

ODISHA ORDINANCE NO. 1 OF 2015

THE ODISHA LAND GRABBING (PROHIBITION) ORDINANCE, 2015

[Promulgated by the Governor on the 26th May, 2015
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AN

ORDINANCE

**TO PROVIDE FOR PROHIBITION OF ACTIVITY OF LAND GRABBING IN THE
STATE OF ODISHA AND FOR MATTERS CONNECTED THEREWITH OR
INCIDENTAL THERETO.**

Whereas, there are organised attempts on the part of certain lawless persons operating individually and groups to grab either by force or by deceit or otherwise lands belonging to the Government, a local authority, a statutory or non-statutory body owned or controlled or managed by the Government, the Bhoodan Yagna Samiti, a public religious or charitable institution or endowment including a WAKF who are known as land grabbers;

And whereas, in urban areas due to pressure on land, prices have been constantly soaring high, and taking advantage of this phenomenon, the land grabbers without any semblance of right, title and interest over the land are setting up fictitious claims and indulging in unlawful activities like unauthorised occupation of land, fraudulent sale of land through unscrupulous real estate dealers or otherwise in favour of certain section of people resulting in large accumulation of unaccounted wealth and quick money to land grabbers and thereby adversely affecting public order;

And whereas, there have been large scale encroachments and unauthorised occupation of land and the existing laws are quite insufficient to meet the challenge posed by the menace of land grabbing in the State of Odisha, particularly in urban areas, it is felt necessary and expedient to arrest and curb such unlawful activity of land grabbing;

And whereas, the Legislature of the State of Odisha is not in session;

And whereas, the Governor of Odisha is satisfied that circumstances exist which render it necessary for him to take immediate action to prohibit activity of land grabbing in the State of Odisha and for matters connected therewith or incidental thereto;

Now, therefore, in exercise of the powers conferred by clause (1) of article 213 of the Constitution of India, the Governor of Odisha is pleased to promulgate the following Ordinance in the Sixty- sixth Year of the Republic of India: —

1. (1) This Ordinance may be called the Odisha Land Grabbing (Prohibition) Ordinance, 2015.

(2) It extends to the whole of the State of Odisha.

(3) It shall apply to all lands situated within the limits of Municipal Corporations, Municipalities, Notified Area Councils, Development Authorities constituted under the Odisha Development Authorities Act, 1982, Special Planning Authorities constituted under the Odisha Town Planning and Improvement Trusts Act, 1956 and land belonging to Government adjacent to the National Highway and to the State Highway and to such other local authority as the Government may, by notification, specify.

Odisha Act
14 of 1982

Odisha Act
10 of 1957.

Definition.

2. In this Ordinance, unless the context otherwise requires,—

(a) "Government" means the Government of Odisha;

(b) "land" includes,—

(i) land belonging to Government, a local authority, a statutory or non-statutory body, owned, controlled or managed by the Government, the Bhoodan Yagna Samiti, a public religious or charitable institution or endowment including a WAKF; and

(ii) rights in or over land, benefits to arise out of land and buildings, structures and other things attached to the earth or permanently fastened to anything attached to the earth;

(c) "land grabber" means a person or a group of persons who commits land grabbing and includes any person who gives financial aid to any person for taking illegal possession of lands or for construction of unauthorised structures thereon, or who sells or attempts to sell land or who collects or attempts to collect from any occupiers of such lands rent, compensation and other charges by criminal intimidation, or who abets the doing of any of the above mentioned acts, and also includes the successors-in-interest;

(d) "land grabbing" means every activity of grabbing of any land by a person or group of persons, without any lawful entitlement and with a view to illegally taking possession of such land, or enter into or create illegal tenancies or lease and licence agreements or any other illegal agreements in respect of such lands, or to construct unauthorised structures thereon for sale or hire, or give such lands to any person on rental or lease and licence basis for construction, or use and occupation, of unauthorised structures; and the term "to grab land" shall be construed accordingly;

(e) "notification" means a notification published in the *Odisha Gazette*; and the word "notified" shall be construed accordingly;

(f) "person" includes a group or body of persons, an association, or a religious or charitable institution or endowment, whether incorporated or not;

(g) "prescribed" means prescribed by rules made under this Ordinance;

(h) "Special Court" means a Special Court constituted under section 7; and

(i) "unauthorised structure" means any structure constructed without express permission of the concerned competent authority under the relevant law.

*Land
grabbing to
be unlawful.*

3. Land grabbing in any form is hereby declared unlawful and any activity connected with or arising out of land grabbing shall be an offence punishable under this Ordinance.

*Prohibition
of land
grabbing.*

4. (1) No person shall commit or cause to be committed land grabbing.

(2) Any person who, on or after the commencement of this Ordinance, continues to be in occupation, otherwise than as a lawful tenant, of a grabbed land belonging to the Government, local authority, statutory or non-statutory body, owned, controlled or managed by the Government, religious or charitable institution or endowment including a WAKF, shall be guilty of an offence under this Ordinance.

(3) Whoever contravenes the provisions of sub-section (1) or sub-section (2) shall, on conviction, be punished with imprisonment for a term which shall not be less than one year but which may extend to seven years, and with fine which may extend to twenty thousand rupees.

*Penalty for
other
offences in
connection
with land
grabbing.*

5. Whoever, with a view to grabbing land in contravention of the provisions of this Ordinance or in connection with any such land grabbing,—

(a) sells or allots, or offers or advertises for sale or allotment, or has in his possession for the purpose of sale or allotment any land grabbed; or

(b) instigates or incites any person to commit land grabbing; or

(c) uses any land grabbed or causes or permits knowingly to be used for the purposes, connected with sale or allotment; or

(d) enters into an agreement for construction of any structure or buildings on such land; or

(e) causes or procures or attempts to procure any person to do any of the above mentioned acts,

shall, on conviction, be punished with imprisonment for a term which shall not be less than one year but which may extend to seven years and with fine which may extend to twenty thousand rupees.

Offences by
companies.

6. (1) If the person committing an offence under this Ordinance is a company, the company as well as every person in charge of, and responsible to, the company for the conduct of its business at the time of commission of the offence, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Ordinance has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or that the commission of the offence is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation. — For the purposes of this section, —

(a) "company" means any body corporate and includes a trust, a firm, a society or other association of individuals; and

(b) "director" in relation to, —

(i) a firm, means either proprietor or partner in the firm;

(ii) a society, a trust or other association of individuals, means the person who is entrusted under the rules of the society, trust or other association with the management of the affairs of the society, trust or other association, as the case may be.

*Constitution
of Special
Courts and
Benches
thereof.*

7. (1) The Government may, for the purpose of providing speedy enquiry into any alleged act of land grabbing, and trial of cases in respect of the ownership and title to, or lawful possession of, the land grabbed, by notification, constitute a Special Court.

(2) A Special Court shall consist of a Chairman and four other members, to be appointed by the Government.

(3) The Chairman shall be a person who is or has been a Judge of a High Court and of the other four members, two shall be persons who are or have been District Judges (hereinafter referred to as Judicial Members) and the other two members shall be persons who hold or have held a post of a Collector (hereinafter referred to as Revenue Members):

Provided that the appointment of a person who was a Judge of a High Court as the Chairman of the Special Court shall be made after consultation with the Chief Justice of the High Court concerned:

Provided further that where a sitting Judge of a High Court is to be appointed as Chairman, such appointment shall be made after nomination by the Chief Justice of the High Court concerned, with the concurrence of the Chief Justice of India.

(4) The Government may, at any time, abolish such Special Court.

(5) The Chairman and other members shall hold office as such for a term of three years from the date on which they enter upon their office or till they attain the age of Sixty- five years or the Special Court is abolished under sub-section(4), whichever is earlier.

(6) Subject to the other provisions of this Ordinance, the jurisdiction, powers and authority of the Special Court may be exercised by benches thereof one comprising of the Chairman, a Judicial Member and a Revenue Member, and the other comprising of a Judicial Member, and a Revenue Member.

(7) Where the bench comprises of the Chairman, he shall be the Presiding Officer of such a bench and where the bench consists of two members, the Judicial Member shall be the Presiding Officer.

(8) It shall be competent for the Chairman either *suo motu* or on a reference made to him to withdraw any case pending before any bench and dispose of the same or to transfer any case from one bench to another bench in the interest of justice.

(9) Where it is reasonably apprehended that the trial of civil liability of a person accused of an offence under this Ordinance, is likely to take considerable time, it shall be competent for the Chairman to entrust the trial of the criminal liability of such offender to another bench in the interest of speedy disposal of the case.

(10) Where a case under this Ordinance is heard by a bench consisting of two members and the members thereof are divided in opinion, the case with their opinions shall be laid before another Judicial Member or the Chairman and that member or Chairman, as the case may be, after such hearing as he thinks fit, shall deliver his opinion and the decision or order shall follow that opinion.

Procedure
to be
regulated
by the
Special
Court.

8 (1) The Chairman may, by notification, make regulations not inconsistent with the provisions of this Ordinance or the rules relating to the procedure to be followed for the conduct of the cases and for regulating the manner of taking decisions.

(2) Every regulation made under this section shall, immediately after it is made, be laid before the Odisha Legislative Assembly if it is in session, and if it is not in the session in the next session immediately following, for a total period of fourteen days which may be comprised in one session or in two successive sessions and if, before the expiration of the session in which it is so laid or

the session immediately following, the Legislative Assembly agrees in making any modifications in the regulation or in the annulment of the regulation, the regulation shall, from the date on which the modification or annulment is notified, have effect only in such modified form or shall stand annulled, as the case may be, so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that regulation.

(3) Notwithstanding anything contained in the Code of Civil Procedure, 1908, the Special Court may follow its own procedure which shall not be inconsistent with the principles of natural justice and fair play and subject to the other provisions of this Ordinance and of any rules made thereunder while deciding the civil liability.

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1908.

(4) No act or proceeding of the Special Court shall be deemed to be invalid by reason only of the existence of any vacancy among its members or any defect in the constitution or reconstitution thereof.

*Removal of
the Chairman
and Members.*

9. (1) The Governor may, in consultation with the Chief Justice of the High Court of Odisha, remove from the office, the Chairman and the Government may remove any member who,—

(a) has been adjudged an insolvent; or

(b) has been convicted of an offence which, in the opinion of the Government, involves moral turpitude; or

(c) has become physically or mentally incapable; or

(d) has acquired such financial or other interest as is likely to affect prejudicially his functions; or

(e) has so abused his position as to render his continuance in office prejudicial to public interest.

(2) The Chairman shall not be removed from his office except by an order made by the Governor after an inquiry made by the Chief Justice of the High Court in which such Chairman has been informed of the charges.

(3) A member shall not be removed from his office without being given an opportunity of being heard.

Authorisation
of officers.

10. The State Government, may, by notification, authorise an officer of the Government, not below the rank of Tahasildar to be the officer responsible for administration and effecting implementation of the provisions of this Ordinance, initiate legal action against the persons contravening the provisions of this Ordinance and exercise such powers and perform such functions, in respect of such area, as may be specified in the notification.

Powers of
the Special
Courts.

11. (1) The Special Court may, either *suo motu* or on application made by any person, officer or authority, take cognizance of, and try, every case arising out of any alleged act of land grabbing or with respect to the ownership and title to, or lawful possession of, the land grabbed, whether before or after the commencement of this Ordinance, and pass such orders, including orders by way of interim direction as it deems fit.

(2) The Special Court shall, for the purpose of taking cognizance of the case, consider the location, or extent or value of the land alleged to have been grabbed or of the substantial nature of the evil involved or in the interest of justice required or any other relevant matter.

(3) Notwithstanding anything contained in the Code of Civil Procedure, 1908 and the Code of Criminal Procedure, 1973, any case in respect of an alleged act of land grabbing or the determination of question of title and ownership to, or lawful possession of, any land grabbed under this Ordinance, shall, subject to the provisions of this Ordinance, be triable in the Special Court and the decision of the Special Court shall be final:

Provided that if, in the opinion of the Special Court, any application filed before it, is *prima facie* frivolous or vexatious, it shall reject the same without any further inquiry.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, it shall be lawful for the Special Court to try all offences punishable under this Ordinance but shall follow the procedure prescribed by that code for the trial of warrant cases by the Magistrate.

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1974.

(5) The Special Court shall determine the order in which the civil and criminal liability against a land grabber be initiated.

(6) It shall be within the discretion of the Special Court whether or not to deliver its decision or order until both civil and criminal proceedings are completed.

(7) The evidence admitted during the criminal proceeding may be used while trying the civil liability, but additional evidence, if any, adduced in the civil proceedings shall not be considered by the Special Court while determining the criminal liability.

(8) Any person accused of land grabbing or the abetment thereof before the Special Court shall be a competent witness for the defence and may give evidence on oath in disproof of the charge made against him or any person charged together with him in the criminal proceeding:

Provided that he shall not be called as a witness except on his own request in writing or his failure to give evidence shall be made the subject of any comment by any of the parties or the Special Court or give rise to any presumption against himself or any person charged together with him at the same proceeding.

(9) Every case under sub-section (1) shall be disposed of by the Special Court, as far as possible, within a period of six months from the date of institution of the case before it.

(10) Every finding of the Special Court with regard to any alleged act of land grabbing shall be conclusive proof of the fact of land grabbing and of the persons who committed such land grabbing, and every judgement of the Special Court with regard to the determination of title and ownership to, or lawful possession of, any land grabbed shall be binding on all persons having interest in such land:

Provided that the Special Court shall, by order, specify the fact of taking cognizance of the case under this Ordinance, and such order shall state that any objection which may be received by the Special Court from any person within the period specified therein will be considered by it.

(11) It shall be lawful for the Special Court to pass such order as it may deem fit to advance the cause of justice and may award compensation in terms of ~~money~~ for wrongful possession of the land grabbed which shall not be less than an amount equivalent to the market value of the land grabbed as on the date of the order and profits accrued from the land payable by the land grabber to the Government and may direct redelivery of the grabbed land to its rightful owner and the amount of compensation and profits, so awarded and costs of redelivery, if any, shall be recovered as an arrear of land revenue in case Government is the owner, or as a decree of a Civil Court, in any other case which may be executed by the Special Court.

(12) When a person is convicted of an offence of land grabbing attended by criminal force or show of force or by criminal intimidation, and it appears to the Special Court that by such force or show of force or intimidation, the land has been grabbed, the Special Court may, if it thinks fit, order that possession of the same be restored after evicting by force, if necessary.

Search,
seizure and
investigation.

12. (1) If the Special Court has reasons to believe that any document which, in its opinion, shall be useful for, or relevant to, any investigation under this Ordinance, are available in any place, it may authorise any officer authorised under section 10 or any police officer to whom the investigation has been given to search for and to seize such documents.

(2) If the Special Court is satisfied that any document seized under sub-section (1) may be used as evidence for the purpose of any investigation under this Ordinance and that it shall be necessary to retain the document in its custody or in the custody of such officer as may be authorised, it may so retain or direct such authorised officer to retain such documents till the completion of such investigation.

(3) For the purpose of investigation and inquiry, Chapter XII and XV of the Code of Criminal Procedure, 1973 shall be applicable in addition to the power of the authorised officer under sub-section (2).

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1974.

Special Court
to have the
powers of the
Civil Court
and the Court
of Session.

13. Save as expressly provided in this Ordinance, the provisions of the Code of Civil Procedure, 1908 and the Code of Criminal Procedure, 1973, in so far as they are not inconsistent with the provisions of this Ordinance, shall apply to the proceedings before the Special Court and for the purposes of the provisions of the said enactments, Special Court shall be deemed to be a Civil Court, or as the case may be, a Court of Session and shall have all the powers of a Civil Court and a Court of Session and the person conducting prosecution before the Special Court shall be deemed to be a Public Prosecutor.

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Offences to be
cognizable and
non-bailable.

14.(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973,—

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1974.

(a) every offence punishable under this Ordinance shall be cognizable;

(b) no person accused of an offence punishable under this Ordinance shall be released on bail or on his own bond unless-

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 or any other law for the time being in force, on granting of bail.

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1974.

Enhanced
punishment
for offences
after
previous
conviction.

15. If any person, after having previously been convicted of any offence punishable under section 4 or section 5, subsequently commits and is convicted of an offence, punishable under any of those sections, he shall be liable to one and half the punishment which might be imposed on a first conviction under this Ordinance.

Burden of
proof.

16. Where in any proceedings under this Ordinance, the land is alleged to have been grabbed, and such land is *prima facie* proved to be the land owned by the Government, the Special Court shall presume that the person who is alleged to have grabbed the land is a land-grabber and the burden of proving that the land has not been grabbed by him shall be on such person.

Staff of
the Special
Court.

17. (1) The Chairman of the Special Court may appoint officers and other employees required to assist the Special Court in the discharge of its functions under this Ordinance.

(2) The categories of officers and employees who may be appointed under sub-section(1), their salaries, allowances and other conditions of service and the administrative powers of the Chairman of the Special Court shall be such as may be prescribed, after consultation with the Chairman.

Power to try offences.

18. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, every offence punishable under this Ordinance shall be tried by a Special Court, or, if a Special Court has not been constituted, by a Court of Sessions specifically empowered by the High Court of Odisha in this behalf.

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Persons acting under the Ordinance to be public servants.

19. Any person acting under this Ordinance shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code, 1860.

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1860.

Protection of persons acting in good faith.

20. No suit, prosecution or other legal proceeding shall lie against any officer or employee of the Special Court or any officer of the Government for anything which is, in good faith, done or intended to be done under this Ordinance or the rules made thereunder.

Ordinance to override other laws.

21. The provisions of this Ordinance shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or custom, usage or agreement or decree or order of a court or of any tribunal or authority.

Power to make rules.

22. (1) The Government may, by notification, make rules for carrying out all or any of the purposes of this Ordinance.

(2) Every rule made under this section shall, immediately after it is made, be laid before the State Legislature if it is in session and if it is not in session, in the session immediately following, for a total period of fourteen days which may be comprised in one

session, or in two successive sessions and if before the expiration of the session in which it is so laid or the session immediately following, and if the State Legislature agree in making any modification in the rule or in the annulment of the rule, the rule shall, from the date on which the modification or annulment is notified, have effect only in such modified form or shall stand annulled, as the case may be; so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Transfer of
pending
cases.

23. Any case, pending before any court or other authority immediately before the constitution of a Special Court, as would have been within the jurisdiction of such Special Court, shall stand transferred to the Special Court as if the cause of action of which such suit or proceeding is based had arisen after the constitution of the Special Court.

Prohibition
of
alienation
of lands
grabbed.

24. Any transaction relating to an alienation of land grabbed or any part thereof by way of sale, lease, gift, exchange, settlement, surrender, usufructuary mortgage or otherwise, or any partition effected or a trust created in respect of such land, which has taken place, whether before or after the commencement of this Ordinance shall, except to the extent ordered by the Special Court, be null and void.

Review.

25. The Special Court may, in order to prevent the miscarriage of justice, review its judgement or order passed under Section 11 but no such review shall be entertained except on the ground that it was passed under a mistake of fact, ignorance of any material fact or an error apparent on the face of the record:

Provided that it shall be lawful for the Special Court to admit or reject review petitions in circulation without hearing the petitioner:

Provided further that the Special Court shall not allow any review petition and set aside its previous order or judgement without hearing the parties affected.

Dr. S. C. JAMIR
Governor of Odisha

Dated the 26th May, 2015