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ORISSA ACT 6 OF 1972

(Assented to by the President on the 12th February, 1972)

An Act to provide for prevention of unauthorised occupation of lands which are the property of Government

Be it enacted by the Legislature of the State of Orissa in the Twenty-second Year of the Republic of India as follows :

[1][STATEMENT OF OBJECTS AND REASONS] :– The Vires of Orissa Prevention of Land Encroachment Act, 1954 as amended by the Orissa Prevention of Land Encroachment (Amendment) Act, 1970 was recently challenged in a writ petition in the Orissa High Court in O.J.C. No. 1584 of 1968. The Court held that Sec. 3 of the Act is void as it contravenes Article 14 of the Constitution. In a series of cases the Court has also earlier observed that Secs. 5 and 6 of the Act were void. As Secs. 3, 5 and 6

forming the very core were void. The Court held the entire Act including the amending Act of 1970 to be Void. It was held that the amending Act 1970 not being a re-enactment of the entire Act cannot resuscitate the Act into life. It, therefore, ruled that the Act and the amending Act separately and together are void. This decision created serious difficulties for the Government as there was no law to deal with encroachment on Government land or Communal land. An Ordinance had, therefore, to be promulgated to meet the situation simultaneously complying with the provisions of the Constitution and judicial pronouncements. It is now necessary to effect the re-enactment of the law permanently to replace the Ordinance.

The Bill seeks to achieve this objective.

Scope of the Act :– The Provisions of this Act are applicable preventing the persons from occupying the Government lands and also in certain cases subject to the Provisions of Section-7 the Government land may be settled in favour of such persons who have been unauthorizedly occupying the Government lands. Thus the Provisions
of this Act being summary in nature and any person unauthorizedly occupying any land which is the property of the Government as defined under Section-2 of the Act can be summarily evicted by the competent authority from the said land. However before proceeding summarily eviction a reasonable opportunity of hearing is extended to the person occupying the land. Under the scheme of the Act proceedings can be initiated if it is seen that there has been encroachment of Government lands either by construction of house or otherwise. In a given case the Government had constructed the houses on the Government land. Thereafter the land was transferred to the Municipality and several persons were inducted lawfully by the said Municipality on monthly rent basis in respect of the shop rooms and as such it cannot be said that they were unauthorized occupants. Therefore, any proceedings initiated against them was thoroughly wrong and misconceived. However, the said tenants remained silent in the matter and did not challenge such eviction proceeding. That apart they approached the Government for allotting the shop rooms on lease basis bye passing the concerned Municipality. In such view of the matter it can be said that the conduct of the tenants was not bonafide and their plea that they quieted the shop rooms against their will and approached the State Government under compulsion. Infact, the concerned Municipality is the real owner of the shop rooms and the tenants were estopped from denying its title: (S.A. No. 86/90 of 1974 decided on 10.12.1980) Keonjhargarh Municipality vs. Judhistir Sendha and others.

1. Short title, extent and commencement :– (1) This Act may be called the Orissa Prevention of Land Encroachment Act, 1972.

(2) It shall extend the whole of the State of Orissa.

(3) It shall be deemed to have come into force with effect from the 29th day of October, 1954.

NOTES

In view of Section-3 (Sub Section-30 of the General Clauses Act) any legislation may be published in the Official Gazette on a day, but the same Act may not come into enforcement from that day. In such view of the matter Sub Section-3 of Section-1 has provided that this Act shall be deemed to have come into force with effect from 29th day of October, 1954 which clearly reveals that the Act has been enforced retrospectively.

By way of enactment of this legislation the lacunae's of the previous Act have been validated and rectified: 1972 (1), CWR 438.

Scope of the Act: Explained: AIR 1965 SC 1296: AIR 1986 ORISSA 114.
Applicability of the Act: Its Scope and Intention: Explained : 49 (1980) CLT 252
Meaning of the term Encroachment: Explained: AIR 1962 MAD 601.

The Enactment is expropriately in nature and character is to be strictly construed: 27 (1961) CLT (SN.119) 75. The Act is not

retrospective but retroactive: 41 (1975) CLT (SN. 145) 99.

2. Property of Government :– 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 to Government for the purposes of this Act, namely :

(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 sources 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 are the property–

(i) of any ruler of Indian State merged with the State of Orissa Zamindar, Proprietor, Sub-proprietor, Landlord, 1[***] Jagirdar, 1[***] Khoropshdar or any other tenure holder or any person claiming through or holding under any of them; or

(ii) of any person paying shist, kattubadi jodi, porupu or quit rent to any of the aforesaid person; or

(iii) of any person holding under raiyatwari tenure or in any way subject to the payment of cess or any other dues direct to Government; or

(iv) of any other registered holder of land having proprietary right; or

(v) of any other person holding land under grant from Government otherwise than by way of licence; 1[***]

(vi) 1[***]

(b) land belonging to or vesting in any Local Authority which is used or intended to be used for any public purpose such as a road, canal,

embankment, tank or ghat or for the repair or maintenance of such road, canal, embankment, tank or ghat;

1. Omitted by Act 4 of 1975

(c) land acquired under the provisions of the Land Acquisition Act 1 of 1894 or under similar Acts for the purposes of any Local Authority, 1[***] Company owned or controlled by the State Government, Statutory Body or Corporation while such land remains as the property of the Local Authority, 1[***] Company owned or controlled by the State Government, Statutory Body or Corporation;

(d) Immovable property claimed by the rulers of merged territories but conceded in their favour; and

(e) land belonging to an establishment or undertaking owned, controlled or managed by–

(i) any State Government or a Department of such Government;

(ii) any Company in which not less than fifty-one per cent of the share capital is held by one or more State Governments; or

(iii) a corporation established by law which is owned, controlled or managed by any State Government.

Explanation :– In this section "high water mark" means the highest point reached by ordinary spring-tides at any season of the year.

NOTES

"Abada Jogya Anabadi land" means such land which lies hallow and which is capable of being utilized. Thus in view of Section-2(1) of the Act such a land categorized as "Abada Jogya Anabadi land" is a Government land: 86 (1998) CLT 170 (Parmeshwar Mohanty vs. State of Orissa):1997(II) OLR 444.

The term Local Authority has not been defined in the Act: 34 (1968) CLT 307.

When "Abada Jogya Anabadi land" is settled as per Government circular there cannot be encroachment: 43 (1977) CLT 177.

Transfer of Government Property to a Municipality will take only after actual Transfer: 42 (1976) CLT 174.

2[3. Definitions :– In this Act, unless the context otherwise required–

(a) "Collector" means the Chief Officer in charge of the revenue administration of a district and shall include an Additional District Magistrate;

1. Omitted by Act 4 of 1975
2. Substituted by Act 4 of 1975.

1(a-1) "Landless person" means a person, the total extent of whose land excluding homestead together with lands of all the 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 the members of his family who are living with him in common mess, does not exceed rupees six thousand and four hundred or an amount which the State Government may, by notification from time to time, specify in that behalf;

[2](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 anywhere 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 Govt. may, by notification from time to time, specify in that behalf";

(b) "Prescribed" means prescribed by rules made by the State Government under this Act; and

[3][(b-1) "standard acre" means a standard acre as defined in the Orissa Land Reforms Act, 1960;]

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

NOTES

Tahasildar while proceeding in the matter of eviction is to consider the question of settlement of land in favour of the encroacher in view of the provision of the Sections: 1990 (I) OLR 304.

4. Levy of assessment of land unauthority occupied :– 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

1. Substituted by Orissa Act 10 of 1988. 2. Inserted by ibid.

3. Inserted by Orissa Act 25 of 1979.

may be, provided that for special reasons [1][the Tahasildar 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 [2][***];

[3][Provided that where the person unauthorisedly occupying such land is a landless person, the amount payable by him by way of assessment shall in no case exceed an amount equal to five times the annual assessment:

Provided further that notwithstanding anything in the tenancy laws for the time being in force, payment of assessment under this sections shall not confer any right of occupancy.]

Explanation :– For the purpose of the section occupation for an incomplete portion of an agricultural year may be deemed to be occupation for the whole of such year.

NOTES

The encroacher is to be evicted summarily under the Provisions of this Act: 44 (1977) CLT 224 (BR).

Rent is to be realized from an unauthorized person being in occupation of the Government land: 44 (1977) CLT 224 (BR).

Meaning of the Eviction Proceeding – Explained: 45 (1978) CLT (SN.60) 29.

5. Decisions as to the amount of assessment shall not be challenged in any Civil Court :– The decision as to the rate of amount of rent assessed under Sec. 4 shall be recorded in writing and shall not be called in question in any Civil Court.

6. Liability of person unauthorisedly occupying land to penalty :–Subject to the provisions of Sec. 9, any person liable to pay assessment under Sec. 4 shall, at the discretion of [1][The Tahasildar] be liable to pay in addition to the assessment by way of penalty a sum calculated at a rate [3][not exceeding one hundred rupees] per acre of land for each year of unauthorised occupation :

1. Substituted by Act 4 of 1975
2. Omitted by ibid.
3. Substituted by Act 25 of 1976

[1][Provided that where the person liable to pay assessment is a landless person, he shall not be liable to pay any penalty under this section.]

NOTES

Eviction Proceeding not maintainable after leasing out the same to an association: 43 (1974) CLT (SN.103) 78.

The person who has got Fishing Right cannot be treated as Trespasser: 48 (1979) CLT (SN.71) 36.

Extent of the liability – Explained: 36 (1970) CLT 602.

The question of that a person against him proceeding has been initiated for eviction from the Government land whether he is a landless person is to be decided

and if it is found that the land can be settled in his favour than the same may be settled. But in the present case there were several disputed question of facts which cannot be decided in the Writ Application as such the matter was remanded with direction: 1999 (I) OLR 599.

In the Eviction Proceedings the Tahasildar should consider whether the encroached land can be settled with the said person after finding that he is a landless person: 1991 OLR 374.

Landlord encroaching upon the Government land appurtenant to his residential house and thereafter letting out the same to a tenant. It is the landlord who is to be treated as an encroacher: 63 (1987) CLT 597.

The authorities are to make due enquiry into several aspect of the matter and should give proper finding: 41 (1975) CLT (SN. 145) 99.

[2][6-A. Reduction and remission of assessment and penalty :–Subject to such conditions as may be prescribed, the Collector may, in suitable cases either reduce or remit the amount payable by way of assessment under Sec. 4 of the penalty, if any, imposed under Sec. 6.]

NOTES :– The reduction or remission before the omission of the section has been protected. The proceedings which were pending on the date of omission of the Section would continue. This is provided in Sec. 7 of Orissa Act 25 or 1976 which reads as follows:

"7 Savings :– The omission of Sec. 6-A of the principal Act by this Act shall in no way affect any reduction or remission of any

1. Added by Act 25 of 1976.
2. Inserted by Act 13 of 1982.

assessment or penalty made under the said section prior to the date of commencement of this Act nor shall it any way affect the proceeding under the section on the said date.

New Section inserted by Orissa Act 13 of 1982.

7. Summary eviction, forfeiture and fine :– (1) Any person unauthorisedly occupying land for which he is liable to pay assessment under Sec. 4 shall be summarily evicted by the [1][Tahasildar] and any crop or other product raised on the land, any encroachments such as a building, other construction or anything deposited thereon shall be liable to forfeiture:

Provided that in case of said encroachments. [2][the Tahasildar] shall give reasonable notice to remove the same.

[2][(2) Notwithstanding anything contained in Sub-Sec. (1)–

(a) where any land is in the unauthorised occupation of a landless person, the Tahsildar may instead of evicting such person from the land in his authorised occupation, settle the same with him, so however, 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 purposes of homestead; and

(b) where any land is in the unauthorised occupation of a homesteadless person, which is being utilised by him as homestead, 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-tenth of an acre."

[3][Provided that no such settlement shall be made if the land belongs to any of the following categories namely]:

(a) lands recorded as Gochar, Rakhit, or Sarbasadharan in any record-of-rights prepared under any law;

(b) lands which are–

(i) set apart for the common use of villages;

1. Substituted by Act 4 of 1975.

2. Substituted by Act 10 of 1988.

3. Added by Act 4 of 1975.

(ii) used as house site, back-yard of temple-site whether or not recorded as such, in the record-of-rights;

(iii) likely to require for any development scheme and are declared as such by the State Government by a notification; and

(c) land belonging to an establishment of undertaking owned, controlled or managed by–

(i) any State Government or a Department of such Government;

(ii) any company in which not less than fifty-one per cent of the share capital is held by one or more State Government, or

(iii) a corporation established by law which is owned, controlled or managed by any State Government:

[1][Provided further that where the land in the unauthorised occupation, of a person is situated within a Municipality or a Notified Area constituted under the Orissa Municipal Act, 23 of 1950:

(a) the settlement of land with such person shall be made by the Sub-divisional Officer on a reference made to him in that behalf by the Tahasildar;

[2][(b)not more than one-tenth of an acre shall be settled and that such settlement shall be made only where

(i) neither the person nor any member of his family living with him in common mess owns a house or house-site anywhere in the State; or

(ii) the land being adjacent to the holding owned by the person is necessary for the beneficial enjoyment of such holding or for the residential purpose of the person and is not reserved for the purpose of any Government or for any development purpose; and

(c) the settlement shall not take effect until–

(i) the order for settlement made by the Sub-divisional Officer is confirmed by the Collector of the district; and

(ii) the person in favour of whom the settlement is made, makes payment of the market value of the land assessed by the Sub-divisional Officer in the manner prescribed by rules made under this Act:

1. Substituted by Act 13 of 1982.

2. Substituted by Act 10 of 1988.

Provided also that on failure, of payment of the market value within the time fixed by the Sub-divisional Officer, the person in unauthorised occupation of the land shall be liable to be summarily evicted from the land in accordance with the provisions of this Act.]

[1](2-a) Notwithstanding anything contained in the first proviso to Sub-Sec. (2), where any land specified under the said proviso except those classified 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 its 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 a person fails to remove the encroachment within the time specified in the notice, [2][the Tahasildar] 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:

[3][Provided that the aggregate of the fines payable under this sub-section shall in no event exceed an amount equal to twice the market value of the encroachment 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 the way of fine under this sub-section].

(4) Forfeitures under this section shall be adjudged by [4][the Tahasildar] and any property so forfeited shall be disposed of as the [4][the Tahasildar] may direct.

(5) An eviction under this section shall be made by serving a notice in the manner provided in Sec. 9 on the person reported to be in occupation or his agent requiring him within such time as [4][the Tahasildar] 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.

(6) If the Officer removing any such person shall be resisted or obstructed by any person, [4][the Tahasildar] shall hold a summary inquiry

1. Inserted ibid.

2. Substituted by Act 4 of 1975.

3. Substituted by Act 29 of 1974.

4. Substituted by Act 4 of 1975.

into the fact 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 Schedule I 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.

NOTES

Burden is upon the Applicant to show and establish that he or she is a landless or homestead less person for settlement of Government land in his favour. Revenue Authorities taking no steps as to find out whether applicant was a landless or homestead less person as such the order settling the land in his favour is illegal: 2008 (CLT) 101: 2008 (1) CLR 187 (Rama Mani Devi vs. Tahasildar and Others)

Some persons filing writ petition making allegations that the land in question being a Communal Land is being encroached upon by some encroachers. Said writ petition disposed with a direction directing the said petitioner to make representation before the Collector: Balasore and on such representation collector would take appropriate steps. On such representation Collector registered encroachment cases against the persons directing them to show cause and on failing which orders of eviction was passed…. But on perusal it is seen that orders of eviction cannot be sustained as the same have been passed prior to the date fixed for filing show cause and as such the same were quashed and further directions issued: 2005 (II) OLR 706 (Sri Manoranjan Behera and five others vs. State of Orissa and two others)

Settlement of Government Land/ Plot ….. Applicant is the wife of Government Servant and not a divorced lady and the plot belongs to a reserve category, as such denial of settlement is not illegal: 2004 (I)

CLR 85 (Smt. Rabeha Khatun vs. State of Orissa)

8. Stay of Construction :– [1][The Tahasildar] 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 [2][***] and if such person fails to comply with the said order, [1][the Tahasildar] may impose a fine which may extend to fifty rupees and a daily fine of rupees ten for everyday during which such

1. Substituted by Act 4 of 1975.

2. Words "during the pendency of any proceeding under this Act "deleted by Act, 13 of 1982.

noncompliance continues [1][and may also 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 Schedule I for imprisonment in the civil jail of the district for a period not exceeding thirty days as may be necessary to prevent the person from proceeding with the construction].

[2][8-A. Settlement of land in cases of encroachment for more than thirty years :– (1) Where in the course of any proceeding instituted under Secs. 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-Sec. (1) the Sub-divisional Officer shall given 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 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 under this Act.]

NOTES

Claim of adverse possession over the Government land cannot be decided in a writ petition. In eviction proceedings Tahasildar directing the petitioner to deposit penalty and assessment amount and the same was paid by the petitioner, cannot be challenged as the same attained its finality 106 (2008) CLT 21 : 2008 (1) CLR 864 : 2008 (Supp.1) OLR 938 (Silu Ekha vs. State of Orissa)

A person occupying the land for more than 30 years by the date of institution of the encroachment proceedings….The Tahasildar is to refer the case to the Sub Divisional Officer. The matter was decided by the Civil Court in favour of the petitioner as he was found to be in possession of the disputed plot for more than 30 years acquiring the right, title by way of adverse possession. The matter was finally decided by the High Court in favour of the petitioner holding his/ her title to the land. But at the instance of Opp. Party No.5 who had no Locus Standi in the matter as agitated before the appellate authority challenging the

1. Added by Act 4 of 1975.

2. Inserted by ibid.

order passed by tahasildar dropping the second encroachment proceeding against the petitioner. The S.D.O also dismissed the appeal. Thereafter matter was carried in revision before the Additional District Magistrate Chatrapur who also directed to Tahasildar to do needful in accordance with the observation and direction of the Civil Court and as such tahasildar recommended for settlement of land in favour of the petitioner…. As the matter stood so the Opp. Party No.5 who had lost at all stages carried the matter in second revision before the R.D.C who surprisingly held that the petitioner as well as Opp. Party No.5 are directed to be evicted held that order is not sustainable in view of clear finding of the Civil Court which has been confirmed by this Court: 93 (2002) CLT 119: A 2002 Orissa 147 (Smt. Labonga Lata Panda vs.

State of Orissa and Others)

Tahasildar is not competent to decide the question of adverse possession: 59(1985) CLT 1 (Rev.)

Settlement of land show cause by the Government department not necessary: AIR (1993) Orissa 77.

Read with Rule 16 of OPLE Rules - Provisions Make clear that settlement under those provisions shall be made in favour of the encroacher who is in actual, continuous and undisputed occupation of the law far more than 30 years, by the time and date of institution of a proceeding against him. The land in dispute has been occupied and encroached by two persons settlement in favour of only one is illegal –

2010 (2) OJR 348 (Chandrasekhar Prasad Sharma Vrs RDC & another.)

9. Prior notice to person in unauthorised occupation :– Before taking proceedings under [1][Sec. 4], Sec. 6 or Sec. 7 [2][the Tahasildar] 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 him to show cause before a certain date as to why he should not be proceeded against under [3][Sec. 4], Sec. 6 or Sec. 7. Such notice shall be served in such manner as the Government may, by rules or orders under Sec. 10 direct.

NOTES

(i) A notice under Sec. 9 calling upon the person in occupation to show cause why he should not be proceeded under Sec. 6 or 7 of the Act does not give rise to a cause of action : 30 MLJ 255: AIR 1924 Mad. 825 : AIR 1925 Madras 415.

1. Inserted by Act 4 of 1975.

2. Substituted by Act 4 of 1975.

3. Inserted by Act 13 of 1982.

(ii) But where such notice did not take effect because the authorities on representation by the landlady recognised her right to possession, the tenant is estopped from pleading justice in a third person : AIR 1956 An. W.R. 1090.

10. Power to make rules :– (1) The State Government may, subject to the condition of previous publication, make rules, orders either generally or in any particular instance –

(a) regulating the rates of assessment leviable under Sec. 4;

[1][(b)regarding the imposition of penalties under Sec. 6; and

(b-1)prescribing the manner of assessment of market value of land under Sec. 7;

(b-2)prescribing the conditions regarding assessment and payment of rent under Sec. 8-A];

(c) regulating the service of notice under this Act.

(2) All rules made under this section shall, as soon as may be after they are made, be laid before the State Legislature for a total period of fourteen days which may be comprised in one session or in two or more successive sessions and if during the said period the State Legislature makes modifications, if any, therein, the rules shall, thereafter have effect only in such modified form; so, however, that such modification shall be without prejudice to the validity of anything previously done under the rules.

11. Recovery of assessment and penalty as public demand :–The amount of fine, assessment or penalty, imposed under this Act on any person unauthorisedly occupying any land shall be recoverable from him as arrears of public demand.

NOTES

Sales for recovery of penal assessment, if prevails over prior encumbrance : See AIR 1942 Madras 244.

[2][12. Appeal and Revision :– (1) An appeal from any decision or order made under this Act by the Tahasildar shall lie to the Sub-divisional Officer.

(2) The Collector may revise a decision or order made by a Sub-divisional Officer under Sub-Sec. (1) [3][or under Sec. 7 or Sec. 8-A.]

(3) The [4][Revenue Divisional Commissioner having jurisdiction] may call for and examine the records of any proceedings under this Act

1. Inserted by ibid.

2. Substituted by Act 4 of 1975.

3. Added by Act 13 of 1982.

4. Substituted by Act ibid for the words "Board of Revenue".

before any officer in which no appeal or revision lies and if such officer appears–

(a) to have exercised a jurisdiction not vested in him by law; or

(b) to have failed to exercise a jurisdiction so vested; or

(c) while acting in the exercise of his jurisdiction to have contravened some express provision of law affecting the decision on the merits, where

such contravention has resulted in serious miscarriage of justice, it may after giving the parties concerned a reasonable opportunity of being heard pass such order as it deems fit.

(4) Pending the disposal of any appeal or revision the Sub-divisional Officer, the Collector the [1][Revenue Divisional Commissioner] as the case may be, may stay the execution of the decision or order appealed against or sought to be revised.

NOTES

Distinction between powers of suo motu revision under Section 12 (2) and 12 (3), 13 – explained…… there is no limitation provided U/ s- 12(2) of the Act to exercise revisional powers – such powers would be exercised taking into consideration the Provisions of Art. 137 of the Limitation Act in filing of the Revision: 2005 (1) CLR 710: 2005 (1) OLR 666 and 2005 AIHC 2942 (Orissa) (Smt. Sarojini Mallick vs. State of Orissa and others)

Exercise of Power U/s- 12(3) of the Act ….. Explained. It can be exercised only in cases where against the orders no appeal or revision lies. There was revision before the collector in the matter and as such no second revision U/s- 12(3) of the Act is tenable: 93 (2002) CLT 119 (Smt. Labongalata Panda vs. State of Orissa)

The Provisions of this Section are to check illegality and improprietority while making settlement or denying settlement: 2003 (II) OLR 637.

The Jurisdiction should be exercised within a reasonable period: 2000 (II) OLR 260.

The petitioner was lessee of a nazul plot – the same plot was sold to another person. On a complain, the Commissioner directed the Tahasildar to initiate encroachment case and to cancel the lease of nazul plot. The Commissioner has no jurisdiction to give such direction and he cannot declare the said Sale Deed illegal. The matter is to be dealt with summarily as per the Provisions of the Act by the Tahasildar: 2000 (I) OLR 178.

1. Substituted by Act 4 of 1975.

Powers of the R.D.C – Explained. Even if there is no limitation for exercise of such powers the same cannot be exercised after elapse of a long period. It should be exercised within a reasonable time: 1991 (II) OLR 51.

Meaning of the terms “In which no Appeal or Revisions lies” –Explained. Unless and until such orders are passed there is no Provision for Suo Motu Revision: 1987 (II) OLR 241.

There is no Provision for Second Suo Motu Revision under the Provisions of the Act: 1984 (1) OLR (BR) 18 and also 1.

Powers are to be exercised within a reasonable period for Suo

Motu Revision: 72 (1991) CLT 49.

13. Limitation :–[1][(1) * * *]

(2) No appeal shall be brought after the expirty of thirty days from the date of the decision or order complained of and in computing the said period of thirty days the time required to obtain a copy of the decision or order appealed against shall be excluded :

Provided that an appeal may be admitted after the aforesaid period if the appellant satisfied the appellate authority that he had sufficient cause for not preferring the appeal within that period.

NOTES

Legality of the Proceeding- Explained. Son possessing land in question proceeding against the father whether maintainable: 72 (1991)

CLT 49.

14. Document accompanying memorandum of appeal :– Every memorandum of appeal shall be accompanied by the decision or order appealed against or by an authenticated copy of the same.

15. Delegation of powers and duties of Collector, Sub-Divisional Officer, Deputy-Collector and Sub-Deputy Collector :– The State Government may, by order, direct that any power, duties or functions conferred or imposed on a [2][Collector or Sub-Divisional Officer] shall in such circumstances and under such conditions, if any, as may be specified in that order, exercised or dicharged by such other officer or authority as may be specified in that order.

16. Bar of suits and proceedings :– Not suit or other legal proceedings in respect of the matter of disputes for determining or deciding which provision is made in this Act shall be instituted in any Court of law except under and in conformity with the provisions of this Act.

1. Omitted by Act 13 of 1982.
2. Substituted by Act 4 of 1975.

NOTES

Suit for permanent injunction Civil Court has no jurisdiction as section 16 of OPLE Act is a bar….. – Authorities granting interim order under OPLE Act. Thereafter plaintiff withdrawing the suit. The present petitioner filing petition for transposing them as plaintiffs was rejected. In Revision also they lost, as at any stage the suit was to be dismissed writ petition was held not to be maintainable: 107 (2009) CLT 730: 209 (1) OLR 647 (Mohammed Nasir vs. Jadal Kumar Sahu and others)

-The question of title by either of the party can be decided by the Civil Court only and not in a summary proceedings under OPLE Act. When there is bonafide dispute with regard to right, title and interest with regard to a land, the Civil Court has jurisdiction to decide the matter. :2008 (1) CLR 951 (Harekrushna Behera vs. State of Orissa and another)

Plots wrongly recorded as Government Land and plaintiff claims to be in possession of the same since long …. Prima facie there is serious dispute with regard to right, title and interest in the two plots. It is not a case that lands were Government Land and the plaintiff is unauthorized occupant of the same. Thus, there being a complicated question of right, title in respect of the suit land Civil Court has got jurisdiction to entertain the suit and adjudicate the question of right, title and interest of the parties:105 (2008) CLT 800: 2008 (II) OLR 170: 2008 (II) CLR 132 (State of Orissa vs. Sahukar Gurumurthy)

In a case where the party raises bonafide question of right, title over the property, authorities cannot adjudicate the same under the provisions of OPLE Act …… Thus the suit in such a matter is to be entertained by Civil Court and it has jurisdiction to grant proper relief regarding title: 2007 (1) OLR 52 (State of Orissa and another vs. Daitari Sahu and other)

When it has been found that the land is Raiyati land and not a government land, the provisions of this Act (OPLE Act) are not applicable and any encroachment case instituted against the occupant of the land is not maintainable. In a case where bonafide dispute arises as to whether the land is Government land or Private land the Government cannot assume unilaterally that it is Government land and can initiate encroachment proceedings under the provisions of OPLE Act: 2007 (1) OLR 550 (Dist. Collector representing State of Orissa and also in the capacity as Collector and others vs. Nirupama Behera and others)

Scope under the Provisions of this Act for initiating Encroachment Proceedings explained – There being dispute between two private parties with regard to claim of title over the land. Civil Court is competent to decide the matter: 93 (2002) CLT 119 (Smt. Labongalata Panda vs.

State of Orissa)

17. Protection of action to be taken under this Act :– No suit, prosecution or other legal proceedings shall lie against any person for anything in good faith done or intended to be done in pursuance of this Act.

18. Repeal and Savings :– (1) The enactments mentioned in Schedule II are repealed to the extent specified in column 4 thereof.

(2) All things done, liabilities incurred, amounts assessed or penalty or fine imposed, enquiries held, notices served, warrants issued, eviction ordered, forfeiture adjudge under any of the enactments hereby repealed shall, so far as may be, deemed to have been respectively done, incurred, assessed, imposed, held, served, issued, ordered, adjudged and made under this Act.

(3) All rules made under the Orissa Prevention of land Encroachment Act 15 of 1954 shall be deemed to have been made under this Act.

(4) Notwithstanding any judgement order of any Court all proceedings, whether original, appellate or by way of revision, started under the Orissa Prevention of Land Encroachment Act, 15 of 1954 which have been dismissed on or

after the 12th November, 1969 merely on the ground that provisions contained in that Act were void, shall be restored to the file of the respective authorities who had dismissed the proceedings and shall be proceeded with and disposed of in accordance with the provisions contained in this Act as if they had never been so dismissed.

NOTES

The proceedings which were already ordered and adjudged are protected and saved under the Act: (1966) OJD 135.

The Orissa General Clauses Act is not applicable to the proceedings

under the Act: 47 (1979) CLT (SN.69) 39.

19. Repeal of Orissa Ordinance No. 7 of 1971 :– (1) The Orissa Prevention of Land Encroachment Ordinance, 1971, is hereby repealed.

(2) Notwithstanding such repeal anything done or any action taken under the said Ordinance shall be deemed to have been ordered or taken under this Act.

NOTES

Orissa General Clauses Act has no application to proceedings initiated under the Prevention of Land Encroachment Act, 1954 : 47 (1979) CLT (Notes 69) 39.

[1][SCHEDULE - I]

[See 7 (6) and (8)]

Form of warrant to be issued by the Tahasildar under Secs. 7 or 8

SEAL

To,

The Officer-in-charge of the Civil Jail at..... whereas A.B. of ..... has resisted/obstructed C.D. in removing F.E. (or himself, that is, the said A.B.) from certain land in the village of ..... in the ..... mouza has failed to comply with the order issued under Sec. 8 of the Orissa Prevention of Land Encroachment Act, 1972;

And whereas, it is necessary in order to prevent the continuance of such resistance/obstruction/in order to enforce compliance of the said order, to commit the said A.B. to close custody.

You are hereby required under the provisions of Sec. 7/Sec. 8 of the said Act to receive the said A.B. into the Jail under your charge and there to keep him in safe custody for..... days.

[Dated this..... days of..... (Signature of Tahasildar)]

SCHEDULE - II

[Section 18]

Year	Number	Short title	Extent of repeal
(1)	(2)	(3)	(4)
1905 (Madras)	III	The Madras Land Encroachment Act	Whole
1917 (C.P. II		The Central Provinces Land Revenue Act	Secs. 217 & 219
1936	V	The Angul Laws Regulation	The entry "1947 XXXIII, The Orissa Land Encroachment Act, 1947" in Part VI of the Schedule.
1947	XXXIII	The Orissa land Encroachment Act	Whole
1950 IV		The Orissa Merged States (Laws) Act.	The entry "1947 XXXIII. The Orissa Land Encroachment Act, 1947" in the Schedule.
1984 XV		The Orissa Prevention of Land Encroachment Act.	Whole