The Orissa Prevention of Land Encroachment Rules, 1985

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Rule
THE-ORISSA-PREVENTION-OF-LAND-ENCROACHMENT-RULES-1985 of 1985

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The Orissa Prevention of Land Encroachment Rules, 1985Published vide Notification Orissa Gazette No. 71, dated 22.1.1986, Notification No. 59406-G.E. (G.L.) E. 31/85, dated 9.10.1985No. 59406-GE-(GL) E-31/85-R.E. - Whereas the draft of the Orissa Prevention of Land Encroachment Rules, 1983 was published, as required by Sub-section (1) of Section 10 of the Orissa Prevention of Land Encroachment Act, 1972 (Orissa Act 6 of 1972) in the Extraordinary Issue No. 1590 of the Orissa Gazette, dated the 2nd December, 1983 as S.R.O. No. 515/83 under the Notification of the Government of Orissa in the Revenue Department No. 54986-GE.(GL) R-2-83R., dated the 24th August, 1983 inviting objections and suggestions from alt persons likely to be affected thereby till the expiry of a period of thirty days from the date of publication of the said Notification in the Official Gazette,And whereas the objections and suggestions received in respect of said draft before the expiry of the said period have been considered by the State Government.Now, therefore, in exercise of the powers conferred by Sub-section (1) of Section 10 of the said Act, the State Government do hereby make the following rules, namely :

1. Short title and commencement.

(1)These rules may be called the Orissa Prevention of Land Encroachment Rules, 1985.(2)They shall come into force on the date of their publication in the Official Gazette.

2. Definition.

(1)In these rules unless the context otherwise requires(a)"Act" means the Orissa Prevention of Land Encroachment Act, 1972;(b)"Encroacher" means a person who unauthorisedly -(i)occupies any land as defined under Clause (d), or(ii)obstructs by dumping earth or any other materials, rubbish or filth

on it, or(iii)puts any fence around it, or(iv)takes up any construction or cultivation on it -(c)"Form" means a form appended to these rules;(d)"Land" means any land declared to be the property of Government under Section 2;(e)"Revenue Inspector" means the officer-in-charge of a Revenue Circle under a Tahasil;(f)"Section" means a section of the Act;(g)"Urban Area" means the area constituted into a Municipality or Notified Area under the Orissa Municipal Act, 1950;(h)Words and expressions used in these rules and not specifically defined therein shall have the same meaning as are respectively assigned to them in the Act.

3. Direction of encroachment and initiation of proceedings.

(1)The Revenue Inspector shall report the cases of unauthorised occupation of land to the Tahasildar and the details of such occupation shall be reduced to writing in Form "G". Within fifteen days of the case of each financial year the Revenue Inspector shall send a certificate to the Tahasildar that except the encroachment already reported there is no further encroachment in his area :Provided that nothing herein shall prohibit the Tahasildar to start a proceeding on his own motion or an information received from any other source.(2)On receipt of such report from the Revenue Inspector or an information received otherwise the Tahasildar shall cause to enter the details chronologically in the register in Form "H" and initiate proceeding under the provisions of the Act.

4. Assessment under Section 4.

- When land unauthorisedly occupied by any person is required to be assessed to rent under the provision of Clause (ii) of Section 4 and if no such prevailing rate exists as referred to in the said clause, it shall be assessed as nearly as possible in accordance with the provisions of section of Orissa Survey and Settlement Act, 1958 (Orissa Act 3 of 1959) for fixation of fair and equitable rent.

5. Conditions for reduction or remission of the amount of assessment, penalty or fine.

- Passing an order of remission or reduction of the amount payable by way of assessment or penalty, under Section 6-A, or of fine under Sub-section (3) of Section 7, by the Collector shall be subject to the following conditions, namely ;(i)the Tahasildar shall enquire in detail regarding the movable and immovable properties of the encroacher and submit details thereof to the Sub-divisional Officer alongwith the case records. If the encroacher is a landless person no penalty shall be levied on him. If the extent of land owned by any landless person does not exceed 0.25 standard acre the Collector may either reduce or remit the amount of assessment payable under Section 4, or fine under Sub-section 3 of Section 7 to such a extent as he considers necessary :Provided that in other cases if the encroacher is a member of the Scheduled Caste or Scheduled Tribe, the Collector may in suitable cases reduce or remit the penalty or fine to such extent as he considers necessary;(ii)if encroachment has been made by the same person in more than on place, the encroacher may be allowed remission or reduction of assessment, penalty or fine only in respect of such land as would be legitimately settled in his favour under Section 7;(iii)In the order-sheet of the case record in

which assessment, penalty or fine, as the case may be, has been proposed to be reduced or remitted, the Tahasildar shall record a clear report as to whether the encroacher is landless. The extent of land, if any possessed by him, if he belongs to Scheduled Caste/Scheduled Tribe and whether he has means to pay the assessment, penalty or fine, and whether any certificate case was filed and why the same is not recoverable. The said case record shall be submitted through the Sub-Divisional Officer to the Collector who shall pass appropriate order to remit or reduce the assessment, penalty or fine, as the case may be, in the said case record;(iv)if the encroacher has re-encroached after eviction, no such reduction or remission shall be allowed.

6. Form and manner of service of notice/order under Sections 4, 6, 7 and 8.

(1)Notice shall be issued in Form "A" before taking any action under Sections 4 and 6 and in Form "B" before taking any action under the proviso to Sub-section (1) of Section 7. They shall be served in the same manner as revenue processes are served and a copy shall be delivered to the occupier of the land or any adult male member of his family at his usual place of residence or to his authorised agent or by affixing a copy thereof to some conspicuous part of his last known residence and of the land in authorised unoccupation, in the presence of two persons when the notice could not be served on the encroacher, his agent or any adult member of his family.(2)An order under Section 8 shall be in Form "C" and shall be served in the same manner as laid down in Sub-rule (1) and shall also be proclaimed by beat of drum in the locality in which the land is situated in the presence of not less than two persons. If the village is uninhabited, the notice shall be published in the aforesaid manner in the nearest inhabited village. A copy of the order shall be published by affixing it in the notice board of the Tahasil Office and another copy sent to the Grama Panchayat, Notified area Council, Municipality, Special Planning Authority or Development Authority, as the case may be, under which the land situates.

7. Objections as to liability for proceedings under the Act and the manner of their disposal.

- If on receipt of notice in Form "A", any person pleads that he is not liable for being proceeded under the Act, the officer conducting the proceeding shall make a summary enquiry and determine the liability of the person for the whole or any part of the land unauthorisedly occupied for which notice was issued to him and may confirm, modify or drop the proceedings, as may be necessary ;Provided that he shall not modify or drop any proceeding in case where he is required to refer the case to the Sub-divisional Officer under the second proviso to Sub-section (2) of Section 7 or Section 8-A.

8. When eviction to be effected.

- No eviction shall be effected after sunset and before sunrise. The officer to be deputed under Sub-section (5) of Section 7 to effect eviction shall not be a person below the rank of a Revenue inspector.

9. Warrant for the arrest.

- A warrant for the arrest of a person under Sub-section (6) of Section 7 or Section 8 shall be issued by the Tahasildar in Form "D".

10. Manner of execution of warrants of arrest.

- A warrant of arrest under Sub-section (6) of Section 7 or Section 8 shall be executed by the Officer-in-charge of the police station within whose jurisdiction the person to be arrested ordinarily reside.

11. Order of forfeiture and its execution.

(1)When an order of forfeiture is passed by the Tahasildar under Sub-section (1) of Section 7, he shall-(a)if the property is movable, make arrangement for taking immediate possession thereof ; or(b)if the property is immovable, issue an order of attachment ; or(c)if the property is perishable in nature order immediate sale thereof and order the sale proceeds to be credited into the treasury.(2)The order of attachment shall be served on the encroacher in the same manner as the notice under Sub-rule (1) of Rule 6 and copies of the order shall be affixed as to conspicuous place in the village or Ward of the urban area, as the case may be, and on the land which is the subject matter of the proceeding.

12. Third party claims to properties seized or attached.

- If any person other than the encroacher puts forward claims to the property within one month from the date of its seizure or attachment, the Tahasildar shall make a summary enquiry and may confirm, modify or cancel his order, if necessary.

13. Final disposal of property forfeited.

- When an order of forfeiture is confirmed after making enquiry under Rule 12 the Tahsildar shall sell the property in public auction and credit the sale proceeds into the treasury:Provided that no order for final disposal of the property or its sale proceeds shall be passed until the period of appeal or revision as provided under Section 12 expires or if an appeal or revision is preferred within the said period until the appeal or revision is disposed of.

14. Declaration of land likely to be required for any development scheme under Section 7.

(1)Whenever it appears to the State Government that any land is likely to be required for any development scheme they may publish a notification in the Official Gazette declaring the area if required for such purpose.(2)Such publication shall be conclusive evidence of the fact that the land is likely to be required for a development scheme for the purpose of Sub-clause (iii) of Clause (b) of

the first provision to Sub-section (2) of Section 7.(3)On issue of such a notification, the Tahasildar, shall record the land mentioned in the said notification in a register prescribed in Form "I" and also in the remarks column of the copy of the record-of-rights of the concerned village against the plot so required.

15. Manner of settlement of encroached land under Section 7.

(1)Before the Tahasildar proceeds with the settlement of unauthorisedly occupied land under Sub-section (2) of Section 7 for agricultural or for homestead purpose, he shall publish a proclamation in Form "J" inviting objections, if any, fixing a date for hearing of objections.(2)Such proclamation shall be published by beat of drums and by affixing a copy of the same at a conspicuous place in the village in which the land is situated in the presence of not less than two persons. If the village is uninhabited, the notice shall be published in the aforesaid manner in the nearest inhabited village. A copy of the proclamation shall be published by affixing in the Notice Board of the Tahasil Office and a copy thereof shall also be sent to the Grama Panchayat, Notified Area Council/Municipality/ Special Planning Authority, or the Development Authority as the case may be, under which the land is situated.(3)On expiry of a period of fifteen days from the date of publication of the proclamation in the village and after hearing the objection, if any and after conducting such enquiry as he may consider necessary, the Tahasildar shall record a finding stating whether the land can be settled in favour of the encroacher under the Act. If the Tahasildar comes to a finding that the land cannot be settled for the encroacher is not entitled to settlement he shall proceed to evict the encroacher as prescribed under the Act.(4)If the Tahasildar comes to a finding that the land can be settled if the encroacher is entitled to settlement under the Act, he shall make an order granting such settlement and issue an intimation slip in Form "F" in the name of the person concerned and shall cause correction of the record-of-rights in his office and in the office of the Revenue Inspector as well.(5)If the encroached land is situated within an urban area the Tahasildar shall record his finding in the case record and on being satisfied that there is no prima facie objection, he shall direct the encroacher to file an affidavit in Form "E" if not a already filed, to the effect that neither he nor any member of his/her family living with him in common mess owns a house or house-site anywhere in the State except in respect of the land required for beneficial enjoyment of a holding as mentioned under Sub-clause (ii) of Clause (b) of the second provision to Sub-section (2) of Section 7. Thereafter he shall send the case record to the concerned Sub-divisional Officer, who shall, on receipt of the same, order the encroacher to pay the assessment/penalty and fine, if any, already levied or imposed by the Tahasildar and shall determine the market value which shall be the same as has been fixed for the urban- area under Rule 8 of the Orissa Government Land Settlement Rules, 1983 :Provided that Government may direct a lower market value to be paid by a specified class of persons.(6)Thereafter, the Sub-Divisional Officer shall order settlement of the land and send the case record to the Collector of the district for confirmation.(7)If the Collector is satisfied on scrutiny of the case record that the procedure prescribed under the Act and these rules have been observed he shall confirm the order of the settlement passed by the Sub-Divisional Officer in the same case record. If he is not satisfied about the procedure followed or he considers that the land cannot be settled or the encroacher is not entitled to settlement under the Act, he shall send back the case record to the Tahasildar through the Sub-Divisional Officer, for effecting eviction of the encroacher.(8)In all cases where settlement is

granted, the Sub-Divisional Officer shall direct the encroacher to pay the market value so determined by a date not later than ninety days from the date of order in one or more instalments to be fixed by him. If the market value is not paid within the period fixed by the Sub-Divisional Office he shall send back the case record to the Tahasildar for effecting eviction of the encroachment. After the market value is paid an intimation slip in Form "F" shall be issued by the Tahasildar in the name of person with whom the land is settled and ensure demarcation of land and correction of the record-of-rights in his office and in the office of Revenue Inspector as well. The land ordered for settlement under Sub-rule (4) and (7) shall be recorded in such status as are applicable-to the tenure of similar land in the vicinity for similar purposes under the same terms and conditions which are applicable to such tenures.If use of the land is non-agricultural and it is to be recorded under pattadari or similar other status, the encroacher shall be required to execute an agreement containing such terms and conditions as are fixed by the Government for similar lands in the locality to which the land belongs.

16. Manner of settlement of encroached land, encroached for more than thirty years.

- For settlement of land under Section 8-A the onus of proof that the encroacher has been in actual, continuous and undisputed occupation of the land for more than thirty years by the date of institution of the proceeding shall be on the encroacher. If the Sub-Divisional Officer order settlement of the land under Sub-section (3) of Section 8-A, he shall fix rent of the land in the manner prescribed under Rule 4 and shall direct the person to pay rent for the entire period of occupation subject to the provisions of limitation prescribed under the Orissa Limitation (Recovery of Revenue) Act, 1964 (Orissa Act 14 of 1964). In case no payment is made within the time fixed by the Sub-Divisional Officer, the order of settlement shall not be effected.

17. Powers of Board of Revenue to regulate the administrative procedure.

- The Board of Revenue may issue such further instructions which are not inconsistent with the provisions of the Act and these rules as it may consider necessary for -(a)effective implementation of the Act and these rules;(b)maintenance of all registers and returns essential to carry out the purpose of the Act, their preservation and final disposal; and(c)the budget heads to which the receipt and charge under the Act shall be credited and debited.

18. Repeal and savings.

- The Orissa Prevention of Land Encroachment Rules, 1977 is hereby repealed :Provided that anything done or any action taken under the rules so repealed be deemed to have been done or taken under the provisions of these rules, and those pending on the date of commencement of rules, shall be done or taken under the provisions of these rules.Form-ANotice under Section 9 of the O.P.L.E. Act, 1972[See Rule 6 (1)]ToShri.....
S/o.....Address.....Whereas it appears that you are in unauthorised occupation of land a Specified in the schedule below which is the property of

Government, you are hereby given notice to appear before the undersigned personally or through authorised Agent on..... at..... and show cause why you should not be proceeded against under Sections 4 and 6 of the Orissa Prevention of Land Encroachment Act, 1972 (Orissa Act 6 of 1972).

Schedule

Name of the village, police station or Thana andDistrict	Plot No.	Description	Entire extent of the plot as recorded inrecord-of-rights	Extent unauthorisedly occupied	Nature of occupation
1	2	3	4	5	6

Date .....TahsildarForm-BNotice under Section 9/7(1) of the O.P.L.E. Act, 1972[See Rule 6(1)]ToShri.....S/o.....Address.....Whereas after due enquiry the undersigned is satisfied that you are in unauthorised occupation of the land specified in the Schedule below which is the property of Government, you are hereby given notice to remove the encroachment within thirty days from the date of receipt of this notice failing which you will be summarily evicted from the land and any crop or other product raised on the land or any encroachment such as a building erected or a thing deposited thereon shall be liable to forfeiture.

Schedule 2

Name of the village, police station or Thana andDistrict	Plot No. Description	Entire extent of the plot as recorded inrecord-of-rights	Extent unauthorisedly occupied	Nature of occupation
1	2	3	4	5

Date.....TahasildarForm-COrder under Section 8 of the O. P. L. E. Act, 1972[See Rule 6(2)]Prohibitory order against construction or continuance of any building or structure on any unauthorisedly occupied landToShri.....S/o.....Address .....Whereas the undersigned has reason to believe that you are unauthorisedly constructing /about to construct a building or other structure on the land, which is the property of Government as defined under Section 2 of the O.P.L.E. Act, 1972, it is hereby ordered that you be and you are hereby prohibited from continuing the said construction/structure further.

Name of the village, police station or Thana andDistrict	Plot No.	Description	Entire extent of the plot as recorded inrecord-of-rights	Extent unauthorisedly occupied	Nature of occupation
1	2	3	4	5	6

Date.....TahsildarForm-D[See Rule 9]Form of Warrant of Arrest to be Issued by the Tahsildar

Seal

ToThe Officer-in-charge,Police Station.....Whereas Sri..... S/o..... of village/police-station has resisted/obstructed the officer deputed to remove him from unauthorised occupation of Government land in plot No. ..... of holding No. ..... has failed to comply with my order prohibiting him from constructing the building/structure on the said land and it is necessary to send him for imprisonment in the Civil Jail under Sections 7(6) and 8 of the O.P.L.E. Act, 1972 you are hereby directed to arrest the said ..... and produce him before me.Dated this.....day of.....20.....(Strike out which is not applicable)Seal :Signature of TahasildarForm-E[See Rule 15 (5)]In the Court of Shri.....Magistrate.....I Shri.....aged about.....years, son/daughter/wife of..... resident of Ward No..... Municipality/Notified Area, P.O..... P.S..... in the district of..... at present..... by profession..... do hereby..... solemnly affirm as follows :

1. that I or any of my family members living with me in common mess do not own or possess any residential house/building or house site anywhere in the State of Orissa.

2. That the land measuring..... acre pertaining to Plot No..... Khata No..... in the Municipality/Notified Area/Urban Area now under my unauthorised occupation is adjacent to my holding.

3. That the encroached land shown under item 2 above is necessary for beneficial enjoyment of my holding/for my residential purpose.

4. That I have not been considered for any homestead/plot in any Municipality/Notified Area/Urban Area.

5. That I solemnly swear and affirm that the above statements are true to my knowledge and belief and I also swear that I have not concealed anything regarding existing house or house-site owned either by me or anything of my family members, I swear the affidavit this the..... day of.....

Identified by meAdvocateSignature of the DeponentI Shri..... aged about..... years, son/daughter/wife of..... resident of village/town/Municipality/Notified Area/Urban Area..... P.O..... P.S..... in the district of..... at present by profession..... who is identified by Shri..... Advocate, appears before me and states on oath that contents of this affidavit are true to the best of his knowledge and belief.(Strike out which is unnecessary)DeponentMagistrate (Seal)Form-F[See Sub-rules (4) and (8) of Rule 15]Intimation Slip for Settlement of LandOffice of the TahasildarDistrictCase No.Name of the Village/Municipality/Notified Area/Urban Area(if Municipality or Notified Area, mention Ward No.)Thana No..... of the villageName of the person in whose favour land is ordered for settlementFather's nameCasteAddressHolding No.Plot No.Khata No.Area leased outClassification of the landAmount of assessment/penalty/finePurpose of

settlement of landStatusRemarksCertified that the above particulars have been incorporated in the relevant record-of-rightsTahsildarCertified that the above particulars have been incorporated in the circle records.Revenue InspectorForm-G[See Rule 3(1)]Statement of unauthorised occupation of Government land in village..... of in the circle..... Tahasil..... Sub-division..... District..... during the month of..... 19...../20.....

1. Serial No.

2. Name, father's name and address of the person in unauthorised occupation.

3. Whether the person belongs to Scheduled Caste or Scheduled Tribe.

4. Description of the land unauthorisedly occupied :

(a)Village, Thana and Tahasil(b)Holding No.(c)Plot No.(d)Full extent of plot(e)Extent occupied with boundary

5. Class of lands encroache, i.e. whether -

Gochar, Canal, Embankments, Rakhit, Sarbasadharan, set apart for common use of villages used for house site, temple site, likely to be required for any development scheme, belonging to an establishment of Government/ Company/Corporation.

6. Whether the land is in Rural Area/Municipality/Notified Area/Urban Area.

7. If the land is in Municipality or Notified area whether -

(i)the person or any member of his family living with him in common mess, own a house or house site in that Municipality or Notified Area;(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, or(iii)the land is reserved for the purpose of any Government or for any development purpose.

8. Whether the person is landless and, if not -

(a)the total extent of land owned by him (excluding his homestead);(b)extent of lands owned by all the members of his family who are living with him in common mess; and(c)extent of homestead land owned by him.

9. Income of encroacher and other members of the family jointly with him in one mess from sources other than agriculture.

10. Mode of occupation by-

(i)cultivation(ii)erection of house(iii)any other manner

11. Date of inspection of the Revenue Inspector.

12. Whether encroachment was booked previously, if so, the case number.....

13. Rate of assessment (Taram assessment of the village)

14. If not assessed, rate of assessment lands of similar description and advantage in the vicinity.

15. Assessment of the extent occupied.

16. Remarks of the Revenue Inspector.

Signature in full of the Reporting Officer(Revenue Inspector)Form-HRegistration of Encroachment[See Rule 3(2)]

1. Serial No.

2. Date

3. Name of village

4. Name of the encroacher, Caste, his father's name and address

5. Khata No.

6. Classification and status

7. Plot No.

8. Area encroached

9. Mode of encroachment

10. Date of receipt from Revenue Inspector

11. Assessment

12. Penalty

13. Fine

14. Market value

15. Date of disposal and by whom disposed of

16. Purpose of the order

17. Date of Settlement, if any and purpose

18. Date of vacation/eviction

19. Remarks of the Tahasildar which may include -

(a)The amount of sale proceeds of crop or other materials forfeited, if any;(b)Report of Revenue Inspector incorporating the amount in the village demand;(c)If appeal filed, the date of appeal and the decision of appellate Court.Form-IRegister Showing Government Land Likely to be Required for any Development Scheme[See Rule 14 (3)]

1. Name of the village

2. Classification of land

3. Khata No.

4. Plot No.

5. Area

6. Purpose for which reserved

7. No. and date of the Notification declaring the area likely to be required for any development scheme

8. Remarks

Form-J[See Rule 15 (1)]It is proposed to settle the land mentioned in the Schedule below in favour of..... S/o..... Caste..... Village..... who has encroached the said land being the property of Government. Any person intending to raise objection to the proposed settlement may file his objection before the undersigned within fifteen days of the publication of this notice at..... Tahasil Office. If no objection is filed till the expiry of the said period, the undersigned will proceed to settle the land in favour of the encroacher.

Schedule 3

Name of the village, police station or Thana andDistrict	Plot No.	Description	Entire extent of the plot as recorded inrecord-of-rights	Extent unauthorisedly occupied	Nature of occupation
1	2	3	4	5	6

Tahasildar