

**IN THE COURT OF THE REVENUE DIVISIONAL COMMISSIONER,
SOUTHERN DIVISION, ODISHA, BERHAMPUR.**

OLR Case No.1/19

(Arising out of OLR Case No. 14/11 of RDC (SD), Berhampur)

(Order by Sri T. Ao. I.A.S., Revenue Divisional Commissioner, (SD), Berhampur)

Decided on 26.07.2021

Sister Regina Chinnappa
Sister Superior,
Franciscan Sisters of Mary
Santirani Bhavan
Vill-Venketaipur
PO/Ps- Gopalpur, Dist. Ganjam. Petitioner

-Versus-

1. The Collector, Ganjam
2. The Tahasildar, Konisi, Ganjam.
3. Smt. Renuka Dey
W/o- Late S.K. Dey, Land holder
Gopalpur on Sea, Dist - Ganjam Respondent

For the Petitioner Advocate, M. Nageswar Rao
For the Respondent None

1. **Prayer**

This revision petition is filed U/r 38-A (10) (bb) of Odisha Land Reform Rules, 1965 by Sister Regina Chinnappa, Sister Superior, Franciscan Sisters of Mary, Santirani Bhavan, Vill-Venketaipur PO/Ps- Ganjam order dtd. 05.04.2019 of Hon'ble High Court, Odisha, Cuttack passed in Writ Petition No. 8244/2016 to set aside order dtd. 26.05.1982 of the



Tahasildar, Berhampur passed in OLR ceiling Case No. 470/1975 and to issue direction to Tahasildar, Konisi (Present Tahasil) for recording of the suit land in favour of the Petitioner Society.

2.

Contention

The original RT of the suit land was Renuka Dey (OP No.3). Smt. Renuka Dey sold the suit land to Mr. George Joseph King S/o- Late Edward Alford King and Mrs. Anges Aurea King vide RSD No. 1746 dtd. 16.06.1941. The said Mr George Joseph King and Mrs. Anges Aurea King sold the suit land to William Nathaniel Daugherty, S/o- Thomas Daugherty and Marvyan Anthony Daugherty, S/o- Thomas Joseph Daugherty vide RSD No. 1442 dtd. 09.03.1956. Marvyan Anthony Daugherty sold the suit land to Franciscan Sisters of Mary, Calcutta represented by sister Mary Germeo vide RSD No. 223 dtd. 30.01.1962. Thereafter the suit land was transferred by the Franciscan Sisters of Mary, Calcutta in the name of Franciscan Sisters of Mary, Hyderabad. During the settlement operation finalized in the locality in the year, 1975 the suit land was recorded again in the name of Renuka Dey (OP No.3). In the year, 1975, the Tahasildar, Berhampur found that Ac. 121.954 of class-IV land which is equivalent to Ac. 30.116 standard acres stood recorded in the name of Renuka Dey. Tahasildar, Berhampur initiated OLR ceiling Case No. 470/75 U/s-42 of OLR Act against Renuka Dey to take the ceiling surplus land recorded in her name to Govt. Khata. On enquiry, it was found that Ac. 236.749 of class-IV land stood recorded in the name of Renuka Dey. As per provision of OLR Act, Renuka Dey was allowed to retain Ac. 45.000 of class IV land which is equivalent to 10 Standard Acres of Class-I land in her name and rest area of Ac. 191.749 land including the suit land was ordered to be



vested in Govt. Khata. Thereafter the Petitioner filed appeal case No. 14/2011 in the court of RDC (SD), Berhampur challenging the order of the Tahasildar, Berhampur passed in OLR ceiling Case No. 470/75. The then RDC (SD), Berhampur in his order dtd. 03.10.2015 rejected the appeal on the ground that the case was not fit to be heard under Rule 38-A (10)(bb) of OLR Rules,1965 as the land was in Govt. Khata and was not recorded in favour of any beneficiary. Thereafter the Petitioner challenged the order of the RDC before the Hon'ble High Court, Odisha, Cuttack vide Writ Petition No. 8244/2016. The Hon'ble High Court in order dtd. 05.04.2019 quashed the orders dtd. 03.10.2015 of RDC (SD) Berhampur and directed for de novo hearing. Hence the petition to record the suit land in favour of the Petitioner Society.

3. **Document enclosed**

- i. Copy of order dtd. 05.04.2019 in Writ Petition No.8244/2016 of Hon'ble High Court, Odisha, Cuttack
- ii. Copy of Affidavit dtd. 10.02.2004 executed before Notary Public, Calcutta on behalf of President of the Society of Franciscan Sisters of Mary (Northern Province) for transfer of suit land in favour of Franciscan Sisters of Mary, Hyderabad.
- iii. Affidavit dtd. 29.01.2014 executed before Notary Public, Berhampur by Sri Krishna Dey (son of late Renuka Dey)
- iv. Copy of rent receipt for Khata No. 465 for the year, 2018-19, 2017-18, 2016-17, 2012-13, 2000-01, 1979-80, 2003-04 and 2002-03
- v. Copy of ROR No. 466 published on 05.03.1977.
- vi. Copy of ROR No 17 published on 03.05.1977
- vii. Copy of order dtd. 03.10.2014 of RDC (SD), Berhampur
- viii. Copy of case record of OLR Case No. 470/75
- ix. Copy of RSD No. 1746 dtd. 16.06.1941.
- x. Copy of RSD No. 1442 dtd. 09.03.1956.
- xi. Copy of RSD No. 223 dtd. 30.01.1962.



4. **Land Schedule**

Sl No	Mouza	SabikKhata No	Sabik Plot No.	Kissam	Hal Khata No.	Hal Plot No.	Area
1	Venkatraipur	43	236/5	Bagayat- I	798	933	Ac.1.870

5. **Date wise briefing**

- i. On **22.06.2019**, the Advocate for the Petitioner was present. The Petitioner sister Regina Chinnappa was also present and established her identity vide Aadhaar No. 877985383909. The Petitioner submitted that the land was purchased by Franciscan Sisters of Mary, Calcutta in the year, 1962 vide RSD No. 223//1962 from Marvyan Anthony Daugherty. Marvyan Anthony Daugherty along with William Nathaniel Daugherty had purchased the suit land from George Joseph King and Mrs. Anges Aurea King vide RSD No. 1442/1956. George Joseph King and Mrs. Anges Aurea King had purchased the said land from Renuka Dey vide RSD No. 1746/1941. The Franciscan Sisters of Mary, Calcutta transferred the land to Franciscan Sisters of Mary, Hyderabad. During the settlement held in the year, 1973-77, the suit land was recorded in the name of Renuka Dey. Thereafter the Tahasildar, Berhampur initiated OLR ceiling case No. 470/75 against Renuka Dey for owning and holding lands in excess of the prescribed ceiling. Renuka Dey offered to give up the suit land along with other lands located in the area as ceiling surplus land. The Tahasildar, Berhampur declared the suit land as ceiling surplus land of Renuka Dey. The Petitioner submitted that the suit land was used as Holiday Home for them and there were 3 cottages over the suit land. In the year "1985" the area was transferred from the operational area of Franciscan Sisters of Mary, Calcutta to Franciscan Sisters of Mary, Hyderabad and it is coming under GP area. The Tahasildar, Konisi was asked to be present in the court on the next date with full field verification report.



- ii. On **08.07.2019**, in spite of prior issue of notices, none of the parties were present on call. The Tahasildar, Konisi was asked to attend the court on the next date. He was also asked to furnish LCR of ceiling case No. 470/1975 and status report of land by 13.07.2019.
- iii. On **15.07.2019**, in spite of prior issue of notices, neither the Advocate for the Petitioner nor the Petitioner attended the court. Sri S.K. Panda, Sr. Clerk and Sri P.R. Rout, Amin of Konisi Tahasil were present on behalf of the Tahasildar, Konisi and intimated that the Tahasildar, Konisi has proceeded to ROTI for training. The Tahasildar, Konisi was once again directed to submit the LCR of OLR ceiling case no. 470/1975 along with comprehensive field possession report of the adjacent suit plots.
- iv. On **26.08.2019**, the Advocate for the petitioner was present. The Settlement Officer, Berhampur was asked to furnish a detailed report.
- v. On **16.11.2019**, the Advocate for the Petitioner and the Petitioner were present. The Settlement Officer, Berhampur was again directed to furnish a detailed report by 25.11.2019.
- vi. This case was heard for the final time on **02.12.2019**. The Advocate for the Petitioner as well the Petitioner were present in the court and stood on the contention of the revision petition. Perused the case record of *OLR Case No. 470/75* which reveals that:
- vii. This case was started U/s-42 of OLR Act against Renuka Dey w/o-late S.K. Dey of Gopalpur on 30.08.1975 basing on the information available from Revenue records. A Draft Statement was accordingly prepared and sent to Renuka Dey for filing objection. Renuka Dey filed her objection to the Draft Statement on 25.10.1975. The Revenue Officer after "due enquiry" confirmed the Draft Statement declaring the land to an extent of Ac. 165.537 as ceiling surplus land.



- viii. Being aggrieved by the order, Renuka Dey filed appeal before ADM, Ganjam vide OLR appeal Case No.531/76 which was dismissed for default. Thereafter Renuka Dey filed Revisional Case in the Court of Member, Board of Revenue, Odisha, Cuttack vide OLR Revision Case No. 69/78 where the Member, Board of Revenue set aside the orders of the Tahasildar, Berhampur on the ground that the Tahasildar, Berhampur has wrongly taken into account the lands of the Petitioner at Darjeeling which is outside Orissa and also the lease hold lands of the Petitioner at Bhubaneswar which are not Rayati lands for application of ceiling law and ordered for fresh enquiry to assess the ceiling surplus land.
- ix. Accordingly, re-enquiry was made and lands of area Ac. 114.227 of Udayapur mouza, Ac. 0.258 of Aswasanpur mouza and Ac. 122.264 of Venketaipur mouza i.e. total area of Ac. 236.749 of class-IV lands were taken into account for determination of ceiling surplus area.
- x. Renuka Dey was allowed to retain 10 standard Acres of land which is equivalent to 45 Acres of class-IV land, and remaining Class IV land of Ac. 191.749 was vested with the Govt.
- xi. Renuka Dey was allowed to retain Ac. 13.51 of Khata No. 466 of Venketaipur mouza, Ac. 0.258 of Khata No. 10 of Aswasanpur mouza and Ac. 31.232 of Khata No. 17 of Udayapur mouza, and remaining area of Udayapur and Venketaipur mouza was vested with the Govt.

6. **Para wise report**

Perused the Para Wise report of the Settlement Officer, Berhampur which reveals that:

- i. In Sabik ROR, Sabik Plot No. 236/5, Ac.2.38 is recorded in the name of "Mrs.Renuka Devi" under Sabik Khata No. 43.
- ii. During Khanapuri stage, ASO ordered to record suit Hal Plot No. 933 in the name of Sabik recorded tenant "Mrs. Renuka Devi" taking reference of Jamabandi No. 43 vide order passed in Yaddast No.813.



- iii. During Bujharat period, mistake No. 4/130 was instituted for recording of father /Husband's name, caste and residence of the tenant in which the ASO passed order to enquire and report. The survey Munsarim of the camp conducted his field enquiry and submitted the report vide A.R. No. 317. In A.R. No. 317, the camp ASO has passed order to keep Hal Plot No. 933 intact in Khata No. 204 and to record the same in favour of "Renuka Devi W/o- Subodh Kumar Dey" caste- Kayast of village Gopalpur in Rayati status deleting the 3rd column of Khatian and also ordered to fill up rent Rs. 2.62 of part jamabandi No. 43.
- iv. During Draft Publication and Objection Hearing stage, a suo-moto Objection Case bearing No. 7775/72 u/s-21(2) of OS&S Act, 1958 had been filed by the camp Peskar for recording of Sabik Plot No. 236/5 Ac. 0.13 in favour of purchaser Rudupalli Helen S/o- Gadriel caste Christian of Gopalpur in which the Camp ASO passed order to create butta plot bearing No. 933/2107 Ac. 0.13 from original Hal Plot No. 933 keeping its area at Ac. 1.870 in place of Ac. 2.000 and to keep the suit Hal Plot No. 933 intact in Tasdik Khata.
- v. In course of rejanch, suo-moto case bearing No. 1005 U/s-22 (3) of O S & S Act, 1958 was instituted to correct the rent as the suit village Venketaipur was declared as town in which the empowered ASO passed order to fill up rent Rs. 780.00 and Cess.17.00 deleting the previous rent and cess.
- vi. Accordingly, the suit Hal Plot No. 933 Ac. 1.870 with Kissam Bagayat-I has been recorded in the name of "Renuka Devi W/o- Subodh Kumar Deo" caste Kayast of village Gopalpur in rayati status under Hal Khata No. 466.

7.

Field Verification

Also appraised the **field verification report submitted by Tahasildar, Konisi vide letter No.4422 Dtd.22.08.2018** which reveals that:

- i. Plot No.933 with area Ac.1.870 of Khata No.798 of Venketaipur Mouza of Bagayat Kissam is recorded as Govt.land.



- ii. The suit land is bounded with cemented wall and a two storied building has been built on the suit land over an area of Ac.0.270 and the suit land is in possession of Franciscan Sisters of Mary.
- iii. No encroachment case is booked over the suit land.

8. **Case record of OLR case No.470/1975**

The case record of OLR case No.470/1975 reveals that Renuka Dey has intimated therein regarding transfer of area of Ac.11.580 of khata No.154/1 of Gopalpur Mouza prior to 26.09.1970. Any other landed property listed in other Mouza has not been mentioned in the list of transferred lands prior to 26.09.1970. Thereafter, on finalization of list of landed property retained with Renuka Dey for calculation of the ceiling surplus lands, the suit plot No.933 which corresponds to Sabik plot No.236/5 was clearly seen in Venketraipur Mouza which was shown to be the property of Renuka Dey.

9. **OLR Revision Case No.2/2000**

The **OLR Revision Case No.2/2000** before the **Land Reforms Commissioner** filed by **Srikrishna Dey (Son of Smt. Renuka Dey)** assumes significance with regard to the present case as the suit plot no. 933 Khata no. 466 of Venketraipur mouza is also covered therein. The learned LRC's **judgment order dtd.7.3.2019** shows that:

- i) This case was filed by Srikrishna Dey against order dtd.26.05.1982 of Tahasildar, Berhampur in OLR (Ceiling) Case No.470/1975.
- ii) Contention of the Petition was that "the Petitioner was a major and married member of the family prior to 26.09.1970 (i.e. the date on which ceiling surplus lands were transferred) and he used to stay abroad (Italy) with his wife, being separated from his mother. Hence, the entire suit lands owned by his father should have been divided equally between his mother and the Petitioner (after deducting the lands sold and donated prior to 26.09.1970). But the Tahasildar, Berhampur-cum-Revenue Officer did not issue notice on the Petitioner, the Deity and the purchaser of the disputed land and passed his order dated 26.05.1982 in OLR case



No.470/1975, wherein the Revenue Officer made the Draft Statement declaring lands to the extent of Ac.165.537 dec. as ceiling surplus over and above the ceiling area.”

- iii) Being aggrieved against the order of the Revenue Officer, the Petitioner filed OLR Appeal Case No. 531/1976 before the A.D.M, Ganjam but the appeal case was dismissed on “default.”
- iv) Then the Petitioner filed OLR Revision case No.69/1978 before the Member, Board of Revenue, Odisha, Cuttack. The Member, Board of Revenue set aside the order of the lower court (Tahasildar’s order) and directed to return the case to the Revenue Officer, Berhampur for fresh adjudication.
- v) On fresh adjudication, the Revenue Officer did not find any documentary evidence on separation of Petitioner as major married son and separation from his mother. Besides, the Opposite party No.2 (Mother of the Petitioner) failed to adduce evidence that the Deity ‘Íswar Krishna Jew’ as a privileged Deity. Rather the Deity is a private deity. Hence, lands which were gifted to the Deity cannot be excluded from the lands owned by the Land Lord. *The Opposite Party No.2 also failed to adduce support of her contention that some lands of others have been included in her Account.* Thereby, the claim of the Petitioner could not sustain before the Tahasildar.
- vi) Thereafter, the Petitioner had filed this revision before the Land Reforms Commissioner Board of Revenue, Odisha, Cuttack u/s 59(2) of the OLR Act, which was dismissed on 25.07.2000.
- vii) Then the Petitioner preferred OJC No.6844/2001 before the Hon’ble High Court of Orissa. The Hon’ble High Court has been pleased to set aside the order dated 25.7.2000 of the Land Reforms Commissioner and directed the revisional authority to rehear the revision with reference to documents produced by the petitioner along with the Misc. Case No.45/2000.
- viii) It is also mentioned in the order that;

“Pursuant to above orders of Hon’ble High Court, the suit matter has been taken up for rehearing. The LCR was called for from the Tahasildar, Berhampur. Gone through the LCR, this revision case along with Misc

case No.45/2000 and documents filed by the Petitioner. Heard the matter at length and gone through the documents filed by the Petitioner. The claim of *separation of the Petitioner from his mother was established as the petitioner filed marriage invitation card, which clearly shows that he has married Leena Amboni, D/o:Mr. Guiseppe Amboni, Bergamo, Italy on 25.02.1969, i.e., Prior to 26.09.1970.* Further, he produced the documents, photostat copy of the petitioner who has been staying in Italy. *Smt. Renuka Dey, the mother of the Petitioner as land holder and objector also had agitated before the Addl.Tahasildar, Berhampur on 12.07.1979 that she has been separated by partition from her major married son Sri S.K.Dey long before 26.09.1970.*

“Smt. Renuka Dey also submitted that the Court should have taken into account in respect of the lands donated to the Deity Sri Iswar Krishna Jew at Gopalpur and should have been excluded the lands from the draft statement. As this land was endowed by a registered deed of trust bearing No.3933 dated 06.12.1950 to the said Deity.

“Smt. Renuka Dey also had pleaded to consider that the lands already sold by her husband namely Subodh Kumar Dey long before 20th September,1970, the lands included in the draft statement are not agricultural lands and some of them were used for plantation purpose and *the draft statement includes properties which does not seem to belong to the objector.*

“The present petitioner also contended that the lands which are not agricultural land need to be deleted from the draft statement. The matter was also brought to the notice of the court below that *the lands, which do not belong to Smt.Renuka Dey have also been erroneously added to the draft statement and those lands are required to be excluded from the draft statement.*”

- ix) The Court of Land Reforms Commissioner, Orissa, Cuttack disposed of the case with observation that “In view of the above findings the revision case appears to have merit. Revenue Officer,



i.e. Tahasildar, Konisi is directed to adjudicate the matter and dispose of the case on merit after giving an opportunity of being heard to the petitioner. The petitioner is directed to adduce evidence in this regard before the Revenue Officer (Tahasildar, Konisi) in support of his claim.”

10. **Petition dtd.12.07.1979 of Renuka Dey**

Copy of petition dtd.12.07.1979 of Renuka Dey filed in the Court of Addl. Tahasildar, Berhampur shows that the Petitioner Smt. Dey had filed objection stating that the following facts need to be taken into consideration before finalization of OLR case No.470/1975.

- i. Smt. Renuka Dey has been separated from her major married son Srikrishna Dey long before 26th day of September, 1970.
- ii. Lands donated to Sri Iswar Krishna Jew at Gopalpur vide Registered deed No.3933 dtd.6.12.1950.
- iii. Lands sold by Smt.Dey and her husband prior to 26.09.1970.
- iv. All the lands included in the draft statement are not agricultural lands and some of them are being used as plantations.
- v. *The draft statement includes properties which do not seem to belong to the objector.*

11. **Findings**

- i. The PWR submitted by Settlement Officer Berhampur in the present case OLR No.1/19 shows that area of Ac.2.38 of Sabik Plot No. 236/5 of Venketaipur Mouza stood recorded in the name of Renuka Dey under Sabik Khata No. 43, but there is no clarity on whether any objection case was filed by the Petitioner during the settlement operation finalized in the year, 1977 for recording of the suit land in favour of the Petitioner society.



- ii. Copy of RSD No. 1746 dtd. 16.06.1941 shows that area of Ac.2.38 of Plot No. 236/5 of Khata No. 43 of Venketaipur Mouza was sold by Renuka Dey through her General Power of Attorney holder and husband Subodh Kumar Dey to Mr. George Joseph King S/o- late Edward Alford King and Mrs. Anges Aurea King through registered deed.
- iii. Copy of RSD No. 1442 dtd. 09.03.1956 shows that Mr. George Joseph King and Mrs. Anges Aurea King sold area of Ac.2.38 of Plot No. 236/5 of Khata No. 43 of Venketaipur Mouza to William Nathaniel Daugherty S/o- Thomas Daugherty and Marvyan Anthony Daugherty S/o- Thomas Joseph Daugherty through registered deed in the presence of witness Kaunria Sahu S/o Gopal Sahu.
- iv. Copy of RSD No. 223 dtd. 30.01.1962 shows that Marvyan Anthony Daugherty sold area of Ac.2.25 of Plot No. 236/5 of Khata No. 43 of Venketaipur Mouza at consideration amount of Rs.7,000/- to the Franciscan Sisters of Mary, Calcutta represented by sister Mary Germeo through registered deed in the presence of witnesses Hariram Sahu S/o Kadu Sahu and Madan Mohan Sahu.
- v. Copy of Affidavit dtd. 10.02.2004 executed before Notary Public, Calcutta on behalf of President of the Society of Franciscan Sisters of Mary (Northern Province) shows that the suit land was transferred in favour of The Franciscan Sisters of Mary, Hyderabad.
- vi. Copy of Yaddast No.813 shows that sabik plot No.236/5 corresponds to Hal plot No.933.
- vii. Copy of Hal Settlement ROR No.466 published on 3.5.1977 shows that the suit plot No.933 stands recorded in the name of Smt. Renuka Dey.
- viii. Copy of order sheet of Revision case No.126/05 shows that this case was filed in the Court of Joint Commissioner, Settlement and Consolidation, Berhampur to record area of Ac.1.870R of Plot No.933



of Khata No.798 in favour of the Petitioner society. As the Khata No.798 was issued by the Tahasil office, Berhampur as per orders passed in OLR case No.470/75, the revisional authority rejected the revision petition.

- ix. It is clear from the case record of OLR ceiling case No.470/75 of the Court of Tahasildar, Berhampur that Renuka Dey, in her written submission dtd. 12.07.1979 in the Tahasil Office, Berhampur, has stated that lands sold by Smt.Dey and her husband prior to 26.09.1970, non-Agricultural lands included in the Draft Statement, lands in the Draft Statement which do not belong to Smt.Renuka Dey should not be covered in the ceiling exercise. But in the record of Court proceeding dtd.26.05.1982 of the above case the Tahasildar, Berhampur has observed that the Petitioner could not furnish the particulars of land transferred before 26.09.1970 or details of lands of other owners included in the Draft Statement. Further, the lands covered in the Ceiling case are recorded as "Tope", "Gharabari," and citing the aforesaid reasons, the Tahasildar Berhampur rejected the prayer of Smt.Dey. But in the letter No.4623 dtd.14.05.1984 of A.D.M, Ganjam addressed to R.D.C (SD) office, Berhampur, it has been mentioned that the suit land is unfit for agriculture. This proves that proper enquiry has not been made before drafting of Ceiling surplus land in this case. Further there is no indication regarding transaction of the suit land from original RT Renuka Dey through all the years down to the Franciscan Sisters of Mary, Calcutta, though as many as three transactions of the suit land were made in between the years 1941 to 1962 via duly registered deeds. Accordingly, the extent of total landed property of Renuka Dey sold prior to 26.09.1970 should have been excluded from the total identified for calculation of Ceiling surplus land as per section 39(b) of Orissa Land Reforms Act,1960. There was scope to detect all this had the Revenue Officer made proper field enquiry as required U/s 42 of the OLR Act. Nowhere in the Case record is it evident that the land-holder Renuka Dey has herself exercised the provisions prescribed under Section 40-A of Orissa Land Reforms Act, 1960 to indicate the parcel of land she



wishes to retain and the parcel of land to be surrendered to Govt. Rather, this identification seems to have unilaterally been made by the Revenue Officer solely based upon the paper listing of plots sent by the R.I. Gopalpur. In the process, the present suit land for which she had long surrendered right, title and interest vide RSD No.1746 dated 16.06.1941 registered in the office of District Sub-Registrar, Chatrapur prior to India's Independence was also included.

- x. Copy of Judgment dtd. 7.3.2019 by the Land Reforms Commissioner in OLR Revision Case No. 2/2000 reveals that the case was filed by Srikrishna Dey against the order dtd. 26.05.1982 of Tahasildar, Berhampur in OLR (Ceiling) Case No. 470/1975 involving plots 166, 167, 182, 184, 195, 163/218, 196/219, 193/220, 186/221, 186/222, 185, 194 of Khata no.17 of Udayapur Mouza, and **plots 933, 1416, 1421, 1420, 1422, 1423, 1424, 1403** of Khata no. 466 of Venketaipur Mouza.
- a. (Among these latter plots is the *Plot No.933 pertaining to the suit plot in the present devolved case in the court of RDC Berhampur concerning the Franciscan Sisters of Mary's claim.* Sabik RT Renuka Dey has not mentioned anything in her counter in OLR Case No.470/1975 about selling of suit Plot No.933 in the year, 1941. Resultantly, the suit plot No.933 of Khata No.466 of Venketaipur Mouza fell under the list of surplus land.)
- b. It is also seen that the case was filed for not allowing Srikrishna Dey opportunity of being heard before passing order that no separation was made between Srikrishna Dey and his mother Renuka Dey, and that the Deity Sri Iswar Krishna Jew is a private Deity. But the case was initially dismissed by LRC, Cuttack on 25.07.2000 which led the petitioner Srikrishna Dey to take shelter before Hon'ble High Court of Orissa in OJC No.6844/2001. After issue of direction by Hon'ble High Court of



Orissa in the aforesaid case, the LRC had to take up the case and exercise thorough scrutiny of the documents. Therein the LRC, Cuttack found that claims of Srikrishna Dey are supported by genuine documents with regard to his having been separated from his mother Smt. Renuka Dey prior to 26.09.1970. As such the LRC, Orissa, Cuttack in his order dtd 7.3.2019 held that there is merit in the case and directed Tahasildar, Konisi for rehearing the matter giving due opportunity to the Petitioner Srikrishna Dey to be heard and submit documents.

xi. It is seen that in OLR revision case No.14/2011, the petitioner Society challenged the order of the Tahasildar, Berhampur passed in OLR ceiling Case No. 470/75 in the court of RDC (SD), Berhampur. In his observation in this case, the R.D.C (SD), Berhampur mentioned that before passing order by the Tahasildar, Berhampur, Draft Statement of the Ceiling surplus land of Renuka Dey was published in the locality and none, inclusive of the Petitioner Society, raised any objection to such publication. After lapse of 29 years, the Petitioner society has filed for this revision and also failed to justify the reason for this inordinate delay. Further the scheduled land has not been settled in favour of any beneficiary and lies in Govt. Khata and as such the petition is not fit to be heard under rule 38-A,10(bb) of OLR Rules,1965.

a. With the aforesaid observation, the then R.D.C. (SD), Berhampur in his order Dtd.3.10.2015 rejected the prayer of the Petitioner. It is clearly evident from the case record that no scope was afforded to delve into the details of the petition. A perusal of records would, however, indicate that the Petitioner had been agitating on the matter at various courts since 2004. The following lists the same as per available records; i)OLR revision case No.22/2004 in the court of R.D.C(SD), Berhampur ii)Settlement revision case No.126/2005 in the court of Joint Commissioner, Settlement and Consolidation, Berhampur



iii)Writ petition No.15562/2007 before Hon'ble Orissa High Court. To note further, the suit property was being administered by the Franciscan Sisters of Mary from Kolkata (West Bengal) from the date of purchase (30.01.1962), and thereafter from Hyderabad (Telengana) since 10.02.2004, till the present time. Had proper deliberation been made in the matter, a clearer picture could have emerged in the case and proper conclusions drawn.

- xii. This petition was instituted in this court U/r 38-A (10) (bb) of Orissa Land Reform Rules, 1965 basing on orders Dtd.5.4.2019 of Hon'ble Orissa High Court of Orissa in WP© No.8244/2016. In the said order, Hon'ble Orissa High Court have quashed the order Dtd.3.10.2015 of R.D.C. passed in OLR revision case No.14/2011 and disposed of the case with direction to the R.D.C for *de novo* hearing. Therefore, the earlier observations of the RDC in OLR revision case No.14/2011 that there has been unjustified delay on the part of the Petitioner Society in filing the revision case and that the case is unfit to be heard under OLR 38-A(10)(bb) stand nullified by this order of the Hon'ble High Court of Orissa.
- xiii. The field verification report of Tahasildar, Konisi submitted vide letter No.3208 dtd.23.07.2021 shows that there exists a house named Shantirani Bhawan managed by the Institute of Franciscan Sisters of Mary, Hyderabad Society over the said plot. Thus, it only underlines the fact that till today the land has been under the possession of the Franciscan Sisters of Mary and had in fact never physically been possessed by the Govt., or for that matter since 16.06.1941 by OP No.3 Smt. Renuka Dey.
- xiv. Affidavit dtd. 29.01.2014 executed before Notary Public, Berhampur by Sri Krishna Dey (son of late Renuka Dey) submitted in the Court by Advocate for the Petitioner shows that Srikrishna Dey has no objection if the suit land is recorded in the name of "Franciscan Sisters of Mary, Gopalpur."



- xv. The letter No.1554 Dtd.20.10.2020 of District Sub Registrar, Ganjam, Chatrapur certifies the genuineness of RSD No. 1746 dtd. 16.06.1941, RSD No. 1442 dtd. 09.03.1956, and RSD No. 223 dtd. 30.01.1962 submitted by the Petitioner accounts of which are still preserved in their office.
- xvi. As per section 39 of OLR Act,1960 “the transfer of any land by sale, gift or otherwise or the partition thereof by a person during the period beginning with the 26th day of September,1970 and ending with the commencement of the Orissa Land Reforms (Amendment) Act,1973 (President’s Act 17 of 1973), i.e.31.12.1973 shall, if such person was holding land on the said day in excess of the ceiling area, be deemed to be void, anything contained in any law or agreement or in any decree or order of any court notwithstanding”.
- xvii. As per Section 40-A of OLR Act,1960 “every person holding land either as land holder or raiyat in excess of the ceiling area at commencement of the Orissa Land Reforms (Amendment)Act, 1973 shall before the expiry of Ninety days from such commencement, submit to the Revenue Officer in such form and in such manner as may be prescribed, a return indicating the parcels of land which he wishes to retain and the parcels of land in excess of the ceiling area and furnish in the said returns such other particulars as may be prescribed.Provided that a person who has made any transfer or effected any partition in contravention of the provisions of Sub-section (1) of section 40, shall not have the right to indicate the parcels of land which he wishes to retain and the parcels of land in excess of the ceiling area.”
- xviii. In this regard the order Dtd.10.08.2011 of Hon’ble Orissa High Court passed in WP© No.2077/2009 of Dr. Sudhansu Sekhar Rath -Vrs- State can be referred to due to similarity of the case of which the following contents are cited which are relevant to this case.Para 10 of the judgment shows that in the case of Gundicha Nayak -Vrs- State of



Orissa reported in 1990(II) OLR 199(F.B), the Full Bench of the Court has held that a person who has not filed his return under Section 40-A of the Orissa Land Reforms Act,1960 can claim to have a right of option and choose the land to be retained by him after determination of the ceiling by Revenue Officer in exercise of power conferred under Section 43 of the Act. Thus, the option can be exercised not only in *suo moto* proceeding but also at any stage in view of the circular of the State Govt. bearing No.46458-Re 256176-R Dtd.17.06.1976. In the said circular, it is also clarified on the subject of review of cases in which selection of land to be retained within the ceiling has not been made by the surplus land owner. Paragraph-3 of the said circular reads as follows:

- a. According to the first proviso to Sec.40-A (1) of the Act; "Every person holding land (which shall include lands transferred by sale, gift or otherwise or partitioned by him after the 26th day of September,1970) either as land-holder or raiyat in excess of the ceiling area at commencement of the Orissa Land Reforms (Amendment) Act, 1973, shall, before the expiry of ninety days from such commencement, submit to the Revenue Officer in such form and in such manner as may be prescribed, a return indicating the parcels of land which he wishes to retain and the parcels of land in excess of the ceiling area(hereinafter referred to as "surplus land") and furnish in the said returns such other particulars as may be prescribed.
- b. Provided that a person who has made any transfer or effected any partition in contravention of the provisions of Sub-section(1) of Section 40, shall not have the right to indicate the parcels of land in excess of the ceiling area, but shall have to file the return furnishing the particulars of all the lands held by him as aforesaid." Para 13 of the judgment shows that in OJC No.542/1979 of Samanta Narayan Srichandan Mahapatra -Vrs- Tahasildar, Banki, Divisional Bench of Hon'ble High Court pronounced judgment wherein the same view was expressed



by the court with citation of provision under Section 40-A of OLR Act,1960 therein.

- xix. It is revealed from file No. V-44/86 of this office that after vesting of suit land in Govt. Khata as ceiling surplus land, A.D.M., Ganjam submitted a proposal basing on recommendation of Tahasildar, Berhampur to transfer a patch of area of Ac.90.000 of Venkatraipur Mouza to Forest Department including the suit land where the lands have been mentioned as sand dunes and unfit for any Agricultural purpose. Hence the ADM, Ganjam in his proposal suggested for Casuarina Plantation in the said patch of land which was approval by R.D.C.(SD) and communicated vide Divisional Office letter No. 2489 Dtd.27.06.84. But no information regarding transfer of the suit land for the said purpose is traceable.
- xx. It is evidently clear that the present suit plot No.933 with respect to the claim of Franciscan Sisters of Mary, Calcutta/Hyderabad is a veritable fact realized long before 26.9.1970, the baseline date in the ceiling exercise. As mentioned before, RSD No.1746/1941 - wherein OP No.3 Smt. Renuka Dey, through her husband Sri Subodh Kumar Dey, the Power of Attorney Holder, has sold this plot of land to other individuals (Mr. George Joseph King and Mrs. Anges Aurea King) - clearly establishes that OP No.3 Smt.Renuka Dey had surrendered her right, title and interest over this patch of land. Not only this, but also the fact that this very plot of land had changed ownership on two subsequent occasions - (1) RSD No.1442/1956, sale transaction recorded between Mr. George Joseph King and Mrs. Anges Aurea King (Vendor) and William Nathaniel Daugherty and Marvyan Anthony Daugherty (Vendee) (2) RSD No.223/1962, sale transaction between Marvyan Anthony Daugherty and Franciscan Sisters of Mary, Calcutta) - makes the suit plot irrelevant in the context of the Ceiling exercise over lands purportedly falling under 'excess' category of land beyond the ceiling admissible to Smt. Renuka Dey. Again, it is to be noted that all these three sale transactions recording respective transfers of



ownership were registered documents, registered and numbered in the Office of District Sub-Registrar, Chatrapur and all these events had taken place well before the cut-off date of 26.09.1970. The details on whether attempts were made to obtain rectified RORs (Pattas) post the aforementioned sale transactions at relevant points of time (or the reason/s as to why they were not) cannot be conjectured at the present as information on this count has not been submitted to this court. But the fact that this suit land was still recorded in the name of Smt. Renuka Dey during the time of ceiling exercise cannot be denied. However, in what way or manner would the un-corrected status of land nullify or, invalidate the three registered sale transactions of yore has not been satisfactorily argued or submitted by the Opposite Parties or, by any other authority connected to the case in all these years. As appraised earlier, the authenticity of these old transactions has been traced to and certified by the Office of the District Sub-Registrar, Ganjam, Chatrapur in the present time.

- xxi. Had proper field verification as mandated under Section 42 of OLR Act, 1960 been exercised, then perhaps these old transactions could have been traced. The then Revenue Officer seems to have relied solely on the report of R.I, Gopalpur dtd. 29.05.1979 wherein the Revenue Inspector has simply relayed the ROR position of plots found on record in Smt. Renuka Dey's name. The suit plot No.933 of Khata No.466 of Venketaipur Mouza is shown to have been classified as "Bagayat" (Orchard). There is absolutely no indication of the Revenue Inspector having physically visited the plots to ascertain on ground (and thence taken to record) the status of the plots in question - who was in actual possession of the land, or, what was the condition of the land or, how the land was being utilized. This simply indicates that the Revenue Officer relied more on paper documents rather than empirical verification on the submissions and contention presented by Smt. Renuka Dey. Perhaps, had requisite field verification been conducted, then the likelihood of the present suit plot being found under the active possession of another party other than OP No.3



would have been high and even the existence of the RSD of 1962 could possibly have been known.

- xxii. Against this backdrop, even the fact that Smt. Renuka Dey had herself objected before Additional Tahasildar, Berhampur in OLR case No.470/1975 regarding the inclusion of 'irrelevant' properties in the Draft Statement published by the Authority (*viz.* land identified as belonging to Smt.Renuka Dey) should also be weighed in. In the objection note submitted on 12.07.1979 under section-43(2) of OLR Act, 1960, the objector had contended: "That, this Hon'ble court should have taken into consideration the lands already sold by the petitioner's husband and petitioner herself long before the Sept., 1970. That, all the lands included in the draft statement are not agricultural lands and some of them are being used as plantations. That, the draft statement includes properties which does not seem to belong to the objector. These properties were not included in the previous draft statement which has been set aside by the Commissioner, Land Reforms, Orissa."
- xxiii. These objections were rejected by the Additional Tahasildar, Berhampur on the ground that;
- a. "According to the objection of the landholder, I have verified the objection of the landholder, I have verified the revenue records and found that the lands belonging to the landholder are recorded as Tope, Gharabari etc. Therefore there is no bar to mention these category of lands in the draft statement which are not agriculture lands. If the lands are used other than agriculture, then the classification of the land will be considered as defined u/s 2(5-a) of the O.L.R.Act. Thus, the contention of the objector is not correct. The landholder could not be able to furnish the land particulars of land transferred before 26.9.70. Thus, there is no merit to consider this objection. The objection of the objector landholder is that the lands of others have been included in her account. If there are any lands belonging to others included in her account, she

should have filed all such particulars. But she failed to do so. Further the draft statement was published as per the land particulars of the current R.O.R. The O.P. is paying land revenue etc. for the lands from 1976-77 onwards. She has never challenged the entries made in the R.O.R. before the appropriate authority. Therefore the plea taken under this para is rejected.”

xxiv. The above reasons cited by the Addl. Tahasildar in rejecting OP No.3's objection now effectively stand invalidated by the ruling of the LRC, Cuttack in case No.2/2000 wherein the learned LRC has concluded that;

- a. “The revision case appears to have merit” (*vide* OLR Revision case No.2/2000 filed U/s 59 (2) of OLR Act, 1960 filed by petitioner Srikrishna Dey, son of Smt. Renuka Dey). “...Smt Renuka Dey also had pleaded to consider that the lands already sold by the petitioner's husband namely Subodh Kumar Day long before 20thSeptember, 1970, the lands included in the draft statement are not agricultural lands and some of them were used for plantation purpose and the draft statements includes properties which does not seem to belong to the objector.
- b. “The present petitioner also contended that the lands which are not agricultural land need to be deleted from the draft statement. The matter was also brought to the notice of Court below that the lands, which do not belong to Smt. Renuka Dey have also been erroneously added to the draft statement and those lands are required to be excluded from the draft statement.”
- c. This effectively makes it imperative for the Tahasildar to resume hearing in the petition (of SriKrishna Dey) under OLR Act right from the scratch. As it stands today, the matter is still pending in the court of the Tahasildar, Konisi.



12. In sum, with regard to the present case of the Franciscan Sisters of Mary (Calcutta/Hyderabad/Gopalpur) involving Plot no. 933 Khata no.466 of Venketaipur Mouza, three key facts emerge from the records :
- a. OP No.3 Smt. Renuka Dey had long surrendered her right, title and interest to the land way back in 16.06.1941 when, vide RSD No.1746, she had sold the land to Mr. George Joseph King and Mrs. Anges Aurea King.
 - b. Before the cut-off date of 26.09.1970, therefore, three transactions (including the transaction at 'a.' above) had already been registered in the Office of Sub-Registrar, Chatrapur (*viz.* RSD no. 1746 dt.16.06.1941, RSD no. 1442 dt.09.03.1956, and RSD no. 223 dt.30.01.1962). These have all been certified to be true by the present Office of the Sub-Registrar, Chatrapur based on available records with the office.
 - c. The Petitioner party Franciscan Sisters of Mary have been in continuous physical possession of the suit land since 30.01.1962 till this day.

13. **ORDER**

In full objective appreciation of the case history at hand and the submissions made by all parties, and the other relevant records collected along the way, this Court pronounces the following:

- a. As the present petition of the Franciscan Sisters of Mary pertains to plot No.933 (khata No.466 -Settlement) corresponding to earlier sabik plot No.236/5 of khata No.43 of Venketaipur Mouza, and the persistent anomaly with regard to its status owes its origin primarily to the contested Draft Statement of 1979 (Ceiling Surplus exercise) and the resultant final order of 26.05.1982, the Tahasildar, as the statutory authority at the present stage, is directed to also account for the present petitioner's case, in tandem with Srikrishna Dey's petition that stands remitted from LRC's Court, and afford all



concerned parties the opportunity to be heard and adduce supportive documents.

- b. *Inter alia*, the Tahasildar would do well to also keep the findings of this Court in the right perspective. The case as such is remitted to the court of Tahasildar, Konisi for holistic adjudication, so as to limit the scope for duplication or contradictory order. The entire matter be heard and disposed of within a period of two months from the date the Petitioner party makes a fresh application on the weight of this order.

This revision case stands disposed of accordingly.



**Revenue Divisional Commissioner,
Southern Division, Berhampur**