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## **Orissa Scheduled Areas Transfer of Immovable Property (by Scheduled Tribes) Regulation, 1956**

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## ORISSA REGULATION NO. 2 OF 1956\*

The Orissa Scheduled Areas Transfer of Immovable Property  
(By Scheduled Tribes) Regulation, 1956

### REGULATION

#### TO CONTROL AND CHECK TRANSFERS OF IMMOVABLE PROPERTY IN THE SCHEDULED AREAS OF THE STATE OF ORISSA BY SCHEDULED TRIBES.

WHEREAS it is expedient to control and check transfers of immovable property by the Scheduled Tribes in the Scheduled Areas of the State of Orissa;

Now, therefore, in exercise of the powers conferred by sub-paragraph (2) of paragraph 5 of the Fifth Schedule to the Constitution, the Governor of Orissa, is pleased to promulgate the following Regulation made by him in the Seventh Year of the Republic of India:

(1)

Short title extent and commencement 1. (1) This Regulation may be called the Orissa Scheduled Areas Transfer of Immovable Property (by Scheduled Tribes) Regulation, 1956.

(2) It extends to all the Scheduled Areas of the State of Orissa.

(3) It shall come into force at once.

Definitions

2. In this Regulation unless there is anything repugnant in the subject or context –

[(a) ‘Agriculture’ includes making land fit for cultivation, cultivation of land, harvesting of crops, horticulture, forestry, planting of trees, farming, cattle breeding, dairy farming, seed farming, pisciculture, agriculture, sericulture, piggery, poultry farming and such other activities as are generally carried on by agriculturists, dairy farmers, cattle breeders, poultry farmers and other category of persons engaged in similar activities including marketing of agricultural products, their storage and transport and the acquisition of implements and machinery in connection with any such activity; and ‘agricultural purpose’ shall be construed accordingly;]<sup>1</sup>

Orissa  
Regulation 2  
of 1956

[(ab) “competent authority” means the Collector and includes any other officer or officers appointed by the State Government by notification to perform all or any of the functions of a competent authority under this regulation;]

Orissa Act  
of 1965

[(b) “Grama Panchayat” and “Grama Sasan” shall respectively mean the Grama Panchayat and Grama Sasan as defined in the Orissa Grama Panchayat Act, 1964;]

(c) “immovable property” does not include standing timber, growing crops or grass;

(d) “prescribed” means prescribed by rules made under this Regulation;

[(d1) “public financial institution” means –

i) any bank to which the Orissa Cooperative Societies Act, 1962 applies ;

Orissa Act 2  
of 1963

ii) a banking company within the meaning of the Banking Regulation Act, 1949;

10 of 1949

the State Bank of India constituted under the State Bank of India Act, 1955;

23 of 1955

iii) a subsidiary bank within the meaning of the State Bank of India (Subsidiary Banks) Act, 1959;

38 of  
1959

<sup>1</sup> Added by Orissa Regulation 1 of 1975

\* This Regulation received the assent of the President on 2<sup>nd</sup> September 1956 and was first published in the Orissa Gazette Extraordinary dated 4<sup>th</sup> October 1956

- (iv) corresponding new bank within the meaning of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970; 5 of 1970
- (v) the Agricultural Refinance Corporation established under the Agricultural Refinance Corporation Act, 1963; 1 of 1963
- (vi) the Agricultural Finance Corporation Ltd., a company incorporated under the Companies Act, 1956; 1 of 1956
- (vii) the Agro-Industries Corporation;
- (viii) any other financial institution which may be notified by the State Government;]

- iv) “Scheduled Areas” and “Scheduled Tribes” shall, respectively mean the Scheduled Areas specified in respect of the State of Orissa in the Scheduled Areas (States of Bihar, Gujrat, Madhya Pradesh and Orissa) Order, 1977 and the “Scheduled Tribes” specified in respect of the State of Orissa in the Constitution (Scheduled Tribes) Order, 1950 as modified from time to time;
- v) “Transfer of immovable property” means mortgage with or without possession, lease, sale, gift, exchange or any other dealings with such property not being a testamentary disposition and includes a charge or contract relating to such property.

Transfer of immovable  
property by a member of the  
Scheduled Tribe

3. [(1) Notwithstanding anything contained in any law for the time being in force any transfer of immovable property by a member of a Scheduled Tribe, except by way of mortgage executed in favour of any public financial institution for securing a loan granted by such institution for any Agricultural purpose, shall be absolutely null and void and of no force or effect whatsoever, unless such transfer is made in favour of another member of a Scheduled Tribe:

Provided that:-

- (i) nothing in this sub-section shall be construed as to permit any member of a Scheduled Tribe or his successor-in-interest to transfer any immovable property which was settled with such member of Scheduled Tribe by or under any authority of the State or the Central Government or under any law for the time being in force;
- (ii) in execution of any decree for realisation of the mortgage money, no property mortgaged as aforesaid shall be sold in favour of any person not being a member of a Scheduled Tribe; and
- (iii) a member of a Scheduled Tribe shall not transfer any land if the total extent of his land remaining after the transfer will be reduced to less than two acres in case of irrigated land or five acres in case of un-irrigated land.

Explanation-I:- For the purposes of this sub-section, a transfer of immovable property:-

- (a) in favour of a female member of a Scheduled Tribe, who is married to a person not belonging to any Scheduled Tribe, shall be deemed to be a transfer made in favour of a person not belonging to a Scheduled Tribe; and
- (b) shall include a transfer of immovable property to a person belonging to a Scheduled Tribe for consideration paid or provided by another person not belonging to any such Tribe.

Explanation II:- For the purposes of clause (iii) of the proviso, the expression “irrigated land” shall mean such land which is irrigated atleast for one crop in a year and the expression “un-irrigated land” shall be construed accordingly.<sup>1</sup>

- (2) Where a transfer of immovable property is made in contravention of sub-section (1) the competent authority may, either on application by any one interested therein [ or on information received from the Grama Panchayat]<sup>2</sup> or on his own motion and after giving the parties an opportunity of being heard order ejectment against any person in possession of the property claiming under the transfer and shall cause restoration of possession of such property to the transferor or his heirs. In causing such restoration of possession the competent authority may take such steps as may be necessary for securing compliance with the said order or preventing any breach of peace.  
[Provided that if the competent authority is of the opinion that the restoration of possession of immovable property to the transferor or his heirs is not reasonably, practicable he shall record his reasons therefore and shall, subject to the control of State Government, settle the said property with another member of a Scheduled Tribe or in the absence of any such member, with any other person in accordance with the provisions contained in the Orissa Government Land Settlement Act, 1962.

Explanation- Restoration of possession means actual delivery of possession by the competent authority to the transferor or his heir].<sup>3</sup>

[Provided further that where it is decided by the competent authority to settle the said property with any person other than a person belonging to a Scheduled Tribe in accordance with the Orissa Government Land Settlement Act, 1962, he shall obtain prior approval of the concerned Grama Panchayat, accorded with the concurrence of the Grama Sasan]<sup>4</sup>

Orissa Act  
33 of 1962

- (3) Subject to such conditions as may be prescribed an appeal if preferred within thirty days of the date of the order under sub-section (2) shall, if made by the Collector, lie to the [Revenue Divisional Commissioner]<sup>5</sup> and if made by any other competent authority to the Collector or any other officer specially empowered by the State Government in this behalf.
- [(3-a) (i) Any order passed by the competent authority under sub-section (1) or under sub-section (2) may, within a period of five years from the date of such order, be revised either on own motion or otherwise, by the Revenue Divisional Commissioner if the order was passed by the Collector and by the Collector if it was passed by any other competent authority, after giving the parties concerned a reasonable opportunity of being heard;  
Provided that no order shall be revised under this sub-section if an appeal against such order has been entertained under sub-section (3).  
(ii) For the purpose of revising any order, the Revenue Divisional Commissioner or, as the case may be, the Collector shall follow such procedure as may be prescribed and shall have power to call for and examine the records of the proceedings wherein such order was passed and pass such order as he deems fit.)<sup>6</sup>
- (4) Subject to [ any order passed under Sub-Section (3) or sub-section (3-a)] the decision of the competent authority under sub-section (2) shall be final and shall not be challenged in court of law.

<sup>1</sup> Substituted by Orissa Regulation 1 of 2002

<sup>2</sup> Added by Orissa Regulation 1 of 2002

<sup>3</sup> Added by Regulation 1 of 1966

<sup>4</sup> Added by Regulation 1 of 2002

<sup>5</sup> Substituted by Regulation 1 of 1997

<sup>6</sup> Substituted in Orissa Regulation 1 of 1997

Eviction of person in  
authorized occupation of  
property

- [3-A (1) Where a person is found to be in unauthorized occupation of any immovable property of a member of the Scheduled Tribes by way of trespass or otherwise, the competent authority may, either on application by the owner or any person interested therein, [ or on information received from the Gram Panchayat] or on his own motion, and after giving the parties concerned an opportunity of being heard, order ejection of the person so found to be in unauthorized occupation and shall cause restoration of possession of such property to the said member of the Scheduled Tribe or to his heirs.
- (2) The provisions contained in sub-sections (2), (3) and (4) of section 3 shall, mutatis mutandis, apply to the proceedings instituted or initiated under sub-section (1) ]<sup>1</sup>
- (3) In every case after finalization of the proceedings under sub-section (1), the competent authority shall make a report to the concerned Grama Panchayat about the order of ejection passed in respect of any person in unauthorized occupation of any immovable property of a member of a Scheduled Tribe and the restoration of possession of the property to such member on his heirs and in case of failure of such restoration, the reasons for such failure.]<sup>2</sup>

Reversion of land of Scheduled  
Tribes, which was transferred by  
fraud.

- [3-B (1) Every person who, on the date of commencement of the Orissa Scheduled Areas Transfer of Immovable Property (By Scheduled Tribes) Amendment Regulation, 2000 (hereinafter referred to in this section as the Amendment Regulation of 2000), is in possession of agricultural land which belonged to a member of a Scheduled Tribe at any time during the period commencing on the 4<sup>th</sup> October, 1956 and ending on the date of commencement of the Amendment Regulation of 2000 shall, within two years of such commencement, notify to the Sub-Collector in such form and in such manner as may be prescribed, all the information as to how he has come in possession of such land.
- (2) If any person fails to notify the information as required by sub-section (1) within the period specified therein it shall be presumed that such person has been in possession of the agricultural land without any lawful authority and the agricultural land shall on the expiration of the period aforesaid, revert to the person to whom it originally belonged and if that person be dead, to his heirs.
- (3) On receipt of the information under sub-section (1), the Sub-Collector shall make such enquiry as may be necessary about all such transactions of transfer and if he finds that the member of Scheduled Tribe has been defrauded of his legitimate right he shall declare the transaction null and void and:-
- (a) Where no building or structure has been erected on the agricultural land prior to such finding, pass an order revesting the agricultural land in the transferor and if he be dead, in his heirs;
- (b) where any building or structure has been erected on the agricultural land prior to such finding, he shall fix the price of such land in accordance with the principles laid down for fixation of price of land in the Land Acquisition Act 1894 and order the person referred to in sub-section (1) to pay to the transferor the difference, if any, between the price so fixed and the price actually paid to the transferor.

Provided that where the building or structure has been erected after the commencement of the Amendment Regulation of 2000, the provisions of clause (b) shall not apply;

Provided further that fixation of price under clause (b) shall be with reference to the price on the date of registration of the case before the Sub-Collector.]<sup>3</sup>

1 of 1984

<sup>1</sup> . Substituted by Orissa Regulation 1 of 1975

<sup>2</sup> Added in Orissa Regulation 1 of 2002

<sup>3</sup> Added in Orissa Regulation 1 of 2002

Inadmissibility of a deed for the purpose of registration	4.	Notwithstanding anything contained in the Indian registration Act, 1908 no deed of transfer of any immovable property executed in contravention of the provisions of this Regulation shall be accepted for Registration.	XVI of 1908
Surrender or relinquishment not valid unless settled by land Lord	5.(1)	No surrender or relinquishment of any holding or a part of a holding by a tenant to a landlord under any law for the time being in force and applicable to such tenancy, such tenant being a member of a Scheduled Tribe, shall be valid unless after such surrender or relinquishment the landlord thereof by whatever name called either settles the said holding or part of the holding as the case may be, with another member of a Scheduled Tribe or else retains it in his possession or settles it with any other person with the approval of the competent authority when such member of a Scheduled Tribes is not available.	
	(2)	Any surrender or relinquishment shall be deemed to be a transfer of immovable property within the meaning of this Regulation and except as otherwise provided in sub-section (1) the other provisions of this Regulation shall, so far as may be applied.	
	(3)	Nothing in this section shall apply to any tenant holding immediately under the State Government.	
Bar to attachment of immovable	6.	In execution of a money-decree against a member of a Schedule Tribe, no right, title or interest held by him in any immovable property within any Scheduled Area shall be liable to be attached and sold except as and if prescribed.	
Punishment of offences.	7.(1)	If any person is found to be in possession of any immovable property in contravention of the provisions of this Regulation, then, without prejudice to his liability to ejectment under this Regulation, or where any person, having been evicted under any provision of this Regulation from any immovable property belonging to a member of a Scheduled Tribe, continues to be in possession of the same, he shall be punishable with rigorous imprisonment for a term which may extend to two years, or with fine which may extend to five thousand rupees, or with both.	
	(2)	Where any person, having been evicted under any provision of this Regulation from any immovable property belonging to a member of a Scheduled Tribe, reoccupied the same shall be punishable with rigorous imprisonment for a term which may extend to three years, or with fine which may extend to ten thousand rupees, or with both.	
	(3)	When a Court imposes sentence of fine or a sentence of which fine forms a part, the Court may, when passing judgement, order the whole or any part of the fine to be paid to the member of Scheduled Tribe to whom the immovable property belongs, or to his heirs. <sup>1</sup>	
Offences to be tried by Executive Magistrate and to be cognizable	7. A (1)	The State Government may confer, on an Executive Magistrate, the powers of a Judicial Magistrate of the first class or of the Second class for the trial of the offences under this Regulations, and on such conferment of powers, the Executive Magistrate, on whom the powers are so conferred, shall be deemed, for the purposes of the Code of Criminal Procedure, 1973, to be a Judicial Magistrate of the first class or of the second class, as the case may be.	2 of 1974
	(2)	[An offence under this Regulation may be tried summarily by a Magistrate.	
	(3)	Every offence under this regulation shall be cognizable.] <sup>1</sup>	
Consideration money not refundable in case of invalid transfer	7 B.	Notwithstanding anything contained in any law for the time being in force, where a transfer of immovable property is found to have been made in contravention of the provisions of section 3 and the transferee or any other persons in possession of the property has been evicted therefrom under the said section, the transferee shall not be entitled to the refund of any amount paid by him to the transferor by way of consideration for the transfer.	
Burden of proof and power of Court to ignore admission.	7 C.	Notwithstanding anything contained in any other law for the time being in force,	

<sup>1</sup> Substituted by Orissa Regulation 1 of 2002

(a) If any proceedings under this Regulation the validity of the transfer of relinquishment of any immovable property is called in question or if such proceedings are for the recovery of possession of immovable property the burden of proving that the transfer or relinquishment was valid shall lie on the transferee, [for any person claiming the right to the property through the transferee.]<sup>1</sup>

(b) the Court shall, in any suit or proceeding relating to the transfer of immovable property of a member of the Scheduled Tribes, have power to require any fact expressly or impliedly admitted by such member to be proved otherwise than by mere admission.

Amendment of the limitation Act, 1963 in its Application to the Scheduled Area.

7 D. In the Limitation Act, 1963 in its application to Scheduled Areas in the Schedule, after the words “twelve years” occurring in the second column against article 65, the words, brackets and figure “but thirty years in relation to immovable property belonging to a member of Scheduled Tribe specified in respect of the State of Orissa in the Constitution (Scheduled Tribes) Order, 1950” as modified from time to time shall be added.

Bar of jurisdiction of civil courts.

[7 E. No Civil Court shall have jurisdiction to try and decide any suit or proceeding so far as it relates to any manner which any officer or other competent authority is empowered by or under this Regulation to decide.]<sup>2</sup>

Rules

8 (1) The State Government may from time to time make rules consistent with the provisions of this Regulation to carry out the purposes thereof.

(2) All rules made under this section shall be published in the Gazette and on such publication shall have the effect as if enacted under this Regulation.

9 (1) On and from the date of commencement of this Regulation the following shall stand repealed, namely:

(a) The Agency Tracts Interest and Land Transfer Act, 1917.

(b) The enactment mentioned in column 2 of the Schedule to the extent specified in column 3 thereof in so far as they are in force [in the scheduled areas].

(2) Notwithstanding such repeal by this Regulation the repeal shall not affect -

(a) the previous operation of such law or provisions so repealed or the validity, effect or consequence of anything done or suffered there under;

(b) any right, title, privilege, obligation or liability acquired, accrued or incurred under the said law or provisions or

(c) any investigation, legal proceedings or remedy in respect of such right, title, privilege, obligation or liability or

(d) any release or discharge from any debt, penalty obligation liability, claim or demand, and any such investigation, legal proceedings or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if this Regulation had not been made.<sup>1</sup>

Madras  
Act of  
1917

<sup>1</sup> . Added in Orissa Regulation 1 of 1997

2. Added in Orissa Regulation 1 of 1997

**SCHEDULE**List of Enactment Repealed  
(See Section 9)

	Number and year	Short title	Extent of Repeal
	1	2	3
1	Madras Act 1 of 1917	Agency Tracts Interest and Land Transfer Act, 1917	The whole
2	Orissa Act IV of 1950	Orissa Merged States (Laws) Act, 1950	The words “subject to the restriction that no transfer of a holding from a member of a aboriginal Tribe to a member of a non-aboriginal Tribe shall be valid unless such transfer is made with the previous permission of the Sub-Divisional Magistrate concerned” in item 1 of clause (d) of Section-7 shall be omitted.
3	[(Central Provinces Act XI of 1893	Central Provinces Tenancy Act 1898 amended by Orissa Act XIII of 1953.	The proviso to clause (b) of sub-section (2) of section 46 shall be omitted.] <sup>1</sup>

1. Omitted by Regulation 1 1966