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

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ORISSA REGULATION 2 OF 1956

¹THE ORISSA SCHEDULED AREAS TRANSFER OF IMMOVABLE PROPERTY (BY SCHEDULED TRIBES) REGULATIONS, 1956

A. REGULATION

(A Regulation to control and check transfer of immovable property in the Scheduled Areas of the State of Orissa by Scheduled Tribes)

Whereas, it is expedient to control and check transfers 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 following Regulations made by him in the Seventh Year of Republic of India:

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1. Short title, extent and commencement – (1) These Regulations may be called *the Orissa Scheduled Areas Transfer of Immovable Property (By Scheduled Tribes) Regulations, 1956*.

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

(3) It shall come into force at once.

¹ Received the assent of the President on the 21st September, 1956 and was first published in the Orissa Gazette, extraordinary, dated 4th October, 1956.

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

- ²(a) "**agriculture**" in eludes making land fit for cultivation. cultivation of land, improvement of land including development of sources of irrigation, raising and harvesting of crops, horticulture, forestry, planting of trees, farming, cattle breeding, diary farming, seed farming, pisciculture, agriculture, sericulture, piggery, poultry farming and such other activities as. are generally carried on by agriculturists, diary 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, (x x x)³
- ⁴((a-b) "**competent authority**" means the Collector and inch any other Officer or Officers appointed by the State Government by notification to perform all or any off functions of a competent authority under this regulation)
- ⁵((b) "Grama Panchayat" and "Grama Sasan" respectively mean the Grama Panchayat and Gr Sasan as defined in the Orissa Grama Panchayat 1964;)
- (c) "**Immovable property**" does not include standing standing timber growing crops or grass,
- ⁶((d-l) "**public financial institution**" means,
- (i) Any bank to which the Orissa Co-operative Sc Act, 1962 (Orissa Act 2 of 1963) applies.
- (ii) A banking company within the meaning o Banking Regulation Act 10 of 1989.
- (iii) The State Bank of India constituted under the Bank of India Act 23 of 1955.
- (iv) A subsidiary Bank within the meaning of the Stf Bank of India (Subsidiary Bank) Act 33 of 1959 ;
- (v) A corresponding new Bank within the meaning of 1 Banking Companies (Acquisition and Transfer Undertakings) Act, 5 of 1970 ;
- (vi) The Agricultural Refinance Corporation established under the Agricultural Refinance Corporation Act 1963 ;
- (vii) The Agricultural Finance Corporation Limited, a company incorporated under the Companies Act 1 of 1956;
- (viii) The Agro-Industries Corporation ;
- (ix) Any other financial institutions which may be notified by the State Government;
- ⁷((e) "**Scheduled Areas**" and "**Scheduled Tribe**" shall respectively means and

² Added by Orissa Regulation 1 of 1975.

³ Subclause (aa) is Omitted vide Notifn. No. 11714-Legis-dt. 4.9.2002 by Regulation 1 of 2002 titled as OSATIP (by ST) Amendment Regulation 2000.

⁴ Re-numbered by Orissa Regulation 1 of 1975 and renumbered by Notification I 7894, dt. 27.7.97. Regulation 1 of 1997.

⁵ Substd. by Regulation 1 of 2002 dt. 4.9.2002.

⁶ Added by Orissa Regulation 1 of 1975.

⁷ Substituted by Orissa Regulation, 1 of 1979.

Scheduled Areas specified in respect of the State of Orissa in the Scheduled Areas (State of Bihar, Gujarat, 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.)

(e-1) (x x x)⁸

Explanation - For the purposes of conversion, one acre shall be equal to 0.4047 hectare.)

(f) "**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.

3. Transfer of Immovable property by a member of the Scheduled Tribe -

⁹("(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 unirrigated 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 at least for one crop in a year, and the expression "unirrigated land" shall be construed accordingly"; and

(2) Where a transfer of immovable property is made in contravention of Sub-sec, (i) the competent authority may, either on application by any one interested therein * (or on information received from the Gram panchayat) or on his own motion and after giving the parties, an opportunity of being heard order ejection

⁸ Omitted by Regulation 1 of 2002 dt. 4.9.2002.

⁹ Substituted by Orissa Regulation 1 of 2002 dt. 4.9.2002.

* Added by Orissa Regulation of 1 of 2001 dt, 4.9.2002.

against any person in possession of the property claiming under the transfer and shall cause restoration of possession of such property or 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.

¹¹**(Provided that** if the competent authority is of the opinion that the restoration of possession of immovable property to the transfer his heirs is not reasonably practicable, he shall record his reasons thereof and shall, subject to the control of the State Government settle the said property with another member of 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, 33 of 1962.

*("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.")

Explanation - Restoration of possession means actual delivery of possession by the competent authority to the transfer or his heirs)

(3) Subject to such conditions as may be prescribed an appeal if preferred within thirty days of the order under Sub-sec (2) shall if made by the Collector lie to the ¹²(Revenue Divisional Commissioner) and if made by any other competent authority to the Collector, or any other officer specially empowered by the State Government in this behalf.

¹³((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 subsection if an appeal against such order has been entertained under sub-section (3).

- (a) 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.) ;
- (4) Subject to the provisions of ¹⁴(any order passed under Sub-sec. (3) or Sub-sec. (3-a)) the decision of the competent authority under Sub-section (2) shall be final and shall not be challenged in Court of law.

¹⁵**[3-A. Eviction of persons in unauthorised occupation property** - (1) Where a person is found to be in unauthorised occupation of any immovable property of a member of the Scheduled Tribes by way of trespass or otherwise the competent

¹¹ Added by Orissa Regulation. 1 of 1966.

¹² Substituted by Notification No. 7894. dt. 27.7.97.

¹³ Inserted by *ibid*.

¹⁴ Substituted by Notification No. 7894. dt. 27.7.97.

¹⁵ Added by Orissa Regulation. 1 of 1975.

authority may, either on application by the owner or any person interested therein, ²(or on information received from the Grama 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 unauthorised occupation and shall cause restoration of possession of such property to the said member of the Scheduled Tribes 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-sec. (1).

¹⁶("(3) In every case after finalisation 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 unauthorised occupation of any immovable property of a member of a Scheduled Tribe and the restoration of possession of the property to such member or his heirs and in case of failure of such restoration, the reasons for such failure.]"

¹⁷("3-B. **Reservation of land of members of Scheduled Tribes which was transferred by fraud** - (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 4th 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 or 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."

¹⁶ Added by Orissa Regulation 1 of 2002 dt. 4.9.2002.

¹⁷ Inserted by *ibid*.

4. Inadmissibility of a deed for the purpose of registration - Notwithstanding anything contained in the Indian Registration Act, XVI of 1908 no deed of transfer of any immovable property executed in contravention of provision of this Regulation shall be accepted for registration.

5. Surrender or relinquishment not valid unless settled by landlord - (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 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 Tribe 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 the 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.

6. Bar to attachment of immovable property - In execution of a money decree against a member or a Scheduled 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.

¹⁸**(7. Punishment for offences** - (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 ejection 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, reoccupies 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 judgment, 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.

7-A. Offences to be tried by Executive Magistrate and to be cognizable – (1) The State Government may confer, on a 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 Regulation and on such conferment of powers, the Executive Magistrate,

¹⁸ Substituted by Orissa Regulation, 1 of 2002 dt. 4.9.02.

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 maybe.

- (2) An offence under this Regulation may be tried summarily by a Magistrate.
- (3) Every offence under this Regulation shall be cognizable.)

7.B. Consideration money not refundable in case of invalid transfer - Notwithstanding anything contained in any law for the time being in force, where transfer of immovable property is found to have been made in contravention of the provisions of Section 3 and the transferee or any other person 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 transfer by way of consideration for the transfer.

7.C. Burden of proof and power of Court to ignore admission - Notwithstanding anything contained in any other law for the time being in force.

- (a) If in any proceedings under this Regulation the validity of the transfer or 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 ¹⁹(or any person claiming the right to the property through the transferee) :
- (b) The Court shall in any suit or proceeding relating to the transfer of immovable property a member of the Scheduled Tribes have power to require in fact expressly or impliedly admitted by such member to be proved otherwise than by admission.)

²⁰**(7-D - Amendment of the Limitation Act, 1963 in Its Application to the Scheduled Areas -** In the Limitation Act, 1968 in its application to the Scheduled Areas in the Schedule, after the words "twelve years" occurring in the second column against Art, 65, the words "twelve years" and figure "but thirty years in relation to immovable property belonging to a member, of a Scheduled Tribe specified in respect of the State of Orissa in ²¹(the Constitution (Scheduled Tribes) Order, 1950 as modified from time to time shall be added.)

²²**(7-E. Bar of jurisdiction of Civil Courts -** 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.)

8. Rules - (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 application shall have the effect as if enacted under this Regulation.

¹⁹ Substituted by Orissa Regulation. 1 of 2002 dt. 4.9.02.

²⁰ Inserted by Notification No. 7894. dt. 27.7.1997.

²¹ Which was inserted therein by Orissa regulation of 1975 shall be deemed to have been so Inserted with effect from the 2 day of October. 1973 (Orissa Regulation 1 of 1976).

²² Inserted by Notification No. 7894. dt. 27.7.1997, Regulation 1 of 1997.

9. Repeal - (1) On and from the date of commencement of this regulation shall stand repealed namely.

(a) The Agency Tracts Interests and Land Transfer Act, 1917 (Madras Act of 1917) :

(b) The enactments mentioned in Column 2 of the (Scheduled to the extent specified in Column 3 thereof in so far as they are in force²³(in the Scheduled Areas).

(2) Notwithstanding such repeal by this regulation the repeal shall not effect -

(a) the previous operation of such law of provisions so repealed or validity affect or consequence of anything done or suffered thereunder ;

(b) any right title, privilege, obligation or liability acquired, accrued or incurred under the said law or provision; 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 proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture of punishment may be imposed as if this Regulation had not been made.

NOTE - Madras Act 1 of 1917, Orissa Act IV of 1950 & Central provinces Act XI of 1898 repealed by Regulation 1 of 1966.

²³ Substituted by Orissa Regulation 1 of 1966.