

(2021) 10 OHC CK 0070

In the Orissa High Court

Case No : Writ Petition (Civil) No. 3687 Of 2002, First Appeal Nos.88, 89, 96, 98, 103, 121, 124 Of 2002 and CMP Nos.224, 225 Of 2020

State Of Orissa

APPELLANT

Vs

Manta Krishna Sethi & Others

RESPONDENT

Date of Decision : 27-10-2021

Acts Referred:

Constitution of India, 1950 — Article 162, 226, 227
Code of Civil Procedure, 1908 — Order 31 Rule 95
Orissa Land Reforms Act, 1960 — Section 22, 37
Orissa Estates Abolition Act, 1951 — Section 2(n), 3, 3A, 5, 5(a), 6, 7, 7(1)(a), 8, 8(1)
Orissa Survey and Settlement Act, 1958 — Section 12, 15(a)
Land Acquisition Act, 1894 — Section 4(1), 18
Transfer of Property Act, 1882 — Section 54, 55
Orissa Tenancy Act, 1913 — Section 3(23), 4, 4(2), 8, 23, 234, 234(1)(b)
Evidence Act, 1872 — Section 110
Delhi in Azmer Rent Control Act, 1952 — Section 8

Citation : (2021) 10 OHC CK 0070

Hon'ble Judges : Dr. S. Muralidhar, CJ;B.P. Routray, J

Bench : Division Bench

Advocate : Subir Palit, Kishore Kumar Jena, Sanjib Swain

Final Decision : Disposed Of

Judgement

Dr. S. Muralidhar, CJ

1. Writ Petition (Civil) No.3687 of 2002 and the connected First Appeals and CMPs arise out of the common set of facts and accordingly they are disposed of by this common judgment.

Background Facts

2. The present case concerns acquisition of land measuring Ac.288.89 decimals in mouza Bidadharpur in 12 numbers of different blocks under Khewat Part 3(1), which was a 'Nijadakhali' land of Raja Radhanath Bebartta Pattnaik under the Beheldars (intermediaries) Radhakrishna Bharati and others. The rent for the

lands were purportedly paid by Raja Radhanath Bebarta Pattanaik to the three Beheldars (intermediary/ zamindars) excluding the fourth Beheldar Sri Chintamani Behera.

3. It is claimed by the Opposite Parties in the writ petition/ Respondents in the appeals, that the said land were not within the territorial jurisdiction of Athagarh Estate. It is claimed that in the instrument of merger of Athagarh Estate, the lands have not been included.

4. Due to non-payment of rents, the Beheldars Chintamani Behera and Bhagaban Das filed Rent Suit No.80 of 1958-59 in the Revenue Court against Raja Radhanath Bebarta Pattnaik for realization of rent for the years 1955-56, 1956-57 and 1957-58. The said suit was decreed on 20th January, 1959.

5. After the death of Chintamani Behera, his sons Jayaram Behera and Bhagaban Das filed Execution Case No.680 of 1958-59 against Raja Radhanath Bebarta Pattnaik for realization of rent as per the decree in their favour. In the said Execution Proceedings the aforementioned land to the extent of Ac.288.89 decimals was put to sale by public auction.

6. One Sri Baishnaba Charan Sethi of Deulasahi of Cuttack Town emerged as the highest bidder in that public auction held on 15th October, 1960 and purchased the aforementioned extent of Ac.288.89 decimals. The sale was confirmed in his favour after the statutory period. A Sale Certificate was issued in his favour on 11th April, 1961 under Order 21, Rule 94, C.P.C. On application of the auction purchaser, the Executing Court passed an order for delivery of possession under Order 31, Rule 95, C.P.C.

7. In terms of the order of the executing court, the process-server of the court delivered possession of the aforementioned land in favour of Baishnaba Charan Sethi on 17th May, 1961 in presence of the witnesses, affixing the certificate of sale of the said land and proclaiming it by drum beat that the right, title, interest and possession of the aforementioned land of Ac.288.89 decimals was transferred to the auction purchaser Sri Baishnaba Charan Sethi. A report to that effect was submitted to the executing court.

8. Thereupon Baishnaba Charan Sethi cultivated the lands and paid rents to the Tahsildar, Sadar, Cuttack with effect from 1960-61. The first payment was made in November, 1962 for the year 1960-61, 1961-62, and he kept paying rents thereafter till 1970.

9. It is stated that the property sold in the auction sale was Nijadakhil land (own possession) of Raja Radhanath Bebarta Pattnaik situated in the CDA and was not within the territorial jurisdiction of Athagarh.

10. Under the Orissa Estate Abolition Act, 1951 (OEA Act), the land in question stood vested with the Government of Odisha on 27th April, 1963 vide Notification No.27478-EA1-T/63-R, "free from all encumbrances". All the intermediary interests were also vested with the State. It was the State who then became the

owner of the lands. No application for assessing rents thereafter was filed by Sri Baishnaba Charan Sethi, the auction purchaser.

11. It appears that, on 4th April, 1970 said Baishnaba Charan Sethi applied for permission to sell a portion of the land measuring Ac.185.00 decs. for his own interest. On 31st May, 1971 permission was granted by the then Sub-Divisional Officer, Cuttack Sadar under Section 22 of the Orissa Land Reforms Act (OLR Act) permitting Sri Sethi to sell land of the extent of Ac.185.00 decs.

12. It appears that a local enquiry was conducted, and in the course of settlement proceedings the Assistant Settlement Officer prepared a draft record of rights (RoR) under Section 12 of the Orissa Survey and Settlement Act, 1958 (OSS Act) on 12th March, 1971 inviting objections against the draft RoR. In the draft RoR the number of plots were increased to 17, but the area of the land was reduced to Ac.283.98 decs. as against Ac.288.89 decs., as per the C.S. RoR. It is stated that, in the absence of any objection, the final RoR was published on 10th November, 1973 showing Baishnab Charan Sethi as tenant.

13. O.L.R. Ceiling Case No.346 of 1975 was initiated against Baishnab Charan Sethi, to which he filed his objection in Form-12 of the OLR Act. After due enquiry, the Tahsildar, Cuttack Sadar held that Ac.171.98 decs. is ceiling surplus land which was then taken over by the State to distribute to landless persons. The R.I., Sadar, Cuttack received possession of the said extent of Ac.171.98 decs. land and submitted his report on 28th April, 1976 in the Ceiling Proceedings. For the said ceiling surplus land, said Baishnab Charan Sethi received compensation in terms of the OLR Act.

14. On 15th May, 1976 Ac.10.00 decs. of land was purchased by one Jagannath Lenka and others by executing Registered Sale Deed, after receiving permission from the competent authority on 1st May, 1976.

15. In connection with Bidanasi Triangular Project, an enquiry was undertaken in respect of the ownership of the land. It is claimed that, after due verification of the documents, the Government of Odisha in the Revenue Department in consultation with the Advocate General, Orissa, declared that Sri Sethi had acquired Stitiban tenancy. A notification dated 28th July, 1983 was issued under Section 4 (1) of the Land Acquisition Act, 1894 (LA Act) for acquisition of the aforementioned remaining portion of land. This was done unmindful of the fact that under the OEA Act, the entire extent of land already stood vested with the State. In the meanwhile, Sri Sethi appears to have sold the balance area of Ac.112.00 decs. of land to different persons with the prior permission of the S.D.O., Cuttack and in turn those purchasers sold it to others.

16. Pursuant to the aforementioned Notification, on 28th December, 1984 the possession of land was taken over by the State and an Award was passed by the Land Acquisition Collector, which was then challenged by the landholders seeking enhancement of compensation by filing petitions under Section 18 of the LA Act.

17. Initially, the Reference Case was disposed of on 12th July, 1986 by the Reference Court. Appeals were filed by the claimants in this Court against the said order. The High Court by a common order dated 23rd August, 2001 set aside those orders and remanded the matter to the Reference Court for re-determination of compensation based upon certain guidelines. In the second round, by orders dated 24th November, 2001, the learned Reference Court/Civil Judge confirmed the enhanced compensation earlier awarded. All the First Appeals and the CMPs in the present Batch Matters have been filed by the State against the said order.

18. One Sri Damodar Rout, a former MLA filed a Public Interest Litigation being O.J.C. No.9886 of 1996 in this Court seeking to challenge the entire proceedings. This PIL was heard along with F.A. Nos.88, 89, 102, 103, 121 and 124 of 2002. On 16th August, 2002 this Court stayed all the execution cases in the First Appeals but did not stay execution case pertaining to F.A. No.121 of 2002, i.e. Execution Case No.105 of 2002, which arose out of LA Case No.3 of 1994.

Registering of W.P. (C) 3687/2002

19. When the matter stood thus, on 16th August, 2002 the Court entertained Misc. Case No.7136 of 2002 in O.J.C. No.9886 of 1996 for impleading Cuttack Development Authority (CDA) as an Opposite Party in O.J.C. No.9886 of 1996. That application was allowed. On the same day, i.e. on 16th August, 2002 another Misc. Case bearing No.7626 of 2002 was entertained as a PIL and subsequently registered as Writ Petition No.3687 of 2002. The said order reads as under:

"Misc. Case No.7626 of 2002

Heard learned counsel on all sides, and especially in vehemence, Mr. Indrajeet Mohanty for the main contesting parties.

The writ petition has been entertained by this Court as a Public Interest Litigation at the instance of a responsible citizen and in public interest as the allegation was that a scheme was devised to swindle the State exchequer. The charges made therein are very serious in nature. In the writ petition, the Cuttack Development Authority filed an application for impleading itself which we allowed today. In this application, the Cuttack Development Authority which has been impleaded as an opposite party, submits that the execution of the award decrees under the Land Acquisition Act secured by the contesting parties be kept in abeyance until disposal of the writ petition.

2. Mr. Indrajeet Mohanty rightly pointed out that challenging the award decrees the State has filed First Appeals before this Court and the proper course is to seek a stay of execution of the decrees in those First Appeals. He submits that, even if the frontiers of procedure have been pierced by the concept of Public Interest Litigation, things have not reached such a stage that we can dispense with all procedure in dealing with a Public Interest Litigation. Therefore, he

submitted that the present application by the Cuttack Development Authority, an opposite party in the writ petition, is misconceived and should not be entertained. The learned Additional Government Advocate submits that the first appeals are to be moved and they will be moved expeditiously. We think that it would be proper to hear those First Appeals along with the present writ petition and hence we order that First Appeal Nos.88, 89, 102, 103, 121 and 124 of 2002 be listed with this writ petition at the next hearing.

3. It is true, as submitted by Mr. Indrajeet Mohanty, that the proper course to take for the State or the Cuttack Development Authority is to seek a stay of execution of the amounts decreed, in the First Appeals filed against the decrees by the State, in this Court. At the same time, we find that what is involved is a matter of public importance, since serious allegations are made and countered in this proceeding, and this proceeding requires a careful examination for arriving at a conclusion one way or the other. The opposite parties are also entitled to have their say in the matter before the final judgment is pronounced by this Court. In that situation, notwithstanding the weighty submissions of Mr. Indrajeet Mohanty on the procedural aspects, we think it proper to keep in abeyance the execution for the amounts decreed under the Land Acquisition Act against the State and the Cuttack Development Authority, until the writ petition is disposed of. Therefore, we direct a stay of Execution Case Nos.99, 100, 101 and 102 of 2001 pending in the court of Civil Judge (Senior Division), First Court, Cuttack for a period of two months.

4. During the course of hearing, it is brought to our notice that the Commissioner of Land Records and Settlement, Orissa has finally disposed of R.P. Case No.2351 of 1998. Considering that the entire matter has to be scrutinized and to be disposed of by this Court, to ensure that complete justice is done in the case, we also take up the order in R.P. Case No.2351 of 1998 dated 5.4.2002 suo motu for scrutiny in exercise of our jurisdiction under Articles 226 and 227 of the Constitution of India. This will enable this Court to scrutinize the entire matter in controversy untrammelled by any order right or wrong, attaining finality. The Registry will treat that as a writ petition, number it and issue notices therein to (1) Manta Krishna Sethi, s/o. late Baishnab Ch. Sethi of Deulasahi, Cuttack, (2) Sushana Sethi, w/o. Naran Sethi, D/o. late Baishnab Charan Sethi, village - Urali, P.S. Sadar, District - Cuttack, (3) Kusum Sethi, w/o. Sanatan Sethi, D/o. late Baishnab Charan Sethi, village - Anantapur, P.S. Gurudijhatia, District - Cuttack, and (4) Jhuna Sethi, D/o. late Baishnab Charan Sethi, of Deulasahi, Cuttack.

5. Place this matter along with the First Appeals referred to above, and the suo motu proceeding, we have initiated, on 4.10.2002. The Registry will immediately call for the records of the First Appeals as also the entire records of R.P. Case No.2351 of 1998 from the Commissioner of Land Records and Settlement, Orissa, Cuttack. The Registry will also call for the records of Execution Case Nos.119 and 120 of 1995 from the Subordinate Judge, First Court, Cuttack and Rent Suit No.80 of 1958-59 and Execution Case No.680 of 1959-60 from the said

Court. The learned Additional Government Advocate assures the Court that necessary steps will be taken in the First Appeals filed in this Court before the next posting.

Post this matter on 1.10.2002."

20. It should be mentioned at this stage that, the said R.P. Case No.2351 of 1998 had been filed by the State of Orissa against the legal heirs of Baishnab Charan Sethi, i.e. Manta Krishna Sethi and three others, which was under Section 15 (a) of the OSS Act, against the recording of all the 17 Hal Plots measuring Ac.283.98 decs. under the impugned Hal RoR under Khata No.220 located in mouza Bidyadharpur under Cuttack Sadar P.S. of Cuttack district. By the order dated 5th April, 2002, the Commissioner dismissed the revision petition, holding that the State had admitted the title of Baishnaba Charan Sethi and his vendees over the suit lands and was estopped from challenging the same in view of the decision of this Court in Jagabandhu Senapati v. Bhagu Senapati, AIR 1974 Orissa 120 and Sri Madan Mohan Das Babaji v. Brundaban Pal, 38 (1) 1972 CLT 1323.

21. After the Writ Petition (Civil) No.3687 of 2002 was registered, on 27th September, 2004, the following order was passed:

"OJC 9886 of 1996 has been listed for orders on various interim applications as noted in the cause list. W.P. (C) 3687 of 2002 and a batch of First Appeals have also been listed for orders because they are analogous to the dispute under consideration in this writ petition (OJC 9886 of 1996).

Mr. Indrajit Mohanty, learned counsel for one batch of opp. party members presses into service two applications, i.e. Misc. Case No.8668 of 2002 and Misc. Case No.643 of 2004. In the first application he has prayed to issue a direction to the C.D.A. to deposit the amount awarded by the Civil Court under reference and alternatively in the second application he has sought for an order for vacating the stay order by which execution proceeding has been stayed. Mr. Swain, learned counsel appearing for C.D.A. states that the said authority would file a counter and an adjournment may be granted for that purpose.

It is also stated at the Bar that the ultimate decision in the writ petition may have a bearing on the decision which has been passed/would be passed in the connected First Appeal. Therefore, considering the importance of the writ petition, we direct for its early listing for expeditious disposal. A couple of weeks after the Puja Vacation intervened and therefore it is agreed upon at the Bar that the writ petition be listed for hearing in the date assigned for hearing on the first week of November, 2004. All the parties including the appellant and respondent in the First Appeal agree to cooperate for hearing and disposal of the writ petition on that date. Accordingly, we direct to list all the First Appeals except L.A.A. 43 of 2002 and L.A.A. 44 of 2002. The learned Standing Counsel for the State undertakes to prepare compulsory paper books in the meantime so that there would not be any impediment for hearing of the First Appeal which will follow conclusion of hearing of argument in the writ petition."

22. Thereafter, all the writ petitions along with all the F.As were listed intermittently for a few days in 2004 and 2005. They were ultimately listed on 24th March, 2021, 16 years later.

23. It may be mentioned here that, on 3rd November, 2014, in Misc. Case No.940 of 2002 in F.A. No.121 of 2002 this Court directed the Appellant State to deposit 50% of the awarded amount and on such deposit, the recovery of the balance amount would be stayed. On 27th January, 2015 an application was filed in F.A. No.121 of 2002 for modification of the said order dated 3rd November, 2014. The said application was dismissed. However, the Court granted the Appellant four weeks' time to deposit 50% of the awarded amount in Execution Case No.105 of 2001. On 7th April, 2015 the Appellant State deposited Rs.10,55,000/- in the said Execution Case. On 18th May, 2016 a further sum of Rs.5,85,850/- over and above Rs.10,55,000/- was deposited by the Appellant. On 22nd August, 2016, in Misc. Case Nos.65 and 66 of 2016, by a common order, this Court directed the Executing Court to make a fresh calculation of the 50% awarded amount subject to the Appellant depositing a further sum of Rs.10,00,000/-. It is contended by the Respondents in the said F.A. that the said order has not yet been complied with.

24. On 27th April, 2021 a detailed order was passed by this Court framing the following questions of law for determination in the writ petition and first appeals:

(i) What is the effect of the vesting of the entire land in the State, free from all encumbrances, under the OEA Act by the notification dated 27th April, 1963? What effect does the said notification have on all the sales that took place subsequent thereto?

(ii) Is the order of the Commissioner dated 5th April, 2002 in R.P. No.2351 of 1998 valid?

(iii) Depending on the answer to (i) and (ii) above, what is the status of validity of the subsequent orders passed in the land acquisition proceedings including the order passed by this court in the first appeals on 23rd August, 2001?

(iv) What is the status of the consequential order passed by the Civil Court on remand of the matter by this Court by its order dated 23rd August, 2001?

(v) Whether the execution cases should not proceed in accordance with law?

25. This Court heard Mr. Subir Palit, learned Additional Government Advocate (AGA) and Mr. Kishore Kumar Jena, learned counsel appearing for the Opposite Parties in the writ petition as well as the Respondents in the connected First Appeals.

Submissions on behalf of the State

26. The submissions of Mr. Subir Palit, learned A.G.A. are as under:

(i) The notification dated 27th April, 1963 under the OEA Act had the effect of

automatically vesting the entire land in the State free from all encumbrances. Thereby the vendor (the ex-intermediary) and Sri Sethi who had stepped into his shoes lost all the right, title, interest over the land by operation of the mandatory provisions of the OEA Act. Further, no claim had been lodged under Section 6 and 7 of the OEA Act by the vendees for any right that could have been claimed over a portion of the lands and therefore such right also got extinguished.

(ii) Therefore, the sale deeds executed by Sri Sethi are ab initio void documents and do not confer any right on the vendees. Since Sri Sethi did not have any right, he could not have passed on any title by virtue of those Registered Sale Deeds. Reliance is placed on the decision in *State of Orissa v. Nityananda Satpathy*, (2003) 7 SCC 146 and *State of Orissa v. Harapriya Bisoi*, (2009) 12 SCC 378, to urge that upon a notification issued under Section 3 & 3-A of the OEA Act, the entire estate free from all encumbrance vests in the State. The intermediary ceases to have any interest in such estate other than the interest expressly saved under the OEA Act.

(iii) OEA Act provides an exception to the general rule of vesting of the estate insofar as possession of lands are concerned. With Sri Sethi not having filed application under Sections 6 & 7 of the OEA Act, asking to remain as tenant under the State by paying rents, all the lands to the extent of Ac.288.89 decs. vested with the State, without exception, free from all encumbrance by virtue of operation of the law.

(iv) The State is not bound to acquire its own land but it can only acquire restrictive interests. Reference is made to the decisions in *Special Land Acquisition and Rehabilitation Officer v. M.S. Seshagiri Rao*, AIR 1968 SC 1045 and *State of Orissa v. Brundaban Sharma*, (1995) Supp (3) SCC 249.

(v) In support the submission that Sri Sethi was not competent to enter into any such transaction vis-à-vis the land of an extent of Ac.288.89 decs. in the teeth of the notification dated 27th April, 1963, due to the bar under Sections 54 & 55 of the Transfer of Property Act, 1882 (TP Act), reliance is placed on the decision in *State of Andhra Pradesh v. Star Bone Mill and Fertiliser Company*, (2013) 9 SCC 319. In this context reference is also made to the decision in *Sewa Ram v. Union of India*, (1997) 5 SCC 166.

(vi) It is submitted that the revenue records do not create any title but only a presumption in regard to possession. Therefore, the entry in the RoR in favour of Sri Sethi cannot be said to bestow any title on him when in fact it stood vested with the State.

(vii) On issue (ii), it is submitted that the order dated 5th April, 2002 of the Commissioner in R.P. No.2351 of 1998 is unsustainable in law, because that can be no estoppel against the statute. Reliance is placed on the decisions in *Dr. H.S. Rikhy v. The New Delhi Municipal Committee*, AIR 1962 SC 554 and *Bengal Iron Corporation v. Commercial Tax Officer and Others*, AIR 1993 SC 2414.

(viii) It is then contended that, Sri Sethi had committed a fraud when despite the lands being vested with the State, he projected himself as the titleholder of the lands and first applied for permission under Section 22 of the OLR Act and thereafter participated in the case of Ceiling Proceeding No.346 of 1975 and thereafter sold the land to the extent of Ac.112.00 decs. Relying on the decision in *I.T.C. Bhadrachalam Paperboards v. Mandal Revenue Officer, A.P.*, (1996) 6 SCC 634, it is submitted that, promissory estoppel cannot defeat the law and the said rule is not available against a statutory provision. It is pointed out that the sanctity of the law cannot be allowed to be defeated by the rules of estoppel.

(ix) As regards Issue No.(iii), it is submitted that since the Land Acquisition Proceedings are subsequent to the vesting notification under the OEA Act, they are ab initio void. It is accordingly submitted in response to Questions (iv) and (v) that since all the consequent proceedings are also null and void, the compensation already paid to the claimants should be returned to the State exchequer and all the execution cases quashed.

Submissions of the Opposite Parties/Respondents

27. In reply, it is submitted by Mr. Jena, learned counsel, that Baishnab Charan Sethi had purchased the land before the date of vesting on 27th April, 1963. Therefore it was not necessary for him to file any application under Section 6 & 7 of the OEA Act, because he was the tenant/raiyat in respect of the purchased property. He was not an intermediary. It is submitted that the OEA Act was enacted only for abolition of intermediaries and the interest of the raiyat/tenant was not touched. Reliance is placed on the decision in *Kumar Bimal Chandra Sinha vs. State of Orissa*, AIR 1962 SC 1912.

28. It is stated that Sri Baishnab Charan Sethi purchased right, title and interest of the land put for auction and he had not purchased the intermediary right. Relying on the decision in *Narayan Behera v. Ch. Narsingh Ch. Mohapatra*, AIR 1951 Orissa 60, where it was held that a sale held in execution of a decree against an estate holder does not pass the estate itself to the purchaser, it is submitted that, the purchaser of an auction sale only purchases the right, title and interest of the land, and does not purchase the estate of the intermediary. Referring to the definition of "Raiyat" under Section 2(n) of the O.E.A. Act, 1951, it is submitted that Radhanath Bebarta Pattnaik was the 3rd part Khewat who was cultivating the lands. Under Section 4 (2) of the Orissa Tenancy Act, 1913('OT Act') Raiyats are tenants. Reference is also made to Section 3 (23) of the OT Act. It is submitted that Radhanath Bebarta Pattnaik was paying rents to Radhakrishna Bharati and others, as the lands were not within the territorial areas of Athagarh. Reliance is also placed on Section 4 of the OT Act to claim that Raiyats have a right of occupancy of lands. Reference is also made to the decision in *State of Orissa v. Purushottam Barik*, (2018) CLT 125.

29. The submission on behalf of the Opposite Parties /Respondents is that, the OEA Act was enacted only to abolish the intermediary right and not the Raiyat/

Tenancy right. It is submitted that, after accepting rent for a period of 26 years from Baishnab Charan Sethi, the plea by the State that it was government land cannot be accepted. Reliance is also placed on the decision in Radhamani Dibya v. Braja Mohan Biswal, AIR 1984 Ori 77.

30. Mr. Jena submits that, the State has recorded the "Stitiban status" in favour of Baishnab Charan Sethi in 17 plots in the Hal R.O.R. published on 2nd November, 1973, which is presumed to be correct unless it is proved to be incorrect by adducing evidence. It is stated that the following circumstances show that the State has admitted the tenancy of Sri Baishnab Charan Sethi:

(a) Rent was collected by the Tahsildar with effect from 1961.

(b) SDO, Cuttack Sadar granted permission under Section 22 of the OLR Act on 30.05.1971 in favour of Baishnab Charan Sethi to sell the land after due inquiry.

(c) In Ceiling Case No.345 of 1975 the ceiling surplus lands were taken by the State leaving Ac.112.00 dec. of land for cultivation of Baishnab Charan Sethi under Section 37 of the OLR Act.

(d) Ceiling surplus lands were distributed to landless persons and same was confirmed by this Court in different proceedings.

(e) Admitting the land, i.e. Ac.112.99 as lands of Baishnab Charan Sethi, the said lands were acquired from the purchasers of Baishnab Charan Sethi and compensation were paid under the provisions of the Land Acquisition Act, 1894.

(f) Before payment of the compensation amount, the opinion of the then Advocate General was taken.

(g) Admitting the ownership of the purchasers in the High Court, the reference petitions were also sent back to the Court under Section 18 of the LA Act for re-determination of fair market price of the lands.

(h) Before the executing court or before this Court in the First Appeal, the State has not challenged the ownership of the purchasers. In the First Appeal only the quantum granted by the executing court was challenged.

31. Reliance is placed on the decision of the Supreme Court in Municipal Council, Ahmednagar v. Shah Hyder Beig, AIR 2000 SC 671 to urge that when an Award is passed and possession taken under the LA Act, the High Court should not interfere, several years thereafter, with the acquisition proceedings. It is submitted that the PIL is highly belated as it was registered in 2002, after a long gap of 40 years after the cause of action arose on 11th September, 1961.

32. It is submitted that despite the OEA Act, rent was accepted from Sri Sethi, not as a landlord but as a tenant. It is submitted that he has not committed any fraud. The settlement of this land in his favour could be said to be voidable but it cannot be void. On the same analogy it is submitted that Basanta Manjari Lenka and others through the purchaser Jagannath Lenka and others have not

committed any fraud. They purchased the land on verification of the RoR and after ceiling surplus land was taken by the State from the land of Sri Sethi. So, it is submitted that if any mistake has been committed, it was committed by the State Authorities.

33. It is submitted that Sri Sethi would not suffer as he sold it at the same price of the land and is now no more. Innocent persons, who purchased the land after due verification, ought not to be punished. It is urged that justice should be complete justice in all respects. It is pointed out that while the Court stayed all the execution cases, it did not stay the case of Jagannath Lenka. The applicability of the decisions in Nityananda Satpathy (supra) and Harapriya Bisoi (supra) are questioned on the basis that they are distinguishable on facts. Likewise, the decisions in Special Land Acquisition & Rehabilitation Officer (supra) and Brundaban Sharma (supra), are also sought to be distinguished.

Analysis and reasons

34. The above submissions have been considered. In the first place it is seen that the vesting of the entire extent of land in favour of the State by virtue of the notification dated 27th April, 1963 under the OEA Act has not been able to be disputed by the Respondents/Opposite Parties. To appreciate this aspect, one needs to first understand what the effect of the vesting is.

35. Section 5 of the OEA Act reads as under:

"5. Consequences of vesting of an estate in the State - Notwithstanding anything contained in any other law for the time being in force or in any contract, on the publication of the notification in the Gazette under Sub-section (1) of Section 3 or Sub-section (1) of Section 3-A or from the date of the execution of the agreement under Section 4, as the case may be, the following consequences shall ensue namely:

(a) Subject to the subsequent provisions of this Chapter the entire estate including all communal lands and porambokes, other non-raiyati lands, waste lands, trees, orchards, pasture lands, forests mines and minerals (whether discovered or inclusive of rights in respect of any lease of mines and minerals quarries, rivers and streams, tanks and other irrigation works, water channels, fisheries, ferries, hats and bazars, and building or structures together with the land on which they stand shall vest absolutely in the State Government free from all encumbrances and such Intermediary shall cease to have any interest in such estate other than the interests expressly saved by or under the provisions of the Act;

Explanation - 'Encumbrance' means a mortgage of or a charge on any estate or part thereof and includes any right in land or other immovable property comprised in an estate, but does not include an intermediary interest or the interest of a riyat or an under-raiyat.

(b) All rents, cesses, royalties and other dues accruing in respect of lands

comprised in such estate on or after the date of vesting shall be payable to the State Government and not to the outgoing intermediary and any payment made in contravention of this clause shall not be valid discharge, and all such rents, cesses, royalties and other dues shall be recoverable as arrears of land revenue. Provided that where the date of vesting falls within the period to which the dues relate only such proportion of the dues shall be payable as the period beginning with the said date and ending with the period aforesaid bears to the whole of that period.

Provided further that, any part of such dues appropriated by the intermediary beyond what may be found due to him in accordance with the provisions of this clause may be recovered by the State Government as arrears of land revenue or by the deduction of the amount from the compensation payable to such Intermediary.

Provided also that, the payment of any amount on account of any such rents, cesses, royalties and other dues made to the outgoing intermediary in pursuance of the orders of any Court of law shall constitute a valid discharge.

(c) - (k) xx xx xx xx"

36. Vesting is automatic under the OEA Act. In terms of the Explanation to Section 5 (a), encumbrance does not include an intermediary interest or the interest of a raiyat or an under-raiyat. It is for this reason that a desperate argument is sought to be advanced by Mr. Jena that Sri Sethi was in fact a raiyat. However, this was never his case. The fact of the matter is that if indeed Sri Sethi was a raiyat as defined under Section 2 (n) of the OEA Act, he could have never conveyed valid title in respect of the Ac.112.00 dec., which was sold by him to several persons as a land-owner. Section 2(n) of the OEA Act, which defines 'Raiyat', reads as under:

"Raiyat means any person holding the land for the purpose of cultivation and who has acquired the right of occupancy according to the Tenancy Law or Rules for the time being in force in that area or in absence of such law or rules, the custom prevalent in that area."

37. Section 4 (2) of the OT Act defines a "Tenant" as under:

"Tenant means a person who holds land under another person and is, or but a special contract would be liable to pay rent for that land to that person."

38. Under Section 4, the class of Tenants includes occupancy raiyats, i.e. raiyats having right of occupancy over the land held by them. The relevant passage in *State of Orissa v. Purushottam Barik* (supra), reads thus:

"The word 'raiya' has been defined in Sec.5(2) of Orissa Tenancy Act. It means primarily a person who has acquired a right to hold land for the purpose of cultivating it by himself, or by members of his family or by hired servants, or with the aid of partners, and includes also the successors-in-interest or persons

who have acquired such a right. Sec.23(1) of the Act provides that every person who, for a period of twelve years whether wholly or partly before or after the commencement of Act, has continuously held as a raiyat land situate in any village, whether under a lease or otherwise, shall be deemed to have become, on the expiration of that period, a settled raiyat of that village. Sec.24(1) postulates that every person who is a settled raiyat of a village within the meaning of Sec.23 of the Act shall have a right of occupancy in all land for the time being held by him as a raiyat in that village."

39. All of the above arguments do not advance the case of the Respondents that Sri Sethi had, notwithstanding the vesting in the State under the OEA Act, valid title to convey by projecting himself as the owner of the properties in terms of the registered sale deeds. In fact, it was never the case of Sri Sethi that at any point of time he was a raiyat. So, even when he applied under the OLR Act, he did not do so in his capacity as a raiyat. The fact of the matter is he did not even file an application under the OEA Act seeking protection under any of the exceptions of Sections 6 & 7 and seek to be declared as a tenant under the State. While he may have paid rent initially for a few years he stopped doing so after 1970.

40. The decision in Nityananda Satpathy (supra) makes it clear that in order to take the benefit of Section 7(1)(a) of the OEA Act, the intermediary must be in cultivating possession either by himself with his own stock or by his own servants or by hired labour or with hired stock. The relevant portion of the said judgment reads as under:

"6. Once a Notification under Section 3 of the Act is issued, the lands of the intermediaries vested in the State of Orissa. Section 5 provides for the consequences of the vesting of an estate in the State in terms whereof all the rights of the nature specified therein shall stand transferred to the State. As vesting takes place free from all encumbrances, the intermediaries ceased to have any rights there under.Under Section 5 of the Act, the intermediaries although might not have physically dispossessed, but they would be deemed to go out of possession and it was open to the State to exercise its right of possession.

7. Section 7 of the Act provides for an exception. It, thus, must be construed strictly. In terms of the aforementioned provision, only the lands specified therein can be retained by the intermediaries as a raiyat, but such a right can be exercised only in the event an order is passed by the appropriate authority on an application filed in this behalf. In terms of sub-section (1) of Section 7, only the land used for cultivation and horticultural purposes which were in khas possession of an intermediary on the date of such vesting would be conceived. The expression 'khas possession' has been defined in Section 2(j) which too means 'land used for agricultural or horticultural purposes'. The possession of an intermediary of any land used for agricultural or horticultural purposes means the possession of such intermediary by cultivating such land or carrying horticultural

operations thereon himself with his own stock or by his own servants or by hired labour or with hired stock. A bare perusal of the aforementioned provision show that for the purpose of taking benefit of the provisions of Section 7(1)(a) of the Act, the intermediary must be in cultivating possession of the said land either by himself, with his own stock or by his own servants or by hired labour or with hired stock. The nature and character of the land being non-agricultural, the same evidently was not in cultivating possession of the intermediaries and, thus, an application for settlement of such land by the intermediaries purported to be in terms of Section 7 of the Act was not maintainable. Furthermore, the land being not used either for cultivation or for horticulture purposes on the date of vesting did not attract the provisions of clause (a) of sub-section (1) of Section 7."

41. The concept of vesting has been explained by the Supreme Court of India in Harapriya Bisoi (supra), as under:

"18. Upon a notification being issued under the provisions of Sections 3, 3A or 4 of the Act, the entire estate vests in the State free from encumbrances and the intermediary ceases to have any interest in such estate other than the interests expressly saved under the Act...."

42. The Court is for the aforementioned reasons not able to accept the submission of the Respondents that the intermediary/raiyati right of Sri Sethi did not stand extinguished upon the notification being issued under the OEA Act.

43. Mr. Jena referred to the decision in Radhamani Dibya v. Braja Mohan Biswal (supra), the relevant portion of which reads as under:

"20. In view of our above discussions, we hold that Pravakar was a tenant as defined in Section 3(23) of the O.T. Act by the date of vesting on 1.4.1954 and as a tenant he would fall within the class of non-occupancy raiyats. Under section 8 of an estate in the State Government was in possession of any holding as a tenant under an intermediary shall, on and from the date of vesting be deemed to be a tenant of the State Government and such person shall hold the land in the same rights and subject to the same restrictions and liabilities as he was entitled or subject to immediately before the date of vesting. Thus, on and with effect from 1.4.1954, Pravakar became a non-occupancy raiyat under the state government. He continued in possession of the lands as before under the State Government until his death on 4.12.1954. As a raiyat he was in continuous possession for a period of twelve years from 17.4.46 to 17.4.1958. Thus he became a settled raiyat under section 23 of the O.T. Act and by virtue of the status, he acquired occupancy right.

21. Even otherwise he acquired occupancy right by virtue of Section 234, O.T. Act. Land with which we are concerned is chur land. Section 234 provides that a raiyat shall not acquire a right of occupancy in chur land until he has held that land in question for twelve continuous years. According to Sub-section (2) of this section, Chapter VI dealing with the non-occupancy raiyats is made non-

applicable to utbandi lands and not to chur lands. It follows, therefore, that Chapter VI is applicable to the case of chur lands. In the present case, Pravakar held the chur lands prior to the vesting. His right to continue possession of the lands as a non-occupancy raiyat under the State Government was maintained under section 8(1), O.E.A. Act being in continuous possession as a raiyat for 12 years he acquired occupancy right by virtue of Section 234(1)(b) of the O.T. Act."

44. Clearly the above case turned to its own facts. The subsequent conduct of the parties in the present case reveals that Sri Sethi did not continue as a tenant under the State Government. In fact, he stopped paying rent to the Government after 1970. In other words, he thereafter started projecting himself as the owner of the land and not a tenant or a raiyat. Therefore, the above decision in *Radhamani Dibya v. Braja Mohan Biswal* (supra) is of no assistance to the Respondents/Opposite parties.

45. The grant of permission under Section 22 of the OLR Act in favour of Sri Sethi was totally contrary to the legal vesting of entire land in favour of the State. The question of government acquiring its own land did not arise. The legal position in this regard has been explained in *Special Land Acquisition & Rehabilitation Officer v. M/s. Seshagiri Rao* (supra), in the following terms:

"4. The High Court also placed reliance upon the judgment of the Madras High Court in *State of Madras v. A.Y.S. Parisutha Nadar*, 1961(2) Mad LJ 285. In that case the main question decided was whether it was open to a claimant to compensation for land under acquisition to assert title to the land notified for acquisition as against the State Government when the land had become vested in the Government by the operation of the Madras Estates (Abolition and Conversion into Ryotwari) Act 26 of 1948. On behalf of the State it was contended that once an estate is taken over by the State in exercise of its powers under the Estates Abolition Act, the entire land in the estate so taken over vested in the State in absolute ownership, and that no other claim of ownership in respect of any parcel of the land in the estate could be put forward by any other person as against the State Government without obtaining a ryotwari patta under the machinery of the Act. The High Court rejected that contention observing that the Government availing itself of the machinery under the Land Acquisition Act for compulsory acquisition and treating the subject-matter of the acquisition as not belonging to itself but to others, is under an obligation to pay compensation as provided in the Act, and that the Government was incompetent in the proceeding under the Land Acquisition Act to put forward its own title to the property sought to be acquired so as to defeat the rights of persons entitled to the compensation. The propositions so broadly stated as, in our judgment, not accurate. The Act contemplates acquisition of land for a public purpose. By acquisition of land is intended the purchase of such interest outstanding in others as clog the right of the Government to use the land for the public purpose. Where the land is owned by a single person, the entire market value payable for deprivation of the ownership is payable to that person; if the

interest is divided, for instance, where it belongs to several persons, or where there is a mortgage or a lease outstanding on the land, or the land belongs to one and a house thereon to another, or limited interests in the land are vested in different persons, apportionment of the compensation is contemplated. The Act is, it is true, silent as to the acquisition of partial interests in the land, but it cannot be inferred therefrom that interest in land restricted because of the existence of rights of the State in the land cannot be acquired. When land is notified for acquisition for a public purpose and the State has no interest therein, market value of the land must be determined and apportioned among the persons entitled to the land. Where the interest of the owner is clogged by the right of the State, the compensation payable is only the market value of that interest subject to the clog.

5. We are unable to agree with the High Court of Madras that when land is notified for acquisition, and in the land the State has an interest, or the ownership of the land is subject to a restrictive covenant in favour of the State, the State is estopped from setting up its interest or right in the proceedings for acquisition. The State in a proceeding for acquisition does not acquire its own interest in the land, and the Collector offers and the Civil Court assesses compensation for acquisition of the interest of the private persons which gets extinguished by compulsory acquisition and pays compensation equivalent to the market value of that interest. There is nothing in the Act which prevents the State from claiming in the proceeding for acquisition of land notified for acquisition that the interest proposed to be acquired is a restrictive interest."

46. Likewise, in *State of Orissa v. Brundaban Sharma* (supra), it was observed as under:

"5. In view of the diverse contentions, the first question that arises for consideration is whether the applicants are bound to acquire the land in question. In the *Collector of Bombay v. Nusserwanji Rattanji Mistri*, (1955) 1 SCR 1311, 1223, this Court while approving the ratio of Madras High Court in *Dy. Collector, Calicut Division v. Aiyeru Pillay*, (1911) 9 IC 341: (1911) 2 MWN 367, that the Act does not contemplate or provide for the acquisition of any interest belonging to the Government in the land on acquisition, but only it acquires such interest in the land as does not already belong to the Government held that :

"When Government possesses an interest in land which is the subject of acquisition under the Act, that interest is itself outside such acquisition, because there can be no question of Government acquiring what is its own. An investigation into the nature and value of that interest will no doubt be necessary for determining the compensation payable for the interest outstanding in the claimants, but that would not make it the subject of acquisition."

This principle was followed in a catena of decisions, viz. *Special Land Acquisition & Rehabilitation Officer v. M.S. Seshagiri Rao and Another*, (1968) 2 SCR 892; *Ram Narain Singh v. State of Bihar*, (1972) 2 SCC 532; *Union of India v. Prafulla*

Kumar Samal, (1979) 3 SCC 4 : (1979) 2 SCR 229, etc. Therefore, it is settled law that the Government, being an owner of the land, need not acquire its own land merely because on an earlier occasion proceedings were mistakenly resorted to acquire the land and later on while realizing its mistake obviously withdrew the same and published a fresh notification in which admittedly the land was omitted for acquisition and thereafter proceeded to lay the road on its land. However, the High Court found that the respondent as a tenant under the Act and Government unauthorisedly took possession from him and directed the Government to pay compensation."

47. The fact that Sri Sethi had no valid title to convey through the registered sale deeds in favour of the persons who were vendors of these lands, are now claiming compensation is undisputed. In *State of Andhra Pradesh v. Star Bone Mill and Fertiliser Company* (supra), the legal position in this regard is

explained as under:

"17. No person can claim a title better than he himself possess. In the instant case, unless it is shown that M/s. A. Allauddin & Sons had valid title, the respondent/plaintiff could not claim any relief whatsoever from court.

18. In *Gurunath Manohar Pavaskar & Ors. vs. Nagesh Siddappa Navalgund & Ors.*, AIR 2008 SC 901, this Court held as under:

"12. A revenue record is not a document of title. It merely raises a presumption in regard to possession. Presumption of possession and/or continuity thereof both forward and backward can also be raised under Section 110 of the Evidence Act."

19. In *Nair Service Society Ltd. v. K.C. Alexander & Ors.*, AIR 1968 SC 1165, dealing with the provisions of Section 110 of the Evidence Act, this Court held as under:

"15... ..Possession may prima facie raise a presumption of title no one can deny but this presumption can hardly arise when the facts are known. When the facts disclose no title in either party, possession alone decides."

20. In *Chief Conservator of Forests, Govt. of A.P. v. Collector & Ors.* AIR 2003 SC 1805, this Court held that:

"20... .. Presumption, which is rebuttable, is attracted when the possession is prima facie lawful and when the contesting party has no title."

Xx xx xx

22. The courts below have failed to appreciate that mere acceptance of municipal tax or agricultural tax by a person, cannot stop the State from challenging ownership of the land, as there may not be estoppel against the statute. Nor can such a presumption arise in case of grant of loan by a bank upon it hypothecating the property."

48. The same decision also supports the plea of the State that mere entries in the revenue records cannot confer title, because they only show possession. Relevant observation in this regard is as under:

"22. The courts below have failed to appreciate that mere acceptance of municipal tax or agricultural tax by a person cannot stop the State from challenging ownership of the land, as there may not be estoppel against the statute. Nor can such a presumption arise in case of grant of loan by a bank upon it hypothecating the property.

23. The trial court has recorded a finding to the effect that the name of one Raja Ram was shown as Pattadar in respect of the land in dispute and the respondent/plaintiff is in possession. Therefore, the burden of proof was shifted on the government to establish that the suit land belonged to it. Learned counsel for the respondent/plaintiff could not furnish any explanation before us as to who was this Raja Ram, Pattadar and how respondent/plaintiff was concerned with it. Moreover, in absence of his impleadment by the respondent/plaintiff such a finding could not have been recorded.

24. The courts below erred in holding that revenue records confer title, for the reason that they merely show possession of a person. The courts below further failed to appreciate that the sale deed dated 11.11.1959 was invalid and inoperative, as the documents on record established that the vendor was merely a lessee of the Government."

49. There is merit in the contention of Mr. Palit appearing on behalf of the State that, in the present case there appears to have been a massive fraud committed involving several persons, perhaps even the authorities, over the years in overlooking the fact that the lands in question already stood vested with the State under the OEA Act. In somewhat similar circumstances, in *State of Orissa v. Harapriya Bisoi* (supra), it was observed by the Supreme Court as under:

"8. In *Brundaban's case* (supra) this Court held that even in a case where the OEA Collector "decides not to set aside the lease, he should have referred the case to the Board of Revenue. The object of conferment of such power on the Board of Revenue appears to be to prevent collusive or fraudulent acts or actions on the part of the intermediaries and lower level officers to defeat the object of the Act." This Court further held that even if the OEA Collector decides that a lease was purported to have been granted before 1.1.1946 and is not liable to be set aside, without reference or confirmation by the Board of Revenue, such lease would not attain finality. The judgment finally concludes that, "the order passed by the Tehsildar (exercising powers as the OEA Collector) without confirmation by the Board is not est. A non est order is a void order and it confers no title and its validity can be questioned or invalidity be set up on any proceeding or at any stage."

50. Therefore, the plea of the Opposite Parties/Respondents that the PIL is time-barred, or that the actions taken in that regard by the State are belated, cannot

stand legal scrutiny.

51. Consequently, as far as the answer to Issue No.(i) posed by the Court in its order dated 27th April, 2021 is concerned, it is clear that the effect of vesting of the entire land in the State free from all encumbrances under the OEA Act by the Notification dated 27th April, 1963 is that all subsequent actions of transfer of properties of those very lands in favour of the third parties or even the proceedings to acquire the land under the LA Act are null and void.

52. Now turning to Issue No.(ii), namely the order of the Commissioner dated 5th April, 2002 in R.P. No.2351 of 1998, it is seen that the order proceeds on the basis that the State is estopped from denying the title of Sri Sethi notwithstanding the aforementioned notification under the OEA Act. In the considered view of the Court, this is contrary to the legal position as has been explained in *Dr. H.S. Rikhy v. New Delhi Municipal Committee* AIR 1962 SC 554, in the following passages:

"The question was there was the provision of Section 8 of the Delhi in Azmer Rent Control Act, 1952 would apply to the transactions between the appellants and the New Municipal Committee. This arose in the context of the question that framed in the trial court whether the amounts paid by the occupants of the shops in the Central Municipal Market Complex, Lodhi Colony was 'rents' within the meaning of 1952 Act. The committee had raised objection that there was in fact no relationship of landlord connect between the applicants in the Committee. The High Court reversed the trial court's finding that they were in fact tenants. It was held that there was no letting of the property and the doctrine of part-performance is not attracted in the facts and circumstances of the case. In the Supreme Court this judgment was upheld and it was held that there was no question of estoppel against the Committee. The following passages in the said judgment are relevant in this regard.

"12. The same argument was advanced in another form, viz. that the effect of Section 47 of the Municipal Act is not to render the transactions in question between the parties entirely void, but it was only declared to be not binding on the Committee. In other words, the argument is that a distinction has to be made between acts which are ultra vires and those for the validity of which certain formalities are necessary and have not been gone through. This distinction assumes an importance where the rights of third parties have come into existence and those parties are not expected to know the true facts as to the fulfillment of those formalities. That it is so becomes clear from the following statement of the law in Halsbury's Laws of England (3rd Edn., Vol.15) para 428 at p.227:

"Distinction between ultra vires and irregular acts. - A distinction must be made between acts which are ultra vires and those for the validity of which certain formalities are necessary. In the latter case, persons dealing without notice of any informality are entitled to presume *Omnia rite esse acta*. Accordingly a

company which possessing the requisite powers, so conducts itself in issuing debentures as to represent to the public that they are legally transferable, cannot set up any irregularity in their issue against an equitable transferee for value who has no reason to suspect it."

13. In this connection, it is also convenient here to notice the argument that the Committee is estopped by its conduct from challenging the enforceability of the contract. The answer to the argument is that where a statute makes a specific provision that a body corporate has to act in a particular manner, and in no other, that provision of law being mandatory and not directory, has to be strictly followed. The statement of the law in para 427 of the same volume of Halsbury's Laws of England to the following effect settles the controversy against the appellants:

"Result must not be ultra vires. - A party cannot by representation, any more than by other means, raise against himself an estoppel so as to create a state of things which he is legally disabled from creating. Thus, a corporate or statutory body cannot be estopped from denying that it has entered into a contract which it was ultra vires for it to make. No corporate body can be bound by estoppel to do something beyond its powers, or to refrain from doing what it is its duty to do..."

53. In Harapriya Bisoi (supra), the Supreme Court had the occasion to deal with the aspect of fraud, and explained that a void order confers no title and that its validity can be questioned in any proceeding at any stage.

54. In conclusion, as far as Issue (ii) is concerned, the order dated 5th April, 2002 in R.P. No.2351 of 1998 is held to be unsustainable in law and is hereby set aside.

55. As a result of the answers to Issues (i) and (ii) above, the subsequent orders passed in the LA proceedings including the orders passed by this Court in the First Appeals on 23rd August, 2001 cannot be upheld. They are accordingly set aside.

56. The submission of Mr. Jena that, after a long number of years the proceedings under the LA Act should not be interfered with, is based on the observation by the Supreme Court in Municipal Council, Ahmednagar v. Shah Hyder Beig (supra), which was in an entirely different context. There, reliance was placed on the decision in Municipal Corporation of Greater Bombay v. Industrial Development Investment Co. Pvt. Ltd., AIR 1997 SC 482. That did not involve the question of fraud as is involved in the present case. As explained in numerous other decisions, there can be no estoppel against law. The fact that vesting of the entire land in the State took place way back in 1963 gives a completely different complexion to the entire proceedings. Once it is clear that all the further proceedings are null and void, the further order passed in November, 2001 by the Civil Court on remand by this Court also cannot be sustained in law. That is therefore, no need for the execution proceedings to continue any further.

Issues (iii), (iv) and (v) are answered accordingly.

57. While Mr. Jena did submit that the justice that is done should be the justice for everyone, the fraud of this extent can by no means be condoned. This is a fraud not just against the State but against the people. Innocent persons may have been lured into parting with valuable consideration, but that cannot be the reason to condone, what is plainly unsustainable in law.

58. There is no question of estoppel against the statute. As explained in *I.T.C. Bhadrachalam Paperboards v. Mandal Revenue Officer, A.P.* (supra):

"If the statute requires that a particular act should be done in a particular manner and if it is found, as we have found hereinbefore, that the act done by the Government is invalid and ineffective for non-compliance with the mandatory requirements of law, it would be rather curious if it is held that notwithstanding such non-compliance, it yet constitutes a 'promise' or a 'representation' for the purpose of invoking the rule of promissory/equitable estoppel. Accepting such a plea would amount to nullifying the mandatory requirements of law besides providing a licence to the Government or other body to act ignoring the binding provisions of law. Such a course would render the mandatory provisions of the enactment meaningless and superfluous. Where the field is occupied by an enactment, the executive has to act in accordance therewith, particularly where the provisions are mandatory in nature. There is no room for any administrative action or for doing the thing ordained by the statute otherwise than in accordance therewith. Where, of course, the matter is not governed by a law made by a competent legislature, the executive can act in its executive capacity since the executive power of the State extends to matters with respect to which the legislature of a State has the power to make laws (Article 162 of the Constitution). The proposition urged by the learned counsel for the appellant falls foul of our constitutional scheme and public interest. It would virtually mean that the rule of promissory estoppel can be pleaded to defeat the provisions of law whereas the said rule, it is well settled, is not available against a statutory provision. The sanctity of law and the sanctity of the mandatory requirement of the law cannot be allowed to be defeated by resort to rules of estoppel."

59. For all the aforementioned reasons, this Court allows the writ petition and sets aside the order dated 5th April, 2002 passed by the Commissioner in R.P. Case No.2351 of 1998. Also all the First Appeals and the CMPs are allowed and the orders of the learned Civil Judge (Senior Division), First Court, Cuttack, which are the subject matter of the Appeals and CMPs, are hereby set aside. The State is directed to take all possible steps to recover the amount paid as compensation to the claimants, in accordance with law.

60. The amount deposited in this Court or in the Executing Court be returned forthwith by the Registry to the State together with the interest which may have accrued thereon.

61. All the sales of lands in question subsequent to the Notification dated 27th

April, 1963, Land Acquisition Awards and the corresponding orders in reference under Section 18 of the LA Act are declared null and void, and all the Execution Proceedings arising therefrom are hereby declared closed. On the strength of this judgment, the concerned Courts will pass corresponding orders accordingly.

62. An urgent certified copy of the judgment be issued as per the Rules.