

## **Madras Land Encroachment Act, 1905**

**3 of 1905**

**[19 April 1905]**

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### **SCHEDULE 1 :- SCHEDULE I**

## **Madras Land Encroachment Act, 1905**

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

It is hereby enacted as follows:-

## **1. Short Title And Extent :-**

This Act, may be cited as the Madras Land Encroachment Act, 1905. It extends to the whole of Presidency of Madras.

### **1A. Definition :-**

In this Act, unless the context otherwise requires, the expression "transferred territory" means the Kanyakumari District and the Shencottah Taluk of the Tirunelveli District.

## **2. Right Of Property In Public Roads, Etc., Water And Lands :-**

(1) All public roads, streets, lanes and paths, the bridges, ditches, dikes and fences, on or beside the same, the bed of the sea and of harbours and creeks below high water mark and of rivers, streams, nalas, lakes and tanks, and all backwaters, canals and water courses and all standing and flowing water, and all lands, wherever situated, save insofar as the same are the property,--

(a) of any zamadar, poligar, mittadar, jagirdar, shrotriendar of inamdar or any person claiming through or holding under any of them, or

(b) of any person paying shist, kattubai, jodi, poruppu or quitreni or any of the aforesaid persons, or

(c) of any person holding under ryotwari tenure, including that of a janmi in the Gudalur Taluk of the Nilgiri District and in the transferred territory or in any way subject to the payment of land revenue director of Government, or

(d) of any other registered-holder of land in proprietary right, or

(e) of any other person holding land under grant from the Government otherwise than by way of licence.

and, as to lands, save also insofar as they are temple site or owned as housesite or backward, are and are hereby declared to be the property of the Government except as may be otherwise provided

by any law for the time being in force subject always to all rights of way and other public rights and to the natural and easement right of other land owners, and to all customary rights legally subsisting.

(2) All public roads and streets, vested in any local authority shall, for the purposes of this Act, be deemed to be the property of Government.

Explanation.--In this section "high water mark" means the highest point reached by ordinary spring-tides at any season of the year.

### **3. Levy Of Assessment On Lands Unauthorisedly Occupied :-**

Any person who shall unauthorisedly occupy in any area other than the transferred territory and land which is the property of Government shall be liable to pay by way of assessment,--

(i) if the land so occupied forms an assessed survey number or part thereof, the full assessment of such number for the whole period of this occupation or a part thereof proportionate to the area occupied, as the case may be, provided that, for special reasons, the Collector or subject to his control, the Tahsildar or Deputy Tahsildar may impose the full assessment of such number or any lesser sum irrespective of the area occupied;

(ii) if the land so occupied be unassessed an assessment on the area, occupied calculated for the same period at the rate imposed on lands of a similar quality in the neighbourhood, or at the highest dry or wet rate of the village, as the case may be, or when no such rates exist in such manners as may be prescribed in rules or orders under section 8:

Provided that payment of assessment under this section shall not confer any right of occupancy.

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

### **3A. Levy Of Assessment On Lands Unauthorisedly Occupied In The Transferred Territory :-**

Any person who shall unauthorisedly occupy in the transferred territory, and land which is the property of Government shall be liable to pay by way of assessment,--

(a) if the land so occupied forms an assessed survey number or part thereof, such assessment for the whole period of his occupation, as may be imposed by the Collector or subject to his control, by the Tahsildar or Deputy Tahsildar, in accordance with such rate as may be prescribed;

(b) if the land so occupied be unassessed, such prohibitory assessment for the whole period of his occupation, as may be imposed by the Collector or subject to his control, by the Tahsildar or Deputy Tahsildar:

Provided that payment of assessment or prohibitory assessment under this section shall not confer any right of occupancy.

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

#### **4. Conclusiveness Of Decision As To Amount Of Assessment**

**:-**

The decision, as to the rate or amount of assessment payable under section 3 of section 3A shall be recorded in writing and shall not be questioned in any Civil Court.

#### **5. Liability Of Person Unauthorisedly Occupying Land To Penalty After Notice :-**

Any person in any area other than the transferred territory liable to pay assessment under section 3 shall also be liable at the discretion of the Collector, or subject to his control, the Tahsildar or Deputy Tahsildar to pay in addition by way of penalty,--

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

(ii) if the land be unassessed, a sum not exceeding ten rupees, or when twenty times the assessment payable for one year under section 3 exceeds ten rupees, a sum not exceeding twenty times such assessment.

#### **5A. Liability Of Person Unauthorisedly Occupying Land To Penalty After Notice In The Transferred Territory :-**

Any person in the transferred territory liable to pay assessment under section 3A shall also be liable at the discretion of the Collector or subject to his control, the Tahsildar or Deputy Tahsildar, to pay in addition by way of penalty, whether the land is assessed or unassessed a sum not exceeding two hundred rupees.

## **5B. Notice Before Proceeding Under Section 5 Or Section 5A**

:-

Before taking proceedings under section 5 or section 5A, the Collector or Tahsildar or Deputy Tahsildar or Revenue Inspector, shall cause to be served in the manner provided in section 7 on the person reputed to be in unauthorised occupation of land being the property of Government a notice specifying the land so occupied and calling on him to show-cause before a certain date why he should not be proceeded against under section 4 or section 5A:

Provided that where the notice under this section is caused to be served by the Revenue Inspector, he shall require the person reputed to be in unauthorised occupation of the land to show cause against such notice to the Tahsildar or Deputy Tahsildar having jurisdiction and shall also make a report in writing containing such particulars as may be specified in rules on orders made under section 8 of the Tahsildar or Deputy Tahsildar having jurisdiction.

## **6. Liability Of Person Unauthorisedly Occupying Land To Summary Eviction, Forfeiture Of Crops Etc :-**

(1) Any person unauthorisedly occupying any land for which he is liable to pay assessment under section 3 or section 3A may be summarily evicted by the Collector or subject to his control, by the Tahsildar or Deputy Tahsildar or any other officer authorised by the State Government in this behalf, (hereafter referred as the Authorised Officer) and any crop or other product raised on the land shall be liable to forfeiture and any building or other construction erected or anything deposited thereon shall also, if not removed by him after such written notice as the Collector or subject to his control, the Tahsildar or Deputy Tahsildar or Authorised Officer may deem reasonable, be liable to forfeiture. Forfeitures under this section shall be adjudged by the Collector or subject to his control by the Tahsildar, or Deputy Tahsildar, or Authorised Officer and any property so forfeited shall be disposed of as the Collector or subject to his control, the Tahsildar or Deputy Tahsildar or Authorised Officer may direct.

(2) An eviction under this section shall be made in the following manner, namely.--By serving a notice in the manner provided in section 7 on the person reputed to be in occupation or his agent requiring him within such time as the Collector or the Tahsildar or Deputy Tahsildar or Authorised Officer may deem reasonable after

receipt of the said notice to vacate the land, and, if such notice is not obeyed, by removing or deputing a subordinate to remove any person who may refuse to vacate the same, and if the officer removing any such person shall be resisted or obstructed by any person, the Collector or the Tahsildar, or Deputy Tahsildar or Authorised Officer shall hold a summary inquiry into the facts of the case, and if satisfied that the resistance or obstruction was without any just cause and that such resistance or obstruction still continues, may issue a warrant for the arrest of the said person and on his any appearance commit him to close custody in the office of the Collector or of Tahsildar or Deputy Tahsildar or Authorised Officer for such period not exceeding 30 days as may be necessary to prevent the continuance of such observation or resistance or may send him with a warrant in the form of the Schedule for imprisonment in the Civil Jail of the district for the like period:

Provided that no person so committed or imprisoned under this section shall be liable to be prosecuted under section 183, section 186, or section 188 of the Indian Penal Code in respect of the same fact.

(3) Any authorised officer taking proceeding under this section shall make a report in writing containing such particulars as may be specified in rules or orders made under section 8 to the Collector, Tahsildar or Deputy Tahsildar having jurisdiction.

## **7. Prior Notice To Person In Occupation :-**

Before taking proceedings under section 6 the Collector or Tahsildar or Deputy Tahsildar or Revenue Inspector or any Authorised Officer or any officer of the Highways Department not below the rank of a Section Officer and not being any authorized officer, as the case may be, shall cause to be served on the person reputed to be in unauthorised occupation of land being the property of Government a notice specifying the land so occupied and calling on him to show cause before a certain date why he should not be proceeded against under section 6.

Such notice shall be served in the manner prescribed section 25 of the Madras Revenue Recovery Act, 1864, or in such other manner as the State Government by rules or orders under section 8 may direct:

Provided that no such notice shall be necessary in the case of any person unauthorisedly occupying any land, if he had been previously evicted from such land under section 6 or if he has

previously vacated such land voluntarily after the receipt of a notice under section 5B or under this section:

Provided further that where the notice under this section is caused to be served by any Revenue Inspector or any officer of the Highways Department not below the rank of a Section Officer and not being an authorized officer, he shall require the person reputed to be in unauthorised occupation of the land to show cause against such notice to the Collector, Tahsildar or Deputy Tahsildar having jurisdiction and shall also make a report in writing containing such particulars as may be specified in rules or orders made under section 8 to the Collector, Tahsildar or Deputy Tahsildar having jurisdiction.

### **8. Power To Make Rules :-**

(1) The State Government may make rules or orders either generally or in any particular instance,--

(a) regulating the rates of assessment liable under section or 3 section 3A;

(b) regulating the imposition of penalties under section 5 or section 5A;

(c) declaring that any particular land or class of lands which are the property of Government shall not be open to occupation;

(d) regulating the services of notices under this Act and prescribing the form of such notices;

(e) specifying the particulars to be contained in the report under the proviso to section 5B under sub-section (3) or section 6 and under the second proviso to section 7;

(f) regulating the procedure to be followed in appeals and revisions under this Act; and

(g) for the purpose of carrying into effect the provisions of the Act.

(2) All rules and orders made under this section shall be punishable in the Fort St. George Gazette and, unless they are expressed to come into force on a particular day, shall come into force on the day on which they are so published.

(3) Every rule and every order made under this section shall, as soon as possible after it is made, be placed on the table of both Houses of the Legislature, and if, before the expiry of the session in which it is so placed or the next session, both Houses agree in making any modification in any such rule or order or both Houses agree that the rule or order should not be made, the rule or order shall, therefore, have effect only in such modified form or be of no

effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or order.

## **9. Recovery Of Assessment Or Penalty Levied As Arrears Of Land Revenue :-**

The amount of assessment and penalty imposed under this Act, on any person unauthorisedly occupying any land shall be deemed to be land revenue and may be recovered from him as arrears of land revenue under the provision of Madras Revenue Recovery Act, 1964, or the Madras City Land Revenue (Amendment) Act, 1867, as the case may be.

## **10. Appeal :-**

An appeal shall lie, (a) to the Collector from any decision or order passed by a Tahsildar or Deputy Tahsildar or an Authorized Officer under this Act, and (b) to the District Collector from any decision or order of a Collector passed otherwise than on appeal, and (c) to the Board of Revenue from any decision or order of a District Collector passed otherwise than on appeal.

### **ection 10A - Revision**

(1) Any decision or order passed under this Act may be revised either suo motu or on application,--

(a) by the District Collector, if such decision or order was passed by authorized officer or a Deputy Tahsildar, Tahsildar, or Collector;

(b) by the Board of Revenue, if such decision or order was passed by any officer;

(c) by the State Government, if such decision or order was passed by the Board of Revenue.

(2) The power conferred by sub-section (1) shall not be exercised except on the ground that the officer or authority whose decision or order is sought to be revised appear to have exercised a jurisdiction not vested in him or it by law, or to have failed to exercise a jurisdiction so vested, or to have acted in the exercise of his or its jurisdiction illegally or with material irregularity.

(3) No decision or order shall be passed under sub-section (1) prejudicial to any person without giving such person a reasonable opportunity of making any representation that he may desire to make and such representation, if any, shall be taken into consideration, before such decision or order is passed.

### **ection 10B - Stay pending decision in appeal or revisions**



Pending the disposal of any appeal or application or proceedings for revision under this Act, the Collector, the District Collector, the Board of Revenue, or the State Government, as the case may be, may by order, and subject to such conditions as may be specified therein, stay the execution of the decision or order appealed against or sought to be revised.

### **11. Limitation For Appeal And Revision :-**

(1) No appeal shall be preferred under section 10 after the expiration of thirty days from the date on which the decision or order appealed against was received by appellant.

(2) No application for revision shall be referred to in sub-section (1) of section 10 after the expiration of thirty days from the date on which the decision or order sought to be revised was received by the applicant.

(3) In computing the period of thirty days referred to in sub-sections (1) and (2), the time required to obtain a copy of the decision or order appealed against or sought to be revised shall be executed.

(4) Notwithstanding anything contained in sub-sections (1) and (2), the officer or authority concerned or the State Government may admit an appeal or application preferred after the period specified therein if such officer or authority or Government is or are satisfied that the appellant or applicant had sufficient cause for not preferring the appeal or application within that period.

### **12. Document Accompanying Petition Of Appeal Or Application For Revision :-**

Every petition of appeal or application for revision under this Act, shall be accompanied by the decision or order appealed against or sought to be revised or by an authenticated copy of the same.

### **13. Saving Of Operations Of Other Laws In Force :-**

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

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

### **14. Saving Of Suits By Persons Aggrieved By Proceeding**

## **Under Act :-**

Nothing contained in this Act, shall be held to prevent persons deeming themselves aggrieved by any proceedings under this Act, except as herein before provided, from applying to the Civil Courts for redress:

Provided that the Civil Courts shall not take cognizance of any suit instituted by such person for any such cause of action unless such suit shall be instituted within six months for the time at which the cause of action arose.

Explanation.--The cause of action shall be deemed to have,--

(a) in respect of any assessment or penalty, on the date on which such assessment or penalty was levied;

(b) in respect of eviction or forfeiture, on the date of eviction or forfeiture.

## **15. Validation Of Levy Or Penal Assessment Before The Passing Of Act, Saving Of Pending Suits :-**

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

## **15A. Certain Persons Deemed To Be In Unauthorised Occupation Of Land :-**

Where a lease of land which is the property of the Government expires or is terminated by the Government or any other authority competent in that behalf, the lessee or any other person remaining in possession of the land after such expiry or termination, or where land granted to any person is liable to be resumed by the Government for the breach or non-observance of any of the conditions subject to which the grant is made and the Government or any other authority competent in that behalf have passed order resuming the land for such breach or non-observance, the grantee or any other person remaining in possession of the land after the

passing of those orders, shall, for the purposes of sections 3 to 15, be deemed to be a person unauthorisedly occupying such land.

## **16. Saving Of Lands Claimed By Right Of Escheat Or Revision :-**

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

### **SCHEDULE 1**

#### **SCHEDULE I**

#### **FORM OF WARRANT TO BE ISSUED UNDER SECTION 6**

Seal

To,

The Officer-in-Charge of the Civil Jail at.....

Whereas A.B. of.....has resisted (or obstructed) C.D. in removing E.F. (or himself, that is, the A.B) from certain land in the village of.....in the..... taluk, and whereas it is necessary in order to prevent the continuance of such obstruction (or resistance) to commit the said A.B. to close custody, you are hereby required under the provisions of section 6 of the Madras Land Encroachment Act, 1905, to receive the said A.B. into the jail under your charge and there to keep him in safe custody for.....days.....

Dated..... day of.....

Signature of Collector /Tahsildar/Deputy Tahsildar/ Authorised Officer .