

THE ODISHA PREVENTION OF LAND
ENCROACHMENT (AMENDMENT) BILL, 2015

A

BILL

FURTHER TO AMEND THE ODISHA PREVENTION OF
LAND ENCROACHMENT ACT, 1972.

BE it enacted by the Legislature of the State of Odisha in the
Sixty- sixth Year of the Republic of India, as follows:-

Short title
and
commencement.

1. (1) This Act may be called the Odisha Prevention of Land
Encroachment (Amendment) Act, 2015.

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

Amendment of
section 3.

2. In the Odisha Prevention of Land Encroachment Act, 1972, Odisha Act
6 of 1972.
(hereinafter referred to as the principal Act), in section 3,—

(i) after clause (a-2), the following clause shall be inserted,
namely: —

"(a-3) 'encroachment' means any activity or unauthorised
occupation by any person of any class of land declared to

be the property of Government under section 2 including but not limited to erection of any structure, unauthorised use of such land, raising of crops, extraction of minerals, taking away of usufructs, unauthorised collection of rent, compensation or any other charges from occupier thereof, sale or offer to sell, such land and the expressions "to encroach" and "the encroacher" shall be construed accordingly; and

(ii) after clause (c), the following clause shall be inserted, namely:—

"(d) 'unauthorised occupier' means the encroacher and the expression 'unauthorisedly occupying' shall be construed accordingly;"

Amendment of
section 4.

3. For section 4 of the principal Act, the following section shall be substituted, namely:—

"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 person so occupying the land is homesteadless or landless and has occupied the land for own homestead or personal cultivation respectively, the rent shall be at the rate on lands of similar description and with similar advantages in the vicinity, and where no such rate exists, the amount shall not exceed five times the annual assessment; and

(ii) in all other cases, at the rate of 0.10%, 0.50% and 1.00% of the market value of land for the land used for agricultural, residential and all other uses respectively;

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 with the unauthorised occupant.

Explanation. — For the purpose of this section, occupation for an incomplete portion of an agricultural year shall be deemed to be occupation for the whole of such year."

Amendment of
section 6.

4. For section 6 of the principal Act, following section shall be substituted, namely: —

"6. Subject to the provision of section 9, any person liable to pay assessment under section 4, shall be liable to pay in addition to the assessment by way of penalty a sum calculated at a rate equivalent to five per centum of the market value of the land for each year of unauthorised occupation or part thereof, subject to minimum of one thousand rupees:

Provided that, a homesteadless person or landless person, shall not be liable to pay any penalty under this section."

Amendment of
section 7.

5. In section 7 of the principal Act, —

(a) in sub-section (2), —

(i) in clause (a), after the words "landless person", the words "and such person has used the land only for agricultural purpose" shall be inserted;

(ii) in the second proviso, in clause (b), for the words "one-tenth", the words "one-twenty-fifth" shall be substituted;

(b) after sub-section (2-a), the following sub-section shall be inserted, namely: —

"(2-b) The land settled under this section shall be heritable but non-transferable for a period of twenty years from the date of settlement.

Explanation. — For the purposes of this sub-section, the expression "non-transferable" shall be deemed to debar transfer by way of sale, Agreement to sell, gift, Power of Attorney, lease of land or creation of any charge except mortgage of the land for availing loan from any financial institution."; and

(c) In sub-section (3), —

(i) for the words and comma "may, in his discretion", the word "shall" shall be substituted;

(ii) for the words "fifty rupees and daily fine of rupees ten", the words "five hundred rupees and an additional daily fine of fifty rupees" shall be substituted; and

(iii) after the second proviso, a new proviso shall be inserted, namely: —

“Provided also that if the land so encroached is a drain or water channel, the amount of fine and daily fine shall be one thousand rupees and one hundred rupees respectively.”

Amendment of
section 8.

6. Section 8 of the principal Act shall be re-numbered as sub-section (1) thereof and, —

(i) in sub-section (1) as so re-numbered, for the word “fifty”, the words “five hundred” and for the word “ten”, the word “fifty” shall be substituted; and

(ii) after sub-section (1) as so re-numbered, the following sub-sections shall be inserted, namely: —

“(2) If, after issue of prohibition order under sub-section (1), the encroacher fails to comply therewith, the Tahasildar may, without prejudice to any other action that may be taken under this Act, enter the premises, seize and remove the materials and equipments used for construction and shall report the matter to the Collector.

(3) On receipt of the report of seizure under sub-section (2), the Collector may, after giving an opportunity of being heard to the encroacher, order confiscation of the seized materials and equipments.”.

Amendment of
section 8-A.

7. In the principal Act, for section 8-A, the following section shall be substituted, namely: —

“8-A. (1) Notwithstanding anything contained in this Act or the rules made thereunder, whoever, —

(a) unlawfully occupies or enters on any property of Government with the intention of holding that property, shall be punishable with imprisonment for a term which may extend to one year and with fine which may extend to five thousand rupees;

- (b) cheats and thereby dishonestly creates documents for the purpose of selling or mortgaging or transferring by gift or otherwise of any property of Government, shall be punishable with imprisonment for a term which may extend to three years and with fine which may extend to ten thousand rupees;
- (c) creates a forged document regarding property of Government, with an intention to use it for that purpose or to grab such land, shall be punishable with imprisonment for a term which may extend to three years and with fine which may extend to five thousand rupees; or
- (d) contravenes any lawful order passed under this Act, shall be punishable with imprisonment for a term which may extend to six months and with fine which may extend to one thousand rupees.

(2) Whoever abets any offence punishable by or under this Act or attempts to commit any such offence shall be punishable with the penalty provided by or under this Act for committing such offence.

(3) Nothing in this Act shall prevent any person from being prosecuted and punished under any other law for the time being in force for any act or omission made punishable by or under this Act:

Provided that no person shall be prosecuted and punished for the same offence more than once.

(4) Offences under this section shall be cognizable."

Insertion of new sections 8-B and 8-C.

8. In the principal Act, after section 8-A as so substituted, the following sections shall be inserted, namely: —

"Direction for disconnection or discontinuance of services.

8-B. (1) The Tahasildar shall have power to direct any local body, any company or Department of any State Government providing public utility service like electricity,

water, telephone, sewerage service and such other service as may be declared by the State Government, to disconnect or discontinue the supply of such service to any unauthorised structure erected on Government land for which order to stop the construction or order of eviction has been passed under any provision of this Act and the officer of the local body, company or Department to whom such direction has been issued shall comply with such direction within the period stated in such order.

(2) if any officer of the local body, company or Department fails to comply with the direction issued under sub-section (1) without sufficient cause, the Tahasildar may impose a fine on such officer, which may extend to one thousand rupees and a daily fine of one hundred rupees for everyday during which such non-compliance continues.

Persons liable
to be treated as
encroachers.

8-C (1) Where a lease of land which is the property of the Government expires, or terminated or cancelled by the Government or any other competent authority or under orders of a court, the lessee or any other person remaining in possession of the land after such expiry, termination or cancellation, as the case may be, shall be declared as encroacher.

(2) where land granted whether as lease or otherwise to any person, by the Government or any other authority, is liable to be resumed for the breach or non-observance of any of the conditions subject to which the grant is made and the Government or any other authority competent in that behalf have passed orders resuming the land for such breach or non-observance, the grantee or any other person remaining in possession of the land after the passing of those orders, shall, for the purposes of sections 4 to 11, be deemed to be a person unauthorisedly occupying such land."

STATEMENT OF OBJECTS AND REASONS

The Odisha Prevention of Land Encroachment Act, 1972 (Odisha Act 6 of 1972) (hereinafter referred to as the said Act) was enacted with a view to preventing unauthorised occupation of lands which are the property of the Government. The said Act came into force with retrospective effect from the 29th October, 1954 which has served some purposes in preventing encroachment of Government land in the State.

2. However, since the amount of assessment, fine and penalty is very low in comparison to the growing value of land, there are increasing instances of encroachment of Government land by rich and influential persons. The provisions of the said Act are inadequate to deter habitual and influential offenders from encroaching upon the Government land. Therefore, it is felt necessary to amend the provisions of the said Act so that while on the one hand unobjectionable encroachments can be settled in favour of the poor people who have occupied the Government land for basic livelihood, on the other hand, effective and stringent action can be taken against other encroachers so as to have a deterrent effect and to prevent further encroachments.

3. It is, therefore, proposed to amend various provisions of the said Act like increase in assessment, penalty and fine amount, withdrawal of existing provision of settlement of Government land with encroachers after 30 years of occupation and bring in certain new measures like encroachment to be treated as cognizable offence, land settled with homesteadless and landless persons to be non-transferable for 20 years, provision for seizure and confiscation of materials and equipments used for illegal construction on Government land etc.

The Bill seeks to achieve the above objectives.

BIJAYSHREE ROUTRAY

Member-in-Charge

ANNEXURE

[Extract from the Odisha Prevention of Land Encroachment, Act, 1972
(Odisha Act 6 of 1972)]

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-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 any where 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".

(a) ** ** *

(b) ** ** *

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

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Levy of
assessment
on land
unauthorisedly
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; 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 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.

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.

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Liability of
person
unauthorisedly
occupying
lands to
penalty.

Summary
eviction, for
feature 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—

“(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 purpose of homestead; and
- (ii) In the second proviso to sub-section (2) in clause (b), for words “one twentieth of an acre” the words “one-tenth of an acre” shall be substituted; and
- (iii) After sub-section (2), the following new sub-section shall be inserted, namely:—
- “(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 unauthorised occupation of any homesteadless 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 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:

"Provided that the aggregate of the fines payable under the 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 the sub-section."

Stay or
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 Act 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.

Settlement of
land in cases
of
encroachment
for more than
thirty years.

"8-A. (1) wherein 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."