

The M.P. Krishi Udhār Pravartan Tatha Prakiran Upabandha (Bank) Adhiniyam, 1972

MADHYA PRADESH

India

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Act 32 of 1973

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The M.P. Krishi Udhār Pravartan Tatha Prakiran Upabandha (Bank) Adhiniyam, 1972 M.P. Act No. 32 of 1973 Received the assent of the President on 15-6-1973, assent first published in the M.P. Gazette, (Extraordinary), dated 27-6-1973. An Act to make provisions to facilitate adequate flow of credit for agricultural production and development through banks and other institutional credit agencies and for matters connected therewith or incidental thereto. Be it enacted by the Madhya Pradesh Legislature in the Twenty-third Year of the Republic of India as follows : Chapter-I Preliminary

1. Short title, extent and commencement.

(1) This Act may be called the Madhya Pradesh Krishi Udhār Pravartan Tatha Prakiran Upabandha (Bank) Adhiniyam, 1972. (2) It extends to the whole of Madhya Pradesh. (3) It shall [come into force on such date] [W.e.f. 1-10-1973 by Notification No. 5-6-73-1-XV, dated 28-8-1973, published in the M.P. Rajpatra, Part I, dated 14-9-1973 at page 1375.] or dates as the State Government may, by notification, appoint and different dates may be appointed for different provisions of this Act and for different areas of the State.

2. Definitions.

- In this Act, unless the context otherwise require, -(a) "agriculture" shall include 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 and farming, cattle breeding, animal husbandry, dairy farming, seed farming pisciculture, apiculture, sericulture, piggery, poultry farming and such other activities as are generally carried on by cultivators, dairy farmers, cattle breeders, poultry farmers and other categories 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 the expressions "agricultural purpose" and "agricultural product" shall be construed accordingly;(b)"agriculturist" means a person who is engaged in agriculture;(c)"bank" means-(i)a banking company as defined in the Banking Regulations Act, 1949 (No. 10 of 1949);(ii)the State Bank of India constituted under the State Bank of India Act, 1955 (No. 23 of 1955);(iii)a subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959 (No. 38 of 1959);(iv)a corresponding new bank constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (No. 5 of 1971);(v)the Agricultural Refinance Corporation constituted under the Agricultural Refinance Corporation Act, 1963 (No. 10 of 1963);(vi)the Madhya Pradesh State Agro-Industries Development Corporations Ltd., Bhopal;(vii)Agricultural Finance Corporation Limited, a company incorporated under the Companies Act, 1956 (No. 1 of 1956);(viii)[a Regional Rural Bank established under sub-section (1) of Section 3 of the Regional Rural Banks Act, 1976 (No. 21 of 1976);] [Inserted by M.P. Act No. 42 of 1976.](d)"Co-operative Society" means a co-operative society registered or deemed to be registered under the Madhya Pradesh Co-operative Societies Act, 1960 (No. 17 of 1961);(e)"Financial Assistance" means assistance in the shape of loans, advances, guarantees or otherwise for agricultural purpose; and(f)the expression "Registrar" shall have the meaning assigned to it in the Madhya Pradesh Co-operative Societies Act, 1960 (No. 17 of 1961).

Chapter II

Rights of Agriculturists to Alienate Land or Interest in Land in Favour of Banks

3. Right of agriculturists to alienate land or interest therein for obtaining financial assistance from bank.

- Notwithstanding anything contained in any law for the time being in force or any custom or usage to the contrary, it shall be lawful for an agriculturist to alienate the land or his interest therein, including by creation of a charge or mortgage on such land or interest in favour of a bank for the purpose of obtaining financial assistance from the bank.

3A. [Bank to make entries in Bhoo Adhikar Avam Rin Pustika. [Inserted by M.P. Act No. 64 of 1976 (w.e.f. 28-12-1976).]

(1)A bank making a loan to an agriculturist, who has been provided with "Bhoo Adhikar Avam Rin Pustika" prescribed under Section 114-A of the Madhya Pradesh Land Revenue Code, 1959 (No. 20 of 1959) shall enter all transactions of loans, advances and recoveries, thereof in the aforesaid Bhoo Adhikar Avam Rin Pustika.(2)Notwithstanding anything contained in this Act and rules made thereunder, in case of an omission in making entry of a loan or advance made to an agriculturist, it shall be presumed that no such loan or advance has been made unless proved to otherwise by the bank.]

4. Charge on crop and other movable property in favour of bank.

(1) It shall be lawful for an agriculturist to create a charge on the movable property owned by him or on the crops raised by him, standing or otherwise or other produce from land cultivated by him to the extent of his interest therein, in favour of a bank, to secure financial assistance from the bank notwithstanding that he may not be owner of the land on and from which the crop is raised. (2) Notwithstanding anything to the contrary in the Madhya Pradesh Co-operative Societies Act, 1960 (No. 17 of 1961) or any other law for the time being in force, no charge in respect of financial assistance extended by a co-operative society to an agriculturist shall have priority over a charge on the crops raised by him, standing otherwise, or any other movable property in respect of any financial assistance given to him by a bank, provided that financial assistance made by the bank is prior in point of time to that of the assistance extended by the co-operative society. (3) A bank may distrain and sell through an official of the State Government designated in this behalf by the State Government, the crop or other produce or other movables charged to that bank to the extent of the agriculturist's interest therein and appropriate the proceeds of such sale towards all moneys due to the bank from that agriculturist: Provided that the process specified in sub-section (3) shall not permit the attachment and sale of the following, namely: (i) the necessary wearing apparel, cooking vessel, beds, and bedding of the defaulter, his wife and children, and such personal ornaments as, in accordance with the religious usage, cannot be parted with by any woman; (ii) tools of artisans and, if the defaulter is an agriculturist, his implements of husbandry, except an implement driven by mechanical power and such cattle and seed as may, in the opinion of the designated official be necessary to enable him to earn his livelihood as such; (iii) articles set aside exclusively for the use of religious endowments.

5. Creation of charge on land in favour of bank by declaration.

(1) Where an agriculturist creates a charge on land, or any other immovable property which he owns or in which he has an interest in respect of any financial assistance given to him by a bank, he shall make a declaration in the form prescribed declaring that thereby he creates, in favour of the bank, a charge on such land or his interest therein, or on other immovable property, as the case may be, to secure the financial assistance given to him by the bank. (2) A declaration made under sub-section (1) may be varied from time to time by the agriculturist with the consent of the bank in whose favour the declaration has been made. Such variation shall take effect from such date on which the variation, if it had been an original declaration, would have effect under Section 8.

Chapter III

Charges and Mortgages in Favour of Banks and their Priorities

6. Removal of disability in creation of charges and mortgages.

- Notwithstanding anything to the contrary contained in the Madhya Pradesh Co-operative Societies Act, 1960 (No. 17 of 1961), or any other law for the time being in force and notwithstanding that any land or interest therein stands already charged or mortgaged to a co-operative society, it shall be

lawful for an agriculturist to create a charge or mortgage on such land or interest therein in favour of a bank as security for any financial assistance given to the agriculturist by that bank.

7. Priority of charges and mortgages in favour of bank and cooperative society.

(1) Notwithstanding anything to the contrary in any law for the being in force, - (a) no charge or mortgage created on any land or interest therein, after the commencement of this Act, in favour of co-operative society shall have priority over a charge or mortgage on such land or interest created by an agriculturist in favour of a bank as security for financial assistance given to the agriculturist by the bank after the commencement of this Act, and prior to the charge or mortgage in favour of co-operative society; and (b) any charge or mortgage created on any land or interest therein in favour of a bank in respect of financial assistance given to an agriculturist by that bank shall have priority over any other charge or mortgage that may have been created over such land or interest in favour of any person other than the State Government, a co-operative society or any other bank prior to the date on which the charge or mortgage was created in favour of the bank. Explanation. - For the purpose of this sub-section "commencement of this Act" means the date on which the provisions of this section are brought into force under sub-section (3) of Section 1 in the area in which the land on which charge or mortgage is created, is situated. (2) Where different charges or mortgages over the same land or interest therein have been created by an Agriculturist in favour of the State Government, co-operative society, or a bank or more than one banks, any such charge or mortgage created as security for financial assistance given by the State Government, co-operative society or the bank or banks by way of term loan for development purposes shall have priority over the other charges or mortgages created in favour of the co-operative society or any of the banks, provided prior notice of any such financial assistance by way of term loan for development purpose had been given to such co-operative society or bank, as the case may be, and such co-operative society or bank has concurred in such financial assistance, and where more than one such charge or mortgage is as security for financial assistance given by way of term loan, the charges or mortgages by way of security for term loan for development purpose shall rank for priority in accordance with the dates of their creation. Explanation. - For the purposes of this sub-section, "term loan for development purpose" shall mean financial assistance which would generally lead to improvement of agriculture and/or building up of assets in agriculture but shall not include financial assistance for meeting working capital expenses seasonal agricultural operations or marketing of crops. (3) Nothing in this section shall - (a) apply to borrowings only from one or more co-operative societies including land development banks; (b) affect the priority of the charge resulting from Government loan irrespective of the time of its creation.

8. Registration of charge and mortgage in favour of banks.

(1) Notwithstanding anything contained in the Indian Registration Act, 1908 (No. 16 of 1908), a charge in respect of which a declaration has been made under sub-section (1) of Section 5, or in respect of which a variation has been made under sub-section (2) of that section, or a mortgage executed by an agriculturist in favour of a bank in respect of financial assistance given by that bank, shall be deemed to have been duly registered in accordance with the provisions of that Act on the

date of such charge, variation or mortgage, as the case may be, provided that the bank sends to the Sub-Registrar within the local limits of whose jurisdiction the whole or any part of the land or immovable property charged or mortgaged is situate, within the time prescribed by the State Government for this purpose, by registered post acknowledgement due a copy of the document creating such charge, variation or mortgage duly certified to be a true copy by an employee of the bank authorised to sign on its behalf.(2)The Sub-Registrar receiving the declaration in respect of a charge or variation or a mortgage referred to in sub-section (1) shall, immediately as practicable or receipt thereof, record, in a register to be maintained in this behalf, the fact of the receipt of such declaration, variation or mortgage for registration.

9. Noting of charge or mortgage created in favour of banks in Record of Rights.

- Wherever, a charge or a mortgage on land or interest therein is created in favour of bank by an agriculturist, the bank shall, within such time as may be prescribed give intimation to Tahsildar within whose jurisdiction the land is situate of the particulars of the charge or mortgage in its favour. The Tahsildar shall, notwithstanding anything contained in Madhya Pradesh Land Revenue Code, 1959 (No. 20 of 1959), in the prescribed manner cause a note to be made in the prescribed manner of the particulars of charge or mortgage in the record of rights relating to the village in which the land over which the charge or mortgage has been created is situate.

Chapter IV

Arrangements for Recovery of Dues by Banks

10. Removal of bar to attachment and sale by process of Court.

- Nothing in any law shall prevent in any manner, a bank from causing any land or any interest therein charged or mortgaged to it by an agriculturist to secure any financial assistance, to be attached and sold through a Civil Court and applying the proceeds of such sale towards all moneys due to it from that agriculturist including the cost and expenses as may be awarded by the Court :Provided that nothing in this section shall be construed to permit the attachment and sale of the following, namely : (i) the necessary wearing apparel, cooking vessels, beds and beddings of the defaulter, his wife and children, and such personal ornaments as, in accordance with the religious usage, cannot be parted with by any woman; (ii) tools of artisans and, if the defaulter is an agriculturist, his implements of husbandry, except an implement driven by mechanical power and such cattle and seed as may, in the opinion of the Tahsildar, be necessary to enable him to earn his livelihood as such; (iii) articles set aside exclusively for the use of religious endowments; (iv) houses and other buildings (with the materials and the sites thereof and the land immediately appurtenant thereto and necessary for the enjoyment) belonging to an agriculturist and occupied by him.

11. Recovery of dues of bank through prescribed authority.

(1)An official of the State Government notified by the State Government as the prescribed authority for the purpose of this section may, on the application of a Bank, make an order on any agriculturist or his heir or legal representative, directing the payment of any sum due to the bank on account of financial assistance availed of by the agriculturist, by the sale of any land or any interest therein or any other immovable property upon which the payment of such money is charged or mortgaged [or by attachment and sale of any other immovable property or any interest therein of such agriculturist] [Inserted by M.P. Act No. 6 of 1981 (w.e.f. 6-4-1981).] :[Provided that no order shall be made under this sub-section unless the agriculturist or the heir or legal representative of the agriculturist, as the case may be, has been served with a notice of not less than fifteen days by the prescribed authority calling upon him to pay the amount due.] [Substituted by M.P. Act No. 6 of 1981 (w.e.f. 6-4-1981).][x x x] [Omitted by M.P. Act No. 6 of 1981 (w.e.f. 6-4-1981).](3)Nothing in this section shall debar a bank from seeking to enforce its rights in any other manner open to it under any other law for the time being in force.

12. Right of bank to acquire and dispose of immovable property.

(1)Notwithstanding anything contained in any law for the time being in force, a bank shall have power to itself acquire agricultural land or interest therein or any other immovable property which has been charged or mortgaged to it by an agriculturist in respect of any financial assistance availed of by him, provided the said land or interest therein or any other immovable property has been sought to be sold by public auction and no person has offered to purchase it for a price which is sufficient to pay to the bank the moneys due to it.(2)A bank which acquires land or interest therein or other immovable property in exercise of the power vested in it under sub-section (1) shall dispose it of by sale, within a period to be specified by the State Government in this behalf.(3)If the bank has to lease out any land acquired by it under sub-section (1) pending sale thereof as prescribed in sub-section (2), the period of lease shall not exceed one year at a time and the lessee shall not require any interest in that property, notwithstanding any provisions to the contrary in any other law for the time being in force.(4)A sale by a bank of land or interest therein or any other immovable property in terms of this section shall be subject to the provisions of any other law for the time being in force providing for restrictions on purchase of land by non-agriculturists or in excess of ceiling limit or involving fragmentation of land below a specified limit.(5)Nothing in this section shall be construed to empower the bank to sell any land or interest therein of a person belonging to a tribe which has been declared to be an aboriginal tribe by the State Government by notification under sub-section (6) of Section 165 of the Madhya Pradesh Land Revenue Code, 1959 (No. 20 of 1959), to a person not belonging to such tribe.

13. Exemption to banks from restrictions on acquisition of land in excess of ceiling.

- Nothing in the Madhya Pradesh Ceiling on Agricultural Holdings Act, 1960 (No. 20 of 1960), shall apply to a bank acquiring land under Section 12 and holding such land till such time the bank is in a

position to sell the land in the manner provided in Section 12 or otherwise at a price which is adequate to cover its dues.

Chapter V

Financing of Co-Operative Society by Banks

14. Bank eligible to become member of co-operative society.

- Notwithstanding anything contained in the Madhya Pradesh Co-operative Societies Act, 1960 (No. 17 of 1961) or any law for the time being in force, it shall be lawful for a bank to become a member of a co-operative society.

15. Power of co-operative societies to borrow from banks.

- Notwithstanding anything contained in the Madhya Pradesh Co-operative Societies Act, 1960 (No. 17 of 1961) it shall be lawful for any co-operative society to borrow from a bank.

16. Inspection of books of co-operative society by bank.

(1)A bank shall have the right to inspect the books of any co-operative society which has either applied to the bank for financial assistance or is indebted to the bank on account of financial assistance granted earlier.(2)The inspection may be carried out by an officer or any other member of the paid staff of the bank with the previous sanction in writing of Registrar.(3)The officer or any other member of the paid staff of the bank, undertaking such inspection, shall, at all reasonable times, have access to the book of accounts, documents, securities, cash and other properties belonging to, in the custody of, the co-operative society inspected by him and shall also be supplied by such society such information, statements and returns as may be required by him to assess the financial condition of the society and the safety of financial assistance already made or to be made to the society.

17. Disputes between bank and co-operative society.

(1)Notwithstanding anything contained in any other law for the time being in force, any dispute touching the constitution, management or the business of a co- operative society, between a bank financing a co-operative society and the co-operative society so financed, other than disputes regarding the disciplinary action taken by the society or its committee against paid employees of the society, shall be referred by either of the parties to the dispute to the Registrar for decision.(2)Where any question arises whether, for purposes of sub-section (1) a matter referred to for decision is a dispute or not, the question shall be decided by the Registrar whose decision thereon shall be final.

18. Settlement of disputes.

(1) If the Registrar is satisfied that any matter referred to him or brought to his notice is a dispute within the meaning of Section 17, the Registrar shall decide the dispute himself or refer it for disposal to a nominee or a Board of nominees appointed by him. (2) Where any dispute is referred under sub-section (1) for decision to the Registrar, nominee or board of nominees, the Registrar may, at any time, for reasons to be recorded in writing, withdraw such dispute from his nominee or board of nominees and may decide the dispute himself or refer it again for decision to any other nominee or board of nominees appointed by him. (3) Notwithstanding anything contained in Section 17, the Registrar may, if he thinks fits, suspend proceedings in regard to any disputes if the question at issue between a co-operative society and a bank is one involving complicated question of law and fact, until the question has been tried by a regular suit instituted by one of the parties to the dispute. If any such suit is not instituted within two months from the Registrar's order suspending proceedings, the Registrar shall take action as provided in sub-section (1).

19. Procedure for hearing of disputes.

- The Registrar or his nominee or Board of nominees hearing a dispute under Section 18 shall hear the dispute in such manner and dispose it of within such period as is prescribed.

20. Decision of Registrar or his nominee or Board of nominees.

- When the dispute is referred to for decision, the Registrar or his nominee or the board of nominees may, after giving a reasonable opportunity to the parties to the dispute to be heard, make an award on the dispute, on the expenses incurred by the parties to the dispute in connection with the proceedings and on fees, expenses payable to the Registrar or his nominee or, as the case may be, to the board of nominees. Such an award shall not be invalid merely on the ground that it was made after the expiry of the period prescribed under Section 19 and shall, subject to review or revision by any competent authority under the Madhya Pradesh Co-operative Societies Act, 1960 (No. 17 of 1961) be binding on the parties to the dispute.

21. [Recovery of dues and money. [Substituted by M.P. Act No. 6 of 1981 (w.e.f. 6-4-1981).]

(1) Every order passed by the prescribed authority under sub-section (1) of Section 11 and every award given by the Registrar or the Registrar's nominee or the Board of nominees under Section 20 shall, if not carried out on a certificate signed by the prescribed authority in the case of an order passed under sub-section (1) of Section 11 and by the Registrar in the case of an award made under Section 20, - (a) be deemed to be a decree of a Civil Court and shall be executed in the same manner as a decree of such Court; or (b) be executed according to the law and under the rules for the time being in force for recovery of arrears of land revenue; or (c) be executed by the Registrar or any other person empowered by the Registrar in that behalf in accordance with the provisions contained in clause (c) of Section 85 of the Madhya Pradesh Co-operative Societies Act, 1960 (No. 17 of 1961) and

rules made thereunder :Provided that any application for recovery under clause (b) shall be made,-(i)to the Collector and shall be accompanied by a certificate referred to above; and(ii)within five years from the date fixed in the order or award, as the case may be.(2)The bank or person in whose favour order or award has been passed shall be liable to pay such charges for preparation of certificate and such fees for supply of certified copies of order, award or certificate as may be prescribed.]

22. Power of a bank to proceed against defaulting members of co-operative society.

(1)If a co-operative society is unable to pay its debts to a bank from which it has borrowed, by reason of its members defaulting in the payment of the moneys due by them, the bank may direct the committee of such society to proceed against such members by taking action under the Madhya Pradesh Co-operative Societies Act, 1960 (No. 17 of 1961).(2)If the committee of the co-operative society fails to proceed against its defaulting members within a period of ninety days from the date of receipt of such direction from the bank, the bank itself may proceed against such defaulting members in which event, the provisions of the Madhya Pradesh Co-operative Societies Act, 1960 (No. 17 of 1961), and the rules and the byelaws made thereunder shall apply as if all references to the society or its committee in the said provisions, rules and bye-laws were references to the bank.(3)Where a bank has obtained a decree or award against a co-operative society indebted to it, the bank may proceed to recover such moneys firstly from the assets of the co-operative society and secondly from the members of the co-operative society to the extent of their debts due to the society.

23. Audit, inspection and enquiry reports of societies to be available to banks.

- The Registrar shall draw the attention of the bank financing a cooperative society to the defects noticed in every audit or inquiry or inspection of such society conducted in accordance with provisions of the Madhya Pradesh Co-operative Societies Act, 1960 (No. 17 of 1961) and shall also supply a copy each of such audit, inquiry or inspection report, if demanded, in writing, by the bank.

Chapter-VI Miscellaneous

24. Exemption from legislations relating to money-lending and agriculturists' debt relief.

- Nothing in any law for the time being in force dealing with money-lending or agriculturists' debt relief shall apply to financial assistance availed of by an agriculturist from a bank.

25. Mortgages executed by managers of joint Hindu families.

(1)Notwithstanding anything contained in any law for the time being in force, mortgages executed by the manager of a joint Hindu family in favour of a bank for securing financial assistance for an agricultural purpose shall be binding on every member of such joint Hindu family.(2)Where a

mortgage executed in favour of a bank is called in question on the ground that it was executed by the manager of joint Hindu family for a purpose not binding on the members (whether such members have attained majority or not) thereof, the burden of proving the same shall lie on the party alleging it.

26. Modified application of Section 8 of Act 32 of 1956.

- Section 8 of the Hindu Minority and Guardianship Act, 1956 (No. 32 of 1956) shall apply to mortgages in favour of a bank subject to the modification that reference to the Court therein shall be construed as reference to the Collector or his nominee and the appeal against the order of the Collector or his nominees shall lie to the Commissioner.

27. Power of State Government to make rules.

(1)The State Government may, by notification, make rules to carry out all or any of the purposes of this Act.(2)All rules made under this Act shall be laid on the table of the Legislative Assembly.