

**FREQUENTLY ASKED QUESTIONS  
ON  
THE ODISHA PREVENTION OF LAND ENCROACHMENT ACT 1972 AND Rules  
1973**

**Question 1. What was the objective of enacting the Odisha Prevention of Land Encroachment Act 1972?**

**Answer** - Originally the provisions laid down in the Orissa Prevention of Land Encroachment Act 1954 were prevalent in the state of Odisha. The Act was amended in 1970. Consequent upon the judgment delivered by Odisha High Court in OJC No. 1584 of 1968 that declared section 3 of the Act void as it was contravening the provisions laid down in Article 14 of the Constitution of India and also in view of a series of rulings that sections 3, 5, and 6 of the said Act were void as they contravened the provisions laid down in the Constitution of India, enactment of new Act became necessary. Ultimately the entire Act as amended in 1970 was declared void by the court.

The court also held that the 1970 amendment was not a re-enactment of the law and cannot be sustained in the eye of law. Accordingly, the entire Act was declared void and this left Government with no law to deal with encroachment cases. The Government tried to address the issue by promulgating an ordinance and subsequently came up with a new enactment; namely; *The Orissa Prevention of Land Encroachment Act 1972*. Basic objective of the Act was to provide means that would help the Government to remove unauthorized occupation of the land. However the Act is not applicable to other encroachments and is applicable only in case of encroachment of Government lands in any manner including construction of houses and cultivation of the land.

**Question 2. From when were the provisions of OPLE Act enforced?**

**Answer** - The Orissa Prevention of Land Encroachment Act, 1972 came into force with retrospective effect from the 29<sup>th</sup> day of October 1954 and extended to the entire state of Odisha.

**Question 3. What is meant by the properties of Government?**

**Answer** = Section 2 of the Act defines the term *property of Government* as including the following types of lands.

2 (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 area -

- Lands belonging to Ex Rulers of Ex intermediaries.
- Lands belonging to people paying rent in any form to intermediaries.
- Lands for which rent is paid to government.
- Lands of registered land holders with proprietary rights.
- Any land held under the government by any person.

- Departmental or local authority lands.
- Land acquired under the Land Acquisition Act 1894 or any such act in force.
- Immovable properties of ex rulers settled in their favor.
- Lands belonging to PSUs.
- Lands belonging to Government undertakings or in which Government has substantial stake or control.

**Question 4. What is meant by landless persons under the Act?**

**Answer** – *Landless persons* mean any person the total extent of whose land excluding the homestead but together with the lands of all members of the family living in common mess with him is less than one standard acre. The income of the entire family should not exceed Rs.40,000 or as determined by the government from time to time.

**Question 5. Who are the homestead less persons under the Act?**

**Answer** - *Homesteadless persons* mean any person who or any member of whose family does not have homestead land in the entire state, has less than one standard acre of land, and has income less than Rs.40,000 or as determined by Government from time to time.

**Question 6. What are the components of assessment of lands unauthoroizedly occupied?**

**Answer** - Section 4 deals with levy of assessment on lands that are unauthorisedly occupied. Occupants on unauthorized occupation shall pay –

- Rent for the entire period of occupation if the land was assessed to rent at any time. The rent will be proportionate to the area occupied.
- If the land was never assessed to rent the Tehsildar will determine the rent basing on rent payable for similar kism of lands in the area.
- In case of landless persons the assessment shall not exceed five times of annual rent.
- Payment of assessment will not confer any occupancy rights.

**Question 6. What is the extent of penalties to be paid by people occupying the land unauthorisedly?**

**Answer** - Under section 6 of the Act the person occupying the land in unauthorized manner shall also be liable to pay penalty of Rs.100 per acre per year in addition to the assessment amount. Penalties will not be imposed on landless persons.

Section 7 of the Act says that persons occupying the Government land unauthorized shall be liable to be evicted after payment of assessment and standing crops and structures set up on the land shall be liable to be forfeited.

**Question 7. If the person under unauthorized occupation of government land is landless then what action would be taken by the Revenue Officer?**

**Answer** - Section 7(1) (2) says that where the person under unauthorized occupation is landless the Tehsilder can settle the encroached land in such manner that the total extent of lands of the family together with the settled land shall not exceed one standard acre and not more than  $\frac{1}{10}$  th of an acre used as homestead purposes.

**Question 8. What are the lands that cannot be settled under the provisions of OPLE Act 1972?**

**Answer** - Sub section 2 of the section specifies the categories of lands that cannot be settled. These are =

- Gochar, Rakhsit, and Sarbasadharan land.
- Lands set apart for community purposes.
- Lands used as house sites, back yards, or temple sites.
- Lands that may be required for development projects.
- Lands belonging to Government undertakings or departmental lands or companies where 51% of share is held by Government. But in such cases the person concerned or any member of his or her families owns a house or house site in the Municipal or NAC area.
- Also in such cases the land adjacent to the existing holding of the person should be necessary for the beneficial enjoyment of the holding.

**Question 9. Who is competent to settle land situated in Municipality or NAC area?**

**Answer** – On reference by Tahasildar, Sub-Collector can settle the unauthorized occupied land up to  $\frac{1}{10}$  th of an acre subject to confirmation by Collector on payment of market value of the land.

**Question 10. What are the provisions regarding homestead government lands unauthorizedly occupied?**

**Answer** - In case of persons occupying homestead government lands that can be settled and is not barred from being settled under the provisions of this law; can be settled to the extent of Ac.0.04 decimals if the person is residing there and using the land for homestead purposes prior to 10<sup>th</sup> March, 1985.

**Question 11. What will happen if an occupier fails to evict the land in scheduled time despite notice?**

**Answer** - When someone is given a notice to vacate the encroached land, and if the person is unable to do so within the specified period, the Tahasildar have the power to

impose one time penalty of Rs.50 and daily penalties of Rs.10 besides effecting forfeiture of the properties in question. However in suitable cases the Collector shall have the power to reduce or remit the fines payable.

**Question 12. What is the procedure for dealing with forfeited property under the Act?**

**Answer** - Tehsildar has the power to dispose off the forfeited items under this Act. Eviction within prescribed time limit shall be effected as per the procedure laid down in section 9 of the Act by issuing notice to the encroacher or his agent. Tehsildar may use the services of an Officer for effecting the eviction. In case of resistance to such Officer by the encroacher or anyone connected with him, the Tehsildar will conduct a summary inquiry and has the power to issue warrant and send the person to Civil Prison for a period not exceeding 30 days.

**Question 13. How to deal with unauthorized construction on government lands?**

**Answer** - Section 8 gives Tehsildar power to stay of any construction which might be upcoming or intended on any encroached land. In this case the Tehsildar has also the power to impose fines and send the violator to civil prison for a period of not exceeding 30 days to prevent him from further construction .

**Question 14. Is there any provision relating to getting rights over the occupied land by adverse possession?**

**Answer** - According to Section 8-A if an encroacher is able to establish that he is in actual, undisputedly, and continuously in possession over the land for more than 30 years, by the dates of institution of the case, the Tehsildar will refer the case to the Sub-Collector. On receipt of the reference the Sub-Collector will intimate the department except the Revenue and Disaster Management Department to whom the land belongs and decide the case giving all concerned due opportunity of being heard. If the Sub-Collector is satisfied about the claim then he will make the assessment and subject to its payment settle the land with such occupant.

**Question 15. How the principles of natural justice and fair play affected under the Act?**

**Answer** - Section 9 provides that before initiating any proceeding under this act prior notice shall be given to the encroacher with all details to show cause as to why proceedings against him won't be started.

**Question 16. Who can make rules for implementation of the provisions of the Act?**

**Answer** - Section 10 empowers the State Government the power to make rule for proper implementation of the provisions of the Act and regulating the assessment, penalties, manner of assessment of market value, payment of assessments and rent and procedures to be followed. All Rules so framed shall be placed before the OLA for a period of 14 days covering one or more sessions.

**Question 17. What is the relationship between OPLE and OPDR Acts?**

**Answer** - Section 11 provides that the assessment amount shall be recoverable as public demand.

**Question 18. Who is the appellate authority under the Act?**

**Answer** - Section 12 (1) makes the Sub-Collector appellate authority and the order of hierarchy from him to Collector, RDC, and Member Board of Revenue shall be followed.

**Question 19. What special power has been given to RDC under the Act?**

**Answer** - Section 12 (2) vests revision power with the Collector. Section 12 (3) vests the RDC with some extraordinary powers and he can call for and examine any record if he feels that –

- The disposing authority has exceeded his legal powers;
- The disposing officer has failed to exercise power vested in him; and
- The disposing officer has contravened express provisions of law.

The Sub-Collector, Collector, or RDC can stay the execution of any decree passed by the lower court pending disposal of the appeal, revision, or review as the case may be.

**Question 20. What is the time period for filing of appeal under the Act?**

**Answer** - Section 13 says that the time period for filing of appeal shall be limited to 30 days from the date of passing of the order. However the time taken for obtaining certified copy of the order will be excluded while computing the period of filing of appeal. Appellate authority has powers to condone delay if he feels that there was sufficient reasons for the appellant in making such delay.

**Question 21. Are you protected for taking action in good faith under the Act? If so, under what provision?**

**Answer** - Section 17 gives protection to the officers taking action under this Act in good faith and Section 18 repeals earlier Acts including the OPLE 1954 and states that actions taken under the Acts and Rules repealed shall deemed to have been taken under this Act. Section 19 repeals the Odisha Ordinance 7 of 1971 which preceded this Act.

