

BIHAR PUBLIC LAND ENCROACHMENT ACT, 1956

Preamble - THE BIHAR PUBLIC LAND ENCROACHMENT ACT, 1956

THE BIHAR PUBLIC LAND ENCROACHMENT ACT, 1956

[Act No. 15 of 1956]

PREAMBLE

An Act

To make better provision for removal and prevention of Encroachment on Public Lands.

Be it enacted by the Legislature of the State of Bihar in the seventh year of the Republic of India as follows:--

Section 1 - Short title, extent and commencement

- (1) This Act may be called the Bihar Public Land Encroachment Act, 1956.
- (2) It extends to the whole of the State of Bihar.
- (3) It shall come into force on such date as the State Government may, by notification, appoint in this behalf.

Section 2 - Definitions

In this Act unless there is anything repugnant in the subject or context:--

- (1) "Collector" means the Collector of the district and includes any officer empowered by the State Government to discharge all or any of the functions of the Collector under this Act;
- (2) "prescribed" means prescribed by rules made under this Act; and
- (3) "public land" means any land ^[1] [managed by or] vested in the Union of India or the State of Bihar, or in any local authority ^[2] [or statutory body], ^[3] [public undertaking] educational institution recognised by the Government or by any University established under any law for the time being in force, Railway Company or Gram Panchayat established under, section 3 of the Bihar Panchayat Raj Act, 1947 (Bihar Act VII of 1948), and includes any land over which the public or the community has got a right of user, such as right of way, burials, cremation, pasturage or irrigation.

^[4] [Explanation I.-- For the purpose of this clause and section 9 the

expression "public undertaking" shall mean--

- (i) any industrial undertaking owned by a corporation constituted under any law for the time being in force; or
- (ii) any industrial undertaking in which the Government owns more than fifty per centum of the share capital thereof; or
- (iii) any other industrial undertaking which is declared to be a public undertaking by the State Government, by notification in the Official Gazette.

Explanation II.--All notifications under item (ii) paragraph (1) shall be laid before the Legislature of the State, as soon as may be, after they are issued.]

Section 3 - Initiation of the proceedings

[5] [(1) If it appears to the Collector from an application made by any person or upon information received from any sources that any person has made or is responsible for the continuance of any encroachment upon any public land, the Collector may cause to be served upon such person a notice in the prescribed form requiring him to appear on a date which shall not be less than two weeks from the date of service of notice to show cause:--

- (a) Why he should not be restrained from making such encroachment by issue of injunctions; or
- (b) Why such encroachment should not be removed.

(2) Under clause (a) of sub-section (1) the Collector shall have power to issue temporary injunction at any stage to restrain such encroachment till the disposal of the proceeding or till further orders or he may pass such orders as he deems proper for preventing such encroachment:

Provided that where the encroachment on public land is in the nature of exposure of articles for sale, or opening temporary booth for vending, the Collector may without the formality of issuing a notice as required under sub-section (1) order for its immediate removal or cause it to be removed immediately and for the purpose he may use such force as is necessary in the case:

Provided further that where the encroachment on public land is of such a nature as the Collector considers its immediate removal essential for the safety of general public or for the safety of any other structure on the public land and the notice cannot be served without unnecessary delay upon the person responsible for the encroachment or his representative owing to his absence or for any other reason, he may order the removal of encroachment or if necessary cause it to be removed immediately and may use such force for the purpose as is necessary.

(3) If the person who has made or is responsible for the continuance of the encroachment is not known or cannot be found, the Collector may cause notice to be affixed in the neighborhood of the alleged encroachment requiring any person interested in the same to show cause by the date specified in the notice why the encroachment should not be removed and it shall not be necessary to name any person in such notice.]

Section 4 - Defence

Any person on whom notice is served under Section 3 or any person interested in the encroachment may appear before the Collector and raise any defence which he could have raised if he was a defendant in a properly framed suit for the removal of the encroachment.

Section 5 - Hearing

On the date specified in the notice served under section 3, the matter shall be heard, unless the hearing is adjourned by the Collector to a future day, and the Collector shall hear the applicant if any, the person on whom the notice has been served and any other person who may be interested either in the encroachment or in the removal thereof and take such other evidence as may be adduced in that behalf:

Provided that, if the person on whom notice has been served under section 3 or any other person interested in the encroachment, fails to appear and show cause on the date specified in the notice, or any other date to which the hearing may be adjourned, the matter shall be heard, ex-parte.

Section 6 - Final order of the Collector

[6] [(1) In all cases not covered by the provisos to sub-section (2) of section 3, the Collector shall after hearing the persons concerned and taking evidence, if any under section 5 and after making such enquiry as he deems necessary the Collector may, as the circumstances of the case requires--

- (a) either drop the proceeding, or
- (b) make the temporary injunction issued under sub-clause (a) of subsection (1) of section 3 absolute against the person making encroachment of the public land, or
- (c) if any person who together with his homestead does not own more than 5 acres of land, has encroachment up to 10 dec. of public land continuous to his agricultural holding and has used the encroached public land for agricultural purposes. The Collector shall order the settlement of such public land with such person on payment of rent and damages for the use of this land. The amount of damages and rent shall be calculated by considering the rent payable in case of similar land in the neighborhood. Where no rent is payable the rent and damages for the encroached public land shall be calculated on the basis of such fair rent as the Collector may deem proper, or
- (d) where the temporary encroachment on public land has been removed by the person making encroachment after some time the Collector shall order payment of damages for the use of the land during the period of encroachment. The amount of damages shall be calculated according to the prescribed procedure, or
- (e) in the cases not covered by the foregoing sub-clauses, the Collector shall direct the person making encroachment of the public land to remove the encroachment within specified period which shall not in any case be more than two weeks in case the encroachment is not removed within the specified

time the crops standing or all types of structures existing on the encroached land shall be forfeited by the Collector;

Provided if any landless person encroached up to 12 1/2 dec. of public land before the 10th October 1955, no action shall be taken against him under this Act.

Explanation.-- In this proviso landless person means a person whose source of livelihood is agricultural or agricultural labour and who either does not possess any land or does not possess more than one acre of land.

[7] ["(2) If any person does not comply with the orders passed by the Collector under this section, he shall be punishable with imprisonment for a term, which may extend to one year or with fine up to Rs. 20,000/- (twenty thousand) or with both."]

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the offence under this section shall be cognizable.]

Section 6A - Power of the State Government to compound the proceeding under the Act

The State Government or any officer specially authorised by the State Government in this behalf not below the rank of an Additional Collector, may compound the offences arising out of any proceeding under the Act on such terms and conditions as the State Government may determine.

Section 7 - Power of the Collector to get encroachment removed and recover cost of the removal

[8] [If any person fails to comply with the orders passed by the Collector under section 6 directing the removal of any encroachment by the date fixed, the Collector shall cause the encroachment to be removed in such manner as he deems fit and the cost of such removal shall be recovered from such person.]

Section 8 - Summary disposal of proceedings

All proceedings under this Act shall be heard and disposed of in a summary manner.

Section 9 - Burden of proof

Where any public land was acquired under the provisions of the Land Acquisition Act 1894 (1 of 1894), for the purpose of the Government, any local authority, [9] [public undertaking], any educational institution or a railway company, or where the land is recorded in any public or other official book, register or record or surveyed under Bengal Survey Act, 1875 (Ben. Act V of 1875), or other local or special law as belonging to the Government, local authority. [10] [public undertaking], educational institution or railway company, or where the land is recorded as public land within the meaning of this Act, the burden of proving that the land is not public land or has ceased to be public land shall lie on the person who raises such a defence.

Section 10 - Power of Collector to summon witnesses, etc. in enquiries under this Act

The Collector shall, for the purposes of enquiries under this Act, have powers to issue commission, to hold local inspection, to summon and enforce the attendance of witnesses and to compel the production of documents as a Civil Court under the Code of Civil Procedure, 1908 (V of 1908).

Section 11 - Appeals

[11] [(1) From every order passed under sections 6, 7 or 8 an appeal shall lie--

- (i) if such an order is passed by any officer other than the Collector of the district, to the Collector of the district or to any officer specially empowered by the State Government, by notification in the official Gazette;
- (ii) If such order is passed by the Collector of the district, to the Commissioner of the Division.

(2) An appeal under this section shall be preferred within 30 days of the passing of the order appealed against;

Provided that an appeal may be admitted after the said period when the appellate authority is satisfied that the appellant had sufficient cause for not preferring the appeal within such period.]

Section 12 - Section 12

[12] [xxxx]

Section 13 - Review

Any order passed under this Act may, after giving the parties reasonable opportunity of being heard, be reviewed by the officer who made the order, or by his successor-in-office, on account of any mistake or error in the course of any proceeding under this Act.

Section 14 - Stay of execution of order

[13] [Pending the disposal of any appeal, the appellate authority may suspend the execution of the orders appealed against.]

Section 15 - Award of costs

[14] [In the orders in appeal, the appellate authority may if it thinks fit award costs to the person in whose favour the order is passed.

Section 16 - Bar of jurisdiction of Civil Courts

No Suit or other legal proceeding shall lie in any Court in respect of any order passed under this

Act.

Section 17 - Recovery of sum as public demands

All sums payable under this Act shall be recoverable as public demands.

Section 18 - Indemnity

No suit, prosecution or other legal proceeding shall lie against any officer of the State Government or any person for anything which is in good faith done or intended to be done in pursuance of this Act.

Section 19 - Section 19

[15] [*****]

Section 20 - Power to make rules

- (1) The State Government may, after previous publication, make rules for carrying out the purpose, of this Act.
- (2) In particular, and without prejudice to the generality of the foregoing power, the State Government may make rules with respect to all or any of the following matters, namely:
 - (a) the forms and the manner of service of notices under this Act;
 - (b) the procedure of hearing and disposal of appeals under this Act;
 - (c) any other matter which is required to be or may be prescribed;
- (3) All rules made under this section shall, as soon as may be after they are made, be laid, for not less than fourteen days before both houses of the State Legislature and shall be subject to such modifications as the State Legislature may make during the session in which they are so laid.

Section 21 - Repeal and savings

- (1) The Bihar Land Encroachment Act, 1950 (Bihar Act XXXI of 1950), is hereby repealed.
- (2) The repeal by this Act of the Bihar Land Encroachment Act, 1950 shall not affect the previous operation of the said Act and subject thereto anything validly done or any action validly taken in the exercise of any powers conferred by or under that Act shall be deemed to have been done or taken in the exercise of the powers conferred by or under the corresponding provision of this Act as if this Act were in force on the day on which such thing was done or action taken.
- (3) Any proceeding initiated under the repealed Act and pending on the date of the commencement of the Act shall be continued in accordance with the provisions of this Act.

- (4) Without prejudice to the generality of the provisions of section 3, the Collector shall have power to examine the records of any proceeding initiated under the repealed Act which may have been quashed by reason of the invalidity of any of the provisions of that Act, and if it appears to the Collector that there is sufficient ground for initiating any proceeding under this Act, the Collector may cause a notice to be served under section 3 on the person, who was alleged in the proceeding under the repealed Act to have made, or to have been responsible for the continuance of, any encroachment, requiring him to reappear and show cause why such encroachment shall not be removed and thereupon all the provisions of this Act shall apply:

Provided that the evidence taken in the proceeding which were quashed shall form part of the proceedings under this Act without prejudice to the right of such person or any person interested either in the encroachment or in the removal thereof, to adduce further evidence under this Act.

Appendix - APPENDIX I

APPENDIX I

RULES UNDER BIHAR PUBLIC LAND ENCROACHMENT ACT, 1956

In exercise of the powers conferred by sub-section (2) of Section 20 of the Bihar Public Land Encroachment Act, 1956 (Bihar Act XV of 1956), the Governor of Bihar is pleased to make the following rules, the same having been previously published as required by sub-section (1) of that section--

1. The notice of show cause under section 3 shall be in Form I annexed hereto.
2. In case the person who has made or is responsible for the continuance of the encroachment cannot be traced, the notice shall be served by affixing a copy thereof at a conspicuous place on the land or in the vicinity of land and the service shall also be proclaimed by beat of drum. The service of notice in the manner prescribed in this sub-rule shall be attested by at least two witnesses.
3. The notice to be served under sub-section (2) of Section 6, shall be in Form II annexed hereto.
4. The appellate authority shall fix a day for hearing the appeal and a notice thereof shall be served on the respondent in the manner stated in rule 2 or rule 3 as the case may be.

If on the day fixed for hearing the appeal or any other day to which the hearing may be adjourned, the appellant does not appear in person or by agent the appeal shall be dismissed for default.

If on such day, the appellant appears and the respondent does not appear in person or by agent the appeal shall be heard ex parte.

FORM I

Form of notice under section 3 of the Bihar Public Land Encroachment Act, 1956

To,

Shri/Shrimati son/wife/daughter of resident of Village Thana No. P.S.
..... District

1. Whereas you have made or are responsible for the continuance of encroachment upon

Plot No. area of Village Thana No. P.S. District which is public land as defined in sub-section (2) of section 2 of Bihar Public Land Encroachment Act, 1956 (Bihar Act XV of 1956). You are hereby called upon to appear before me on at and show cause why such encroachment shall not be removed.

2. Take notice that if you fail to appear at the time and place mentioned above, the matter will be decided in your absence.

Date

Collector.

FORM II

Form of notice under sub-section (2) of section 6 of the Bihar Public Land Encroachment Act, 1956

Shri/Shrimati son/wife/daughter of resident of Village
Thana No. P.S. District

Whereas an order has been passed under clause (c) of sub-section (1) of section 5 of the Bihar Public Land Encroachment Act, 1956, for removal of encroachment from Plot No. area of Village Thana No. P.S. District which has been found to be a public land as defined in sub-section (5) of section 2 of the Act; you are hereby called upon to comply with the order within a period of

2. Take notice that in case of disobedience you shall be liable to the penalty provided by section 188 of the Indian Penal Code, 1860, (XLV of 1860).

Date

Collector.

Appendix - APPENDIX II

APPENDIX II

BIHAR PUBLIC LAND ENCROACHMENT (AMENDMENT) ACT, 1972

[Act No. 3 of 1972]

[29th April, 1972]

An Act to amend the Bihar Public Land Encroachment Act, 1956

Be it enacted by the Legislature of the State of Bihar in the twenty third year of the Republic of India as follows:

1. Short title.--

This Act may be called the Bihar Public Land Encroachment (Amendment) Act, 1972.

2. to 8. incorporated in the text of the Act.

9. Repeal and savings.--

- (1) Bihar Public Land Encroachment (Amendment) Ordinance, 1972 (Bihar Ordinance No. 7 of 1972) is hereby repealed.

- (2) Subject to the repeal, anything validly done or any action validly taken in the exercise of any powers conferred by or under the said Ordinance, shall be deemed to have been done or taken in exercise of the powers conferred by or under this Act, as if this Act were in force on the day on which such thing was done or action taken.

Appendix - APPENDIX III

APPENDIX III

THE BIHAR PUBLIC LAND ENCROACHMENT (AMENDMENT) ACT, 1981

[Act No. 3 of 1982] ^[16]

An Act to amend the Bihar Public Land Encroachment Act, 1956.

Be it enacted by the Legislature of the State of Bihar in the thirty second year of the Republic of India as follows:

1. Short title.--

This Act may be called the Bihar Public Land Encroachment (Amendment) Act, 1981.

2. to 9. Incorporated in the text of the Act.

10. Repeal and saving.--

- (1) The Bihar Public Land Encroachment (Amendment) Ordinance, 1981 (Bihar Ordinance no. 134 of 1981) is hereby repealed.
- (2) Notwithstanding such repeal anything done or any action taken in the exercise of any power conferred by or under the said Ordinance shall be deemed to have been done or taken in the exercise of the powers conferred by or under this Act, as if this Act were in force on the day on which such thing or action was done or taken.

Appendix - APPENDIX IV

APPENDIX IV

Table showing amendments made in the Act through Ordinances

Ordinance no. & date of Bihar Gazette	Reference to Journal	Sections affected	Repealed by
210 to 1975 (22.12.75)	1975 BBCJ 373	Ins. of Secs. 2(1A) (a), (b), (c), 6A and subs, of Secs. 3, 6, 7, 11, 14, 15 and deletion of Sec. 19.	108 of 1976
108 of 1976 (30.4.76)	1976 BLT 134	-do-	159 to 1976
159 of 1976(12.8.76)	—	-do-	19 of 1977
19 of 1977(8.1.77)	—	-do-	81 of 1977
81 of 1977(29.4.77)	—	-do-	139 of 1977
139 of 1977(8.8.77)	1977 BLT 200	-do-	178 of 1977

178 of 1977(31.8.77)	1978 BLT 5	-do-	232 of 1977
232 of 1977(17.1.78)	—	-do-	48 of 1978
48 of 1978(24.4.78)	1978 BLT 88	-do-	72 of 1978
72 of 1978	—	-do-	7 of 1979
7 of 1979(5.2.79)	1979 BLT 39	-do-	104 of 1979
104 of 1979(28.4.79)	—	-do-	138 of 1979
138 of 1979(2.7.78)	—	-do-	30 of 1980
30 of 1980(8.3.80)	1980 BLT 115	-do-	64 of 1980
64 of 1980(21.4.80)	—	-do-	122 of 1980
122 of 1980(11.8.80)	—	-do-	16 of 1981
16 of 1981 (28.1.81)	—	-do-	130 of 1981
110 of 1981	—	-do-	134 of 1981
134 of 1981 (11.8.81)	—	-do-	Act 3 of 1982

Appendix - APPENDIX V

APPENDIX V

Important State Government Decisions

Shri S. K. Chakravarty, Secretary to Government, To, All District Officers.

Subject : Encroachments detected during the special drive on Gair Mazrua Malik and Gair-Mazrua Am culturable waste lands.

- (1) I am directed to say that the question of settlement of Gair-Mazrua-Malik lands has been dealt with in Revenue Department letter no. 940-LR, dated the 25th February, 1953 reproduced at pages 30-31 of the Land Reforms Compendium and again in Revenue Department letter no. 1454-LR, dated the 8th March, 1964 at page 51 of the said Compendium of Government Orders and Circular on Land Reforms and allied matters (copies enclosed). The question of settlement in the case of Gair-Mazrua Am Lands has been dealt with in Revenue Department letter no. 4997-LR dated the 23rd September, 1953 at pages 392-393 of the Compendium on Land Reforms and allied matters (Copy enclosed). Institution of cases under section 4(h) have been dealt with in paragraph (b) at page 4 of the Booklet "A" guide to the disposal of cases under section 4(h) of the Bihar Land Reforms Act, 1950 (copy enclosed). Government have considered all these circulars and have been pleased to amplify for the information of the District Officers in the following manner:-
 - (i) All cases of encroachments on Gair-Mazrua Malik or Gair Mazrua Am Lands should first be examined as to whether the settlement was bonafide or malafide. If the settlement was malafide, there should be no hesitation in starting enquiry under section 4 (h) of the Bihar Land Reforms Act, with a view to get the settlement annulled and to release the lands for settlement with landless people with special preference to scheduled castes, scheduled tribes and backward classes. No. case of malafide settlement should be recognised and if they have been recognised by subordinate officers, they should be re-opened by the appellate and the revisional authorities. The question whether the settlement is malafide or bona fide should be referred to

the Subdivisional Officer or the Land Reforms Deputy Collector and no inferior authority should come to any final decision on this point.

- (iii) Encroachments on Gair-Mazrua Malik lands should be strictly dealt with according to the instructions contained in Revenue Department letter no. 4097-LR, dated the 23rd September, 1953. Normally no such settlement should be made at all and any such relaxation according to special circumstances should also be limited to the instructions contained in the aforesaid letter.
 - (iv) Encroachments on Gair-Mazrua Malik lands which have not been annulled under section 4(h) of the Bihar Land Reforms Act can be regularized to the extent mentioned in the previous instructions governing Gair-Mazrua Malik lands. Settlements can be made with effect from the date of encroachment or from the date of vesting whichever is later and back rent can also be realised for a period not exceeding 10 years in addition to reasonable salami before regularizing such settlement. No salami is realisable from scheduled castes, scheduled tribes and backward classes.
 - (v) Encroachments in municipal areas, Notified Area Committee, Union Board and other Bazar areas for non-agricultural purposes will have to be carefully enquired into and a special report should be sent through the Sub divisional Officers to the Collector of the district. Government are separately considering the question as to what extent the Collectors can be empowered to recognize the settlement in such cases.
 - (vi) No settlement should be recognised merely because the area settled is below 15 acres. Each settlement will have to be scrutinized strictly as to whether it is genuine or not.
 - (vii) It is no doubt true that settlements on Gair-Mazrua Khas lands have been made by the ex-intermediaries previously on plain paper but having regard to the large number of bogus settlements, proper care should be exercised before accepting any settlement based on Kacha Patta as genuine. If they are not backed by proper rent receipts granted every year from the date of the settlement, there should be no hesitation in ignoring such settlements. The fact that the land remains uncultivated is also another important factor to be taken into consideration before judging the genuineness of settlement.
- (2) The instructions contained in this letter should be treated as amplifying and modifying the instructions previously issued on the subject. It should be anxiety of the Sub divisional Officer and the Land Reforms Deputy Collector to ensure the cancellation of all the bogus settlements with a view to get the lands released for being settled with landless people.
- (3) Ten spare copies are enclosed. The receipt of this letter may kindly be acknowledged. (Memo. No. A/CL 401/1965-76 LR. dated 6.1.1965)

[1] Inserted. by Act 19 of 1994.

[2] Inserted. by Act 19 of 1994.

[3] Inserted. by Act 19 of 1960.

[4] Inserted. by Act 19 of 1960.

[5] Substituted by Act 3 of 1982.

[6] Substituted by Act 3 of 1982.

[7] Substituted by Act 17 of 2012.

[8] Substituted by Act 3 of 1982.

[9] Inserted by Act 19 of 1960.

[10] Inserted by Act 19 of 1960.

[11] Substituted by Act 3 of 1982.

[12] Omitted by Act 3 of 1982.

[13] Substituted by Act 3 of 1982.

[14] Substituted by Act 3 of 1982.

[15] Omitted by Act 3, of 1982.

[16] Published in Bihar Gazette (Ex. ord) dated 21.1.1982.

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