



The Orissa Prevention of Land Encroachment Act, 1972

Act 6 of 1972

Keyword(s):
Tahasildar, Encroachment

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ORISSA ACT 6 OF 1972

[THE ORISSA PREVENTION OF LAND
ENCROACHMENT ACT, 1972]

[Received the assent of the President on the 12th
February 1972, first published in an extraordinary
issue of the Orissa Gazette, dated the 16th
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. (1) This Act may be called the Orissa Preven- Short title,
tion of Land Encroachment Act, 1972. extent and
commence-
ment.

(2) It shall extend to 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. Subject to the provision of any law for the Property of
time being in force, the following classes of lands are Government.
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 including 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,
²[* *] Jagirdar, ³[* *] Inamdar,
⁴[* *] Khorposhdar or

1. For statement of Objects and Reasons see *Orissa Gazette*, Extra
ordinary, dated the 4th January 1972 (No. 35).

2. The words and commas "Malguzar, Poligar, Mittadar," omitted by
the Orissa Prevention of Land Encroachment (Amendment) Act, 1974 (Or.
Act 4 of 1975), s. 2 (i) (a).

3. The word and comma "Shrotriemadar," omitted by *ibid.*

4. The word and comma "Ilaquedar," omitted by *ibid.*

(Sec. 2 contd.)

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 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. [*]

* * * * *

(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, 1894, or under similar Acts for the purposes of any Local Authority, [*] Company owned or controlled by the State, Government, Statutory Body or Corporation, while such land remains as the property of the Local Authority [*] Company owned or controlled by the State, Government, Statutory Body or Corporation;

(d) immovable property claimed by the Rulers of the merged territories but not conceded in their favour; and

1. The word " or " omitted by the Orissa Prevention of Land Encroachment (Amendment) Act, 1974 (Or. Act 4 of 1975), s. 2 (i) (b).

2. Omitted by *ibid.*, s. 2 (i) (c)

3. The words and Comma "Railway Company, omitted by *ibid.*, s. 2 (ii)

(e) lands 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. In this Act, unless the context otherwise ~~Defines~~ requires:—

(a) “Collector” means the Chief Officer in charge of the revenue administration of a district and shall include an Additional District Magistrate;

²[(a-1) “landless person” means a person who has no profitable means of livelihood other than agriculture, provided that—

(i) he owns no land excluding his homestead, or

³[(ii) the total extent of the land (excluding his homestead) owned by him along with the lands owned by all the members of his family who are living with him in common mess, is less than one standard acre;]]

(b) “Prescribed” means prescribed by rules made by the State Government under this Act; and

1. Substituted by the Orissa Prevention of Land Encroachment (Amendment) Act, 1974 (Or. Act 4 of 1975), 1 s. 3.

2. Inserted by the Orissa Prevention of Land Encroachment (Amendment) Act, 1976 (Or. Act 25 of 1976), s. 2.

3. Substituted by the Orissa Prevention of Land Encroachment (Amendment) Act, 1979 (Or. Act 25 of 1979) s. 2 (a).

[(b-1) "standard acre" means a standard acre as defined in the Orissa Land Reforms Act, 1960;]

(c) "Tahasildar" means the Chief Officer in charge of the revenue administration of a tahasil and shall include an Additional Tahasildar.]

Levy of assessment on land unauthorised by occupied.

4. Any person unauthorisedly occupying any land which is the property to 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] 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 [* * *]:

[Provided that where the person unauthorisedly occupying such land is a landless person, the amount payable by him by ways of assessment shall in no case exceed an amount equal to five times the annual assessment:

Provided further that notwithstanding anything in the Tenancy Law for the time being in force, payment of assessment under this section shall not confer any right to 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.

1. Inserted by the Orissa Prevention of Land Encroachment (Amendment) Act, 1979 (Or. Act 25 of 1979), s. 2 (b).

2. Substituted by the Orissa Prevention of Land Encroachment (Amendment) Act, 1974 (Or Act 4 of 1975), s. 4 (a).

3. Omitted by idid., s. 4 (b).

4. Substituted by the Orissa Prevention of Land Encroachment Amendment) Act, 1976 (Or. Act 25 of 1976); s. 3.

(Secs. 5—7)

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

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

6. Subject to the provisions of section 9, any person liable to pay assessment under section 4 shall, at the discretion of the [the Tahasildar], be liable to pay in addition to the assessment by way of penalty a sum calculated at a rate [not exceeding one hundred rupees] per acre of land for each year of unauthorised occupation.

Liability of person unauthorisedly occupying lands to penalty.

³[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].

⁴[* * * * *]

7. (1) Any person unauthorisedly occupying land for which he is liable to pay assessment under section 4 shall be summarily evicted by the [Tahasildar] 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:

Summary eviction, forfeiture and fine.

Provided that in the case of said encroachments, the [Tahasildar] shall give reasonable notice to remove the same.

⁶[(2) Notwithstanding anything contained in sub-section (1), where any land is in the unauthorised occupation of a landless person, the Tahasildar may, instead of evicting such person from the land in his unauthorised occupation, settle the same with him, so, however, that the land so settled with him together with the land (excluding homestead), if any,

1. Substituted by the Orissa Prevention of Land Encroachment (Amendment) Act, 1974 (Or. Act 4 of 1975), s. 5.

2. Substituted by the Orissa Prevention of Land Encroachment (Amendment) Act, 1976 (Or. Act 25 of 1976), s. 4 (a).

3. Added by *ibid.*, s. 4 (b).

4. Omitted by *ibid.*, s. 5.

5. Substituted by the Orissa Prevention of Land Encroachment (Amendment) Act, 1974 (Or. Act 4 of 1975), s. 7 (a).

6. Substituted by the Orissa Prevention of Land Encroachment (Amendment) Act, 1974 (Or. Act 4 of 1975), s. 7 (b).

7. Substituted by the Orissa Prevention of Land Encroachment (Amendment) Act, 1976 (Or. Act 25 of 1976), s. 6 (a).

(Sec. 7—contd.)

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]:

Provided that no such settlement shall be made if the land belongs to any of the following categories namely:-

(a) lands recorded as Gochar, Rakhshit or Sarbasadhāran 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 or temple-site whether or not recorded as such in the record-of-rights;

(iii) likely to be required for any development scheme and are declared as such by the State Government by a notification; and

(c) lands 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.

Provided further that where the land in the unauthorised occupation of a person is situate within a Municipality or a Notified area constituted under the Orissa Municipal Act, 1950, not more than

Orissa Act
XXIII of
1950.

(1) Substituted by the Orissa Prevention of Land Encroachment (Amendment) Act, 1979 (Or. Act 25 of 1979); s 3(a)(f).

(Sec. 7-contd.)

one twentieth of an acre shall be settled with such person and that such settlement shall be made only where :—

- (a) neither the person nor any member of his family living with him in common mess owns a house or house-site in that Municipality or Notified Area; or
- (b) the land, being adjacent to the holding owned by the person, is necessary for the beneficial enjoyment of such holding or for the residential purposes of the person and is not reserved for the purposes of any Government or for any developmental purpose.]

[* * * *]

(3) If such person fails to remove the encroachment within the time specified in the notice, the ²[Tahasildar] 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 [Provided that the aggregate of the fines payable under this sub-section 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 way of fine under this sub-section.]

(4) Forfeitures under this section shall be adjudged by the ²{ Tahasildar } and any property so forfeited shall be disposed of as the ²{ Tahasildar } 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

1. Deleted by the Orissa Prevention of Land Encroachment (Amendment) Act, 1979 (Or. Act 25 of 1979), s.3 (a) (ii).

2. Substituted by the Orissa Prevention of Land Encroachment (Amendment) Act, 1974 (Or. Act 4 of 1975), s.7 (a).

3. Inserted by the Orissa Prevention of Land Encroachment (Amendment) Act, 1979 (Or. Act 25 of 1979), s.3 (b).

(Secs. 8-10)

['Tahasildar] 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.

(6) If the officer removing any such person shall be resisted or obstructed by any person, the ¹['Tahasildar] 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 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.

Stay of
construction.

8. The ²['Tahasildar] 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 during the pendency of any proceeding under this Act and if such person fails to comply with the said order, the ²['Tahasildar] 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.

Prior notice
to person in
unauthori-
sed occupa-
tion.

9. Before taking proceedings under section 6 or section 7, ³[the 'Tahasildar] 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 6 or section 7. Such notice shall be served in such manner as the State Government may, by rules or orders under section 10, direct.

Power to
make rules.

10. (1) The State Government may, subject to the condition of previous publication, make rules

1. Substituted by the Orissa Prevention of Land Encroachment (Amendment) Act, 1974 (Or. Act 4 of 1975), s. 7 (a).

2. Substituted by *ibid.*, s.8.

3. Substituted by *ibid.*, s.9.

(Secs. 11-12)

or orders either generally or in any particular instance—

- (a) regulating the rates of assessment leviable under section 4;
- (b) regulating the imposition of penalties under section 6 ; and
- (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 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 modifications shall be without prejudice to the validity of anything previously done under the rules.

11. 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. Recovery of assessment and penalty as a public demand.

[12. (1) An appeal from any decision or order made under this Act by the Tahsildar shall lie to the Subdivisional Officer. Appeal and revision.

(2) The Collector may revise a decision or order made by a Subdivisional Officer under sub-section (1).

(3) The 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

1. Substituted by the Orissa Prevention of Land Encroachment (Amendment) Act, 1974 (Or. Act 4 of 1975), s. 10.

(Secs. 13-17)

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 Subdivisional Officer, the Collector or the Board of Revenue, as the case may be, may stay the execution of the decision or order appealed against or sought to be revised.]

Limitation

13. (1) No proceeding under sections 4, 6, 7 or 8 shall be instituted against any person after expiry of thirty years from the date of commencement of the unauthorised occupation to which the proceeding relates.

(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 appelliant satisfies the appellate authority that he had sufficient cause for not preferring the appeal within that period.

Document accompanying memorandum of appeal.

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

Delegation of power and duties of Collector, Subdivisional officer, 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 Subdivisional Officer] 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.

Bar of suits and proceedings.

16. No suit or other legal proceeding in respect of the matters or 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.

Protection of action to be taken under this Act.

17. 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.

1. Substituted by the Orissa Prevention of Land Encroachment (Amendment) Act, 1974 (Or. Act 4 of 1975), s. 11.

(Secs. 18-19)

18. (1) The enactments mentioned in Schedule II ^{Repeal and savings.} 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, be deemed to have been respectively done, incurred, assessed, imposed, held, served, issued, ordered, adjudged and made under this Act.

Orissa
Act 15 of
1954.

(3) All rules made under the Orissa Prevention of Land Encroachment Act, 1954 shall be deemed to have been made under this Act.

Orissa Act
15 of 1954.

(4) Notwithstanding any judgment or order of any Court, all proceedings, whether original, appellate or by way of revision, started under the Orissa Prevention of Land Encroachment Act, 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.

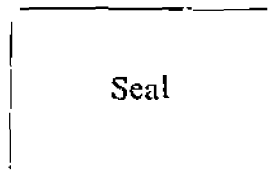
19. (1) The Orissa Prevention of Land Encroach- ^{Repeal of} ment Ordinance, 1971, is hereby repealed. ^{Orissa} ^{Ordinance} ^{No. 7 of} ^{1971.}

(2) Notwithstanding such repeal anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under this Act.

SCHEDULE I

Section 7 (6)

Form of warrant to be issued by the [Tahsildar] under section 7.



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 7 of the Orissa Prevention of Land Encroachment Act, 1972 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 [Tahsildar])

SCHEDULE II

Section 18

Year (1)	Number (2)	Short-title (3)	Extent of repeal (4)
1905 (Madras) ..	III	The Madras Land Encroachment Act.	Whole
1907 (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.
1954 ..	XV	The Orissa Prevention of Land Encroachment Act.	Whole

1. Substituted by the Orissa Prevention of Land Encroachment (Amendment), Act, 1974 (Or. Act 4 of 1975), s. 12.

ANNEXURE

[PROVISION OF THE ORISSA PREVENTION OF LAND
ENCROACHMENT (AMENDMENT) ACT, 1976
(OR. ACT 25 OF 1976) NOT INCORPORATED
IN THE ORIGINAL ACT.]

* * *

7. The omission of section 6-A of the principal ^{Savings} 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 proceedings pending under that section on the said date.