu through sale deeds. For which, in the Hal Settlement as well as in consolidation, the case land was recorded jointly in their names along with Ratnakara Sahu (father of Kamalakanta Sahu)."

7. After hearing from both the sides, Opp. Party No.13 allowed the Revision Case No.165 of 2007 as per the impugned order dated 07.12.2016 (Annexure-13) filed by (Kamalakanta Sahu-Opp. Party No.1 in this writ petition) and directed to record the case land exclusively in the name of the petitioner (Kamalakanta Sahu) under "Sthitiban Status" and also directed to correct all records of the

case land assigning the reasons that,

"the case land is Sikim homestead land. When the Sabik R.o.R of the case land was in the names of the predecessors of Kamalakanta Sahu i.e. in the names of Bauri Sahu, Raghu Sahoo, Bidyadhar Sahoo, Govinda Sahu and Chakradhar Sahu and when Singh family and Jena family are in no way related with the family of the Sikim tenants Sahu family, then, at this juncture, the case of the Singh family and Jena family for continuation of their names in the R.o.R cannot be acceptable under law. For which, Kamalakanta Sahu as successor in interest of the Sabik recorded Sikim tenants has right of occupancy over the case land. Therefore, the right of occupancy of Kamalakanta Sahu (petitioner in Revision Case No.165 of 2007) over the case land is declared, as he (Kamalakanta Sahu) is the successor-in-interest of all the sabik recorded Sikim tenants thereof."

8. On being aggrieved with the impugned order dated 07.12.2016 (Annexure-13) passed in Revision Case No.165/2007 by the Opp. Party No.13, the LRs of Kailash Chandra Singh challenged the same by filing this writ petition being the petitioners praying for quashing the Annexure-13 passed by the Opp. Party No.13.

9. I have already heard from the learned counsel for the petitioners, learned counsel for the Opp. Party No.1 (petitioner in Revision Case No.165/2007) and the learned Addl. Standing Counsel for the State.

10. It is the undisputed case of the parties that, the record of right of the case land has been continuing as sikim land since the Sabik settlement of the year 1929 till yet.

The status of the case land is homestead land.

The Sabik R.o.R of the case land vide Sabik Sikim Khata No.15 was recorded in the names of Bauri Sahu, Raghu Sahoo, Bidyadhar Sahoo, Govinda Sahu and Chakradhar Sahu as Sikim tenants.

The Hal R.o.R of the case land under Sikim Hal Khata No.2 (Annexure-7) was recorded in the names of Kailash Chandra Singh, Kapilash Singh (the predecessors of the petitioners) along with Krushna Chandra Jena, Natabar Jena and Ratnakar Sahu (father of the Opp. Party No.1) in the year 1977.

The consolidation R.o.R of the case land was published in the year 1986 vide Annexure-9 in the names of the same persons as per Hal R.o.R of the year 1977.

11. The nature of rights of a sikim tenants has already been clarified in the ratio of the following decisions:

(I) In a case between Daitary Swain Vs. Kartika Swain & Others reported in 2019 (II) OLR (F.B) 171 that, as per Section 4(1)(i) of the OLR Act, 1960, sikim tenancy both with regard to homestead land and agricultural land is transferable and heritable. (Para Nos.9 & 10)

Sikim tenants have been recognized as under Raiyats/sub-tenants. Such under Raiyats can become Raiyats, when declaration is made as per the provisions of Sub-sections (5) to (8) of Section 4 of the OLR Act, 1960. (Para No.6.1)

(II) In a case between Hari Jena & Others Vs. Somanath Harichandan reported in 1974 (1) C.W.R. 387 that, how and under what process a sikim tenant can become a Raiyat—Until the proceeding as envisaged under Sub-sections (5) to (8) of Section 4 are concluded by the Revenue Officer by passing an order declaring an under Raiyat, to be Raiyat, a sikim tenant cannot be deemed to be a Raiyat.

(III) In a case between Purusottam Choudhury Vs. Commissioner, Consolidation and Others reported in 2000 (II) OLR 202 that, the matter which comes within the purview of the revenue authority under OLR Act, 1960, the same is excluded from the jurisdiction of the consolidation authorities. The consolidation authorities have no jurisdiction to decide a question whether a person was the sikim tenant or not.

(IV) In a case between Manmohan Rout and Others vs. State of Orissa & Others reported in 74 (1992) CLT 708 that, the conclusions of the authorities under OLR Act is binding upon the consolidation authorities.

12. Here in this matter at hand, when the Hal R.o.R vide Annexure-7 of the case land was published in the year, 1977 jointly in the names of Kailash Chandra Singh and Kapilash Singh (predecessors of the petitioners), Krushna Chandra Jena, Natabara Jena and Ratnakara Sahu (father of the Opp. Party No.1) and when such finally published settlement R.o.R of the case land under Khata No.2 vide Annexure-7 in the year 1977 had remained unchallenged by the predecessor of the Opp. Party No.1 or by the Opp. Party No.1 and when in view of the ratio of the Full Bench Decision of this Court between Daitary Swain Vs. Kartika Swain & Others reported in 2019 (II) OLR (FB) 171 at Para Nos.9 & 10 that, the Right of sikim Tenant in respect of both agricultural and homestead land has become similar after coming into force of Orissa Act 29 of 1976 and when sikim right in respect of agricultural land and homestead land both are heritable and transferable and when a sikim tenant cannot be declared as a Raiyat without complying the provisions of Sub-Sections (5) to (8) of Section 4 of the OLR Act, 1960 and when the consolidation authorities have no jurisdiction to declare any sikim tenant as Raiyat entering into the jurisdiction of the OLR/Revenue Authorities, then, at this juncture, by applying the principles of law enunciated in the ratio of the decisions indicated in Para No.11 of this Judgment, it is held that, the Consolidation Authorities have exceeded their jurisdiction in deciding the matter through the impugned order dated 07.12.2016 (Annexure-13) entering into the jurisdiction of the OLR/Revenue Authorities declaring sikim tenants as Raiyats. Because, such power for declaration of the sikim tenant as Raiyat can only be made by the OLR Authorities only after the compliances of the provisions of Sub-Sections (5) to (8) of Section 4 of the OLR Act, 1960.

13. When in this matter at hand, the revenue authorities have not declared to the sikim tenants of the case land as Raiyats, then, at this juncture, the declaration made by the Consolidation Authorities i.e. Opp. Party No.13 in Revision Case No.165 of 2007 to the petitioner thereof (Opp. Party No.1 in this writ petition) as occupancy Raiyat through the impugned order dated 07.12.2016 (Annexure-13) cannot be sustainable under law.

For which, there is justification under law for making interference with the same through this writ petition filed by the petitioners.

14. Therefore, there is merit in the writ petition filed by the petitioners. The same is to be allowed.

15. In result, the writ petition filed by the petitioners is allowed on contest.

16. The impugned order dated 07.12.2016 (Annexure-13) passed in Revision Case No.165 of 2007 by the Joint Commissioner, Settlement and Consolidation, Cuttack (Opp. Party No.13) is quashed (set aside).

17. As such, the writ petition filed by the petitioners is disposed of finally.