IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) NO.31418 of 2026
CNR NO. ODHC010751962026

(In the matter of application under Articles 226 & 227 of the Constitution of India).

Gouri Sankar Kar and others … ***Petitioners***

-versus-

State of Odisha and others … ***Opposite Parties***

For Petitioners : ***Mr. D. Mohapatra, Sr. Advocate along with Mr. A. Mohanty, Advocate***

For Opposite Parties : ***Mr. J.K. Khandayat Ray, ASC***

CORAM: JUSTICE G. SATAPATHY

DATE OF HEARING & JUDGMENT:05.10.2026(ORAL)

G. Satapathy, J.

1. The sole grievance as advanced by the writ petitioners is against the impugned order passed by OPNo.3-cum-Collector, Kendrapara under Annexure-3.

2. Heard, Mr. Dayananda Mohapatra, learned Senior Counsel, who enters appearance for the writ petitioners in Court today along with learned counsel Mr. Abhishek Mohanty by filing appearance memo,

which is taken on record, and Mr. Jayant Kumar Khandayat Ray, learned ASC and perused the record.

3. Admittedly, one Kanakalata Malla has approached this Court by way of W.P.(C) No.27459 of 2025 and a co-ordinate Bench of this Court after considering the grievance of the petitioner therein has inter-alia passed this order as reiterated under:-

> *"**4.** Considering the submissions made by the learned counsel for the Petitioner and on going through the averments made in this Writ Petition, this Writ Petition stands disposed of directing the Petitioner to approach the appropriate authority by way of filing an application within a period of two weeks hence. In such event, the appropriate authority shall consider his application within a period of two months in accordance with law from the date of presentation of the application along with a certified copy of this order, by the Petitioner."*

4. Pursuant to the above order, the said petitioner-Kanakalata Malla directly approached to the Collector, Kendrapara-cum-OPNo.3, who has passed this order in this writ petition under Annexure-3, but Orissa Prevention of Land Encroachment (OPLE) Act, 1972 (in short, "the Act") is a self-contained Act having

inbuilt provisions for eviction and demolition of illegal encroachment/construction and, accordingly, Section 7(1) of the Act provides power to the Tahasildar to evict the person in unauthorized occupation of the land by providing him reasonable opportunity after giving notice to remove the same, however, it is averred in this Writ that no notice was given/issued to the present writ petitioners while passing the impugned order under Annexure-3.

5. It is not out of place to reiterate that the Collector, Kendrapara has passed the impugned order in exercise of original jurisdiction not vested upon him, but Section 12 of the Act provides the provisions for appeal and revision and Section 12(1) of the Act provides for an appeal from any decision or order made under this Act by the Tahasildar to the Sub-Divisional Officer and the Collector is vested with revisional power U/S.12(2) of the Act, however, the Collector, Kendrapara has passed the impugned order in exercise of original jurisdiction, and thereby, depriving the

petitioners to statutory legal forums/remedy available to them and, thereby, the Collector, Kendrapara has exceeded the jurisdiction vested on him under OPLE Act. It is also not found from the order that the revision petitioners were in fact noticed or any opportunity was given while passing the impugned order. This Court at this point entertains a question as to whether a Writ is maintainable in such situation, but the answer is in affirmative, since the authority concerned has exercised jurisdiction without any authority and jurisdiction and, thereby, the petitioners having not been provided with any opportunity and forums to agitate their grievances, the Writ Petition against the impugned order is squarely maintainable.

6. In the result, the present Writ Petition stands disposed of at this stage of admission without giving notice to any of the OPs, since the impugned order proceeds from the very inception on illegal assumption of power and, thereby, the impugned order is, hereby, set-aside. Consequently, the matter is remitted back to

the Tahasildar, Kendrapara-cum-OPNo.4 to take appropriate decision in accordance with law on the grievance of the petitioners by hearing both the parties with notice in advance to them. Further, the Show Cause Notice issued to the writ petitioners under Anneuxre-1 stands quashed. The Tahasildar, Kendrapara is, hereby, directed to dispose of the proceeding within thirty days of the appearance of the parties before him.

(G. Satapathy)
Judge

Orissa High Court, Cuttack,
Dated the 5th day of October, 2026/Subhasmita

Signature Not Verified
Digitally Signed
Signed by: SUBHASMITA DAS
Designation: Sr. Stenographer
Reason: Authentication
Location: High Court of Orissa, Cuttack
Date: 06-Oct-2026 16:23:45