

A.P. LAND ENCROACHMENT ACT, 1905

Land Cell

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BACK GROUND : Before 1869, unauthorised encroachments were dealt with as criminal trespass and punishment used to be awarded by imprisonment. In the year 1869 the High Court of Madras held that the procedure followed was illegal. Thereafter, upto 1905 the Government was levying what was known as penal or prohibitory assessment or charge on unauthorised occupations of land and collecting it as arrears of land revenue under the provisions of Revenue Recovery Act. The Full Bench of the Madras High Court in *Madatapu Ramaiah Vs. Secretary of State* (ILR 27 MAD 386) held that the imposition was not Land Revenue and could not be recovered as an arrears of Land Revenue though the procedure followed was found effective to check the unauthorised encroachments on Government lands. It was this decision that led to the enactment of the Land Encroachment Act, 1905 for more effective checking of encroachments on Government and Communal lands.

OBJECT : To provide measures for checking unauthorised occupation of Government lands, to protect the property of Government and to curb or restrain unauthorised occupation of land by the imposition of penal assessment or by subjecting unauthorised occupants to summary eviction.

JURISDICTION : The Act extends to the entire State of Andhra Pradesh including Schedule Areas. Section 13 of the Andhra Pradesh Land Encroachment (Extension & Amendment) Act, 1958 says that nothing contained in the A.P.Telangana Area Land Revenue Act, 1917 . Fasli shall apply in so far as it relates to any matter or proceeding dealt with in the Principal Act as amended by this Act except as respects things done or omitted to be done before the commencement of this Act.

DEFINITIONS :

- Government property means all public roads, streets, lanes and paths, bridges, ditches, dykes 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 courses and all standing and flowing water and all lands situated are the property of the Government including Railway lands and land in Port limits. (Section 2(1))
- All public roads and streets vested in any local authority shall be deemed to be the property of the Government. (Section 2(2))

STEPS FOR IMPLEMENTATION :

- The Tahsildar levies assessment in respect of unauthorized occupations (in villages), which are unobjectionable . in the case of assessed waste only assessment, in case of unassessed waste highest dry rate or highest wet rate as the case may be. (Section 3 of the Act, 1905 and Rule 4 of Rules, 1976)
- Levies ground rent in the case of unauthorised occupations in Towns (Rule 3 of Rules, 1976)
- May impose a penalty in addition to the assessment basing on the nature of encroachment. (Section 5 of the Act)
- May recover the assessment or penalty levied as arrears of land revenue under A.P.Revenue Recovery Act, 1864. (Section 9 of the Act)
- May in addition to the imposition of assessment and penalty, summarily evict the person in occupation, if the encroachments are found objectionable and also forfeit any crop or other product raised on the land or building or any structure or deposited anything thereon if not removed by the encroacher before the time specified in the Notice served. (Section 6 of the Act)
- Before taking proceedings under Section 5 or 6, service of Notice is a mandatory and it should contain specification of the land so occupied and calling on him to show cause before certain date why he should not be proceeded against him under Section 5 or 6. If such Notice is not obeyed, the eviction to be carried out after hearing objections if any filed. If he resists or obstructs the Tahsildar, may issue Warrant for the arrest of the said person for such a period not exceeding 30 days in order to prevent the continuance of such obstruction or resistance or may send him with a Warrant in form of schedule for imprisonment in the Civil Jail of the District for the like period. (Section 6 & 7 of the Act)
- Encroachment by group of persons on Government lands is liable for eviction without Notice. If necessary, with the assistance of Police. (Section 7 (A) of the Act).

Section 7-A of LE Act was introduced by means of an amendment in 1980. When a group of persons without entitlement and with a common objection of occupying and Government land occupy and do not vacate on demand by the Collector shall order without notice and immediate vacation of the encroachers and for taking possession of the land. Thereupon, the encroachers should be evicted from the land by force, taking such police assistance as may be necessary and take possession of the land. An order U/s 7-A of the Act for eviction so passed by the Collector shall be final and shall not be questioned in any Court. If any dispute arises as to whether any land is the property of the Government, such land shall be presumed to be the property of the Government until the contrary is proved.

APPEALS :

- Appeal lies to the RDO against the orders of Tahsildar, to the District Collector against the orders of RDO and to the CCLA against the orders of District Collector otherwise than an Appeal. No Appeal shall be brought after the expiration of 60 days from the date of receipt of the copy of order. The District Collector and the CCLA have got revisional powers. (Sections 10, 11 & 12 of the Act)
- The Government have power to call for records and pass necessary orders. [Section 12(A)]

PUNISHMENTS :

- Any person who unauthorisedly re-enters and occupies land from which he was evicted, shall be punishable with imprisonment upto 6 months or with fine upto Rs.1000/- or with both. (Section 6 (3) of the Act)

BARRING OF JURISDICTION OF CIVIL COURTS :

- Conclusiveness of decision as to amount of assessment payable under Section 3 shall not be questioned in any Civil Court. (Section 4 of the Act)
- No decision made or order passed under this Act except proceeding effecting the title to the land of a person shall be called in question before Civil Court. (Section 14 of the Act)

OTHER RELATED ISSUES :

- Petty encroachments on Porambores may be ignored, but should be recorded in the Adangal / Pahani. (BSO 26 Para 8)
- The expenditure incurred in connection with the eviction should be borne by the Government. (BSO 26 Para 7)
- Encroachments on Government property vest in Local Bodies or Municipalities, they are responsible for dealing with such encroachments under their respective Acts. (BSO 26 Para 10(1))

IMPORTANT CASE LAWS :

- Authorities constituted under the Act cannot take eviction proceedings against person in unlawful and illegal encroachments of Government

- lands without following the procedure laid down under Section 6 & 7 of the Act. (*K.R.Zilla Parishad High School Committee, Katur Vs. The State of A.P.*, 1976(1) An WR 86)
- Mere service of notice periodically under Section 7 is ineffective and does not give rise to a cause of action. (*Ravipudi Abbayya Vs. State of A.P.* AIR 1960, AP 134)
 - Orders passed without considering the objections of the petitioner - occupant . Not valid . Orders set aside and matter remanded for passing fresh order. [*Jyothi Educational Society Vs. Govt. of A.P.*, 2002 AIHC 3576: 2002 (6) ALD 83: 2002 (4) ALT 417 (AP) (DB)]
 - Appeal is not maintainable against a show-cause notice. An order passed by the Government stopping all further proceedings pursuant to show-cause notice issued to alleged encroacher were *ex facie* illegal and must be declared void. [*G.Rajender Reddy Vs. Government of A.P.*, 2002 94 ALD 113: 2002 (3) LS 186: 2002 (5) ALT 289: 2002 AIHC 3265].
 - It is not beyond the jurisdiction of Tahsildar to order vacating certain land belonging to Government in a Municipality and in possession of an occupier, however, he has to follow the procedure contemplated under Section 7 of the Andhra Pradesh Land Encroachment Act, 1905 before initiation of action. (*Anjani Kumar Vs. Special Tahsildar*, W.P.No.11704/84 dated. 13-7-1988 (Unreported)].

THE ANDHRA PRADESH LAND ENCROACHMENT ACT, 1905¹

(Act No. III of 1905)

STATEMENT OF OBJECTS AND REASONS

- (1) The objects of the bill is to provide means of protecting public lands from encroachment, and to place upon a statutory basis the customary levy of assessment on such lands when occupied without authority.
- (2) There are two classes of land which it is desired to protect. The first and more important is that which is termed 'Poramboke' that is, unassessed land set apart for public purposes or for the communal use of the villagers as village site, threshing floors, roads, paths, water courses and the like. The second class! "> 'assessed waste', or land available for occupation by private persons, but which has not been formally applied for or assigned by the revenue authorities under the rules prescribed in that behalf. The occupation of the latter class is ordinarily unobjectionable, but it is desirable to provide means of enforcing the strict observance of the rules laid down for its assignment. As regards the other class, encroachments upon such 'Poramboke' lands are all together objectionable and require prompt and stringent measures for their prevention.
- (3) Before the year 1869 unauthorised encroachments were generally dealt with as criminal trespass, for which imprisonment might be awarded, and were suppressed accordingly; but in that year the High Court of Madras-ruled under the Penal Code the Procedure was illegal, the Collectors were accordingly authorised by Government to evict trespasser by charging them assessment at rates calculated to be prohibitive, such assessment being collected in accordance with the provisions of the Madras Revenue Recovery Act. 1864.
- (4) The practice of charging this Penal a sssessment has continued upto the present time, and has generally proved effective in checking encroachment. Recently, however, the High Court of Madras has decided that the practice is not authorised by law. Hence the necessity for the present Legislation. An Act to provide measures for checking unauthorised occupation of lands which are the property of Government.

Preamble: Whereas it has been the practice to check the unauthorized occupation of lands which are the property of Government by the imposition of penal or prohibitory assessment or charge, and whereas doubts have arisen as to how far such practice is authorized by law and it is expedient to make statutory provision for checking such occupation: It is hereby enacted as follows:

1. Short title and extent:—

This Act may be cited as the Andhra Pradesh Land Encroachment Act, 1935. It extends to the whole of the State of Andhra Pradesh.

1-A. Definitions:—

In this Act, unless the context otherwise requires,— (a) "Collector" means any officer incharge of a revenue division and includes a Deputy Collector, a Sub-Collector and an Assistant Collector. ²[(b) "Deputy Tahsildar" means the Deputy Tahsildar in independent charge of a Taluk or Sub-Taluk, the dependent Deputy Tahsildar of a Sub-Taluk, or the Headquarters Deputy Tahsildar, in whose jurisdiction the land is situated and includes a Special Deputy Tahsildar.] ¹(c) "Tahsildar" means the Tahsildar in whose jurisdiction the land is situate and includes Special Tahsildar.

2. Right of Property in public roads, etc, waters and lands:—

(1) 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, nallas, lakes and tanks, and all canals and water-courses, and all standing and flowing water, and all lands, wherever situated, save in so far as the same are the property-

- (a) of any Zamindar, poligar, mittadar, jagirdars, shrortriemdar or any person claiming through or holding under any of them, or
 - (b) of any, person paying shist, Kattubadi, jodi, poruppu or quit-rent to any of the aforesaid persons, or
 - (c) of any person holding under ryotwari tenure, ²[* * *] or in any way subject to the payment of land-revenue direct to Government, or
 - (d) of any other registered holder of land in proprietary right, or.
 - (e) of any other person holding land under grant from the Government otherwise than by way of licence and, as to ands, save also in so far as they are temple sites or owned as housesite or backyard, are and are hereby declared to be the property of Government except as may be otherwise provided by any law for the time being in force, subject always to all rights of way and other public rights and to the natural and easement rights of other land owners, and to all customary rights legally subsisting.
- (2) All public roads and streets vested in any local authority shall, for the purposes of this Act, be deemed to be the property of Government.

Explanation:- In this section "high water mark" means the highest point reached by ordinary spring tides at any session of the year. Government, as the owner of the public streets and appurtenances there to, can vest them in any Municipality and withdraw the control from them. Government is a necessary party in suits of declaration of such sites.

Proddatar Municipality vs. Gurnam Hanumanthu, AIR 1954 Mad. 479.

3. Levy of assessment on lands unauthorizedly occupied:—

- (1) Any person who shall unauthorizedly occupy any land which is the property of Government shall be liable to pay by way of assessment—
- (i) if the land so occupied forms an assessed survey number or part thereof, the full assessment of such number for the whole period of his occupation or a part thereof proportionate to the area occupied, as the case maybe, provided that, for special reasons, the Collector or subject to his control, the Tahsildar may impose the full assessment of such number or any lesser sum irrespective of the area occupied.
 - (ii) if the land so occupied be unassessed, an assessment on the area occupied calculated for the same period at the rate imposed on lands of a similar quality in the neighbourhood, or at the highest dry or wet rate of the village, as the case may be, or when no such rates exist in such manner as maybe prescribed in rules or orders under Section 8: Provided that payment of assessment under this sub-section shall not confer any right of occupancy.

Explanation:- For the purposes of this sub-section occupation for an incomplete portion of a fasli may be deemed to be occupation for a whole fasli.

- (2) In the case of any class of land which is ordinarily granted on lease or licence, the Government may levy, in addition to the assessment imposed under sub-section (1), a further sum equivalent to the annual rent or fee which would normally be realisable thereon.

4. Conclusiveness of decision as to amount of assessment:— The decision as to the rate or amount of assessment, rent or fee, payable under Section 3 shall be recorded in writing and shall not be questioned in any civil court.

5. Liability of person unauthorizedly occupying land to penalty after notice:— Any person liable to pay assessment under Section 3 shall also be liable at the discretion of the Collector or subject to his control, the Tahsildar or Deputy Tahsildar to pay in addition by way of penalty-

(i) if the land be an assessed land, a sum not exceeding five rupees or, when ten times the assessment payable for one year under Section 3 exceeds five rupees, a sum not exceeding ten times such assessment, provided that no penalty shall ordinarily be imposed in respect of the unauthorized occupation of such land for any period not exceeding one year; (ii) if the land been assessed, a sum not exceeding ten rupees, or when twenty times the assessment payable for one year under Section 3 exceeds ten rupees, a sum not exceeding twenty times such assessment.

6. Liability of person unauthorizedly occupying land to summary eviction, forfeiture of crops, etc.:—

(1) Any person unauthorizedly occupying any land for which he is liable to pay assessment under Section 3 may be summarily evicted by the Collector, Tahsildar or Deputy Tahsildar, and any crop or other product raised on the land shall be liable to forfeiture and any building or other construction erected or anything deposited thereon shall also, if not removed by him after such written notice as the Collector, Tahsildar or Deputy Tahsildar may deem reasonable, be liable to forfeiture. Forfeitures under this section shall be adjudged by the Collector, Tahsildar or Deputy Tahsildar and any property so forfeited shall be disposed of as the Collector, Tahsildar or Deputy Tahsildar may direct¹.

(2) **Mode of eviction:-** An eviction under this section shall be made in the following manner, namely:- By serving a notice in the manner provided in Section 7 on the person reputed to be in occupation or his agent requiring him within such time as the Collector, Tahsildar or Deputy Tahsildar 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 to remove any person who may refuse to vacate the same, and if the officer removing any such person shall be resisted or obstructed by any person, the Collector shall hold a summary inquiry into the facts of the case, and if satisfied that the

resistance or obstruction was without any just cause and that such resistance or obstruction shall continue, may issue a warrant for the arrest of the said person and on his appearance commit him to close custody in the office of the Collector or of any Tahsildar or Deputy Tahsildar for such period not exceeding 30 days as may be necessary to prevent the continuance of such obstruction or resistance or may send him with a warrant in the form of the schedule for imprisonment in the civil jail of the district for the like period: Provided that no person so committed or imprisoned under this section shall be liable to be prosecuted under Sections 183, 186 or 188 of the Indian Penal Code in respect of the same facts.

(3) Any person who unauthorized by re-enters and occupies any land from which he was evicted under this section, shall be punished with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or with both."

- 7. Prior notice to person in occupation:—** Before taking proceedings under Section 5 or Section 6 the Collector or Tahsildar, or Deputy Tahsildar, as the case may be, shall cause to be served on the person reputed to be in unauthorised occupation of land being the property of Government, a notice specifying the land so occupied and calling on him to show cause before a certain date why he should not be proceeded against under Section 5 or Section 6.

Such notice shall be served in the manner prescribed in Section 25 the Andhra Pradesh Revenue Recovery Act, 1864, (Act II of 1864) or in such other manner as the State Government by rules or order under Section 8 may direct.

7-A. Encroachment by group of persons on Government lands and their eviction:—

- (1) Where the District Collector knows or has reason to believe that a group or groups of persons without any entitlement and with the common object of occupying any land, which is the property of the Government, are occupying or have occupied any such land, and if such group or groups of persons have not vacated the land on demand by the District Collector or any officer authorised by him in this behalf, the District Collector shall, notwithstanding anything in this Act, order without any notice, the immediate eviction of the encroacher from the land and the taking of possession of the land; and there upon it shall be lawful for any officer authorised by the District Collector in this behalf to evict the encroachers from the land by force, taking such police assistance as may be necessary, and take possession of the land:

(2) Where, in any proceedings taken under this section, or in consequence of anything done under this section, a question arises as to whether any land is the property of the Government, such land shall be presumed to be the property of the Government until the contrary is proved. Notwithstanding anything in this Act, but subject to the provisions of Section 12-A, any order of eviction passed by the District Collector under sub-section (1) shall be final and shall not be questioned in any Court].

8. Power to make rules:— The State Government may make rules or orders either generally or in any particular instance-

- (a) regulating the rates of assessment, rent or fee leviable under Section 3:
- (b) regulating the imposition of penalties under Section 5:
- (c) declaring that any particular land or class of lands which are the property of Government shall not be open to occupation:
- (d) regulating the service of notices under this Act. Such general rules or orders shall be made only after previous publication.

9. Recovery of assessment or penalty levied as arrears of land revenue:— The amount of assessment, rent, fee and penalty imposed under this Act on any person unauthorizedly occupying any land shall be deemed to be land revenue and may be recovered from him as arrears of land revenue under the provisions of the Andhra Pradesh Revenue Recovery Act, 1864.

10. Appeal:—

(1) An appeal shall lie (a) to the Collector from any decision or order passed by a Tahsildar or Deputy Tahsildar under this Act and (b) to the District Collector from any decision or order of a Collector passed otherwise than ⁵ on appeal, and (c) to the Board of Revenue from any decision or order of a District Collector passed otherwise than on appeal. There shall be no appeal against a decision or order passed by the Collector or the District Collector on appeal, but the District Collector may revise any decision or order passed by a Deputy Tahsildar or Collector under this Act and the Board of Revenue may revise any decision or order passed by any officer under this Act.

(2) Pending the disposal of any appeal or petition for revision under this Act, the District Collector or the Board of Revenue as the case may be, may suspend the execution of the order appealed against or sought to be revised.

11. Limitation of appeal I. No appeal shall be brought after the expiration of sixty days from the date of decision or order complained of provided that in computing the period of sixty days, the time required to obtain a copy of the decision or order appealed against shall be excluded, but the appeal may be admitted after the period hereby prescribed when the appellant satisfies the authority to whom he appeals that he had sufficient cause for not preferring the appeal within the prescribed period.

12. Document accompanying petition of appeal: —*Every petition of appeal under this Act shall be accompanied by the decision or order appealed against or by an authenticated copy of the same.

12-A. Power of Government to call for records and pass orders:—

(1) The State Government may, in their discretion, at any time, either suo motu or an application made to them, call for and examine, the records relating to any decision or order passed or proceeding taken by any authority or officer subordinate to them under this Act for the purpose of satisfying themselves as to the legality or propriety of such decision or order, as to the regularity of such proceeding and pass such proceeding and pass such order in reference thereto as they think fit.

(2) The State Government may stay the execution of any such decision, order or proceeding pending the exercise of their powers under sub-section (1) in respect thereof [Inserted by Section 10 of the A. P. Land Encroachment (Extn. and Admt.) Act, 1958 {A.P. Act XXV of 1958).

13. Saving of operation of other laws in force:— Nothing in this Act contained shall be construed as exempting any person unauthorisedly occupying land from liability to be proceeded against under any law for the time being in force :

Provided that if any penalty has been levied from any person under Section 5 of this Act, no similar penalty shall be levied from him under any other law in respect of such occupation.

14. Bar of jurisdiction of Civil Courts:— No decision made or order passed or proceeding taken by any officer or authority or the State Government under this Act, not being a decision, order or proceeding affecting the title to the land of a person, shall be called in question before a civil court in any suit, application or other proceeding and no injunction shall be granted by any court in respect of any proceeding taken or about to be taken by such officer or authority or State Government in pursuance of any power conferred by or under this Act.]

15. Validation of levy of penal assessment before the passing of Act—

Saving of pending suits:— Every proceeding taken by a Collector for the recovery of any sum of money by way of penal or prohibitory assessment or charge from any person who has unauthorizedly occupied any land hereby declared to be the property of Government shall, if such sum has been recovered prior to the passing of this Act, be deemed to have been lawfully taken, provided that this section shall not apply to any suits pending when this Act comes into force in a Court of First Instance or in a Court of Appeal or affect the validity and operation of any decree or order already passed by a court of competent jurisdiction.

15-A. Certain persons deemed to be in unauthorized occupation of land:—

Where a lease of land which is the property of Government expires or is terminated by the Government or any other authority competent in that behalf, the lessee or any other person remaining in possession of the land after such expiry of termination, or where land granted to any person is liable to be resumed by the Government for the breach or non-observance of any of the conditions subject to which the grant is made and the Government or any other authority competent in that behalf have passed orders resuming the land for such breach or non-observance, the grantee or any other person remaining in possession of the land after the passing of those orders, shall for the purposes of Sections 3 to 15, be deemed to be a person unauthorizedly occupying such land. (Inserted as per A.P. Amendment Act XXIX of 1950).

16. Saving of lands claimed by right of escheat or reversion:— Nothing in this Act save as provided in Section 15-A shall apply to any lands claimed by right of escheat or reversion until such lands have been reduced into possession by the State Government.

SCHEDULE
Form of Warrant to be issued by the Collector
under Section 6 Seal

To

The Officer in-charge of the CMUail at.....
Whereas A.P. of has resisted (or obstructed) C.D.
in removing E.F. (or himself, that is, the said A. B.) from certain lands in the
village
of.....in the Taluk,
and whereas it is necessary in order to prevent the continuance of such
obstruction (or resistance) to commit the said A.B. to close custody, you
are hereby required under the provisions of Section 6 of the Andhra
Pradesh Land Encroachment Act, 1905, to receive the said A.B. into the jail
under your charge
and there to keep him in safe custody for days. Dated
this..... day of.....

(Signature of Collector)
