

ORISSA ORDINANCE No. 7 OF 1971

THE ORISSA PREVENTION OF LAND ENCROACHMENT ORDINANCE, 1971

[Promulgated by the Governor of Orissa on the 17th December 1971, published in extraordinary issue of the Orissa Gazette, dated the 18th December 1971]

AN

ORDINANCE

TO PROVIDE FOR PREVENTION OF UNAUTHORISED OCCUPATION OF
LANDS WHICH ARE THE PROPERTY OF GOVERNMENT

WHEREAS the Legislature of the State of Orissa is not in session;

AND WHEREAS the Governor of Orissa is satisfied that circumstances exist which render it necessary for him to take immediate action to provide for prevention of unauthorised occupation of lands which are the property of Government in the manner hereinafter appearing;

AND WHEREAS instructions from the President have been received to promulgate an Ordinance for the above purpose;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of Article 213 of the Constitution, the Governor of Orissa is pleased to make and promulgate the following Ordinance in the Twenty-second Year of the Republic of India:—

Short title,
extent and
commence-
ment.

1. (1) This Ordinance may be called the Orissa Prevention of Land Encroachment Ordinance, 1971.

(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.

Property of
Government.

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 Ordinance, 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, Malguzar, Poligar, Mittadar, Jagirdar, Shrotri-madar, 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

- (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; 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 Ordinance; D. & 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 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, 1894¹ or under similar Acts for the purposes of any Local authority, Railway Company, Company owned or controlled by the State Government, Statutory body or Corporation while such land remains as the property of the Local authority, Railway Company, 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 ;
- (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.

Objectionable encroachment.

3. Unauthorised occupation of any land which is the property of Government and which belongs to any of the categories specified below shall be deemed to be an objectionable encroachment—

- (a) lands recorded as gochar, rakshit or sarbasadharan in any record-of-rights prepared under any law ;
- (b) lands situate in any village which are—
 - (i) set apart for the common use of the villagers ;
 - (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 in the manner prescribed by rules made under this Ordinance by the State Government by a notification ;

(c) lands unauthorisedly occupied by persons, who had once before been evicted therefrom or from any portion of such land in accordance with the provisions of this Ordinance or any other similar law ; and

(d) lands specified in clause (e) of section 2.

Levy of
assessment
on land un-
authorisedly
occupied.

4. 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 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.

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.

Liability of
person un-
authorisedly
occupying
lands to
penalty.

6. Subject to the provisions of section 9, any person liable to pay assessment under section 4 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 calculated at a rate not exceeding twenty-five rupees per acre of land for each year of unauthorised occupation.

Summary
eviction, for-
feiture and
fine.

7. (1) Any person unauthorisedly occupying land for which he is liable to pay assessment under section 4 shall 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.

(2) Notwithstanding anything contained in sub-section (1), the Collector may decide not to take action under the said sub-section if the unauthorised occupation—

(a) does not amount to an objectionable encroachment under section 3, or

(b) while amounting to an objectionable encroachment as aforesaid does not or is not likely to prejudice or adversely affect—

(i) any development scheme, programme or work specified by general or special order made in that behalf by the State Government or the prescribed authority ; or

(ii) the interests of the general public or of the village community.

(3) If such person fails to remove the encroachment within the time 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.

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

(6) 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 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 Collector 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 Ordinance and if such person fails to comply with the said order, the Collector 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 unauthorised occupation.

9. Before taking proceedings under section 6 or section 7, 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 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 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 Ordinance;

(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 four teen 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 done under the rules.

Recovery of
assessment
and penalty
as a public
demand.

11. The amount of fine, assessment or penalty, imposed under this Ordinance on any person unauthorisedly occupying any land shall be recoverable from him as arrears of land revenue.

Appeal and
revision.

12. (1) An appeal shall lie to the Collector from any decision or order passed by a Sub-divisional Officer, a Deputy Collector or a Sub-Deputy Collector under this Ordinance and 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 Sub-divisional Officer, Deputy Collector or Sub-Deputy Collector under this Ordinance 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 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 appellant satisfies the appellate authority that he had sufficient cause for not preferring the appeal within that period.

Document
accompany-
ing memora-
ndum 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,
Deputy Col-
lector and
Sub-Deputy
Collector.

15. The State Government may, by order, direct that any power, duties or functions conferred or imposed on a Collector, Sub-divisional Officer, 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 sub-section (5) of section 7 may not be delegated to any Deputy Collector or Sub-Deputy Collector below the rank of a Sub-divisional Officer.

Bar of suits
and proceed-
ings.

16. No suit or other legal proceeding in respect of the matters or disputes for determining or deciding which provision is made in this Ordinance shall be instituted in any Court of law except under and in conformity with the provisions of this Ordinance.

Protection of
action to be
taken under
this Ordinance.

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 Ordinance.

Repeal and
Savings.

18. (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, be deemed to have been respectively done, incurred, assessed, imposed, held, served, issued, ordered, adjudged and made under this Ordinance.

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

(4) Notwithstanding any judgement 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 Ordinance as if they had never been so dismissed. Orissa Act
15 of 1954.

SCHEDULE I

Section 7 (6)

Form of warrant to be issued by the Collector under section 7

Seal

To

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

Whereas A, B ofhas 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 Ordinance, 1971 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 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 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

JOGENDRA SINGH

Dated the 17th December, 1971

GOVERNOR OF ORISSA