

ORISSA ACT XVII OF 1947

THE MADRAS ESTATES LAND (ORISSA
SECOND AMENDMENT) ACT, 1946

[Received the assent of the Governor-General on the 20th May 1947, first published in an extraordinary issue of the Orissa Gazette, dated the 7th June 1947]

AN ACT FURTHER TO AMEND THE MADRAS ESTATES LAND ACT, 1908 AND TO AMEND THE MADRAS ESTATES LAND (AMENDMENT) ACT, 1934, FOR CERTAIN PURPOSES IN THEIR APPLICATION TO THE PROVINCE OF ORISSA

WHEREAS it is expedient further to amend the Madras Estates Land Act, 1908, and to amend the Madras Estates Land (Amendment) Act, 1934, in their application to the Province of Orissa or the purposes hereinafter appearing;

Madras Act I of 1908.
Madras Act VIII of 1934.

It is hereby enacted as follows:—

Short title and commencement.

1. (1) This Act may be called the Madras Estates Land (Orissa Second Amendment) Act, 1946.

(2) It shall come into force on such date as the Provincial Government may, by notification, appoint.*

Amendment of section 3, Madras Act I of 1908.

2. In section 3 of the Madras Estates Land Act, 1908 (hereinafter referred to as the said Act),—

Madras Act I of 1908.

(i) for sub-clause (d) of clause (2), the following sub-clause shall be substituted, namely:—

“(d) any inam village of which the grant has been made confirmed or recognised by the British Government notwithstanding that subsequent to the grant, the village has been partitioned among the grantees or the successors in title of the grantee or grantees.

Explanation (1)—Where a grant as an inam is expressed, to be of a named village the area which forms the subject-matter of the grant shall be deemed to be an estate notwithstanding that it did not include certain lands in the village of that name which have already been granted on service or other tenure or been reserved for communal purposes.

Explanation (2)—Where an inam village is resumed by the Government, it shall cease to be an estate; but, if any village so resumed is subsequently regranted by the Government as an inam, it shall, from the date of such regrant, be regarded as an estate.

*NOTE—Extended to the partially-excluded areas of Ganjam Agency and Koraput district by notification No. 4282-R., dated the 7th June 1947 (Vide *Orissa Gazette*, dated the 9th June 1947, Extraordinary issue).

Explanation (3)—Where a portion of an inam village is resumed by the Government, such portion shall cease to be part of the estate, but the rest of the village shall be deemed to be an inam village for the purposes of this sub-clause. If the portion so resumed or any part thereof is subsequently re-granted by the Government as an inam, such portion or part shall, from the date of such re-grant, be regarded as forming part of the inam village for the purposes of this sub-clause;” and

(ii) for clause (10), the following clause shall be substituted, namely:—

“Private land”.

“(10) ‘Private land’—

- (a) in the case of an estate within the meaning of sub-clauses (a), (b), (c) or (e) of clause (2), means the domain or home-farm land of the landholder by whatever designation known, such as *kambattam*, *khas*, *sir* or *pannai*, and includes all land which is proved to have been cultivated as private land by the landholder himself, by his own servants or by hired labour, with his own or hired stock, for a continuous period of twelve years immediately before the commencement of this Act; and
- (b) in the case of an estate within the meaning of sub-clause (d) of clause (2), means—
- (i) the domain or home-farm land of the landholder, by whatever designation known, such as *kambattam*, *khas*, *sir* or *pannai*; or
- (ii) land which is proved to have been cultivated as private land by the landholder himself, by his own servants or by hired labour, with his own or hired stock, for a continuous period of twelve years immediately before the first day of July 1908, provided that the landholder has retained the *kudivaram* ever since and has not converted the land into *ryoti* land; or
- (iii) land which is proved to have been cultivated by the landholder himself, by his own servants or by hired labour, with his own or hired stock, for a continuous period of twelve years immediately before the first day of November 1933, provided that the landholder has retained the *kudivaram* ever since and has not converted the land into *ryoti* land; or
- (iv) land, the entire *kudivaram* in which was acquired by the landholder before the first day of November, 1933 for valuable consideration from a person owning the *kudivaram* but not the *melvaram*, provided that the landholder has retained the *kudivaram* ever since and has not converted the land into *ryoti* land, and provided further that, where the *kudivaram* was acquired at a sale for arrears of rent, the land shall not be deemed to be private land unless it is proved to have been cultivated by the landholder himself, by his own servants or by hired labour, with his own or hired stock, for a continuous

period of twelve years since the acquisition of the land and before the commencement of the Madras Estates Land (Orissa Second Amendment) Act, 1946.”

Amendment of section 6, Madras Act I of 1908. 3. Explanation (2) to sub-section (1) of section 6 of the said Act shall be renumbered as Explanation (3) and the following shall be inserted as Explanation (2), namely:—

“*Explanation (2)*—In relation to any inam village which was not an estate before the commencement of the Madras Estates Land (Orissa Second Amendment) Act, 1946, but became an estate by virtue of that Act, or in relation to any land in an inam village which ceased to be part of an estate before the commencement of that Act, the expressions ‘now’ and ‘commencement of this Act’ in this sub-section and Explanation (1) shall be construed as meaning the thirtieth day of June 1934 and the expression ‘hereafter’ in this sub-section shall be construed as meaning the period after the thirtieth day of June 1934.”

Amendment of section 8, Madras Act I of 1908.

4 In section 8 of the said Act—

- (i) the proviso to sub-section (1) shall be omitted;
- (ii) in sub-section (3), the words, figure and bracket^s ‘except in the case referred to in the proviso to sub-section (1)’ shall be omitted ; and
- (iii) after sub-section (4), the following sub-section shall be added, namely:—

“(5) If before the first day of November 1933, the landholder has obtained in respect of any land in an estate within the meaning of sub-clause (d) of clause (2) of section 3 a final decree or order of a competent Civil Court establishing that the tenant has no occupancy right in such land, and no tenant has acquired any occupancy right in such land before the commencement of the Madras Estates Land (Orissa Second Amendment) Act, 1946, the landholder shall, if the land is not private land within the meaning of this Act, have the right, notwithstanding anything contained in this Act, for a period of twelve years from the commencement of the Madras Estates Land (Orissa Second Amendment) Act, 1946, of admitting any person to the possession of such land on such terms as may be agreed upon between them:

Provided that nothing contained in this sub-section shall be deemed during the said period of twelve years or any part thereof to effect the validity of any agreement between the landholder and the tenant subsisting at the commencement of the Madras Estates Land (Orissa Second Amendment) Act, 1946.”

Insertion
of new
section 28,
Madras Act
I of 1908.

5. After section 22 of the said Act, the following section shall be inserted, namely:—

Presumption
that inam
villages are
estates.

“23 Where in any suit or proceeding it becomes necessary to determine whether an inam village or a separated part of an inam village was or was not an estate within the meaning of this Act as it stood before the commencement of the Madras Estates Land (Orissa Second Amendment) Act, 1946 it shall be presumed, until the contrary is shown, that such village or part was an estate.”

Amendment
of section
28, Madras
Act I of
1908.

6. To section 28 of the said Act, the following proviso shall be added, namely:—

“Provided that in the case of an estate within the meaning of sub-clause (d) of clause (2) of section 3, the rent or rate of rent lawfully payable by a ryot or tenant on the first day of November 1933 shall be presumed to be fair and equitable at the commencement of the Madras Estates Land (Orissa Second Amendment) Act, 1946, until the contrary is proved.”

Amendment
of section
163-A,
Madras Act
I of 1908.

7. In clause (a) of sub-section (1) of section 163-A of the said Act, for the word, figure and brackets “Explanation (2)” the word, figure and brackets “Explanation (3)” shall be substituted.

Substitution
of new
section for
section 185,
Madras Act
I of 1908.

8. For section 185 of the said Act, the following section shall be substituted, namely:—

“185. When in any suit or proceedings it becomes necessary to determine whether any land is the landholder's private land regard shall be had—

Presumption
that land
in inam
villages is
not private
and.

(1) to local custom,

(2) in the case of an estate within the meaning of sub-clause (a), (b), (c) or (e) of clause (2) of section 3, to the question whether the land was before the first day of July 1898, specifically let as private land, and

(3) to any other evidence that may be produced:

Provided that the land shall, except in those cases which come under the provisions of sub-clause (iii) of the second proviso, be presumed not to be private land until the contrary is proved:

Provided further that in the case of an estate within the meaning of sub-clause (d) of clause (2) of section 3—

(i) any expression in a lease, patta or the like, executed or issued on or after the first day of July 1918, to the effect or implying that a tenant has no right of occupancy or that his right of occupancy is limited or restricted in any manner shall not be admissible in evidence for the purpose of proving that the land concerned was private land at the commencement of the tenancy;

(ii) any such expression in a lease, patta or the like executed or issued before the first day of July 1948 shall not by itself be sufficient for the purpose of proving that the land concerned was private land at the commencement of the tenancy; and

(iii) if on the 12th September 1946, the land in the possession of a landholder, whether situated in one inam village or in different inam villages, did not exceed five acres in extent, such land shall be presumed to be the private land of the landholder until the contrary is proved."

9. After section 185 of the said Act, the following sections shall be inserted, namely:—

Insertion of new sections 185-A and 185-B, Madras Act I of 1908.

Declaration of kudivaram interest of inamdar.

"185-A. (1) In the case of an inam village which was not an estate before the commencement of the Madras Estates Land (Orissa Second Amendment) Act, 1946, but became an estate by virtue of that Act, in respect of any land which does not fall under any of the categories referred to in paragraphs (i) to (iv) of sub-clause (b) of clause (10) of section 3 or under the category referred to in sub-section (4) or sub-section (5) of section 8, the landholder may within three years of the date of the commencement of the Madras Estates Land (Orissa Second Amendment) Act, 1946, lodge an application, such in manner as may be notified by the Provincial Government, for a declaration by a special Tribunal constituted as hereinafter; provided that the kudivaram in such land was vested in him on the 1st day of November 1933 and that he has retained it ever since.

(2) (a) A special Tribunal or special Tribunals shall, from time to time, as occasion may arise be constituted to hear and dispose of applications of the nature specified in sub-section (1).

(b) Every such Tribunal shall consist of three members chosen by the Governor one of whom shall be a Judicial Officer eligible for appointment as a Judge of the High Court or a retired Judicial Officer who immediately before his retirement was so eligible and another shall be an experienced Revenue Officer whether in active service or retired. The Governor shall appoint one of the members of the Tribunal as the President thereof.

(c) Clauses (i) and (ii) of the second proviso to section 185 shall apply to proceedings under this section.

(d) any order under this sub-section passed by special Tribunal or by a majority of the members thereof shall be final and shall not be liable to be questioned in any court of law.

(3) Any order (including an order for costs) passed by a special Tribunal, shall, on application by the party concerned, be executed by the Collector within whose jurisdiction the land to which the order relates is situated as if it were an order passed by him in a suit under this Act.

Acquisition of occupancy right in, lands in which kudivaram is declared to be an inamdar.

185-B. (1) Any land in respect of which the kudivaram is declared under section 185-A to have vested in the landholder on the 1st day of November 1933 and to have been retained by him ever since shall be ryoti land.

(2) In respect of any land referred to in sub-section (1), the landholder shall, on the application of the tenant and on the tender by him as compensation of an amount equal to the annual rent payable in respect of the land as may have been agreed to by the landholder together with the cost of preparing any instrument required for the purpose, confer upon the tenant a permanent right of occupancy in respect of the said land :

Provided that in the case of a dispute as to the amount payable as compensation, the tenant or the landholder may apply to the Collector to fix the same and the Collector may determine an amount equal to the annual rent payable in respect of the land as the amount payable as compensation.

(3) If a landholder to whom an application and tender have been made by a tenant fails for a period of one month to confer a permanent right of occupancy, the tenant may deposit the amount payable as compensation together with the cost of preparing any instrument required for the purpose in the Collector's office and apply to the Collector to confer on him a permanent right of occupancy in respect of that land.

(4) The Collectors shall thereupon give notice of the application to the landholder and after hearing him if he appears and making such inquiry as he thinks necessary, may execute any instrument required for conferring a permanent right of occupancy upon the tenant in respect of the land and such execution shall have the same effect as an execution by the landholder.

(5) Notwithstanding anything contained in section 151 or in any other provisions of this Act, where the tenant—

- (a) fails within a period of one year from the date of the declaration referred to in sub-section (1) to make an application and tender to the landholder under the first paragraph of sub-section (2), or
- (b) in the case of a dispute as to the amount payable as compensation, fails to tender the amount fixed as compensation by the Collector, under the proviso to sub-section (2) within a period of one year from the date of such determination, the tenant shall, on the application of landholder to the Collector, be liable to be ejected.

Provided that in the event of an appeal to the District Collector regarding the amount of compensation, the period of one year referred to in clause (b) shall be computed from the date of the disposal of the appeal.

Amendment of section 19, Madras Act I of 1908

10. In sub-section (1) of section 192 of the said Act, after the words 'or to any specified classes of such suits, applications, appeals or proceedings', the words 'or to applications or other proceedings before the Tribunal constituted under section 185-A' shall be inserted.

Amendment of Schedule, Madras Act I of 1908.

11. In Part B of the Schedule to the said Act, after item 43 relating to section 163, 2nd paragraph, the following item shall be added, namely:—

"44. 185-B(2) Proviso.	For determining the amount of compensation.	None	None	None	District Collector."
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Amendment of section 127, Madras Act VIII of 1934.

12. In sub-section (2) of section 127 of the Madras Estates Land (Amendment) Act, 1934, as amended from time to time in its application to the Province of Orissa for the words and figures 'the 1st day of April 1947' in both the places where they occur, the words, figures and brackets 'the date of the commencement of the Madras Estates Land (Orissa Second Amendment) Act, 1946', shall be substituted.

Madras Act VIII of 1934.

Disposal of proceedings stayed by Madras Act VIII of 1934.

13. All proceedings stayed under sub-section (2) of section 127 of the Madras Estates Land (Amendment) Act, 1934, as amended from time to time in its application to the Province of Orissa, shall be disposed of as if the Madras Estates Land Act, 1908, as amended by the Madras Estates Land (Amendment) Act, 1934, amended in its application to the Province of Orissa and by this Act, had been in force at the time of institution of the said proceedings in the court of the first instance.

Madras Act VIII of 1934
Madras Act I of 1908
Madras Act VIII of 1934

Computation of period of limitation in certain cases.

14. In computing the period of limitation prescribed for any suit or application for the ejection of a tenant or for any proceeding involving a decision whether or not the inamdar has the kudivaram right in any land in an inam village, the period between the date on which the Madras Estates Land (Amendment) Act, 1934, came into force and the date on which this Act comes into force shall be excluded in cases to which sub-section (2) of section 127 of the Madras Estates Land (Amendment) Act, 1934, as amended from time to time in its application to the Province of Orissa, applies.

Madras Act VIII of 1934
Madras Act VIII of 1934