

A.F.R.



IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P(C) No.12399 of 2024

In the matter of an application under Article 226 and 227 of the
Constitution of India

Hemanta Nayak **Petitioner**

Mr. S. Mishra, Advocate

-versus-

**1.State of Odisha
2.Member, Board of
Revenue, Odisha,
Cuttack
3.Revenue Divisional
Commissioner, Central
Division, Cuttack
4.Collector, Bhadrak
5.Tahasildar, Bhadrak
6.Addl. Tahasildar,
Bhadrak
7.State Information
Commission, Odisha**

.... **Opposite Parties**

Mr. C.R. Swain, AGA
Mr. B.K Dash, Advocate

CORAM: JUSTICE V. NARASINGH

DATE OF HEARING :11.09.2025

DATE OF JUDGMENT :09.10.2025

V. Narasingh, J.

- 1.** Heard Mr. Mishra, learned counsel for the Petitioner, Mr. Swain, learned counsel for the State and Mr. Dash, learned counsel for the Opposite Party No.7.
- 2.** Being aggrieved by the Order dated 26.02.2024 passed by the State Information Commissioner in



disposing of the Second Appeal No.291 of 2019 of the Petitioner, vide Annexure-16, by which the proceeding was closed, the present writ petition has been filed invoking the jurisdiction of this Court under Articles 226 and 227 of the Constitution of India.

3. The genesis of the grievance is that the Petitioner along with other villagers of village Kuansh under Bhadrak District made a representation to the Chief Secretary, Government of Odisha dated 26.12.2017 at Annexure-1, seeking recording of Jalasaya Plot No.1765 in Government records and consequential direction to evict the alleged illegal encroachers and to restore the status of such land.

4. On perusal of the same, it can be seen that to fortify their stand the Petitioner along with others relied on several documents including orders passed by the Apex Court as well as the decisions of this Court and details of the land has also been mentioned in the said representation and a copy thereof was endorsed to the Revenue Secretary, Odisha, Bhubaneswar, Revenue Divisional Commissioner (Central), Odisha, Cuttack, Member, Board of Revenue, Odisha, Cuttack and Collector, Bhadrak.

The Deputy Secretary to the Board of Revenue, Odisha, Cuttack vide letter dated 11.01.2018 referring to the grievance petition at Annexure-1 adverted to hereinabove directed the Collector, Bhadrak to conduct an inquiry and submit a comprehensive report for



appraisal of the Member, Board of Revenue, Odisha, Cuttack.

Similar communication dated 12.01.2018 was addressed to the Collector, Bhadrak by the Office of the Revenue Divisional Commissioner, Central Division, Odisha, Cuttack.

The Government in the Revenue and Disaster Management Department referring to the representation at Annexure-1 has directed the Collector, Bhadrak, Sub-Collector, Bhadrak and Tahasildar, Bhadrak to inquire into the matter and take action in accordance with law.

The said communication of the Board of Revenue, Odisha, Cuttack, Revenue Divisional Commissioner, Central Division, Odisha, Cuttack and the Revenue and Disaster Management Department are on record at Annexures-2 to 4 of the Writ Petition. Copy of the instructions as imparted by the Government vide Annexure-4 was also endorsed to the Petitioner specifically referring to the petition dated 26.12.2017 at Annexure-1.

5. While the matter stood thus, vide letter dated 31.01.2018 the Deputy Collector (Revenue), Collectorate, Bhadrak vide Annexure-5 sought information regarding steps taken for eviction of unauthorized encroachment and redressal of the grievance in public interest.

The Government in the Revenue and Disaster Management Department reiterated its direction to the



Collector, Bhadrak by letter dated 13.03.2018, vide Annexure-6 to look into the grievance petition dated 26.12.2017 relating to unauthorized occupation of Jalasaya Land.

6. When the Petitioner could not get any information relating to any follow up action, he made an application for information under Section 16(1) of the Right to Information Act, 2005 (Act, 2005)¹ to the Public Information Officer, Office of the Tahasildar, Bhadrak.

Particulars of the information was sought in terms of Rule 4(1) thereof in Form-A. The specific details of information sought for in Paragraph-5(c) of the said Form, which is germane for just adjudication is extracted hereunder:

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xxx

xxx

5. Particulars of information solicited

a) Subject matter of information: Information regarding action with documents.

b) The period to which the information relates 26/12/17 to 25/7/18.

c) Specific details of information required : I and other villagers of Kuansh have made representation on 26/12/17 through Speed Post to take appropriate steps to record the land i.e. M.S Plot No.1765 of MS Kuansh under Government Khata addressing to Chief Secretary, Odisha, Revenue Secretary, Odisha, RDC (C.D), Cuttack, Member Board of Revenue, Cuttack, Collector, Bhadrak. On the above

¹ **Section 16.** Term of office and conditions of service.-(1) The State Chief Information Commissioner shall hold office 1[for such term as may be prescribed by the Central Government] and shall not be eligible for reappointment:

Provided that no State Chief Information Commissioner shall hold office as such after he has attained the age of sixty-five years.



representation, directions have been made to the Collector, Bhadrak and Tahasildar, Bhadrak. Whether any step has been taken about our prayer?

Whether any proceeding has been initiated to restore the land under Govt. Khata?

Whether the land in question has been taken delivery of possession of the Govt.?

Whether any letters or instructions or directions has been received by Tahasildar Bhadrak from Collector, Bhadrak, Hon'ble Revenue Secretary, R.D.C (C.D), Cuttack, Member, Board of Revenue, Odisha regarding our representation dated 26.12.2017?

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xxx"

7. Since such information was not provided within the stipulated period, the Petitioner preferred an appeal under Section 19(1) of the Act, 2005² in Form-D under Rule 7(I).

While the matter stood thus, on 12.12.2018 vide Annexure-10 the Petitioner was informed with respect to his first appeal that information sought by him "is not available as per submission of Dealing Assistant, Encroachment"

8. Being aggrieved, the Petitioner preferred Second Appeal under Section 19(3) of the Act, 2005³ in Form No.E and in response thereto the Law Officer of

²**19. Appeal.**-(1) Any person who, does not receive a decision within the time specified in sub-section (1) or clause (a) of sub-section (3) of section 7, or is aggrieved by a decision of the Central Public Information Officer or State Public Information Officer, as the case may be, may within thirty days from the expiry of such period or from the receipt of such a decision prefer an appeal to such officer who is senior in rank to the Central Public Information Officer or State Public Information Officer as the case may be, in each public authority:

Provided that such officer may admit the appeal after the expiry of the period of thirty days if he or she is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

³**19. Appeal.**

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(3) A second appeal against the decision under sub-section (1) shall lie within ninety days from the date on which the decision should have been made or was actually received, with the Central Information Commission or the State Information Commission:

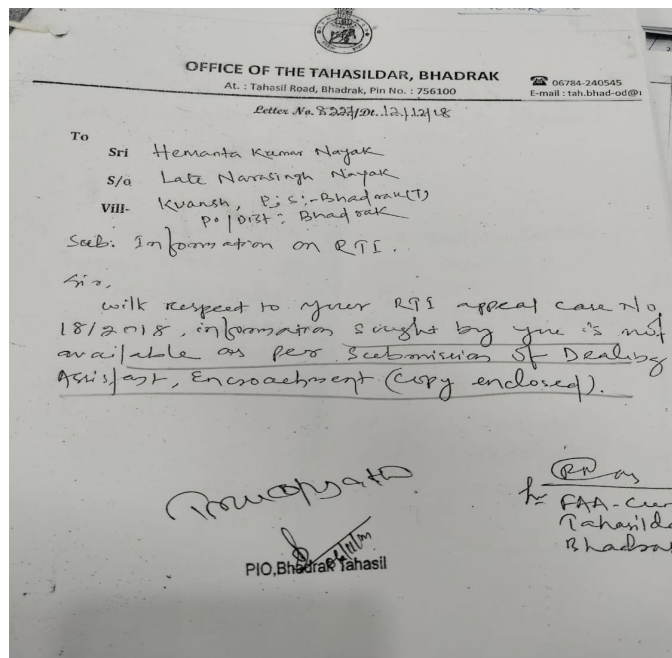
Provided that the Central Information Commission or the State Information Commission, as the case may be, may admit the appeal after the expiry of the period of ninety days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.



the Odisha Information Commission, Bhubaneswar was intimated under letter No.4662 dated 06.11.2023 that the questions as raised by the Petitioner have been complied point wise and supplied in his favour vide letter No.8227 dated 12.12.2018.

9. The matter was taken up by the State Information Commissioner on 26.02.2024 and by impugned order, taking note of the letter No.8227 dated 12.12.2018 and the joint affidavit submitted by the First Appellate Authority and the PIO, Bhadrak Tahasil regarding non-availability of the information as sought and receipt of letter No.8227 dated 12.12.2018 by the Petitioner, the case was dropped which, is the subject-matter of challenge in this writ petition.

10. For convenience of reference, the letter No.8227 dated 12.12.2018 is extracted hereunder:





11. Counter affidavit is filed by the Tahasildar, Bhadrak, Opposite Party No.5, regarding nature of the land in question and it is also reiterated that the writ petition is liable to be rejected.

In response thereto, a rejoinder has been filed.

12. Learned counsel for the Petitioner, Mr. Mishra to fortify his submission has relied on a Division Bench judgment of the Hon'ble Bombay High Court in the case of **Shri Vivek Anupam Kulkarni Vrs. The State of Maharashtra and Ors.**⁴.

On perusal of the said judgment, this Court is of the considered view that the same has no application in the factual matrix of the case at hand.

13. Learned Addl. Government Advocate, Mr. Swain and learned counsel for the Opposite Party No.7, Mr. Dash defend the impugned order and submit that the same does not merit any interference. It is their further submission that the Petitioner has not been able to place on record any material that the information which was available has not been provided.

14. The Right to Information Act was enacted in the year 2005 with an avowed object in tune with Article 19(1)(a) of the Constitution⁵ for setting out the structural mechanism for access to information which is crucial for democratic functioning of the Government and also ensure transparency and accountability. A duty is cast on the PIOs to furnish the information as sought for by a citizen and self-contained redressal

⁴ Writ Petition No.6961 of 2012 disposed of on 27th February, 2015

⁵ **19.** (1) All citizens shall have the right— (a) to freedom of speech and expression



forums have been provided by way of First and Second Appellate Authorities.

15. Considering the personnel manning the second appellate authority a great duty is cast on them to scrutinize the materials which are produced before them on the touchstone of justice, equity and fair-play since the Act bars the jurisdiction of the Court under Section 23 of the Act, 2005⁶. And, Section 19(7) of Act, 2005⁷ provides that decision of the Central Information Commission or State Information Commission shall be binding.

16. Section 19(8) of the Act, 2005⁸ deals with the power of the Central Information Commission and the State Information Commission.

Section 8 of the Act, 2005⁹ is the exception carved out by the legislature in respect of an application seeking information.

⁶ **Section 23.** Bar of jurisdiction of courts.- No court shall entertain any suit, application or other proceeding in respect of any order made under this Act and no such order shall be called in question otherwise than by way of an appeal under this Act.

⁷ **19. Appeal.**

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(7) The decision of the Central Information Commission or State Information Commission, as the case may be, shall be binding.

⁸ (8) In its decision, the Central Information Commission or State Information Commission, as the case may be, has the power to--

(a) require the public authority to take any such steps as may be necessary to secure compliance with the provisions of this Act, including--

(i) by providing access to information, if so requested, in a particular form;

(ii) by appointing a Central Public Information Officer or State Public Information Officer, as the case may be;

(iii) by publishing certain information or categories of information;

(iv) by making necessary changes to its practices in relation to the maintenance, management and destruction of records;

(v) by enhancing the provision of training on the right to information for its officials;

(vi) by providing it with an annual report in compliance with clause (b) of sub-section (1) of section 4;

(b) require the public authority to compensate the complainant for any loss or other detriment suffered;

(c) impose any of the penalties provided under this Act;

(d) reject the application.

⁹ **8. Exemption from disclosure of information.-** (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,-

(a) information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;



17. The impugned order passed by the State Information Commissioner vide Annexure-16 has to be tested on the anvil of the powers as conferred under Section 19(8) of the Act, 2005 adverted to hereinabove.

18. On bare perusal of the impugned order, it can be seen that the State Information Commissioner referred to the letter No.8227 dated 12.12.2018 as compliance of the information sought. The information sought for has already been extracted hereinabove so also the replies. The enclosure to the letter dated 12.12.2018 forms part of the reply since in the letter

(b) information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court;

(c) information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;

(d) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;

(e) information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;

(f) information received in confidence from foreign Government;

(g) information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;

(h) information which would impede the process of investigation or apprehension or prosecution of offenders;

(i) cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers:

Provided that the decisions of Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over:

Provided further that those matters which come under the exemptions specified in this section shall not be disclosed;

(j) information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information:

Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.

(2) Notwithstanding anything in the Official Secrets Act, 1923 (19 of 1923) nor any of the exemptions permissible in accordance with sub-section (1), a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests.

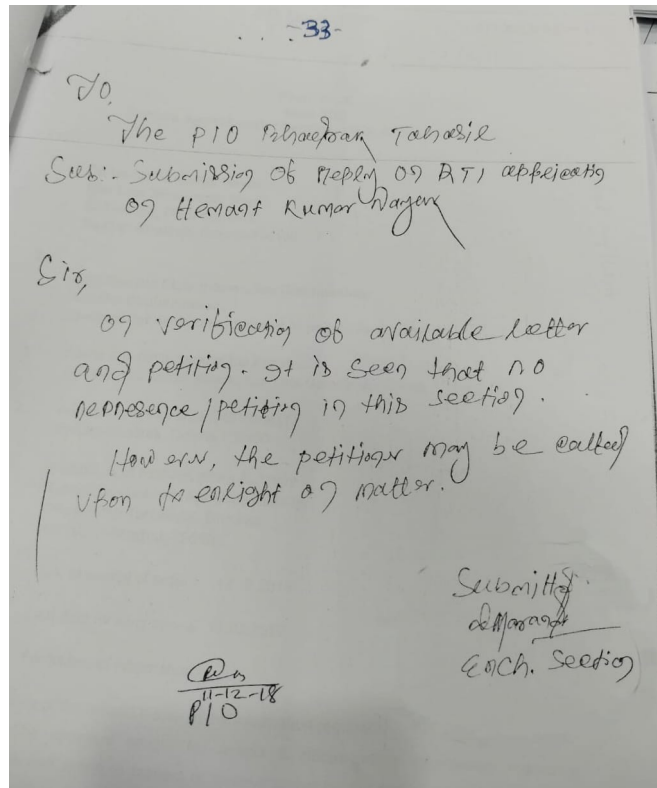
(3) Subject to the provisions of clauses (a), (c) and (i) of sub-section (1), any information relating to any occurrence, event or matter which has taken place, occurred or happened twenty years before the date on which any request is made under section 6 shall be provided to any person making a request under that section:

Provided that where any question arises as to the date from which the said period of twenty years has to be computed, the decision of the Central Government shall be final, subject to the usual appeals provided for in this Act.



dated 12.12.2018 it is stated "as per submission of Dealing Assistant, Encroachment (copy enclosed)".

Such enclosure addressed to the PIO, Bhadrak Tahasil is reproduced below for convenience of ready reference:



19. The stand taken by the PIO, Bhadrak Tahasil referring to the letter of the Dealing Assistant is that no representation/petition was available in the encroachment section.

20. Annexures-1 to 6 to the writ petition adverted to hereinabove and letter dated 21.04.2018 addressed to the PIO of the Collectorate (in vernacular), vide Annexure-7, indicate that on receipt of required information the same shall be furnished.

21. The stand taken by the State and readily accepted by the Information Commission that point



wise reply was supplied is de hors the records. In the face of communications at Annexures-1 to 6 and Annexure-7, the ground urged by the authorities that such representation is not available only exemplifies apathy of the highest order.

22. It is indeed baffling that on one hand the State functionaries are taking a stand that such representation of the Petitioner in respect of which action taken report is being sought for RTI, through Act, 2005 is not received but in the same breath it is stated that point wise reply has been provided.

23. Ex facie such stand of the State authorities is incongruous. Such patent contradictory stand escaped the scrutiny of the State Information Commission. In passing the impugned order, the State Information Commission mechanically accepted the stand of the State authorities, failing to take notice of the patent contradictions in their stand and also failed to appreciate that if such stand of the State authorities is accepted at their face value as in the case at hand without due scrutiny, right of a citizen to get information as codified by Act, 2005 would be a dead letter and it will set at naught the very purpose for which the Act has been enacted "to contain corruption and to hold Government and their instrumentalities accountable to the governed".

24. In the factual backdrop of the case at hand, this Court is constrained to observe that in rendering the impugned decision the State Information Commission



allowed its finding to be entrapped in officialdom and red tapism, which are illegitimate tools to fall back, to deny response to an application under the RTI Act, 2005 and thereby render the provisions nugatory.

25. Accordingly, the ground on which the RTI proceeding has been dropped being the outcome of non-application of mind is liable to be set aside. As such the impugned order at Annexure-16 is quashed.

The matter is remitted back to the State Information Commissioner to be heard and decided afresh on merits in the light of the observations made hereinabove, after giving opportunity of hearing to all concerned.

26. To cut short the delay and taking into account that the information sought for relates to an RTI application of 2018 it is directed that the Petitioner as well as the Opposite Parties shall appear before the State Information Commissioner, Opposite Party No.7 on 27.10.2025 to receive further instruction.

On such appearance the application shall be disposed of as expeditiously as possible, preferably within a period of 45 days.

27. The travail of the Petitioner reminds one of the plight of the protagonist "Josef" in Kafka's celebrated works "The Trial" where he faces nightmarish bureaucracy that seems designed to confuse.

Considering the manner in which the Petitioner was embroiled in unavoidable litigation in seeking information relating to his representation dated



26.12.2017 addressed to, no less than the Chief Secretary of the State, which is yet to see the light of the day, it is directed that the Opposite Party No.5 (Tahasildar, Bhadrak) shall be liable to pay cost of Rs.50,000/- (rupees fifty thousand only) to the Petitioner on or before 09th December, 2025. Proof evidencing such payment shall be submitted to the Registry.

It shall be open for the Government, Opposite Party No.1 to recover the same from the concerned official(s) in accordance with law.

28. The Writ Petition is accordingly disposed of.

(V. Narasingh)
Judge

Orissa High Court, Cuttack
Dated the 09th October, 2025/ Pradeep