

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,
EASTERN ZONE BENCH, KOLKATA.**

Original Application No.39 of 2023

In the matter of:

Prakash Chandra Nayak ... Applicant

-VERSUS-

State of Odisha and others ... Respondents

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CUTTACK

DATE: 11/07/2023


(TARUN PATNAIK)

ADDL. STANDING COUNSEL

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,
EASTERN ZONE BENCH, KOLKATA.**

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COUNTER AFFIDAVIT FILED BY

THE RESPONDENT NO.3

I, Sri Saroj Kumar Sethi, aged about 56 years, S/o- Guruprasad Sethi, at present working as Collector and District Magistrate, Dhenkanal, Dist.- Dhenkanal do hereby solemnly affirm and state as follows:-

1. That, I have been arrayed as the Respondent No.3 in the present Original Application and competent to swear the present affidavit in my official capacity on the basis of report & records submitted by Tahasildar, Parjang.
2. That, I have gone through the averments made in the original application filed by the Applicant and understood the contents and purport thereof.

Saroj Kumar Sethi



3. That, at the outset, I deny all the averments and contentions raised in the Original Application, except those which have been expressly admitted by me hereinbelow. Any allegation, averment and/or contention not specifically admitted shall be deemed to have been denied.
4. That, the present original application has been filed by the Applicant praying, inter alia, for a direction for cancellation of the lease granted in favour of IDCO on the ground that the land granted in favour of IDCO is forest land.
5. That, the main contention of the Applicant is that the Plot No.5, Khata No.1023 admeasuring 6 Acres which has been leased out to IDCO is forest land in Sabik RoR and any alienation in favour of IDCO without any forest clearance is illegal.
6. That, it is stated that the Plot No.5 in Khata No.1023 has always been recorded as non-forest land [Patita Kissam] in the Sabik RoR, being pre-1980 settlement record. The said fact is evident from report no.- 1173 /Dt.05-08-2021 furnished by the Officer-in-Charge (Record Room), Dhenkanal-Keonjhar Major Settlement Office, Dhenkanal wherein it is stated that Hal plot No.5, Khata No.1023 admeasuring 6 Acres corresponding to

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Saroj Kumar Sella



Sabik Plot No.13856 of Sabik Khata No.2 is of Kissam *Patita* [Non-forest land]. This report also forms part of the Lease Case Record.

It is pertinent to mention that the Sabik RoR of Plot No.5 is not traceable as it is an old document. However, the Sabik correspondence along with Sabik classification of the Hal record is available in the Office of the Settlement Officer, Dhenkanal-Keonjhar Major Settlement, Dhenkanal.

At this juncture, it is profitable to mention that Plot No.5 has also not been classified as DLC forest land during the exercise conducted by the District Authorities pursuant to the directions of the Hon'ble Supreme Court.

Copy of the report dated 05-08-2021 of the Officer-in-Charge (Record Room), Dhenkanal-Keonjhar Major Settlement Office, Dhenkanal is annexed herewith as **Annexure-A/3.**

7. Furthermore, in the Hal Settlement Record published on 01.05.1983, the classification of Plot No.5, Khata No.1023 under Odisha Survey and Settlement Rules 1962, was recorded in ***Govt. Abad Jogya Anabadi (AJA) Khata with Kissam Taila-2*** [non-forest land]. It is stated that Govt. Abad Jogya Anabadi means that such land can be leased out in favour of third parties.



Saraj Kumar Silli

In the remarks column of HAL RoR, it was mentioned that the Sabik kissam of the plot no. 5 is *Bandhali* [Non-forest], which has been deleted by Revenue Misc. Case no. 3/2021. However in Bhulekh database, in the remarks column against the said plot it was inadvertently entered that Sabik kissam of the plot was *Jungle*. After the land has been converted into Kissam *Patita* under Section 34 (e) of the Orissa Survey and Settlement Rules, 1962 the said plot has been leased out in favour of IDCO. Thus, it is evident that Plot No.5 is a non-forest land. The Deponent encloses herewith the copy of the RoR to buttress the aforesaid submission.

Copy of the HAL RoR along with the translated copy is annexed herewith as Annexure-B/3.

8. That, the reliance placed by the Petitioners on the Bhulekh copy of the RoR is incorrect since Bhulekh copy is merely recording of the entries made in the Hal RoR. Inadvertently, in the remark column, it has been described that the kissam of the Plot is *Jungle* instead of *Bandhali*. As evident from the above mentioned Hal RoR, the kissam of Plot No.5 is non-forest land. Presently, in the Bhulekh, the classification of the land is Patita. On 02.08.2021, the conversion of the land from Kissam *Talia-2*

Sd/-
Suresh Kumar Sahu



to Kissam *Patita* has been made as per Section 34 (e) of Orissa Survey Settlement Rules, 1962 and subsequently, on 04.08.2021, correction in the classification of the land from *Taila-2* to *Patita* was made in the Hal RoR. Accordingly, in Khatian No. 985/532, Plot No.5 admeasuring 6 Acres is now classified as *Patita* [Pg.43 of the OA].

After the land has been converted to Kissam *Patita*, the said land has been leased out in favour of IDCO which was sanctioned on 25.03.2022. It is pertinent to mention that in Bhulekh database inadvertently, a note was made in the Remarks column that the Sabik kissam of plot no 5 is *Jungle*, whereas it is mentioned as *Bandhali* [Non-forest] in the remarks column against the said plot in the textual RoR. Further, both the Hal & Sabik classification of the land is not forest and, 'Jungle' was only depicted in the Remarks column in Bhulekh database which does not mean that the classification of the land is forest. In the Bhulekh which is being relied by the Applicant, the classification of the land in question is *Taila-2* i.e. non-forest land. The same will be evident from the updated Bhulekh [Pg.41 & 42 of the OA] wherein the tenant is IDCO and the kissam is

Sarsoj Kumar Sella



Patita. Thus, it is clearly proved that Plot No.5 is not a forest land.

Copy of the order dated 02.08.2021 passed by the Sub-Collector, Kamakhyanagar is annexed herewith as Annexure-C/3.

Copy of the order dated 04.08.2021 passed by the Tahasildar, Parjang is annexed herewith as Annexure-D/3.

9. That in reply to the averments made in Paragraph No.1 of the Application, it is submitted that the applicants are the villagers of Patarapada in Parjang Tahasil in the Dhenkanal District except Sri Santanu Kumar Bhukta, S/o GolakBhukta, At/Po-Santhapada, P.S. Talcher, District Angul. The Respondent No.7 had commenced the ground clearance works for construction of boundary wall after settlement of non-forest Govt. land in favour of IDCO, Bhubaneswar.
10. That, in reply to the averments made in Paragraph Nos.2 to 4, it is submitted that the construction work carried by Respondent No.7 was stopped for a short period to resolve the issue that arose in the objection petition regarding involvement of plots having Sabik Kisam *Jungle*. As per the manual RoR published

Saraj Kumar Sella



on 01.05.1983 under Odisha Survey and Settlement Rules 1962, the land is recorded in Govt Abad Jogya Anabadi (AJA) Khata with Kissam *Taila-2*.

11. That, in reply to the averments made in Paragraph No.5, it is submitted that land admeasuring Ac 12.5 dec was leased out to IDCO for the purpose of establishment of industries and allied activities. Thereafter, Plot No.5 has been sub leased by the IDCO in favour of the Respondent No.7 i.e. M/S. Western Integrated Waste Management Facility Pvt. Limited for the purpose of establishment of industries. In this connection, IDCO applied for Ac. 89.33 dec land out of which leasable Ac 12.5 dec of land has been leased out in favour of IDCO for the purpose of establishment of industries and allied activities. It is important to mention here that Gochar land (Grazing lands) admeasuring Ac 6.5 dec was in Plot No.3, Khata No.1026, which was dereserved on 28.02.2022 by the Collector, Dhenkanal on the basis of case record initiated by the Tahasildar, Parjang duly recommended by Sub-Collector, Kamakhyanagar after following the due procedure enumerated under Section 3(A) of Orissa Government Land Settlement Act, 1962 and under Rule 4(2) of the Orissa Government Land Settlement (OGLS) Rules, 1983. As per

Saxoj
Kumar
Saxoj



OGLS Rules, 1983, surplus Gochar lands can be dereserved if it is more than 5% of the effective area of the revenue village. In the present case, only the surplus Gochar land has been dereserved after 5% of the effective area in the revenue village has still been kept as Gochar.

12. That in reply to the averments made in Paragraph Nos.6 &7, it is submitted that since the Plot No.5 was never recorded as forest land, no prior approval under Section 2 of the Forest (Conservation) Act, 1980 was necessary for leasing out of the said land to IDCO.

13. That in reply to the averments made in Paragraph No.8, it is disputed that the plots which have been leased out to IDCO have dense vegetation. Further, enumeration of trees situated over the leased out land was conducted jointly by Revenue, Forest, Odisha State Cashew Development Corporation Ltd. (OSCDC) & IDCO Officials and found that 1292 nos. of Cashew trees and 81 nos. of Gohira trees standing over the land. Basing on the report, the required cost of the enumerated trees amounting to Rs.70,650/- was deposited by the IDCO before Tahasildar, Parjang.



in the revenue village
Savitri Kumar

14. That, in reply to the averments made in Paragraph Nos. 9 & 10, it is submitted that an Environmental Clearance has already been granted by SEIAA after a public hearing was conducted on 08.09.2021.

15. That in reply to the averments made in Paragraph No.11 & 12, it is submitted that the Competent Authority to deal with assertions relating to the movement of the elephants is DFO, Dhenkanal. Hence, the present deponent has no comments.

16. That in reply to the averments made in Paragraph No.13 & 14, it is submitted that, the issue with regard to usage of red bricks is not the subject matter before this Hon'ble Tribunal since the prayer of the Applicant is for cancellation of the lease assigned to IDCO.

17. That in reply to the averments made in Paragraph No.16 to 25 of the Original Application, it is submitted that contentions relating to applicability of the Forest Conservation Act, 1980 are not applicable to the present facts of the case since the plot in question is not a forest land.



Saraj Kumar Saha

18. That the answering deponent craves leave of this Hon'ble Tribunal to add, alter or amend the counter affidavit if necessary.

19. That the averments made in the present application which have not been specifically admitted are deemed to have been denied.

20. That the facts stated in this counter affidavit are true to the best of my knowledge and based on records reports produced by the Tahasildar, Parjang.

Identified by

Advocate

[Handwritten signature] 11/7/23 ✓

[Handwritten signature]
DEPONENT

VERIFICATION

I, Sri Saroj Kumar Sethi son of Sri Guruprasad Sethi working as Collector & District Magistrate, Dhenkanal, do hereby solemnly affirm and verify the contents of paragraph of the present Counter Affidavit are true to my knowledge and that I have not suppress any material facts.

I sign this verification at Dhenkanal on 10th day of July 2023.

PLACE: Dhenkanal

DATE: 10-07-2023

[Handwritten signature] ✓

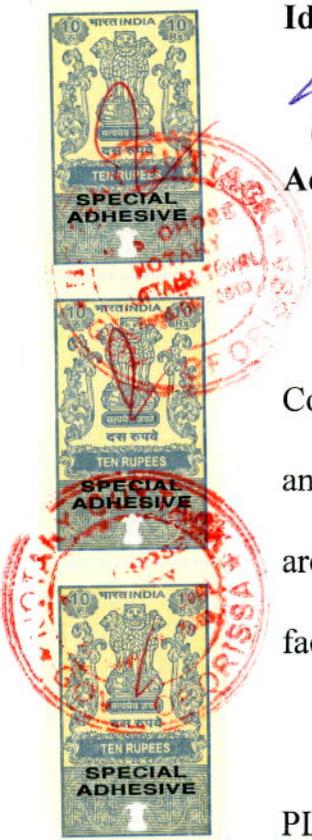
VERIFICANT

The above named deponent being identified by Mr./Ms. *[Signature]* Advocate appears before me at *[Signature]* AM/PM. on this the *[Signature]* 10/7/2023. He/She solemnly affirms that the facts stated are true to his/her knowledge and belief.

NOTARY

CUTTACK TOWN

[Handwritten signature] 11/7/2023



ENGLISH TRANSLATION OF

A/I No. -1173, Dt. 05-08-2021

O/o- Assistant Settlement Officer, Record Room, Dhenkanal.

Mouza :- Patarpada, Thana – Parjang, Dist- Dhenkanal

Hal Khata No. – 1023, Abad Jogya Anabadi (AJA)

Hal Plot No. - 5, Area Ac. 6.00, Kissam – Taila-2

13856 sma

Sabik Khata No.- 2, Recorded tenant Sri Raj Sarkar

Sabik Plot No. - 13856, Area Ac. 44.50, Kissam - Patita

On verification it is ascertained that Hal records bearing Plot No.-5
have been prepared on basis of Yadast No.- 7

Sd/-

Jnana

Sd/-

O.I.C,(Record Room)
DKMS,Dhenkanal

Schedule I--Form No. 39-A

ମୌଜା ଗାଟେରପାଦା

ଖତିୟାନ

1504

ଥାନା ପରଗଣା

ଡେପୁଟି କଲେକ୍ଟର ଥାନା

ଥାନା ନମ୍ବର ୧୦୩

ଡେପୁଟି ନମ୍ବର ୩୮

ଜିଲ୍ଲା ଡିଭିଜନ

ଜମଦାରଙ୍କ ନାମ
ଓ
ଖେତ୍ରପାଟ ବା ଖତିୟାନର ନମ୍ବର

କିଛିକା ସରକାର ଖୋଜିପାଟ କରୁଛନ୍ତି

୧। ଖତିୟାନର ହସିଦ ନମ୍ବର

୧୦୭୩

୨। ପୁରାନ ନାମ, ପିତା ନାମ,
ଜାତି ଓ ବାସସ୍ଥାନ

ଆଗର ଜମାଦାର ଅନାମିତ

୩। ସ୍ତର

Binding Space

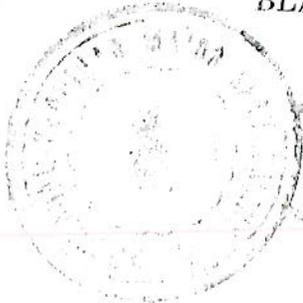
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୪। ଡେପୁ					

୫। ବସେ ଅନୁସନ୍ଧାନ ପଦ ବିଷୟ

True copy
attested
10/7/2023
Dy. Collector, Revenue
Collectorate, Dhenkanal

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rights was finally
formed and finally published under section 36
(1) of the Crissa Survey and Settlement Act
1956 read with Rule 60 and Rule 29 of the
Crissa Survey and Settlement Rules 1962 on
MAY 1983




MAY 1983

ENGLISH TRANSLATION OF HAL KHATIYAN

MOUZA – PATARAPADA

TAHASIL- KAMAKHYANAGAR

THANA/POLICE STATION –PARJANG

TAHASIL NUMBER - 79

THANA NO- 106

DISTRICT – DHENKANAL

NAME OF THE ZAMINDAR			GOVERNMENT OF ODISHA khewat no. 1		
KHATIYAN NO			1023		
NAME OF THE TENANT			ABAD JOGYA ANABADI		
SWATWA					
FEES	WATER CESS	CESS	NISTAR	TOTAL	ENHANCED CESS
LAST DATE OF PUBLICATION - 31.05.1983					

KHATIYAN NO.- 1023 MOUZA – PATARAPADA DISTRICT – DHENKANAL						
PLOT NO	KISAM	DATILS KISHAM	ACRE	DECIMAL	HACTRE	REMARK
7	8	9	10	11	12	13
5 BALIGADIA	TAILA – 2 (PATITA) ALIENATION CASE NO 01/2021 DATE - 06.09.2022 HU MU PLOTE NO - 5, AC – 6.00, TO KHATA NO 985/532 .	N - SARAKARI S – SARAKARI Sd/- Tahasildar Parjang	6	000		UNAUTHORISED OCCUPATION: NABA PRADHAN S/O ARJUNA PRADHAN DARSANI PADHAN S/O RUSI PADHAN PITABASH PADHAN S/O DANDAPANI PADHAN HRUDANANDA NAYAK S/O BASU NAYAK SANGI NAYAK S/O BANKA NAYAK DAMBARUDHAR BISWAL S/O SAMBHU BISWAL , CASTE – CHASA, SABIK KISAM BANDHALI ALIENATION CASE NO 01/2021 DATE -14.08.2021 HU MU PLOTE NO - 5 , KISAM TAILA – 2 CONVERTED INTO KISAM PATITA & DELETED REMARKS COLOUM .

True copy
attested
10/7/2023
Dy. Collector, Revenue
Collectorate, Dhenkanal

English Translation
of Annexure - B/B
Anand Kumar Patel

(See paragraph 207 (1) of Orissa Records Manual, 1964)

(CONTINUATION OF ORDER SHEET)

Sl. No. of the order & Dt.	ORDERS WITH SIGNATURE OF THE P.O.	Action taken on the orders
1	2	3

2/8/2021

This case record is put up today on receipt of case record from Tahasildar, Parjang. The proposal of change of classification of the following schedule of Govt. land from kism Taila/2 to Patita by taking it into Govt. Khata "Abada Jogya Anabadi" as per rules framed under section 34(e) of Orissa Survey and Settlement Rules, 1962 with deletion of illegal note of possession against the encroachers who has no physical possession over the suit plot, is recommended by the Tahasildar, Parjang for the purpose of alienation of non-forest Govt. land in favour of the IDCO, Bhubaneswar for establishment of industries and allied activities at village Patarapada under Parjang Block.

Land Schedule

Mouza	Khata No	Plot No.	Kisam	Proposed Kisam	Full Extent of Plot	Extent of land applied
Patarapada	1023 (AJA)	5	Taila/2	Patita	Ac.6.00	Ac.6.00

The land is absolutely necessary for the requisitioning authority for set up industries and allied activities over the aforesaid Govt. land as recommended by the Tahasildar, Parjang.

Hence, the case record is approved as per power conferred under Rule 34(e) of Orissa Survey & Settlement Rule, 1964 and read with Notification No.25616/R & DM Dtd.27.08.2014 of Govt. R & DM Deptt. Odisha. So the Tahasildar, Parjang is instructed to make necessary correction of RoR to lease out the non-forest Govt. land in favour of IDCO, Bhubaneswar.

Dictated

Signed


Sub-Collector,
Kamakhyanagar


Sub-Collector,
Kamakhyanagar

True copy attested


10/7/2023
Dy. Collector, Revenue
Collectorate Bhubaneswar

Schedule L-III. No.321

(See paragraph 207 (1) of Orissa Records Manual, 1964)

(CONTINUATION OF ORDER SHEET)

Sl. No. of the order & Dt.	ORDERS WITH SIGNATURE OF THE P.O.	Action taken on the orders
1	2	3

4/8/2021

The case is put up today. Gone through the case record. On receipt of case record from the Sub-Collector, Kamakhyanagar after kind approval of the same with direction to change of classification of the Govt. land from Taila/2 to Patita by taking it into Abada Jogya Anabadi Khata with deletion of illegal note of possession of the encroacher against the suit land to make it leasable for the purpose of alienation of non-forest Govt. land in favour of IDCO, Bhubaneswar for establishment of industries and infrastructure development projects at village Patarapada.

Hence, Record Keeper is directed to make necessary correction in the RoR for change of Kisam from Taila/2 to Patita by taking into Govt. Khata "Abada Jogya Anabadi" and delete the illegal note of possession of the said proposed land of the following schedule of Govt. land to make it leasable for grant of alienation in favour of the IDCO, Bhubaneswar.

Land Schedule

Mouza	Khata No	Plot No.	Kisam	Proposed Kisam	Full Extent of Plot	Extent of land applied
Patarapada	1023 (AJA)	5	Taila/2	Patita	Ac.6.00	Ac.6.00

Dictated

[Signature]
Tahasildar, parang.
ALB

[Signature]
Tahasildar, parang

True copy
attested

[Signature]
10/7/2023

Dy. Collector, Revenue
Collectorate Bhanakana