

The Orissa Prevention of Land Encroachment Act, 1972

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Act 6 of 1972

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The Orissa Prevention of Land Encroachment Act, 1972Orissa Act 6 of 1972Statement of Objects and Reasons. - The Vires of Orissa Prevention of Land Encroachment Act, 1954 as amended by the Orissa Prevention of Land Encroachment (Amendment) Act, 1970 was recently challenged in a writ petition in the Orissa High Court in O.J.C. No. 1584 of 1968. The Court held that Section 3 of the Act is void as it contravenes Article 14 of the/Constitution. In a series of cases the Court has also earlier observed that Sections 5 and 6 of the Act were void. As Sections 3, 5 and 6 forming the very core were void. The Court held the entire Act including the amending Act of 1970 to be Void. It was held that the amending Act 1970 not being a re-enactment of the entire Act cannot resuscitate the Act into life. It, therefore, ruled that the Act and the Amending Act separately and together are void. This decision created serious difficulties for the Government as there was no law to deal with encroachment on Government land or Communal land. An Ordinance had, therefore, to be promulgated to meet the situation simultaneously complying with the provisions of the Constitution and judicial pronouncements. It is now necessary to effect the re-enactment of the law permanently to replace the Ordinance. The Bill seeks to achieve this objective. Orissa Gazette Extraordinary No. 15-Dated/4.1.1972 - Notification No. 150 L.A. - Dated/4.1.1972. Published vide Orissa Gazette, Extraordinary No. 296-Dated/16.2.1972 - Notification No. 1943, Legislative - Dated/16.2.1972. (Assented to by the President on the 12th February, 1972). An Act to provide for prevention of unauthorised occupation of lands which are the property of Government. Be it enacted by the Legislature of the State of Orissa in the Twenty-second Year of the Republic of India as follows :

1. Short title, extent and commencement.

(1) This Act may be called the Orissa Prevention of Land Encroachment Act, 1972. (2) It shall extend the whole of the State of Orissa. (3) It shall be deemed to have come into force with effect from the 29th day of October, 1954.

2. Property of Government.

- Subject to the provisions of any law for the time being in force, the following classes of lands are hereby declared to be the property to 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 sources and all standing and flowing water and all lands including temple sites, house sites or backyards wherever situated, save in so far as the same are the property - (i)of any ruler of Indian State merged with the State of Orissa, Zamindar, Proprietor, Sub-proprietor, Landlord, [* * *] [Omitted by Act 4 of 1975.] Jagirdar, [* * *] [Omitted by Act 4 of 1975.] Khoropshdar 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, porupu or quit rent to any of the aforesaid person; or(iii)of any person holding under raiyatwari tenure or in any way subject to the payment of cess or any other dues direct to Government; or(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 licence; [* * *] [Omitted by Act 4 of 1975.](vi)[* * *] [Omitted by Act 4 of 1975.](b)land belonging to or vesting in any Local Authority which is used or intended to be used for any public purpose 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 1 of 1894 or under similar Acts for the purposes of any Local Authority, [* * *] [Omitted by Act 4 of 1975.] Company owned or controlled by the State Government, Statutory Body or Corporation while such land remains as the property of the Local Authority, [* * *] [Omitted by Act 4 of 1975.] Company owned or controlled by the State Government, Statutory Body or Corporation;(d)Immovable property claimed by the rulers of merged territories but conceded in their favour; and(e)land belonging to an establishment or undertaking owned, controlled or managed by -(i)any State Government or a Department of such Government;(ii)any Company in which not less than fifty-one per cent of the share capital is held by one or more State Governments; or(iii)a corporation established by law which is owned, controlled or managed by any State Government.Explanation. - In this section "high water mark" means the highest point reached by ordinary spring-tides at any season of the year.

3. [Definitions. [Substituted by Act 4 of 1975.]

- In this Act, unless the context otherwise required-(a)"Collector" means the Chief Officer in charge of the revenue administration of a district and shall include an Additional District Magistrate;[(a-1) "Landless person" means a person, the total extent of whose land excluding homestead together with lands of all the members of his family who are living with him in common mess, is less than one standard acre and whose total annual income of all the members of his family who are living with him in common mess, does not exceed rupees six thousand and four hundred or an amount which the State Government may, by notification from time to time, specify in that behalf;][(a-2) "homesteadless person" means a person who, together with all the members of his family who are living with him in common mess, does not have any homestead land anywhere in the State and owns less than one standard acre of land other than homestead and whose total annual income, together with the annual income of all the members of his family living with him in common mess, does not

exceed rupees four thousand and two hundred or an amount which the State Government may, by notification from time to time, specify in that behalf;] [Inserted by Orissa Act 10 of 1988.](b)"Prescribed" means prescribed by rules made by the State Government under this Act; and[(b-1) "standard acre" means a standard acre as defined in the Orissa Land Reforms Act, 1960;] [Inserted by Orissa Act 25 of 1979.](c)"Tahasildar" means the Chief Officer in charge of the revenue administration of a Tahasil and shall include an Additional Tahasildar.]

4. Levy of assessment of land unauthorisedly occupied.

- Any person unauthorisedly occupying 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 Tahasildar] [Substituted by Act 4 of 1975.] may impose the full assessment of rent or any lesser sum irrespective of the area occupied; or(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 [* * *] [Omitted by Act 4 of 1975.] :[Provided that where the person unauthorisedly occupying such land is a landless person, the amount payable by him by way of assessment shall in no case exceed an amount equal to five times the annual assessment:Provided further that notwithstanding anything in the tenancy laws for the time being in force, payment of assessment under this sections shall not confer any right of occupancy.] [Substituted by Act 25 of 1976.]Explanation. - For the purpose of the section occupation for an incomplete portion of an agricultural year may be deemed to be occupation for the whole of such year.

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

- The decision as to the rate of amount of rent assessed under Section 4 shall be recorded in writing and shall not be called in question in any Civil Court.

6. Liability of person unauthorisedly occupying land to penalty.

- Subject to the provisions of Section 9, any person liable to pay assessment under Section 4 shall, at the discretion of [The Tahasildar] [Substituted by Act 4 of 1975.] be liable to pay in addition to the assessment by way of penalty a sum calculated at a rate [not exceeding one hundred rupees] [Substituted by Act 25 of 1976.] per acre of land for each year of unauthorised occupation :[Provided that where the person liable to pay assessment is a landless person, he shall not be liable to pay any penalty under this section.] [Added by Act 25 of 1976.]

6A. [Reduction and remission of assessment and penalty. [Inserted by Act 13 of 1982.]

- Subject to such conditions as may be prescribed, the Collector may, in suitable cases either reduce or remit the amount payable by way of assessment under Section 4 or the penalty, if any, imposed under Section 6.]Notes. - The reduction or remission before the omission of the section has been protected. The proceedings which were pending on the date of omission of the Section would continue. This is provided in Section 7 of Orissa Act 25 of 1976 which reads as follows : "7 Savings. - The omission of Section 6-A of the principal Act by this Act shall in no way affect any reduction or remission of any assessment or penalty made under the said section prior to the date of commencement of this Act nor shall it in any way affect the proceeding under the section on the said date. New Section inserted by Orissa Act 13 of 1982.

7. Summary eviction, forfeiture and fine.

(1) Any person unauthorisedly occupying land for which he is liable to pay assessment under Section 4 shall be summarily evicted by the [Tahasildar] [Substituted by Act 4 of 1975.] 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 case of said encroachments, [the Tahasildar] [Substituted by Act 4 of 1975.] shall give reasonable notice to remove the same. (2) [Notwithstanding anything contained in Sub-Section (1) -(a) where any land is in the unauthorised occupation of a landless person, the Tahsildar may instead of evicting such person from the land in his authorised occupation, settle the same with him, so however, the land so settled with him together with the land excluding homestead, if any owned by him and the lands owned by all the members of his family who are living with him in common mess, shall, on no account, exceed one standard acre and shall not include more than one-tenth of an acre of land which is being utilised or can be utilised for purposes of homestead; and (b) where any land is in the unauthorised occupation of a homesteadless person, which is being utilised by him as homestead, the Tahasildar shall, instead of evicting such person, settle the same with him, so, however, that the land so settled with him shall not exceed one-tenth of an acre]: [Provided that no such settlement shall be made if the land belongs to any of the following categories namely] [Added by Act 4 of 1975.] : (a) lands recorded as Gochar, Rakhit, or Sarbasadharan in any record-of-rights prepared under any law; (b) lands which are -(i) set apart for the common use of villages; (ii) used as house site, back-yard of temple-site whether or not recorded as such, in the record-of-rights; (iii) likely to require for any development scheme and are declared as such by the State Government by a notification; and (c) land belonging to an establishment of undertaking owned, controlled or managed by -(i) any State Government or a Department of such Government; (ii) any company in which not less than fifty-one per cent of the share capital is held by one or more State Government, or (iii) a corporation established by law which is owned, controlled or managed by any State Government : [Provided further that where the land in the unauthorised occupation of a person is situated within a Municipality or a Notified Area constituted under the Orissa Municipal Act, 23 of 1950 : (a) the settlement of land with such person shall be made by the Sub-divisional Officer on a reference made to him in that behalf by the Tahasildar; (b) not more than [one-tenth of an acre] shall be settled and that such settlement shall be made only where -(i) neither the person nor any member of his family living with him in common

mess owns a house or house-site anywhere in the State; or(ii)the land being adjacent to the holding owned by the person is necessary for the beneficial enjoyment of such holding or for the residential purpose of the person and is not reserved for the purposes of any Government or for any developmental purpose; and(c)the settlement shall not take effect until -(i)the order for settlement made by the Sub-divisional Officer is confirmed by the Collector of the district; and(ii)the person in favour of whom the settlement is made, makes payment of the market value of the land assessed by the Sub-divisional Officer in the manner prescribed by rules made under this Act :Provided also that on failure, of payment of the market value within the time fixed by the Sub-divisional Officer, the person in unauthorised occupation of the land shall be liable to be summarily evicted from the land in accordance with the provisions of this Act.] [Substituted by Act 10 of 1988.][(2-a)

Notwithstanding anything contained in the first proviso to Sub-section (2), where any land specified under the said proviso except those classified Gochar, Rakhshit or Sarbasadharan and used as burial ground, Government premises, tanks, roads and public places of worship is in the unauthorised occupation of any homesteadless person and who is using its as homestead and residing thereon by constructing a house on or before the 10th March, 1985, the Tahasildar shall instead of evicting such person, settle the same with him so, however, that the land so settled with him shall not exceed one twenty-fifth of an acre.] [Inserted by Act 10 of 1988.](3)If such a person fails to remove the encroachment within the time specified in the notice, [the Tahasildar] [Substituted by Act 4 of 1975.] 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:[Provided that the aggregate of the fines payable under this subsection shall in no event exceed an amount equal to twice the market value of the encroached land;Provided further that subject to such conditions as may be prescribed, the Collector may, in suitable cases, either reduce or remit the amount payable by the way of fine under this sub-section] [Inserted by Act 25 of 1979.](4)Forfeitures under this section shall be adjudged by [the Tahasildar] [Substituted by Act 4 of 1975.] and any property so forfeited shall be disposed of as [the Tahasildar] [Substituted by Act 4 of 1975.] may direct.(5)An eviction under this section shall be made by serving a notice in the manner provided in Section 9 on the person reported to be in occupation or his agent requiring him within such time as [the Tahasildar] [Substituted by Act 4 of 1975.] 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 my refuse to vacate the same.(6)If the Officer removing any such person shall be resisted or obstructed by any person, [the Tahasildar] [Substituted by Act 4 of 1975.] shall hold a summary inquiry into the fact 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 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.

8. Stay of construction.

- [The Tahasildar] [Substituted by Act 4 of 1975.] may, if he has reasons to believe that any person unauthorisedly occupying any land is constructing or is about to construct any building or other structure thereon, by order, prohibit such person from proceeding with the construction or as the

case may be, from constructing such building or structure [* * *] [Words 'during the pendency of any proceeding under this Act' deleted by Act 13 of 1982.] and if such person fails to comply with the said order, [the Tahasildar] [Substituted by Act 4 of 1975.] may impose a fine which may extend to fifty rupees and a daily fine of rupees ten for every day during which such non-compliance continues [and may also 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 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 person from proceeding with the construction] [Added by Act 4 of 1975.].

8A. [Settlement of land in cases of encroachment for more than thirty years. [Added by Act 4 of 1975.]

(1)Where in the course of any proceeding instituted under Sections 4, 6, 7 or 8 against any person unauthorisedly occupying any land it is proved by such person that he has been in actual, continuous and undisputed occupation of the land for more than thirty years by the date of institution of the proceeding, the Tahasildar shall refer the case to the Sub-divisional Officer.(2)On receipt of a reference under Sub-section (1) the Sub-divisional Officer shall give the Department of the State Government (other than the Revenue Department) to which the land belongs, an opportunity to show cause against the settlement of the land and may make such further enquiry as he deems necessary.(3)If after making such enquiry the Sub-divisional Officer is satisfied that such person has been in such occupation of the land as aforesaid, he may by order, settle the land with him and every such settlement shall be subject to such conditions, regarding assessment and payment of rent (including arrears of rent) as may be prescribed by rules made under this Act.] [Substituted by Act 10 of 1988.]

9. Prior notice to person in unauthorised occupation.

- Before taking proceedings under [Section 4] [Substituted by Act 4 of 1975.], Section 6 or Section 7 [the Tahasildar] [Inserted by Act 4 of 1975.] 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 him to show cause before a certain date as to why he should not be proceeded against under [Section 4] [Substituted by Act 4 of 1975.], Section 6 or Section 7. Such notice shall be served in such manner as the Government may, by rules or orders under Section 10, direct.

10. Power to make rules.

(1)The State Government may, subject to the condition of previous publication, make rules, orders either generally or in any particular instance -(a)regulating the rates of assessment leviable under Section 4;(b)regarding the imposition of penalties under Section 6; and[(b-1) prescribing the manner of assessment of market value of land under Section 7; [Inserted by Act 13 of 1982.](b-2) prescribing the conditions regarding assessment and payment of rent under Section 8-A];(c)regulating the service of notice under this Act.(2)All rules made under this section shall, as soon as may be after they are made, be laid before the State Legislature for a total period of fourteen

days which may be comprised in one session or in two or more successive sessions and if during the said period the State Legislature makes modifications, if any, therein, the rules shall thereafter have effect only in such modified form; so, however, that such modification shall be without prejudice to the validity of anything previously done under the rules.

11. Recovery of assessment and penalty as public demand.

- The amount of fine, assessment or penalty, imposed under this Act on any person unauthorisedly occupying any land shall be recoverable from him as arrears of public demand.

12. [Appeal and Revision. [Substituted by Act 4 of 1975.]

(1)An appeal from any decision or order made under this Act by the Tahasildar shall lie to the Sub-divisional Officer.(2)The Collector may revise a decision or order made by a Sub-divisional Officer under Sub-section (1) [or under Section 7 or Section 8-A.](3)The [Revenue Divisional Commissioner having jurisdiction] [Substituted by Act 13 of 1982 for the words 'Board of Revenue'.] may call for and examine the records of any proceedings under this Act before any officer in which no appeal or revision lies and if such officer appears-(a)to have exercised a jurisdiction not vested in him by law; or(b)to have failed to exercise a jurisdiction so vested; or(c)while acting in the exercise of his jurisdiction to have contravened some express provision of law affecting the decision on the merits, where such contravention has resulted in serious miscarriage of justice, it may after giving the parties concerned a reasonable opportunity of being heard pass such order as it deems fit.(4)Pending the disposal of any appeal or revision the Sub-divisional Officer, the Collector the [Revenue Divisional Commissioner] [Substituted by Act 13 of 1982 for the words 'Board of Revenue'.] as the case may be, may stay the execution of the decision or order appealed against or sought to be revised.]

13. Limitation.

- [(1) * * *] [Omitted by Act 13 of 1982.](2)No appeal shall be brought after the expiry of thirty days from the date of the decision or order complained of and in computing the said period of thirty days the time required to obtain a copy of the decision or order appealed against shall be excluded :Provided that an appeal may be admitted after the aforesaid period if the appellant satisfied the appellate authority that he had sufficient cause for not preferring the appeal within that period.

14. Document accompanying memorandum of appeal.

- Every memorandum of appeal shall be accompanied by the decision or order appealed against or by an authenticated copy of the same.

15. Delegation of powers and duties of Collector, Sub-Divisional Officer, Deputy-Collector and Sub-Deputy Collector.

- The State Government may, by order, direct that any power, duties or functions conferred or imposed on a [Collector or Sub-Divisional Officer] [Substituted by Act 4 of 1975.] shall in such circumstances and under such conditions, if any, as may be specified in that order, exercised or discharged by such other officer or authority as may be specified in that order.

16. Bar of suits and proceedings.

- Not suit or other legal proceedings in respect of the matter of disputes for determining or deciding which provision is made in this Act shall be instituted in any Court of law except under and in conformity with the provisions of this Act.

17. Protection of action to be taken under this Act.

- 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.

18. Repeal and savings.

(1)The enactments mentioned in 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 under any of the enactments hereby repealed shall, so far as may be, deemed to have been respectively done, incurred, assessed, imposed, held, served, issued, ordered, adjudged and made under this Act.(3)All rules made under the Orissa Prevention of land Encroachment Act 15 of 1954 shall be deemed to have been made under this Act.(4)Notwithstanding any judgement order of any Court all proceedings, whether original, appellate or by way of revision, started under the Orissa Prevention of Land Encroachment Act, 15 of 1954 which have been dismissed on or after the 12th November, 1969 merely on the ground that provisions contained in that Act were void, shall be restored to the file of the respective authorities who had dismissed the proceedings and shall be proceeded with and disposed of in accordance with the provisions contained in this Act as if they had never been so dismissed.

19. Repeal of Orissa Ordinance No. 7 of 1971.

(1)The Orissa Prevention of Land Encroachment Ordinance, 1971, is hereby repealed.(2)Notwithstanding such repeal anything done or any action taken under the said Ordinance shall be deemed to have been ordered or taken under this Act.[Schedule-I] [Substituted by Act 13 of 1982.][See 7 (6) and (8)]Form of warrant to be issued by the Tahasildar under Sections 7 or 8

Seal

To, The Officer-in-charge of the Civil Jail at..... whereas A.B. of..... has resisted/obstructed C.D. in removing F.E. (or himself, that is, the said A.B.) from certain land in the village of in the mouza has failed to comply with the order issued under Section 8 of the Orissa Prevention of Land Encroachment Act, 1972; And whereas, it is necessary in order to prevent the continuance of such resistance/obstruction/in order to enforce compliance of the said order to commit the said A.B. to close custody. You are hereby required under the provisions of Section 7/Section 8 of the said Act to receive the said A.B. into the Jail under your charge and there to keep him in safe custody for..... days. Dated this..... days of (Signature of Tahasildar)

II

[Section 18]

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 & 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.
1984	XV	The Orissa Prevention of Land Encroachment Act.	Whole