

The Orissa Prevention of Land Encroachment Act, 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:

STATEMENT OF OBJECTS AND REASONS

The Vires of Orissa Prevention of land Encroachment Act, 1954 89 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 had 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.

Scope of the Act -

Proceedings under the Act against tenants of the Municipality - Order on concession of the Tenants -It valid - Held, the Act provides means by which persons in unauthorised occupation of Government land may be evicted. Under the scheme of the Act is only encroachment of Government land either by construction of house or otherwise which can form the subject-matter of a proceeding under the Act. Admittedly, the houses had been constructed by Government and transferred to Municipality. The principal defendants were lawfully inducted as monthly tenants in respect of the shop rooms and they were not in unauthorised occupation. Therefore, the initiation of the proceedings under the Act was thoroughly misconceived. They did not challenge the maintainability of the eviction proceedings but accepted the position that they were encroachers. They applied for taking lease of the shop rooms from the Government and wanted to by-pass the Municipality. Thus the conduct of defendants (tenants) was not bona fide and it cannot therefore be said that they quitted the shop rooms against their will and attorned to the State Government under compulsion. The Municipality was the real title holder in respect of the shop rooms and the tenants were stopped from denying its title at the time when they were left into possession and from pleading title in the State Government Second Appeal No. 86/90 of 1974 decided on 10.12.1980 Keonjharh Municipality Vrs. Judhistir Sendha and others.

1. Short title, extent and commencement-

(1) This Act may be called the Orissa Prevention of Land Encroachment Act, 1972.

(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 29th day of October, 1954.

2. Property of Government -

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 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, Jagirdar, Inamdar, Khoropshdar or any other tenure 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 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 (1 of 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 conceded in their favour; and

(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 Government; or

(iii) a corporation established by law which is owned, controlled or managed by any State Government.

3. Definitions-In this Act, unless the context otherwise requires-

(a) "**Collector**" means the Chief Officer In charge of the Revenue administration of a district and shall include an Additional Magistrate;

1[(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 of an amount which the State Government may, by notification from time to time, specify in that behalf]

2[(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.]

(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;

(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 on 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 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 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 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.

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

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.

6. Liability of person unauthorisedly occupying lands 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, 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:

Provided that where the person liable to pay assessment is a landless person, he shall not be liable to pay penalty under this section.

1[6-A. Reduction and remission of assessment and penalty -

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.]

7. Summary eviction, forfeitures and fines-

(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:

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

1[(2) Notwithstanding anything contained in Sub-section (1)-

(a) 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, 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 homestead less 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:]

2[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 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 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 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 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 un-authorised occupation of a person is situated within a Municipality or a Notified Area constituted under the Orissa Municipal Act 1950 (Orissa Act XXIII of 1950) not more than 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:

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, 1950 (Orissa 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 1[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 purpose 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.

1[(2-a) Notwithstanding anything contained in the first proviso to Sub-section (2), where any land specified under the said proviso except those classified as Gochar Rakhshit or Sarbasadharan and used as burial ground, Government premises, tanks, roads and public places of worship is in the unauthorized occupation of any homestead less person and who is using it 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.]

(3) If such person fails to remove the encroachment within the time specified in the notice, the 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:

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 Tahasildar and any property so forfeited shall be disposed of as the 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 Tahasildar may deem reasonable after receipt of the said notice, to vacate the land 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, 1[the 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.

8. Stay of construction-

The 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 1[x x x] and if such person fails to comply with the said order, the 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 2[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.]

3[8-A. Settlement of land in cases of encroachment for more than thirty years-

(1) Where in the course of any proceeding instituted under Section 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.

9. Prior notice to person in unauthorised occupation-

Before taking proceedings under 1[Section 4,] Section 6 or Section 7, 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 1[Section 4] ,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.

10. Power to make rules -

(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 4;

(b) regulating the imposition of penalties under Section 6; and

- 1[(b-1) prescribing the manner of assessment of market value of land under Section 7 ;
(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 modifications shall be without prejudice to the validity of anything previously under the rules.

11. Recovery of assessment and penalty as a 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 -

- (1) An appeal from any decision or order made under this Act by the Tahsildar 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) 1[or under Section 7 or Section 8-A.]
- (3) The 2[Revenue Divisional Commissioner] having jurisdiction 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 orders as it deems fit.
- (4) Pending the disposal of any appeal or revision, the Sub- divisional Officer, the Collector or the 2[Revenue Divisional Commissioner], as the case may be, may stay the execution of the decision or order appealed against or sought to be revised.

13. Limitation-

- (1) 1[x x x.]

(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 satisfies 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 powers, duties or functions conferred or imposed on a Collector or Sub-divisional 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.

16. Bar of suits and proceedings-

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

(3) All rules made under the Orissa Prevention of Land Encroachment Act, 1954 (Orissa Act 15 of 1954), shall be deemed to have been made under this Act.

(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 (Orissa 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 done or taken under this Act.

SCHEDULE I

[Sections 7 (6) and 8]

SCHEDULE I

[Sections 7 (6) and 8]

**Form of warrant to be issued by the Tahsildar under
Section 7 or 8**

SEAL

To

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

Whereas AB ofhas resisted/obstructed CD in removing EF

(or himself, that is, the said AB) from .certain land in the village of..... themouza 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 AB to close custody;

You are hereby required under the provisions of Section 7/ Section 8 of the said Act to receive the said AB into the Jail under your charge and there to keep him in safe custody for.....days.

Dated thisday of.....

Signature of

Tahsildar)

SCHEDULE II

[Section 18)

Year	Number	Short-title	Extent of repeal
1	2	3	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

ANNEXURE

Provision of the Orissa, Prevention of Land, Encroachment (Amendment) Act, 1976 (Orissa Act 25 of 1976) not incorporated in the original act

x .x. x. x. x

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 proceedings pending under that Section on the said date.