COURT OF THE SUB-COLLECTOR, ATHAMALLIK

Mutation Appeal No. 05 of 2017

(Against the order dated 22.01.2016 of the Tahasildar, Athmallik in Mutation Case No. 691/2015)

Appellant (successor of Bhimsen Tripathy, auction purchaser)

versus

Tahasildar, Athmallik and Ranjan Prasad … Respondents

Decided on 18 September 2025

Mutation – Auction purchase under the Co-operative Societies Act – Reopening of a dropped case ex parte. A purchaser at a public auction held by the Co-operative Land Development Bank in execution against a defaulting mortgagor, with sale certificate and delivery of possession, acquires the right, title and interest of the defaulter. The Tahasildar cannot, by reopening a dropped mutation case ex parte, correct the record in favour of the defaulter's heirs while ignoring the auction and without notice to the purchaser's successors.

Result: Appeal allowed. Order set aside; fresh proceedings directed in favour of the auction purchaser's successor after notice to all.

ORDER

18.09.2025

1. The case was taken up today. Perused the parawise comment submitted by the Tahasildar, which read as follows'

> *"That previously khata no. 15 of Mouza Padiahindal was stood recorded in the name of Bindhyeswar Prasad, son of Sital Prasad, caste- Karhut Kalwar, of village Kaintaragarh, and Judhisthir Tripathy, son of Bhagaban Tripathy of village Kaintaragarh, on behalf of Bhimasen Tripathy, has applied for Mutation vide Case No. 859/2011, based on the Sabik record as per RP case no. 137/83-84 of CLDB Athmallik, as Bhimsen Tripathy bought the land through auction. Then, the Tahasildar rejected the case on 29.08.2012, advising the petitioner to seek shelter before the appropriate authority regarding his claim.*

2. Ranjan Prasad, son of Mohan Prasad of village Kaintaragarh, had filed a mutation case bearing case no. 691/2015 for a correction in column 2 correction, which the Tahasildar dropped on 01.10.2015, as another person already possessed the suit land. On 22.01.2016, the Tahasildar again reopened the case and allowed for column 2 correction in favour of the legal heirs of the recorded tenant. Accordingly, a correction has been made in the khata no. 15 of Mouza- Padiahindal".

3. Perused the appeal memo filed by the appellant, which read as follows,

4. One Bindheswar Prasad, son of Sital Prasad, was the recorded tenant of plot no. 45 and 47, measuring an area of 3.380 and 6.80 acres, respectively, about the current holding number. 15 of the village Padiahindol under Athmallik Tahasil. The case land corresponds to the Sabik plot nos. 75 and 81, measuring an area of 3.54 and 7.02 acres, respectively, which pertain to Sabik Khata No. 10/1 of the village Padiahondol under Athmallik Tahsil. The said Bindheswar Prasad availed a loan from the Co-operative Land Development Bank, Athmallik, by mortgaging the case land. He could not repay

the loan. Thereafter, the bank filed an execution case no. 183/83-84 in the court of the Assistant Registrar of Angul circle, Angul, cum- Principal Officer of Co-operative Development Bank in the district of Dhenkanal. After this, the sales officer was directed to auction the land.

5. Bhimsen Tripathy, son of the present appellant, purchased the case land at the public auction held on 5 June 1985 and paid the full purchase price of Rs. 13,450. The Principal Officer of the Bank proclaimed purchased land in favour of Bhimsen Tripathy on 17.10.1985, by declaring that Bhimsen Tripathy had succeeded to all right, and interest of the defaulter, namely Bindheswar Prasad. On 11.1.1985, the sale officer gave delivery of possession to Bhimsen Tripaty and also handed over physical possession.

6. On 20.08.2015, one Ranjan Prasad, son of Mohan Prasad of village Kaintaragrh, filed a Mutation case 691/2015 in favour of the legal heirs of Bighneswar Prasad. The Tahasildar dropped it on 01.10.2015. Again, the Tahasildar reopened it on 22.01.2016 and allowed the case in favour of the legal heirs of Bighneswar Prasad. Although the Tahasildar is a party in RFA 7/2016, which is pending before the learned District Judge, Angul, in connection with the case land, during the pendency of the appeal, the Tahasildar committed a gross illegality by allowing the mutation case.

7. Hence, the appellant prayed for setting aside the order passed by the Tahasildar.

8. Summarising Case Facts: The suit land pertains to the current Plot Nos. 45 and 47, measuring Ac. 3.380 and Ac. 6.80 respectively, pertaining to Khata No. 15 of Mouza Padiahindal under Athmallik Tahasil, corresponding to Sabik Plot Nos. 75 and 81 measuring Ac. 3.54 and Ac. 7.02 respectively under Sabik Khata No. 10/1. The land was initially recorded in the name of Bindhyeswar Prasad, son of Sital Prasad. Bindhyeswar Prasad availed a loan from the Co-operative Land Development Bank, Athmallik, by mortgaging the suit land, but defaulted on repayment. Consequently, the Bank initiated Execution Case No. 183/83-84 (noted variably as 137/83-84 in records) before the Assistant Registrar of Co-operative Societies, Angul Circle, Angul-cum-Principal Officer of the Co-operative Development Bank, Dhenkanal. The land was put up for public auction on 05.06.1985, where Bhimsen Tripathy, the father of the appellant, purchased the land for Rs. 13,450/-. The Principal Officer proclaimed a sale on 17.10.1985, confirming Bhimsen Tripathy's succession to all rights and interests of the defaulter. Delivery of possession was affected on 01.11.1985, including physical handover.

9. Reviewing Procedural History: An earlier mutation application (Case No. 859/2011) filed by Judhisthir Tripathy on behalf of Bhimsen Tripathy was rejected by the Tahasildar on 29.08.2012, advising recourse to the appropriate authority. Subsequently, on 20.08.2015, Respondent No. 2 (Ranjan Prasad) filed Mutation Case No. 691/2015 seeking correction in favour of Bindhyeswar Prasad's legal heirs. This case was initially dropped on 01.10.2015 due to possession by another party, but was reopened ex parte, culminating in the impugned order dated 22.01.2016

10. Evaluating Evidence and Arguments: The court heard the learned counsel for the appellant and perused the records, including the Tahasildar's para-wise comments, appeal memorandum, auction sale proclamation, delivery of possession certificate, and payment receipts. The appellant has established a prima facie title through a valid public auction conducted under the Co-operative Societies Act, which vests absolute ownership upon confirmation of sale and delivery of possession.

The Tahasildar's order fails to consider the legal effect of the auction, which extinguishes the rights of the original mortgagor and his heirs. Reopening the mutation case without notice to the auction purchaser's successors violates principles of natural justice and procedural fairness under the Orissa Mutation Manual.

11. Analysing Tahasildar's Errors: The Tahasildar's comments acknowledge the auction but erroneously prioritise sabik records without verifying the post-auction title transfer. No evidence counters the validity of the auction or the appellant's predecessor's possession. The impugned order is arbitrary, perverse, and unsustainable in law.

12. In view of the foregoing, the appeal is allowed. The order dated 22.01.2016 passed by the Tahasildar, Athmallik, in Mutation Case No. 691/2015 is hereby set aside. The Tahasildar is directed to: (a) Initiate fresh mutation proceedings in favour of the appellant as the legal successor of Bhimsen Tripathy, based on the auction sale documents, within 30 days from the receipt of this order. (b) Issue notice to all interested parties, including the legal heirs of Bindhyeswar Prasad, and decide the matter afresh after hearing them, in accordance with the law.

13. A copy of this order and judgment shall be sent to the Tahasildar, Athmallik, for compliance.

Sd/-
Sub-Collector, Athmallik

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