

The Orissa Communal Forest and Private Lands (Prohibition of Alienation) Act, 1948

(Received the assent of the Governor General in the 5th February, 1948)

An Act to prohibit the alienation of Communal, Forest and Private Lands in the ²[State] of Orissa

WHEREAS it is expedient to prohibit the alienation of all communal forests and private lands in the ²[State] of Orissa in the manner hereinafter appearing;

It is hereby enacted as follows;

1. Short title, extent and commencement – (1) This Act may be called the Orissa Communal, Forest and Private Lands (Prohibition of Alienation) Act, 1948.

(2) It extends to the whole of the ¹[State] of Orissa except the district of Sambalpur.

(3) It shall be deemed to have come into force on the 1st day of April, 1946.

2. Definitions- In this Act, unless there is anything repugnant in the subject or the context-

(a) Communal land means;

(i) in relation to estates governed by the Madras Estates Land Act, 1 of 1908, land of the description mentioned in Sub-clause (a) or Sub-Clause (b) of Clause (16) of section 3 of that Act : and

(ii) in relation to cases governed by the Orissa Tenancy Act, 11 of 1913, lands recorded as gochar rakshit, or sarbasadharan in the record-of-rights or waste lands which are either expressly or impliedly set apart for the common use of the villagers, whether recorded, as such, in the record-of-rights or not:

(b) Estate and Private land shall have the same meanings respectively assigned to those expressions either in the Madras Estates Land Act, 1 of 1908 or in the Orissa Tenancy Act, 11 of 1913.

(c) Forest land includes any waste land containing shrubs and trees and any other class of land declared to be forest land by a notification of the ¹[State] Government.

(d) Landlords means-

(i) in relation to estates governed by the Madras Estates Land Act, 1 to 1908, land holder as defined in that Act; and

(ii) in relation to cases governed by the Orissa Tenancy Act, 11 of 1913, landlord as defined in that Act.

CASE LAWS : Section 2 (a) and 3- Communal land-Lands not recorded as Gochar, Rakshit or Sarbasadharan in Record-of-Rights- No evidence that the land was either expressly or impliedly set apart for the common use of villagers-Land is held not a communal land to attract prohibition under Section 3 : **1992 (II) OLR 529.**

Section 2- Meaning of Communal Land-Implied grant can be inferred from long user: ILR 1973 cutt. 1080: **39 (1973) CLT 1136.**

Section 2 (a) –Meaning of-Communal Land-Defendant not a village-No right to claim the communal character: **28(1962) CLT 24.**

Section 2 (a) (ii)-Scope-A tank in the Anabadi Khata of the landlord.It has a note in the record of rights that the villagers have got a right of user of water – If the tank can be held to be communal-interpretation of “expressly or impliedly set apart for the common use of the villagers”- Fishery right and common use-Distinction thereof: **34(1968) CLT 1340.**

Section 2 (a) (ii) - “Communal land” and using the tank for bathing not sufficient to establish implied grant: **ILR 1971 Cutt. 1077: 37 (1971) CLT (Notes) 148.**

Section 2 (c)- “Forest Land”- Meaning of- The intention of the Legislature was not to convert all Bagayats lying within the State of Orissa to forest lands and thereby make Orissa Act of 1948 applicable to all Bagayats wherever situate : **36 (1970) CLT 536.**

Section 2 (c) read with Section 3 – “Landlord” –Not restricted by Madras Estates Land Act, 1908 or Orissa Tenancy Act, 1913: **39(1973) CLT (Notes) 5.**

Section 2 (c) - ‘Forest land’- Nature of-Definition inclusive and the term not defined in Indian Forest Act- Dictionary meaning to be sought : **64 (1987) CLT 41.**

3. Prohibition of Alienation of Communal Forest and Private Lands – (1) Notwithstanding anything contained in any other law for the time being in force or any express or implied agreement but subject to the provisions of Sub- section (2), no landlord shall, without the previous sanction of the Collector sell, mortgage, lease or otherwise assign or alienate or convert into raiyati land any communal forest or private land or create occupancy rights therein:

Provided that nothing in this sub-section shall be deemed to prohibit a landlord from leasing out his private land for a period not exceeding two years without previous sanction of the Collector.

(2) When a piece of land comes within the definition of “forest” as given in the Orissa Preservation of Private Forests Act, VIII of 1947, and also within the definition of “communal land” or “forest land” as given in this Act the previous sanction given by the appropriate authority under the clause (a) of sub-section (1) of section (3) of that Act shall be deemed to be the previous sanction as required by sub-section (1)

(3) Any landlord who contravenes the provisions of sub-section (1) and any agent of the landlord who abets such contravention shall be punishable with fine which may extend to 1000 rupees:

Provided that no landlord shall be liable to the penalty provided in this sub-section of any contravention that took place prior to the date of the passing of this Act.

Case Laws-: Section 3 – Khasmahal land and lease by Collector acting on behalf of the State, the landlord – previous sanction not necessary: **28(1962) CLT 24.**

Section 3- Character of communal land – Not Changed after vesting the reason is that it is not the nature of any encumbrance, but only represent the character of the land : **40(1974) CLT 38.**

Section 3- Land not mentioned as communal land in the record of rights- can not be treated as communal land in absence of evidence to the effect: **ILR 1965 Cutt. 22: 31(1965) CLT 654.**

Section 3- Govt. order No. 850 Dt. 2.8.1949- Delegation of Revenue powers- S.D.O. empowered to grant lease of waste land up to 15 acres-Effect of : **36 (1970)CLT 536.**

4. Transaction of the Nature Specified in Section 3 to be void – (1) Any transaction of the nature prohibited by Section 3 which took place on or after the 1 st day of April, 1946, shall be void and inoperative and shall not confer to take away or be deemed to have conferred to taken away any right whatever on or from any party to the transaction.

Provided that nothing contained in this Sub- section shall be deemed to invalidate-

- (i) any such transaction in respect of private land or forest land entered into prior to the 30th day of November, 1947 in favour of any religious, charitable or educational institution or of any hospital or of any local authority or cooperative society registered either under the Madras Co operative Societies Act, VI of 1932 or the Bihar and Orissa Co-operative Societies Act, VI of 1935, as the case may be, of any other public body or institution;

- (ii) any such transaction in respect of private land or forest land entered into prior to the 30th day of November, 1947 in favour of any person in good faith and for valuable consideration.

(2) If any dispute arises as to the validity of the claim of any person to any land under Clauses (i) and (ii) of the proviso to Sub-section, (1) it shall be upon to such person to apply to the District Judge of the district in which the land is situated for a decision as to the validity of such claim

(3) The District Judge to whom an application is made under Sub-section (2) shall, after giving notice to all the persons concerned in the transaction or interested in the land also, where the application is not made by the ¹[State Government] to the State Government decide whether the claim to the land is valid or not; and his decision shall be final and not subject to appeal or revision in any superior Court.

(4) The ¹[State Government] may, by notification makes rules for the purpose of carrying into effect the provisions of this section and in particular as to the fees to be paid in respect to the application referred to in Sub-section (3) and the procedure to be followed by the District Judge.

Explanation- In Sub- section (2), (3) and (4) the expression “District Judge” shall include “Additional District Judge” in respect of those cases that may be transferred to him for disposal.

Case Laws: Section 4 (1)- Civil Court’s jurisdiction to determine the validity of a lease to “Nij –jote land” as contemplated under-Scope of – Lessees to file such an application to enforce the law : **ILR 1964 Cutt. 111: 30(1964) CLT. (Notes) 6.**

Section 4 (2)- Jurisdiction of the Court – District Judge appointed as competent authority to decide the validity of claim- Jurisdiction of the ordinary Civil Court barred : **30 (1964) CLT 481.**

Section 4 (2) and section (7) of the Orissa Estates Abolition Act, 1951- Plaintiff claiming “khas possession “ under section of the O.E.A. Act on the basis of a sale deed which defendant disputes being void under Act (1) of 1948-Order of Estate Abolition Collector setting land on plaintiff without considering validity of sale deed and plaintiff not filing dispute before District Judge for decision –Decree passed of Civil Court basing on such sale deed and order of settlement of land under section (7) of O.E.A. Act invalid : **36 (1970) CLT 636.**

Section 4(2) and (3) Application of Lease after 1.4 .1946 Provisions not applicable- No application of District Judge lies: **ILR 1972 Cutt.753.**

Section 4 land leased out without previous sanction of Collector void: **64(1987) CLT 41.**

5 Collector to Sanction Prosecution- No prosecution shall be instituted under this Act against any person without the previous sanction of the Collector.

6. Bar of Jurisdiction-No notification or order of the State Government or of the Collector under this Act shall be liable to be questioned in any Court of Law.

7. Modification of Madras Act, 1 of 1908 and Bihar and Orissa Act, 11 of 1913- The provisions of this Act shall, as far as may be read and construed as forming part of Madras Estates Land Act, 1 of 1903 , or as the case may be, of the Orissa Tenancy Act, 11 of 1913:

Provided that where any of the provisions of this act is inconsistent or repugnant to the provisions of the aforesaid acts, it shall prevail and the said provisions of the aforesaid acts shall be deemed to be modified to that extent.

8. Power to Remove Difficulties-If any difficulty arises in giving effect to the provisions of the Act, the ¹[State Government] may as occasion may arise by order do anything which appears to them necessary for the purpose of removing the difficulty.