

Assam Land Grabbing (Prohibition) Act, 2010

21 of 2011

[28 October 2011]

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PREAMBLE

AN

ACT

to prohibit the activity of land grabbing in the State of Assam.

Whereas there are organized attempts on the part of certain lawless persons operating individually and in groups to grab, either

by force or by deceitful means or otherwise, lands whether belonging to the Government, a Public Sector Undertaking, a local authority, a religious or charitable institution or endowment, including a wakf or any other private persons or a site of historical monuments etc.;

And, whereas it is necessary to arrest and curb immediately such unlawful activities of land grabbing;

And whereas public order is adversely affected by such unlawful activity of land grabbers.

It is hereby enacted in the Sixty-first Year of the Republic of India as follows:-

1. Short title, extent, application and commencement :-

(1) This Act may be called the Assam Land Grabbing (Prohibition) Act, 2010.

(2) It extends to the whole of Assam except the Autonomous districts of Karbi Anglong, Dima Hasao and the Bodo Land Territorial Council Area:

Provided that the Government may, by notification in the official Gazette, extend the operation of this Act to the aforesaid areas also with the consent of the concerned Autonomous Councils as and when considers necessary.

(3) It shall come into force on such date as the Government may, by notification in the official Gazette, appoint.

(4) It applies to all lands situated within the limits of Guwahati Municipal Corporation established under the Guwahati Municipal Corporation Act, 1969(Assam Act No. I of 1973) and the Municipalities and Town Committees declared as such under the Assam Municipal Act, 1956(Assam Act No. XV of 1957) and also applies to the rural areas of Assam save and except the Autonomous Districts of Karbi Anglong, Dima Hasao and the Bodo Land Territorial Council Area.

2. Definitions :-

In this Act, unless the context otherwise requires,-

(a) "Government" means the State Government of Assam;

(b) "Land" includes right in or over land, benefits to arise out of land and buildings, structures and other things attached to earth or permanently fastened to anything attached to earth and includes standing trees and crops;

(c) "Land belonging to private person", means any land belonging

to,-

(i) a private individual; or

(ii) an evacuee;

the value or the extent of which or the nature of the evil involved shall be of substantial nature or in the interest of justice required;

(d) "land grabber" means a person or a group of person who occupy or attempt to occupy with or without the use of force, threat, intimidation and deceit, land over which he or they have no ownership, title or physical possession and includes any person who gives financial aid to any person or group of persons for taking up illegal possession of land over which he or they have no ownership or title and for construction of unauthorized structures thereon, or who abets the doing of any of the above mentioned acts, and also includes the successors-in-interests;

(e) "land grabbing" means every activity of land grabber to occupy or attempting to occupy with or without the use of force, threat, intimidation and deceit, any land (whether belonging to the Government, a Public Sector undertaking, a local authority, a religious or charitable institution or endowment, including a wakf or any other private person) over which he or they have no ownership, title or physical possession, without any lawful entitlement and with a view to illegally taking possession of such land or creating illegal tenancies or lease or licence, agreements or by constructing unauthorised structures thereon for sale or hire or use or occupation of such unauthorised structures and the term "grabbed land" shall be construed accordingly;

(f) "person" includes a group or body of persons, an association, a local authority, institution or a religious or charitable institution or endowment whether incorporated or not;

(g) "prescribed" means prescribed by rules made under this Act;

(h) "Special Tribunal" means a Court of the District and Sessions Judge, having jurisdiction over the area, and includes the Additional District and Sessions Judge;

(i) "Special Court" means a Special Court constituted under section 14 of this Act;

(j) "Unauthorized Structures" means any structure constructed under the Guwahati Municipal Corporation areas without express permission in writing of the Gauhati Municipal Corporation or the Guwahati Metropolitan Development Authority constituted under the Guwahati Municipal Corporation Act, 1969(Assam Act No. I of 1973) and the Guwahati Metropolitan Development Authority Act, 1985(Assam Act No. 20 of 1987), respectively, and elsewhere

without the express permission of the authority concerned, or except in accordance with any law for the time being in force in the area concerned.

3. Land Grabbing to be unlawful :-

Land grabbing in any form is hereby declared unlawful and any act connected with or arising out of land grabbing shall be a cognizable offence under the Code of Criminal Procedure, 1973(Act 2 of 1974) and punishable under this Act.

4. Prohibition of land grabbing :-

(1) No person shall commit or cause to be committed land grabbing.

(2) No person shall, on or after the commencement of this Act, continue to be in occupation, otherwise than as a lawful tenant, of a grabbed land belonging to the Government, State Government undertaking, local authority, religious or charitable institution or endowment including a wakf, or other private person.

(3) Whoever contravenes the provisions of sub-section (1) or sub-section (2) shall be guilty of an offence punishable under this Act and on conviction, be punished with imprisonment for a term not less than two years, which may extend to five years and with fine which may extend to twenty five thousand rupees.

5. Penalty for other offence in connection with land grabbing :-

Whoever, with a view to grabbing land in contravention of the provisions of this Act or in connection with any such land grabbing,-

(a) sells or allots, or offers or advertises for sale or allotment, or has in his possession for the purpose of sale or allotment, any land grabbed;

(b) instigates or incites any person to commit land grabbing;

(c) uses any land grabbed or causes or permits knowingly to be used, for purpose connected with sale or allotment; or

(d) causes or procures or attempts to procure any person to do any of the above mentioned acts shall, on conviction be punished with imprisonment for a term not less than two years which may extend to five years and with fine which may extend to twenty five thousand rupees.

6. Offences by Companies :-

(1) If the person committing an offence under this Act, is a company, the company as well as every person in charge of and responsible to, the company for the conduct of its business at the time of commission of the offence, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1) above, where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or that the commission of the offence is attributable to any neglect on the part of any director, manager, secretary or other officer, of the company, such director, manager, secretary or officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation:-For the purpose of this section-

(a) "Company" means any body corporate and includes a firm or other association of individuals, and

(b) "director" in relation to a firm means a Partner in the firm.

7. Special Tribunal :-

There shall be a Special Tribunal for the purpose of enquiry into any alleged act of land grabbing and trial of cases in respect of the ownership and title to or lawful possession of the land grabbed and the court of District and Sessions Judge having jurisdiction over the area shall be the Special Tribunal for the purposes of this Act and shall include Additional District and Sessions Judge having jurisdiction over the area.

8. Special Tribunals and their powers and functions :-

(1) Every Special Tribunal shall have power to try all cases arising out of any alleged act of land grabbing, or with respect to the ownership and title to, or lawful possession of the land grabbed whether before or after the commencement of this Act.

(2) The Special Tribunal may, either suo-moto, or on application made by any aggrieved person or any officer or authority, take

cognizance of and try every case arising out of any alleged act of land grabbing, or with respect to the ownership and title to or lawful possession of, the land grabbed, whether before or after the commencement of this Act and pass such orders (including orders by way of interim directions) as it deems fit.

(3) The Special Tribunal, for the purpose of taking cognizance of the case, consider the location, or extent or value of the land alleged to have been grabbed or of the substantial nature of the evil involved in the interest of justice required and any other relevant matter involved in the case:

Provided that the Special Tribunal shall not take cognizance of any such case without hearing the petitioner or the aggrieved person, as the case may be.

(4) Notwithstanding anything contained in the Code of Civil Procedure, 1908(Act 5 of 1908) and the Code of Criminal Procedure, 1973(Act 2 of 1974) any case in respect of an alleged act of land grabbing or the determination of questions of title and ownership to or lawful possession of, any land grabbed, under this Act, shall, subject to the provisions of this Act, be triable in the Special Tribunal:

Provided that if in the opinion of the Special Tribunal, any application filed before it is prima facie frivolous or vexatious, it shall reject such application without any further enquiry.

(5) The Special Tribunal shall, by notification to be affixed in the office premises of the Special Tribunal, office notice Boards of the Deputy Commissioners office and the office of the concerned Circle office under whose jurisdiction the land alleged to have been grabbed is situated, specify the fact of taking cognizance of the case under this Act. Such notification shall state that any objection which may be received by the Special Tribunal from any person including the custodian of evacuee property within the period specified therein will be considered by it:

Provided that where the custodian of the evacuee property objects to the Special Tribunal taking cognizance of the case, the Special Tribunal shall not proceed further with the case in regard to such property:

Provided also that the Special Tribunal shall cause a notice of taking cognizance of the case under this Act served on any person known or believed to be interested in the land., after a preliminary enquiry to satisfy itself about the person likely to be interested in the land. Any objection received by the Special Tribunal from any person within the period specified will be considered by it.

(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973(Act 2 of 1974), it shall also be lawful for the Special Tribunal to frame charge and try all offences punishable under this Act, if in the opinion of the Special Tribunal it is so necessary after delivery of its decision and order in the Civil liability where prima-facie it appears to the Special Tribunal that a particular person or a group of persons are responsible for commission of an offence of land grabbing punishable under this Act.

(7) Every finding of the Special Tribunal in a trial under this section with regard to any alleged act of land grabbing, ownership and title to, or possession of the land grabbed shall be conclusive proof of the fact of land grabbing, and of the persons who committed such land grabbing, and every Judgment of the Special Tribunal with regard to the determination of title and ownership to or lawful possession of any grabbed land shall be binding on all persons having interest in such land.

(8) Every case under sub-section (1) shall be disposed of by the Special Tribunal as far as possible within a period of twelve months from the date of institution of the case before it and a proceeding under sub section (6) shall be disposed of as far as possible within a period of six months from the date of framing of the charges against the person or persons responsible for alleged commission or abetment of the offence punishable under this Act.

(9) It shall be lawful for the Special Tribunal to pass such order as it may deem fit in the interest of justice. It may award compensation in terms of money for wrongful possession of the grabbed land which shall not be less than an amount of equivalent to the market value of the land so grabbed as on the date of the order and the profits accrued from the land, payable by the land grabber to the owner of the grabbed land and may direct redelivery of possession of such land to its rightful owner. The amount of compensation and profits, so awarded and cost of redelivery, if any, shall be recovered as an arrear of land revenue in case the Government is the owner, or as a decree of a Civil Court in any other cases. It may also impose such punishment to a land grabber for Commission of any offence punishable under this Act.

9. Special Tribunal to have the powers of the Civil Court and the Court of Session :-

Save as expressly provided in this Act, the provisions of the Code of

Civil Procedure, 1908(Act 5 of 1908) and the Code of Criminal Procedure, 1973(Act 2 of 1974), in so far as they are not inconsistent with the provisions of this Act, shall apply to the proceedings before the Special Tribunal mutatis mutandis and for the purpose of the provisions of the said enactment, Special Tribunal shall be deemed to be a Civil Court, or as the case may be, a Court of Session and shall have all the powers of a Civil Court and a Court of Session and the person conducting a prosecution before the Special Tribunal shall be deemed to be a Public Prosecutor.

10. Procedure to be followed by Special Tribunal :-

(1) Save as otherwise provided in this Act, a Special Tribunal shall, in the trial of case relating to any alleged act of land grabbing, or with respect to the ownership and title to, or lawful possession of the land grabbed, whether before or after the commencement of this Act, which involves civil liability, follow the procedure prescribed in the Code of Civil Procedure, 1908(Act 5 of 1908) and in the trial of cases relating to alleged offence of land grabbing involving punishment prescribed under this Act, follow the procedure of the Code of Criminal Procedure, 1973(Act 2 of 1974).

(2) After taking cognizance of a case under sub-section (2) of section 8, the Special Tribunal shall try and dispose of the civil liability at first and decide and pass order as to the title, ownership and lawful possession of the grabbed land whether before or after the commencement of this Act as it deems fit. After completion of the civil proceeding, if the Special Tribunal decides and pass order that the land in question has been grabbed, the Special Tribunal may order that the possession of the land be restored to the person whose land has been grabbed after evicting the land grabber or any other person who may be in possession of the land, if necessary by use of such force as may be required for the purpose: Provided that execution of the order for restoration of the possession of the grabbed land shall not be made till expiration of the period of appeal provided under section 13 of the Act. If within a reasonable time after the expiry of the appeal period no order of stay of execution has been received from the Special Court or produced before the Special Tribunal by any of the parties to the case, the Special Tribunal shall proceed for execution of its order and simultaneously frame charge against the land grabber to prosecute him for the alleged act of land grabbing:

Provided further that in the event of preferring an appeal from the

order of the Special Tribunal before the Special Court where stay of execution of the order has been made by the Special Court, the Special Tribunal shall not further proceed in the proceeding to prosecute the land grabber till final disposal of the appeal by the Special Court:

Provided also that after hearing the appeal, if the Special Court decides the appeal against the alleged land grabber, in that event charge for prosecution against the land grabber shall be framed by the Special Tribunal and proceed with the criminal proceeding for prosecution of the land grabber.

(3) The evidence admitted during the civil proceeding may be made use of while trying the criminal proceeding in addition to the additional evidence adduced by the parties in the criminal proceeding.

(4) Any person, accused of land grabbing or the abetment thereof before the Special Tribunal, shall be a competent witness for the defence and may give evidence on oath in disproof of the charge made against him, or any person charged together with him in the criminal proceeding:

Provided that he shall not be called as a witness except on his own request in writing or his failure to give evidence shall be made a subject of any comment by any of the parties or the Special Tribunal or give rise to any presumption against himself or any person charged together with him at the same proceeding.

(5) The Special Tribunal shall, before passing an order under this Act give to the land grabber an opportunity of making his representation or of adducing evidence, if any, in this regard, and consider every such representation and evidence.

11. Burden of proof :-

Where in any proceeding under this Act, a land is alleged to have been grabbed, and such land is prima-facie proved to be the land owned by the Government or by a private person, the Special Tribunal shall presume that the person who is alleged to have grabbed the land is a land-grabber and the burden of proving that the land has not been grabbed by him shall be on such person.

12. Transfer of cases :-

Any case pending before any Court or other authority immediately before coming into force of this Act which involves any act of land grabbing, shall stand transferred to the Special Tribunal within

whose jurisdiction the alleged grabbed land is situated.

13. Appeal :-

(1) Any person, aggrieved by the Judgment and order (not being an interlocutory order) of the Special Tribunal, may prefer an Appeal before the Special Court on any question of law or of fact. Notwithstanding anything to the contrary contained in the Limitation Act, 1963 (Act No. XXXVI of 1963), an appeal under this section shall be preferred it within a period of sixty days from the date of passing of the Judgment and order by the Special Tribunal.

(2) Separate Appeal shall lie against the respective Judgment and order of the Special Tribunal passed in respect of the civil proceeding as well as in criminal proceedings respectively under this Act and the period of sixty days shall be reckoned from the respective date of Judgment and order passed in each of the proceedings.

(3) The Special Court shall dispose of the appeal within a period of six months from the date of filing the appeal and forward a copy of the order to the concerned Special Tribunal under whose jurisdiction the grabbed land is situated for their taking necessary action, if any.

14. Constitution of the Special Court :-

(1) The Government shall, for the purpose of entertaining and disposal of appeals arising out of any Judgment and order of the Special Tribunal, by notification published in the Official Gazette, Constitute a Special Court for the whole of the State of Assam.

(2) A Special Court shall consist of a Chairman and two other members to be appointed by the Government.

(3) The Chairman shall be a person who was or has been a Judge of the High Court and of the other two members, one shall be a person who was or has been a District and Sessions Judge (hereinafter referred to as Judicial Member) and other shall be a person who was or has been a member of the Indian Administrative Service holding or has held a post not below the rank of Secretary to the Government with Special Knowledge or experience in revenue matters (hereinafter referred to as Revenue Member):

Provided that the appointment of a person who was a Judge of the High Court as the Chairman or a District and Sessions Judge as a member respectively of the Special Court shall be made after consultation with the Chief Justice of the Gauhati High Court:

Provided further that where a sitting Judge of the High Court is to be appointed as a Chairman such appointment shall be made after nomination by the Chief Justice of the Gauhati High Court with the concurrence of the Chief Justice of India.

(4) The salary and allowances of the Chairman and the members of the Special Court shall be such as may be prescribed.

(5) No person shall be retained as a Chairman of the Special Court after he has attained the age of sixty five years and as a member after he has attained the age of sixty two years.

(6) The Chairman or other members shall hold office as such for a term of 3 (three) years from the date on which he enters his office: Provided that the Government may re-appoint the Chairman or any other members after expiry of the original term of three years unless such Chairman or member has not attained the age of sixty five years or sixty two years respectively:

Provided further that while making re-appointment of Chairman or any other member, the provisions provided under the provises of sub-section (3) shall be followed.

(7) The quorum to constitute a meeting of the Bench of the Special Court shall be two.

15. Special Court to make regulations :-

(a) The Special Court may, by notification published in the Official Gazette, make regulations, not inconsistent with the provisions of this Act or the rules made thereunder, relating to the procedure to be followed for the conduct of the cases and for regulating the manner of taking decisions.

(b) The Special Court may cause a public notice of the substance of such regulations for the information of the general public.

(c) All regulations made by the Special Court under this section shall, as soon as may be after they are made, be laid before the Assam Legislative Assembly while it is in session, for a total period of not less than fourteen days, which may be comprised in one session or two or more successive sessions and shall unless some later date is appointed, take effect from their publication in the Official Gazette subject to such modification or annulments as the Assam Legislative Assembly may, during the said period agree to make, so however that any such modification or annulment shall be without prejudice to the validity of anything previously done thereunder.

16. Special Court to have the powers of the Civil Court and

the Criminal Court :-

Save as expressly provided in the provisions of the Code of Civil Procedure, 1908(Act 5 of 1908) and the Code of Criminal Procedure, 1973(Act 2 of 1974), in so far as they are not inconsistent with the provisions of this Act shall apply to the proceeding before the Special Court mutatis mutandis and for the purposes of the provisions of this Act, the Special Court shall be deemed to be a Civil Court, or as the case may be, a Criminal Court and shall have all the powers of a Civil Court and a Criminal Court competent to hear and dispose of Appeal. The persons conducting a prosecution before the Special Court shall be deemed to be a Public Prosecutor.

17. Staff of the Special Court :-

(1) The Chairman of the Special Court may appoint officers and other employees required to assist the Special Court in the discharge of its functions under this Act.

(2) The categories of officers and other employees who may be appointed under sub-section (1), their salaries allowances and other conditions of service, and the administrative powers of the Chairman of the Special Court shall be such as may be prescribed, after consultation with the Chairman.

18. Persons acting under the Act to be public servants :-

Any person acting under this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (Act 45 of 1860).

19. Protection of persons acting in good faith :-

No suit, prosecution or other legal proceeding shall lie against any officer or employees of the Special Court or any officer of the Government for anything which is in good faith done, or intended to be done under this Act or the rules made there under.

20. Prohibition of alienation of grabbed land :-

Any transaction relating to an alienation of a grabbed land or any part thereof by way of sale, lease, gift, exchange, settlement, surrender, usufructuary mortgage or otherwise, or any partition effected or a trust created in respect of such land which has taken

place whether before or after the commencement of this Act shall, except ordered by the Special Court or Special Tribunal, be null and void.

21. Functions under certain Acts to continue :-

Notwithstanding anything contained in this Act, the Assam Board of Revenue constituted under the Assam Board of Revenue Act, 1962(Assam Act 21 of 1962) and Officers authorised under the Assam Land and Revenue Regulation, 1886(Regulation 1 of 1886) and the Rules framed thereunder, the Assam Fixation of Ceiling on Land Holding Act, 1956(Assam Act 1 of 1957), the Assam (Temporarily Settled Areas) Tenancy Act, 1971(Assam Act 23 of 1971), shall continue to discharge their functions under the respective Act.

22. Power to make rules :-

(1) The Government may, by notification in the Official Gazette, make rules for carrying out all or any of the purposes of this Act.

(2) All rules made by the State Government under this Act shall, as soon as may be after they are made, be laid before the Assam Legislative Assembly, while it is in session, for a total period of not less than fourteen days which may be comprised in one session or two or more successive sessions, and shall, unless some later date is appointed, take effect from the date of their publication in the Official Gazette subject to such modifications or annulments as the Legislative Assembly may, during the said period agree to make, so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done thereunder.