



# ASECA CHANNEL

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## Editorial

Recently a Consultation Workshop for recommending to amend the Odisha Scheduled Areas Transfer of Immovable Property (by Scheduled Tribes) Regulation 1956 (Regulation II of 1956) was held on 9<sup>th</sup> October 2015 at Baripada, Mayurbhanj. An attempt was made to gather more information and to find out the latest development in this regard. However, no information was found in the Govt. of Odisha website relating to the proposed amendment. This piece of legislation is very important and relevant for the Tribal people as it aims to safeguard and protect the interests of the Tribal people. From time immemorial, attempts were/are being made to usurp the land of Tribals by the non tribal people through one pretext or the other, as such the protective shield from the Government in this regard is considered to be a boon for the Tribal people. The provisions of the Orissa Scheduled Areas Transfer of Immovable Property (By Scheduled Tribes) Regulation, 1956 has been referred to the Courts up to the Supreme Court to interpret and find the actual meaning of various provisions of the Regulation. Gradually, it is felt that this legislation, which is aimed at protecting the interests of Tribals, has become somewhat restrictive considering the aspirations for a better future and expectation of development in the changing and emerging scenario. It is felt restrictive in the sense that it is not aligned to the need of the present day and is not supportive to leverage the immovable property for bringing prosperity in life and also to bring in economic value of a piece of land for the benefit of the Tribals in the present context. When the value of land in a semi urban or urban areas has become dearer and other people except the Tribals are reaping the benefits out of the present urbanization move of the people. When people are ready to dole out one crore rupees for an

acre of land and make their life safe and secure, this opportunity out of the new development is not available nor the Tribals are allowed to participate in the process. The proposed amendment has not been notified by the State Government for public reference or analysis. It is an urgent matter that everyone who are Tribals or at least are having interest on the Tribal affairs should participate and have their opinion heard by the people at the helm of affairs. In the absence of such information, the newspaper reporting has become the only source and from the newspaper reporting it appears that the amendments are considered on the following provisions/issues:

1. (a) Tribal land cannot be gifted. It is presumed that gifting is not permissible by a tribal person to a non-tribal person.  
(b) Permission for mortgage of tribal land can be granted for obtaining loan from different Banks/Financial Institutions for some selective purposes such as, building of residential house, higher studies of children, self-employment, business and for small-scale industries (U/s 3(3) of Regulation 2 of 1956) provided that, he/she possesses a minimum qualification of 10 class pass. (U/s 3(3) of Regulation 2 of 1956).
2. In the event of insolvency of the loanee, the Bank/Financial Institutions will be at the liberty to put the mortgaged land to public auction where any person belonging to ST, can participate in the auction sale. (U/s 3(3) of Regulation 2 of 1956). In case there are no bidders for the minimum reserve amount, the same would be taken by the Govt. at the benchmark value/price to be decided by the competent authority. The said land would be distributed to the landless or dwelling unit less people in the future.

3. The existing provision of transfer of land by ST person subject to minimum limit of Ac.2.00 of irrigated land and Ac.5.00 of un-irrigated land with the transferee after transfer would be reduced to 1.5 acres of irrigated land and 3 acres unirrigated land. In the urban areas 0.5 acres can be irrigated or non-irrigated land.
4. Even transfer between STs is not allowed unless the above is fulfilled.
5. Appeal and Review or Revision period of 5 years and 30 years respectively under Section 3 (3) & 7D of the Regulation 2 of 1956 to be lifted. (The Limitation period of 30 years in case of adverse possession of a tribal land by a non-tribal should be lifted and the period of unauthorized occupation becalculated with effect from 04.10.1956 in order to effect eviction U/s 3(3) & 7D of Regulation-2 of 1956.)

In view of the above proposed amendments, it becomes pertinent to go through the provisions of the said Regulation. The texts of the Regulation as such are reproduced below. For clarity, original Act may be referred. It is desired that views should be shared so that recommendations could be submitted to the Government of Odisha.

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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

\*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.

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. (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.

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;]

[(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;]

[(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 ;

ii) a banking company within the meaning of the Banking Regulation Act, 1949; the State Bank of India constituted under the State Bank of India Act, 1955;

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

(iv) corresponding new bank within the meaning of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970;

(v) the Agricultural Refinance Corporation

established under the Agricultural Refinance Corporation Act, 1963;

(vi) the Agricultural Finance Corporation Ltd., a company incorporated under the Companies Act, 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, 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;

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.

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 at least for one crop in a year and the expression "un-irrigated land" shall be construed accordingly.

(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]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].

[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]

(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] 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.)

(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.

[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 subsection(1)]

(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.]

[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 subsection

{To be continued....}

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