

ORISSA ACT XXXIII OF 1947
THE ORISSA LAND ENCROACHMENT
ACT, 1947

(Received the assent of the Governor on the 2nd December 1947
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 December 1947)

AN ACT TO PROVIDE MEASURES FOR CHECKING UNAUTHORISED
 OCCUPATION OF CERTAIN LANDS WHICH ARE THE
 PROPERTY OF GOVERNMENT

WHEREAS it is expedient to make statutory provision for checking unauthorised occupation of certain lands which are the property of Government in the districts of Cuttack, Puri and Balasore of the Province of Orissa;

It is hereby enacted as follows:

Short title,
 extent and
 commence-
 ment.

1. (1) This Act may be called the Orissa Land Encroachment Act, 1947.

(2) It shall extend to the districts of Cuttack, Puri and Balasore in the Province of Orissa.

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

Property of
 Government.

2. 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 of Government for the purposes of this Act:—

(a) land acquired under the provisions of the Land Acquisition Act, 1894, for the purposes of Government, or of any Local authority or a Railway Company while such land remains as the property of Government, Local authority or Railway Company as the case may be;

(b) land belonging to Government within a cantonment while such land remains as the property of Government;

(c) land recorded or surveyed as belonging to Government or any Local authority which is used for any public purpose such as a road, canal or embankment, or which is required for repair or maintenance of such road, canal or embankment while such land continues to be so used or required;

(d) communal lands recorded as *Gochar*, *Rakhit* or *Sarbasadharan* in the record-of-rights prepared under the Orissa Tenancy Act, 1913;

(e) land in possession of Government or any Local authority or a Railway Company obtained by way of transfer or otherwise.

Bihar and
 Orissa Act
 II of 1913.

Levy of
 assessment
 on lands un-
 authorisedly
 occupied.

3. Any person who shall unauthorisedly occupy 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 reason 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 Orissa Tenancy Act, 1913, payment of assessment under this section shall not confer any right of occupancy.

Bihar and
Orissa Act
II of 1913.

Explanation - For the purposes 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.

4. The decision as to the rate or amount of rent assessed, payable under section 3 shall be recorded in writing and shall not be called into question in any Civil Court.

Liability of person unauthorisedly occupying land to penalty.

5. Subject to the provisions of section 7 any person liable to pay assessment under section 3 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) if the land was at any time assessed to rent, a sum not exceeding five rupees or, when ten times the assessment payable for one year under section 3 exceeds five rupees, a sum not exceeding ten times such assessment, provided that no penalty shall ordinarily be imposed in respect of the unauthorised occupation of such land for any period not exceeding one year,
- (b) if the land was not at any time assessed to rent a sum not exceeding ten rupees or when twenty times the assessment payable for one year under section 3 exceeds ten rupees, a sum not exceeding twenty times such assessment.

Summary eviction, forfeiture and fine.

6. (1) Any person unauthorisedly occupying land for which he is liable to pay assessment under section 3 may be summarily evicted by the Collector and any crop or other product raised on the land and any encroachments such as a building, other construction or a thing 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) If such person fails to remove the encroachments 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.

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

Mode of
eviction

(4) An eviction under this section shall be made in the following manner, namely:—By serving a notice in the manner provided in section 7 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. 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 the Schedule 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.

Prior notice
to person in
unauthorised
occupation

7. Before taking proceeding under section 5 or section 6 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 5 or section 6. Such notice shall be served in such manner as the Provincial Government may, by rules or orders under section 8, direct.

Power to
make rules

8. The Provincial 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 3;
- (b) regulating the imposition of penalties under section 5;
- (c) declaring that any particular land or class of lands which are the property of Government shall not be open to occupation;
- (d) regulating the service of notice under this Act.

Recovery of
assessment
or penalty
as a public
demand.

9. The amount of fine, assessment and penalty imposed under this Act on any person unauthorisedly occupying any land shall be recoverable as a public demand under the Bihar and Orissa Public Demands Recovery Act, 1914.

Bihar and
Orissa Act
IV of 1914

Appeal and
Revision

10. (1) An appeal shall lie (a) to the Collector from any decision or order passed by a Deputy Collector or a Sub-Deputy Collector under this Act and (b) to the Revenue Commissioner 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 Deputy Collector or Sub-Deputy Collector under this Act and the Revenue Commissioner may revise any decision or order passed by the Collector.

(2) Pending the disposal of any appeal or revision, the Collector or the Revenue Commissioner, as the case may be, may suspend the execution of the decision or order appealed against or sought to be revised.

Limitation
of appeal

11. No appeal shall be brought after the expiry of sixty days from the date of the decision or order complained of, provided that in computing the period of sixty days, the time required to obtain a copy of the decision or order appealed against shall be excluded. But the appeal may be admitted after the period hereinbefore provided if the appellant satisfies the appellate authority that he had sufficient cause for not preferring the appeal within the prescribed period.

Document
accompany-
ing petition
of appeal

12. Every petition of appeal under this Act shall be accompanied by the decision or order appealed against or by an authenticated copy of the same.

Saving of
operations
of other
laws in
force

13. Nothing contained in this Act shall be construed as exempting any person unauthorisedly occupying land from liability to be proceeded against under any law for the time being in force:

Provided that if any penalty has been levied from any person under section 5 of this Act, no similar penalty shall be levied from him under any other law in respect of such occupation.

Saving of
suits by
persons
aggrieved
by any
proceedings

14. Subject to the provisions of section 4, any person aggrieved by any proceedings under this Act may apply to the Civil Court for redress:

Provided that the Civil Court shall not take cognizance of any suit instituted by such person for any such cause of action unless such suit shall be instituted within six months from the time at which the cause of action arose.

Explanation—The cause of action shall be deemed to have arisen—

- (a) in respect of any assessment or penalty, on the date on which such assessment or penalty was levied;
- (b) in respect of eviction or forfeiture, on the date of eviction or forfeiture.

SCHEDULE

[SECTION 6 (4)]

FORM OF WARRANT TO BE ISSUED BY THE COLLECTOR UNDER SECTION 6

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 theMouza, 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 6 of the Orissa Land Encroachment Act, 1947, to receive the said A. B. into the jail under your charge and there to keep him in safe custody fordays.

Dated thisday of

(Signature of Collector)