

Odisha Prevention of Land Encroachment Act 1972

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Background

- Before independence Odisha was divided into areas under British Administration and areas of Princely states.

British areas were under 3 different administrative units.

- Central provinces with Madhya Pradesh- Sambalpur etc
- Bengal Provinces- undivided Cuttack, Puri, Balasore
- Madras Provinces- Ganjam etc

Tenancy Acts

- Bengal Tenancy Act-1885
- Orissa Tenancy Act, 1913
- Central Provinces Tenancy Act 1920
- Madras Estate Land Act 1908
- Orissa Estate Abolition Act-1952
- Orissa Survey & Settlement Act, 1958
- Orissa Land Reforms Act 1960
- Orissa Govt Land Settlement Act, 1962
- Orissa Cess Act, 1962
- Orissa Prevention of Land Encroachment Act,1972
- Orissa Consolidation of Holdings and Prevention of Fragmentation Act, 1972

Category of lands

- Private/ raiyati lands
- Lands belonging to Govt of India
- Lands belonging to departments of Govt of Odisha
- Lands belonging to Revenue Department
 - Abad AJogya Anabadi
 - Abad Jogya Anabadi
 - Rakshita
 - Sarbasadharan

Abada Ajogya Anabadi Lands

Lands which are not fit for agriculture

- River, nala, lake, sea, water logged lands, pata jora, river bund
- Hillock, mountain, stone bed, hill, hilly area
- Kuda or balikuda (sand hill)

Abad Jogya Anabadi Lands

Lands which are arable or cultivable

- Patita(old or new), grassy land, slopy land
- Sandy land which is capable of agriculture
- Bushy land / chot jungle
- Abandoned holdings
- Surrendered holdings
- Evicted land due to conversion to non agriculture purposes u/s 8 of OLR Act.
- Char & Diara lands
- Lands reserved for gram panchayat, jawans
- Basti jogya lands

Rakshita lands

Lands reserved for different purposes.

- Acquired vested lands but not transferred.
- Lands given as advance possession but not alienated
- Lands relinquished by departments
- Lands reserved for various purposes under OGLS Act
- Lands transferred to Gram Panchayat
- Gramya Jungle or lands reserved for village forest
- Land reserved for village, busti
- Land under master plan area
- Khas mahal, Nazul. Gramkath paramboke, abadi lands

Sarbasadharan Lands

Land used for communal purposes.

- Cremation/ burial ground, ground used for carcass disposal
- Melan padia, play ground, hat padia kothaghar, akhada grar, Dhangada-dhangadi ghar market
- Temple, mosque, church gurudwar, matha, mandap, dolabedi, bijestahali etc
- GocharDanda, go-danda, gothapadia
- Village road, pucca road
- Land reserved for public purposes.

OPLA Act 1972

An Act to provide for prevention of unauthorized occupation of lands which are the **property of Government.**

Property of Government

U/S 2 of the Act, following classes of land are declared as the property of Government.

- All public roads, streets, bridges, 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, canals, lakes and tanks and all water sources standing or flowing , All lands including temple sites, house sites or backyards
 - Except the property of merged states, zamindars, proprietors, sub-proprietors, land lords
 - all those are paying rent to aforesaid persons
 - Raiyati lands
 - Registered holder of land with proprietary rights,
 - Persons holding land on grants from Government.
- Lands Vested with public authorities
- Lands acquired under LA Act for any public authority, company owned, managed or controlled by Govt
- Lands of other Departments
- Land of Company in which not less than 51 % of share capital is held by Govt
- A corporation of Government

Landless persons

- U/S 3(a-1) Means a person total extent of whose land excluding homestead land together with lands owned by all members of his family who are living with him in common mess is;
- Less than one standard acre and
- Whose total annual income of all members of his family does not exceed 40000/-

Homesteadless person

- A person who, together with all members of his family does not have any homestead land anywhere in the State and
- Owns less than one standard acre of land other than homestead and
- Whose total family income does not exceed Rs.40000/-

Standard Acre

- As defined u/s 2(29) of the OLR Act, 1960
- **One standard acre means**
 - One acre of Class-I land
 - One and one half (1.5) acre of Class-II land
 - 3 acres of Class-III land and
 - 4 and half (4.5) acres of Class-IV land

Class of land

As defined u/s 2(5-a) of OLR Act

Class I- Irrigated land –where 2 or more crops in any one year within a period of last 3 years have grown, or can be grown

Class-II- Irrigated land not more than one crop has grown or can be grown

Class-III – Other than irrigated land in which paddy has grown or can be grown during last 3 years.

Class-IV- Any other land.

Tanks, coconut gardens and orchards (except banana orchards) will be Class-iii land

Section -4- Levy of Assessment of land unauthorisedly occupied.

- Any person unauthorisedly occupying any land which is property of Government is liable to pay assessment;
 - If the land so assessed previously- at that rate proportionate to area occupied.
 - If not assessed, at the rate imposed on lands of similar description with similar advantage in the vicinity
- For landless persons maximum 5 times the assessment
- Any part of an agriculture year will be deemed to be for the whole year.
- Section-5; The Decision of assessment cannot be challenged in civil Court

Section-6: Liability for penalty

- In addition to assessment, the unauthorized occupant is liable to pay penalty a sum not exceeding 100 rupees per acre per year
- If landless person, no penalty
- Section 6-A- Collector can reduce assessment and penalty.

Sec-7: Eviction, forfeiture and fine

- Occupant will be summarily evicted and
- Any crop or other product raised or any building material deposited shall be liable to forfeiture
- Tahasildar shall give reasonable notice to remove the same
- If the occupier is a landless person, the Tahsildar may instead of eviction, settle the same; provided that
- The land so settled with him together with the land excluding homestead if any owned by him and the lands owned by all members of his family doesnot exceed one standard acre and
- Shall not include more than 1/10th of an acre as homestead land

Contd-

- Where the land is occupied by a homesteaded person and utilized for homestead purposes, tahasildar shall settle the same maxm $1/10^{\text{th}}$ of an acre
- No land will be settled if the land is gochar, rakhit or sarbasadharan
 - If set apart for the common use of the village
 - Used as house site, backyard of temple site
 - Likely to be required for any development purpose
 - Land belonging to any undertaking owned and controlled by Govt
 - Land of other Department
- If the land is in urban area;
- The settlement will be done by Sub-collector on reference of Tahasildar
- Not more than $1/10^{\text{th}}$ of an acre be settled and only if the the person or any member of his family does not have homestead land anywhere in the state opr
- The land so occupied is adjacent to his holding and beneficial for use

Contd

- The settlement shall not take effect until;
- The order of settlement made by sub-collector is confirmed by Collect and
- The person pays the market value of the land assessed by sub-collector
- Provided that on failure of payment of the market value within the timeline, the person shall be summarily evicted.

Contd

- If any land is leasable and in possession of any homesteadless person who is using it as such and residing therein before March 1985, the tahasildar shall settle the land to the extent of $1/25^{\text{th}}$ of an acre with him
- If any person fails to remove the encroachment within the timeline, tahasildar in addition to forfeiture may impose a fine which may extend to Rs.50/- and a daily fine of rs.10/- until the encroachment is removed.
- The aggregate of the fines shall not exceed twice the market value of the land.
- Collector may reduce or remit the amount
- Forfeiture shall be adjudged and disposed by Tahasildar
- Notice u/s -9 is mandatory
- If eviction is resisted, tahasildar can issue warrant of arrest u/s7(6) and can send to jail for a period not exceeding 30 days
- If given on rent, the landlord not the tenant will be liable as encraocher.

Section-8- Stay of construction

- Tahasildar can stay any construction
- Impose fine up to Rs.50/- AND DAILY FINE OF Rs.10/-
- Issue warrant of arrest and give civil imprisonment up to 30 days
- Section 8-A- Settlement of land if actual, continuous and uninterrupted encroachment for more than 30 years by the date of institution of proceeding
- Tahasildar shall refer the case to Sub-collector
- Sub-collector can show cause to other departments
- If satisfied can settle subject to payment of rent and assessment with area rent
- Section-9- Notice mandatory
- Section -10- State Govt to make rules
- Section -11- Recovery of assessment and penalty as area land revenue under OPDR Act.

Appeal and Revision

- Sub Collector against the decision of Tahasildar
- Collector against the decision of Sub- Collector
- RDC against the decision of Collector
- No appeal after expiry of 30 days from the date of decision (u/s- 13).

THANK YOU

**Proposed amendments
to OPLE Act**

Existing Provision	Proposed Amendment	Objective / effect
<p>The words “Encroachments”, “Encroachers” and “Unauthorized occupied” were not defined.</p>	<p>These words have been defined.</p>	<p>To widen all types of encroachments.</p>
<p>Section-4 provided for assessment of rent payable by occupied which was five times rent as fixed by the Government in the village.</p>	<p>Higher rent has been charged @ 0.1%, 0.5% & 1% for agriculture, residential and other uses respectively.</p>	<p>To discourage encroachments</p>

Existing Provision	Proposed Amendment	Objective / effect
Under section 6 the penalty for unauthorization was Rs. 100 per acre per year.	Penalty proposed increased to 5% of market value for each year subject to minimum of Rs. 1000/-	To discourage encroachments.
Under section 7 (2) (1) (a) provision was made for settlement of land upto 1 acre.	The words “and such person has used the land for agricultural purpose” has been inserted after the word “landless person”	Settlement of encroach land for purpose other than agriculture has been discouraged.
Under second proviso to section 7 (2) (b) there was provision for settlement of land in urban area.	No change suggested	There is need such deletion in view of excluding public premises from the definition.

Existing Provision	Proposed Amendment	Objective / effect
Under second proviso to Section 7 (2) (b) there was provision for settlement of maximum up to 1/10 of an acre.	The propose amendment reduce the area to 1/25 of an acre.	To reduce the area of settlement.
Sub Section (2) (a) of Section 7 was made for settlement of house site with homesteadless under occupation as on 10.03.1985 except communal land.	Proviso has been made for to make the right transferable after 20 years.	To give transferable right after 20 years.
Under Section 7 (3) Tahasildar has discretion to impose fine up to Rs. 50 /- and daily find of Rs. 10/-	There is no discretion of Tahasildar not impose fine and Rs. 50/- has been raised to Rs. 500/- and daily fine from Rs. 10/- to Rs. 50/-.	To discourage encroachment

Existing Provision	Proposed Amendment	Objective / effect
<p>Section 8 – stay of construction</p> <p>Under Section 8 there was provision to fine Rs. 50/- and daily fine of Rs. 10/- in case of violation of stay orders of constructions.</p>	<p>Section 8 has been renumbered as 8 (a).</p> <p>Rs. 50/- has been raised to Rs. 500/- and daily fine from Rs. 10/- to Rs. 50/-.</p>	
<p>There was no provision for seizure and removal of materials for constructions and confiscation.</p>	<p>Section 8 (2) & (3) added provisioning seizure of constructions materials and confiscation.</p>	
<p>Unauthorized occupation was not a cognizable offence</p>	<p>Section 8 (a) was inserted</p>	

Existing Provision	Proposed Amendment	Objective / effect
New provision.	After Section 8 (A) new Sub-Section 8-B has been inserted to disconnect electricity, water, telephone and Sewerage service.	
New provision.	After expire of any lease, provision has been made under section 8-C to treat him as an encroacher.	

THANK YOU