

ORISSA ACT XV OF 1954

THE ORISSA PREVENTION OF LAND ENCROACH-
MENT ACT, 1953

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THE ORISSA PREVENTION OF LAND ENCROACHMENT ACT, 1953

[Received the assent of the Governor on the 1st October 1954,
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29th October 1954]

AN ACT TO CONSOLIDATE AND AMEND THE LAW RELATING
TO THE PREVENTION OF UNAUTHORISED OCCUPATION OF
LANDS WHICH ARE THE PROPERTY OF GOVERNMENT

WHEREAS it is expedient to consolidate and amend the
law relating to the prevention of unauthorised
occupation of lands which are the property of Government;

It is hereby enacted by the Legislature of the State of
Orissa in the Fifth year of the Republic of India as
follows:—

Short title,
extent and
commence-
ment.

*1. (1) This Act may be called the Orissa Prevention of
Land Encroachment Act, 1954.

(2) It shall extend to the whole of the State of Orissa.

(3) It shall come into force at once.

Property of
Govern-
ment.

2. Subject to the provision of any law for the time
being in force, the following classes of lands are hereby
declared to be the property of Government for the purposes
of this Act, namely:—

(a) All public roads, streets, lanes and paths, the
bridges, ditches, dikes and fences, on or beside the same,
the bed of the sea and of harbours and creeks below high
water mark, and of rivers, streams, nalas, lakes and tanks,
and all canals and water-courses and all standing and
flowing water, and all lands other than temple sites, house-
sites or backyards wherever situated, save in so far as the
same are the property—

(i) of any Ruler of an Indian State merged with the
State of Orissa, Zamindar, Proprietor, Sub-Proprietor,
Landlord, Malguzar, Poligar, Mittadar, Jagirdar,
Shrotriemadar, Inamdar, Ilaquedar, Khorposhdar or any
other tenure-holder or any person claiming through or
holding under any of them; or

(ii) of any person paying shist, Kattubadi, Jodi,
poruppu or quit-rent to any of the aforesaid persons ; or

(iii) of any person holding under raiyatwari tenure
or in any way subject to the payment of land-revenue
direct to Government ; or

* For Statement of Objects and Reasons see *Orissa Gazette Extraordinary*,
dated the 25th February 1954.

(iv) of any other registered holder of land having proprietary right; or

(v) of any other person holding land under grant from Government otherwise than by way of license; or

(vi) of any raiyat holding waste land reclaimed by him with the written consent given or deemed to have been given by the landlord under the provisions of section 61 of the Orissa Tenancy Act, 1913 or under the corresponding provisions of any other tenancy law for the time being in force or the rules made under this Act. B. and O.
Act II of
1913.

(b) land belonging to or vesting in any Local authority which is used or intended to be used for any public purposes such as a road, canal, embankment, tank or ghat or for the repair or maintenance of such road, canal, embankment, tank or ghat.

(c) Land acquired under the provisions of the Land Acquisition Act, 1894 or under similar Acts or procedure for the purposes of any local authority or a railway Company while such land remains as the property of the Local authority or railway company. Act I of
1894.

(d) Immovable property claimed by the Rulers of the merged territories but not conceded in their favour.

Explanation—In this section "high water mark" means the highest point reached by ordinary spring-tides at any season of the year.

Levy of
assessment
on lands
unauthori-
sedly
occupied.

3. Any person who shall unauthorisedly occupy any land which is the property of Government shall be liable to pay by way of assessment—

(i) if the land so occupied was at any time assessed to rent the full assessment for the whole period of occupation or a part thereof proportionate to the area occupied, as the case may be, provided that for special reasons the Collector or subject to his control a Deputy Collector or a Sub-Deputy Collector may impose the full assessment of rent or any lesser sum irrespective of the area occupied;

(ii) if the land so occupied was not at any time assessed to rent, an assessment on the area occupied, calculated for the same period at the rate imposed on lands of a similar description and with similar advantages in the vicinity or when no such prevailing rate exists, in such manner as may be prescribed under section 8.

Provided that notwithstanding anything in the Tenancy Laws for the time being in force payment of assessment under this section shall not confer any right of occupancy.

Explanation—For the purpose of this section occupation for an incomplete portion of an agricultural year may be deemed to be occupation for the whole of such year.

Decision as to the amount of assessment shall not be challenged in any Civil Court.

4. The decision as to the rate or amount of rent assessed payable under section 3 shall be recorded in writing and shall not be called into question in any Civil Court.

Liability of person unauthorisedly occupying lands to penalty.

5. Subject to the provisions of section 7 any person liable to pay assessment under section 3 shall, at the discretion of the Collector or subject to his control of a Deputy Collector or Sub-Deputy Collector, be liable to pay in addition to the assessment, by way of penalty a sum not exceeding five rupees or, when ten times the assessment payable for one year under section 3 exceeds five rupees, a sum not exceeding ten times such assessment.

Summary eviction, forfeiture and fine.

6. (1) Any person unauthorisedly occupying land for which he is liable to pay assessment under section 3 may be summarily evicted by the Collector and any crop or other product raised on the land, any encroachments such as a building, other construction or anything deposited thereon shall be liable to forfeiture :

Provided that in the case of said encroachments the Collector shall give reasonable notice to remove the same :

Provided further that unless such land is required for a public purpose the Collector may not take action under this sub-section till the provisions under section 3 and section 5 are taken recourse to and considered insufficient.

(2) If such person fails to remove the encroachments within the times specified in the notice the Collector may, in his discretion in addition to the order of forfeiture, impose a fine which may extend to fifty rupees, and a daily fine of rupees ten until the encroachment has been removed.

(3) Forfeitures under this section shall be adjudged by the Collector and any property so forfeited shall be disposed of as the Collector may direct.

Mode of eviction.

(4) An eviction under this section shall be made in the following manner, namely :--

By serving a notice in the manner provided in section 7 on the person reported to be in occupation or his agent requiring him within such time as the Collector may deem reasonable after receipt of the said notice, to vacate the land and if such notice is not obeyed, by removing or deputing a subordinate officer to remove any person who may refuse to vacate the same.

(5) If the officer removing any such person shall be resisted or obstructed by any person, the Collector shall hold a summary inquiry into the facts of the case and if satisfied that the resistance or obstruction was without any just cause and that such resistance or obstruction still continues, may issue a warrant for the arrest of the said person and on his appearance may send him with a

warrant in the form appended to the Schedule I for imprisonment in the Civil Jail of the district for a period not exceeding thirty days as may be necessary to prevent the continuance of such resistance or obstruction.

Prior notice to person in unauthorised occupation.

7. Before taking proceedings under section 5 or section 6 the Collector, the Deputy Collector or the Sub-Deputy Collector, as the case may be, shall cause to be served on the person reported to be in unauthorised occupation of the property of Government, a notice specifying the land so occupied and calling upon him to show cause before a certain date as to why he should not be proceeded against under section 5 or section 6. Such notice shall be served in such manner as the State Government may, by rules or orders under section 8, direct.

Power to make rules.

8. (1) The State Government may, subject to the condition of previous publication, make rules or orders either generally or in any particular instance—

(a) regulating the rates of assessment leviable under section 3 ;

(b) regulating the imposition of penalties under section 5 ;

(c) declaring that any particular land or class of lands which are the property of Government shall be open to occupation ;

(d) regulating the service of notice under this Act.

(2) All rules made under this section shall be laid as soon as possible after they are made before the Orissa Legislative Assembly for a total period of fifteen days which may be comprised in one session or in two or more sessions and shall be subject to such modifications as the Assembly may make during the said period.

(3) All rules made under sub-section (1) shall, subject to such modifications as may be made under sub-section (2), have effect as if enacted in this Act.

Recovery of assessment or penalty as a public demand.

9. The amount of fine, assessment and penalty, imposed under this Act on any person unauthorisedly occupying any land shall be deemed to be land revenue and recoverable from him as arrears of land revenue.

Appeal and revision.

10. (1) An appeal shall lie (a) to the Collector from any decision or order passed by a Deputy Collector or a Sub-Deputy Collector under this Act and (b) to the Board of Revenue from any decision or order of the Collector passed otherwise than on appeal. There shall be no appeal against the decision or order passed by the Collector on appeal. The Collector may revise any decision or order passed by a Deputy Collector or Sub-Deputy Collector under this Act and the Board of Revenue may revise any decision or order passed by the Collector.

(2) Pending the disposal of any appeal or revision, the Collector or the Board of Revenue, as the case may be, may suspend the execution of the decision or order appealed against or sought to be revised.

Limitation
of appeal.

11. No appeal shall be brought after the expiry of thirty days from the date of the decision or order complained of; provided that in computing the period of thirty days, the time required to obtain a copy of the decision or order appealed against shall be excluded. But the appeal may be admitted after the period hereinbefore provided if the appellant satisfies the appellate authority that he had sufficient cause for not preferring the appeal within the prescribed period.

Document
accompany-
ing petition
of appeal.

12. Every petition of appeal under this act shall be accompanied by the decision or order appealed against or by an authenticated copy of the same.

Saving of
operations
of other
laws in
force.

13. Nothing contained in this Act shall be construed as exempting any person unauthorisedly occupying land from liability to be proceeded against under any law for the time being in force :

Provided that if any penalty has been levied from any person under section 5 of this Act, no similar penalty shall be levied from him under any other law for the time being in force in respect of such occupation :

Provided further that any person imprisoned under XLV of 1860 sub-section (5) of section 6 shall not be liable to be prosecuted under sections 183, 186 or 188 of the Indian Penal Code in respect of the same facts.

Saving of
suits by
persons
aggrieved
by any
proceedings.

14. Subject to the provisions of section 4, any person aggrieved by any proceedings under this Act may apply to the Civil Court for redress :

Provided that the Civil Court shall not take cognizance of any suit instituted by such person for any such cause of action unless such suit is instituted within six months from the time at which the cause of action arose.

Explanation—The cause of action shall be deemed to have arisen—

(a) in respect of any assessment or penalty, on the date on which notice of such assessment or penalty was served on the person ;

(b) in respect of eviction or forfeiture, on the date of eviction or forfeiture :

Provided further that for purpose of computing the period of limitation, the period spent in appeal or revision shall be excluded.

Delegation of power and duties of collector, Deputy Collector and Sub-Deputy Collector.

15. The State Government may by order direct that any power, duties or functions conferred or imposed on a Collector or Deputy Collector or Sub-Deputy Collector, shall in such circumstances and under such conditions, if any, as may be specified in that order, be exercised or discharged by such other officer or authority as may be specified in that order :

Provided that the powers of the Collector under subsection (5) of section 6 may not be delegated to any Deputy Collector or Sub-Deputy Collector below the rank of a Subdivisional Magistrate.

Protection of action to be taken under this Act.

16. No suit, prosecution or other legal proceedings shall lie against any person for anything in good faith done or intended to be done in pursuance of this Act.

Repeal and savings.

17. (1) The enactments mentioned in the Schedule II are repealed to the extent specified in column 4 thereof.

(2) All things done, liabilities incurred, amounts assessed or penalty or fine imposed, enquiries held, notices served, warrants issued, eviction ordered, forfeiture adjudged and rules made under any of the enactments hereby repealed shall, so far as may be, be deemed to have been respectively done, incurred, assessed, imposed, held, served, issued, ordered, adjudged and made under this Act.

Power of State Government in cases if doubts and difficulties.

18. If any difficulty arises in giving effect to the provisions of this Act, the State Government may, by order, as occasion may require, do anything which appears to them to be necessary, to remove the difficulty.

SCHEDULE I

[SECTION 6 (5)]

Form of warrant to be issued by the Collector under section 6



To

The Officer-in-charge of the Civil Jail at.....

Whereas A, B of.....has resisted or obstructed C, D in removing E, F (or himself, that is, the said A, B) from certain land in the village of..... in the..... mouza, and whereas it is necessary in order to prevent the continuance of such resistance or obstruction to commit the said A, B to close custody ; you are hereby required under the provisions of section 6 of the Orissa Prevention of Land Encroachment Act, 1954, to receive the said A, B into the jail under your charge and there to keep him in safe custody for.....days.

Dated this.....day of

(Signature of Collector)

SCHEDULE II

[SECTION 17]

Year	Number	Short title	Extent of repeal
1	2	3	4
1905 .. (Madras)	III	The Madras Land Encroachment Act.	Whole
1917 .. (C. P.)	II	The Central Provinces Land Revenue Act.	Sections 217 and 219
1936 ..	V	The Angul Laws Regulation	The entry "1947 XXXIII The Orissa Land Encroachment Act, 1947" in Part VI of the Schedule.
1947 ..	XXXIII	The Orissa Land Encroachment Act.	Whole
1950 ..	IV	The Orissa Merged States (Laws) Act.	The entry "1947 XXXIII The Orissa Land Encroachment Act, 1947" in the Schedule.