IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C). No. 27863 of 2025
CNR No. ODHC010706862025

(An Application under Articles 226 & 227 of the Constitution of India)

Purna Chandra Nayak ..... Petitioner

-Versus-

Tahasildar, Ghatagaon, Keonjhar & Others .... Opposite Parties

---

For Petitioner : Mr. D. Mohapatra, Senior Advocate with Mr. L.Tripathy, Advocate,

For Opp. Parties : Mr. G.Mohanty, Standing Counsel,

Mr. C.Mishra, Advocate (O.P. No.4),

and Mr. A.P.Bose, Advocate (O.P. No.3)

CORAM:

JUSTICE SASHIKANTA MISHRA

JUDGMENT
1st October, 2026

SASHIKANTA MISHRA, J.

The order passed by Tahasildar, Ghatagaon on 20.09.2025 in Mutation Case No. 809 of 2019 is under challenge in this writ application.

2. The facts of the case, briefly stated are that the schedule property was originally owned by Md. Nehal (Opposite Party No.3). He mortgaged the same to the UCO Bank, Ashoka Market, Bhubaneswar for cash credit availed by M/S. Shreyans Progressive Consultancy Pvt. Ltd., Bhubaneswar. Said firm could not repay the loan as per the terms and conditions for which necessary action under Section 13 of the Securitization And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002 (for short, SARFAESI Act) were taken by the bank to take possession of the property. The property was ultimately put to public auction as the owner did not exercise his right of redemption within the stipulated time. The petitioner participated in the auction and being the highest bidder, the property was sold to him for Rs.75,75,800/-. Accordingly, a sale certificate was issued in his favour by the bank on 19.11.2019 and possession of the property was handed over. The sale certificate was duly registered by the Sub-Registrar, Ghatagaon on 05.12.2019. The

petitioner thereafter applied for mutation before the Additional Tahasildar, Keonjhar which was registered as Mutation Case No. 806 of 2019. By order dated 07.07.2020, the mutation case was allowed by directing correction of the ROR in favour of the petitioner. The Khata number of the scheduled plots was accordingly changed from 105/81 to 105/156. In the meantime, Opposite Party No.3 filed mutation appeal No. 13/2021 before the Sub-Divisional Magistrate, Keonjhor. By order dated 29.09.2022, the appellate authority set aside the order passed by the Additional Tahasildar in the mutation case. The petitioner challenged such order before this Court in W.P.(C). No. 30048 of 2022. By order dated 10.07.2025, this Court quashed the order of the appellate authority and directed the Tahasildar, Ghatagaon to dispose of the mutation case independently without being influenced in any manner by the observations of the appellate authority. By order dated 20.09.2025, the Tahasildar rejected the mutation case on the ground of pendency of similar criminal proceeding relating to the

schedule property and directed correction of the land records in the name of Opposite Party No.3 by cancelling the previous record of right prepared in favour of the petitioner. After passing of the impugned order, Opposite Party No.3 executed four sale deeds illegally on the same day acting in connivance with the Tahasildar, Ghatagaon who is also posted as Sub-Registrar, Ghatagaon. The Sub-Registrar also created encumbrance certificate basing on such sale. The petitioner as well as the bank requested him not to register the sale deeds or to create further third-party interest but by letter dated 06.10.2025, the petitioner was intimated that the legal transferable right cannot be denied and was directed to take shelter of the Court of law. Basically, on such facts the petitioner has filed this writ application seeking the following relief:

> "*The petitioners, therefore, most humbly pray that Your Lordship would be graciously pleased to issue rule nisi calling upon the opp.parties to show cause as to why the impugned order dated 20.09.2025 at Annexure-13 passed by the Tahasildar, Ghatagaon in Mutation Case No. 809 of 2019 directing immediate correction of the land records in the name of Opp.Party No.3, cancelling the previous record*

of rights in favour of the petitioner in complete contravention of the order dated 10.07.2025 passed by Hon'ble Court in W.P.(C) No. 30048 of 2022 at Annexure-7, should not be quashed and as to why the Opp.Parties should not be directed to record the land records and issue ROR in favour of the Petitioner over the all 22 plots situated in District-Keonjhar, Tahasil-Ghatagaon, Mouza-Khunta, previously Khata No. 105/81 and currently in mutated Khata No. 105/156, Kissam-Gharabari having total area Ac. 14.160 decimal.

And as to why the fraudulent sell deeds registered by O.P.No.5 in connivance with O.P. No.3 in favour of O.P. Nos.7 to 10 at Annexure—16 series should not be declared void ab initio and as to why the O.P. No.5 should not be directed to cancel the said fraudulent sale deeds at Annexure-16 Series.

And further as to why the illegal recording of the names of the O.P. No.3 and O.P. Nos. 7 to 10 should not be removed from the E.C. Register at Annexure-17.

And as to why the further fraudulent sell deed bearing Document No. 11052500622 made by O.P. No.3 in connivance with O.P. No.5 in favour of O.P. No. 9 at Annexure-19 should not be declared void ab initio and as to why the O.P. No. 5 should not be directed to cancel the said fraudulent sale deed.

And if the Opp.Party failed to show cause or sufficient cause, the rule be made absolute.

And further be pleased to issue any other appropriate writ or order/orders, as may be deemed fit and proper in the interest of justice.

And for which act of kindness, the petitioner as in duty bound shall ever pray."

3. Counter affidavit has been filed by the Tahasildar, Ghatagaon (Opp. Party No.1) justifying the impugned order, inter alia, stating that this Court never

quashed order dated 29.09.2022 as claimed by the petitioner in Paragraph-12 of the writ application. He further stated that a joint demarcation was made on 06.09.2025 in presence of the villagers, the petitioner and Opposite Party No.3 during which it was found that the case land was lying vacant and no one is in possession over the same. The claim of the petitioner that he being the title holder is deemed to be in possession is completely wrong. The mutation case was disposed of not on extraneous considerations but considering all materials placed and by granting opportunity of hearing to all parties. It is also stated that the civil dispute between the parties being S.A. No. 123 of 2019 is pending before the DRT, Cuttack for adjudication of the legality and validity of the alleged e-auction sale in favour of the petitioner and a criminal case being Capital P.S. Case No. 51 of 2020 on the allegation of cheating and misappropriation committed by the petitioner is pending in respect of the same property. Following the law laid down by the Supreme Court, the case was rejected as it

would not be proper for the Tahasildar, to embark upon any inquiry relating to the property as no decision can be taken till finalization of S.A. No. 123 of 2019.

4. Counter affidavit has also been filed by Opposite Party No.3. It is stated that the sale certificate dated 19.11.2019 is not valid in the absence of the sale amount and is therefore, a defective one. The petitioner has no legal right on the strength of such sale certificate. In any event, the auction of the bank with regard to the auction sale notice as well as sale certificate has already been challenged by Opposite Party No.3 before the competent forum, that is, Debts Recovery Tribunal, (DRT), Cuttack under Section 17 of the SARFAESI Act vide S.A. No. 123 of 2019 on the ground of non-compliance of the statutory provisions in which the petitioner is also a party. Notice has been issued in the said case. Further the schedule property was registered for consideration amount of Rs.1,42,50,000/- but the petitioner purchased the property for Rs.75,75,800/-. This is thus, a clear act of fraud committed by the bank and the petitioner upon

Opposite Party No.3. The property was mortgaged by the Managing Director of the firm for the cash credit loan of Rs. 4 crores in the year 2015 in which the parents of the said managing director stood as guarantors. The Opposite Party No.3 was unaware that his property was kept as collateral security. It is also stated that the petitioner, instead of availing the statutory remedy of appeal has directly approached this Court which is not permissible. The Tahasildar has rightly rejected the application for mutation filed by the petitioner because of pendency of the dispute before the competent forum as he cannot be said to have acquired valid right and title over the property at this stage.

5. Heard Mr. D. Mohapatra, learned Senior counsel along with Mr. L. Tripathy, Advocate for the petitioner, Mr. G. Mohanty, learned Standing Counsel for the State, Mr. A.P. Bose, learned counsel for the Opposite Party No.3 and Mr. C. Mishra, learned counsel appearing for the Opposite Party No.4.



6. Mr. Mohapatra would argue that the Tahasildar has acted entirely beyond his jurisdiction in rejecting the mutation case despite existence of a valid sale certificate duly registered and executed by the bank in favour of the petitioner. The property having been mortgaged to the bank and the borrower having defaulted in repayment of the loan, the bank acted as per law to recall the loan and auctioned the mortgaged property. It was open to the petitioner to redeem the mortgaged property as per Section 13(8) of the SARFAESI Act but he chose not to do so. Therefore, whatever right he had over the property passed on to the bank. Further, the petitioner became the bonafide auction purchaser by paying the consideration amount as the highest bidder. The sale certificate issued by the bank in his favour was registered by the Sub-Registrar. Initially, the mutation was allowed entirely basing on the above facts and the record was corrected in the petitioner's favour. The appellate authority, without proper appreciation, set aside the order of the Tahasildar. However, this Court directed the matter to be decided by

the Tahasildar afresh. Instead of reiterating his earlier order, the Tahasildar completely digressed from the main issue and rejected the case on untenable grounds. Mr. Mohapatra further submits that mere challenge to the auction notice or sale certificate etc. before the DRT does not by itself take away the right accrued to the petitioner thereby, which is by operation of law. Moreover, there is no prohibitory order passed by the DRT from changing the record of right. Mr. Mohapatra sums up his argument by submitting that the Tahasildar has acted in a malafide manner which would be apparent from the fact that the mutation case was rejected on 20.09.2025. On the very same day the officer who was in charge as the Sub-Registrar corrected the ROR in favour of Opposite Party No.3 on 03.10.2025 and on the same day allowed the registration of as many as four sale deeds relating to same property.

7. Mr. Mohanty, learned State Counsel would argue that if the petitioner feels aggrieved by the order of the mutation authority he should prefer appeal as provided in

law because disputed questions of fact involved in the writ application cannot be decided by this Court. On merits, Mr. Mohanty would argue that since the dispute is also pending before the competent forum, i.e. DRT, the Tahasildar rightly disallowed the mutation as otherwise it would have led to multiplicity of proceedings.

8. Mr. Bose, learned counsel for the Private Opposite Party No.3, would argue that the petitioner not having availed the alternative remedy of appeal, the writ application need not be entertained. He further submits that the validity of e-auction notice, reserve price and sale certificate are directly under challenge before the DRT in S.A. No. 123 of 2019. Moreover, a criminal case involving allegation of fraud in mortgage creation is under active investigation. Under such circumstances, correcting the record of right would not be proper.

9. In view of the rival contentions, it is evident that the first question that falls for consideration is, whether the writ application can be entertained on the face of the availability of alternative statutory remedy of appeal.



Undisputedly, the order passed by the mutation authority under Rule 41 of the OSS Rules can be challenged in appeal under Rule 42 of the said Rules and further in revision before the Board of Revenue invoking the power under Section 32 of the OSS Act. The petitioner admittedly has not availed any of these remedies. Ordinarily, the petitioner ought to be relegated to the statutory remedy available to him, but then it is trite law that where a pure question of law is involved, the writ Court can entertain such challenge. In the instant case, from the facts pleaded and contentions raised the following question emerges for determination: -

> *"Whether a sale certificate duly registered by the registering authority can be ignored only because of pendency of an appeal filed before the Debts Recovery Tribunal under the provisions of the SARFAESI Act?*

This, in the considered view of this Court, is a pure question of law, to determine which a detailed investigation of facts is not necessary. Therefore, following the ratio laid down by the Supreme Court in the case of **M/s Godrej Sara Lee Ltd. Versus The Excise and**

Taxation Officer-Cum-Assessing Authority & Ors.[1], this Court holds that the writ application as laid can be entertained.

10. The question of law being framed as above, this Court shall now proceed to answer it in the following manner: -

There is no dispute that it is the responsibility of the Tahasildar to maintain the record of rights and map finally published under the provisions of the Act. Correction of the record of rights and map can be made only on the grounds enumerated under Rule 34 of the OSS Rules, provided the cause of action arose after final publication of the ROR.

In the present case, there is no dispute that the property in question was originally recorded in the name of Opposite Party No.3 in the settlement ROR. As already stated, the property was mortgaged to the bank (Opp.Party No.4) to secure a cash credit loan, which because of default in repayment ended up being put to

[1] 2023 LiveLaw (SC) 70

public auction. The petitioner was the auction purchaser whereupon the bank issued sale certificate. The sale certificate was registered under the provisions of the Registration Act as provided in the Odisha Registration Rules. The petitioner having thereafter applied for correction of the ROR, it was registered as mutation Case No. 806 of 2019. Said case was allowed by order dated 07.07.2020. This is entirely in line with the statutory scheme laid down in the OSS Act and Rules read with the Registration Act and Odisha Rules.

11. This Court need not dwell upon the correctness of the order passed by the appellate authority since in an earlier writ application a coordinate Bench of this Court directed the Tahasildar to hear the mutation case afresh. Reading of the impugned order reveals that the Tahasildar rejected the mutation case by observing as follows:

> *"As such a Civil Case vide S.A. No. 123 of 2019 and a Criminal Case vide Capital P.S. Case No. 51/2020 i.e. both are subjudice (pending) against Purna Chandra Nayak in respect of the properties under Khata No. 105/81 for adjudication of right, title and interest of the parties in respect of the properties of Khata No. 105/81.*

When civil dispute between the parties vide S.A. No. 123 of 2019 in respect of the properties of Khata No. 105/81 is pending before the DRT Cuttack for adjudication of the legality and validity of the alleged e-auction sale paper thereof in favour of Purna Chandra Nayak and also a criminal case vide Capital PS Case No. 51/20 is pending before the competent Criminal Court for adjudication of the alleged cheating and misappropriation and fraud committed by Purna Chandra Nayak and others for putting the properties of Md Nehal Khata No. 105/81 into e-auction sale creating false forge and manipulated documents in respect of the same and when in this Mutation proceeding at hand, there are Civil dispute relating to title in respect of the properties covered under Khata No. 105/81 are subjudice/pending before the competent courts and when possession of the properties covered under Khata No. 105/81 is with Md Nehal and when it has been decided by the Supreme Court in 2019 (II) OCR (SC) 972 (Smt) Bhimabai Mahadeo Kambekar (D) Th. LR (VS) Arthur Import and Export Co. & Ors, that when Civil Suits in relation to land in question are pending, it would not be proper for the Tahasildar to embark upon any factual enquiries into the question, regarding the entries as it would neither decide the title nor extinguish the title to the properties in relation to the land, because the change of entry in the ROR shall be made only on the basis of the final decision of the civil dispute between the parties in the civil court and when till yet the Civil dispute relating to the title of the properties involved in this Mutation case has not been finalized between the parties due to the pendency of S.A. No. 123/2019 and when on the date of filing of the mutation case, the ROR of Khata No. 105/81 was in the name of Md Nehal and when Purna Chandra Nayak filed this mutation case for correction of ROR of Khata No. 105/81 to his name, then in view of the principles of law enunciated in the ratio of the above decision of Supreme Court, the ROR of Khata No. 105/81 cannot be ordered to be changed from the name of Md. Nehal to the name of Purna Chandra Nayak."

12. It would be proper to refer to the case of ***Smt. Bhimabai Mahadeo Kambekar (D) Th. LR vrs. Arthur***

Import and Export Co. & Ors.[2] relied upon the Tahasildar. A reading of the judgment reveals that in the said case the dispute had gone through several revenue Courts and some civil suits were also pending between the parties. Under such circumstances, the Court held as follows:

> *"10. It is not in dispute that the civil suits in relation to the land in question are pending in the Courts between the parties. Therefore, it would not be proper to embark upon any factual inquiries into the question as to whether the entries were properly made or not and at whose instance they were made etc. in this appeal. It is more so when they neither decide the title nor extinguish the title of the parties in relation to the land."*

The observation as above must be held to have been made on the facts of the case being decided and cannot be treated as laying down of an irrevocable principle of law that wherever a civil suit is pending, the mutation case relating to the same land must be dropped. The main emphasis given by the Supreme Court was that mutation of land in revenue records does not create or extinguish title over the land.

---

[2] 2019(II)OLR (SC)972

13. In the instant case, a civil proceeding between the parties under the SARFAESI Act is pending. Nothing could be placed before this Court to show that mere pendency of such a proceeding before the DRT would automatically operate as stay of mutation in respect of the same land. Though the basis of the petitioner's claim for mutation being the sale certificate is under challenge but as long as it has not been set aside or invalidated it has to be acted upon. A criminal case is also pending on allegation of fraud etc. relating to the auction but then mere allegation is not akin to proof. As long as the sale certificate has not been invalidated by the competent authority, the title of the petitioner emanating therefrom cannot be denied.

14. Law is well settled in this aspect that, unless any interim order is passed by the DRT, the secured creditor can take recourse to the measures provided under the SARFAESI Act for recovery of its secured debts. The borrower or any other person aggrieved by such measures may approach the DRT under Section 17 of the Act. The



DRT has the power to examine the legality of the measures taken by the secured creditor and, if it finds that the secured creditor has not acted in accordance with the provisions of the Act and the Rules framed thereunder, it may restore possession of the secured asset and pass appropriate consequential orders, including declaring the auction sale invalid. Reference in this regard may be had to the Full bench decision of the Madras High Court in the case of ***Lakshmi Shankar Mills (P) Ltd. v. Authorised Officer/Chief Manager Indian Bank, 2008 SCC OnLine Mad 279***.

15. The approach adopted by the Tahasildar therefore, cannot be sustained. The Tahasildar proceeded on the premise that because the legality and validity of the e-auction sale is under consideration before the DRT, no mutation can be effected in favour of the petitioner till final adjudication of the said proceeding. Such an approach, in the considered view of this Court, amounts to treating the mere pendency of the proceeding as an automatic invalidation of the sale certificate. There is a

distinction between a document being under challenge and the document having been set aside by a competent forum. Unless and until the competent forum adjudicates on the challenge and invalidates the sale certificate, the same continues to remain an operative document evidencing the sale in favour of the petitioner.

16. It is equally well settled that mutation proceedings are fiscal in nature and an entry in the record of rights neither creates nor extinguishes title. The Tahasildar was, therefore, not required to adjudicate on the validity of the e-auction sale nor could he reject the petitioner's claim merely because the sale certificate is under challenge before the DRT. If the competent forum ultimately sets aside or invalidates the sale certificate, the consequential correction in the revenue records can thereafter be made in accordance with such adjudication. Likewise, mere pendency of Capital P.S. Case No. 51 of 2020 does not, by itself, invalidate the transaction or furnish a lawful ground to reject the mutation claim, in the absence of any order of the competent Court

restraining mutation or otherwise affecting the operation of the sale certificate.

17. There is yet another aspect which cannot be lost sight of. The earlier order passed by this Court in W.P.(C) No. 30048 of 2022 required the Tahasildar to consider the mutation case afresh and independently. The Tahasildar was therefore, obliged to examine the petitioner's claim on the basis of the documents and the applicable statutory provisions. Instead, the impugned order proceeds on the effect of pendency of the DRT proceeding and the criminal case and relying on the decision in ***Bhimabai Mahadeo Kambekar (Supra)*** held that the mutation could not be ordered until the dispute is finally adjudicated. As noticed hereinbefore, the decision does not lay down any absolute proposition that mutation must necessarily remain pending in every case where a civil proceeding concerning the property is pending. The decision is to be understood in the factual context in which it was rendered and having regard to the settled principle that mutation does not confer title.

18. In view of the foregoing discussion, this Court is of the considered view that the Tahasildar committed an error of law in rejecting the petitioner's mutation claim solely on the ground of pendency of S.A. No. 123 of 2019 before the DRT and Capital P.S. Case No. 51 of 2020. The impugned order dated 20.09.2025 cannot, therefore, be sustained and is liable to be quashed.

19. In the result, the impugned order is set aside. The order dated 07.07.2020 passed by the Tahasildar is hereby restored. The Tahasildar is directed to give effect to the said order by making necessary correction in the ROR in favour of the petitioner, without any further delay and, in any event, not later than two weeks from the date of production of a certified copy of this order by the petitioner. It is made clear that the correction of the ROR pursuant to this order shall not be construed as an adjudication or declaration of title in favour of the petitioner. So far as the subsequent sale deeds executed by Opposite Party No.3 are concerned, this Court does not consider it appropriate to adjudicate on their validity

in the present proceeding. The parties are at liberty to work out their remedies before the competent forum.

.....
Sashikanta Mishra,
Judge

Orissa High Court, Cuttack
Dt. 1st October, 2026/Deepak

Signature Not Verified
Digitally Signed
Signed by: DEEPAK PARIDA
Reason: Authentication
Location: OHC,Cuttack
Date: 01-Oct-2026 16:29:39