

# **The Gujarat Execution of Decrees (Temporary Postponement) Act, 1959**

GUJARAT

India

## **The Gujarat Execution of Decrees (Temporary Postponement) Act, 1959**

### **Act 70 of 1959**

- Published on 28 December 1959
- Commenced on 28 December 1959
- [This is the version of this document from 28 December 1959.]
- [Note: The original publication document is not available and this content could not be verified.]

The Bombay Execution of Decrees (Temporary Postponement) Act, 1959 Bombay Act No. 70 of 1959 [Dated 28th December 1959] For Statement of Objects and Reasons, see Bombay Government Gazette, 1959, Part V, page 844. An Act to provide for relief to agriculturists by way of temporary postponement of institution of suits in, and execution of decrees passed by, Civil Courts in areas that are for the time being affected by natural calamities. Whereas it is necessary to provide for relief to agriculturists by way of temporary postponement of institution of suits in, and execution of decrees passed by, Civil Courts in areas that are for the time being affected by failure of crops, famine, fire, drought, flood or such other natural calamities; And Whereas it is expedient that such relief should be limited within those areas, where on account of such calamities, the State Government [\*\*\*] [The word 'either' deleted by Gujarat 22 of 1987, dated 24th July, 1987.] has granted remission or suspension of land revenue [or has made a declaration] [Substituted for 'and made a declaration' by Gujarat 22 of 1987, dated 24th July, 1987.] of scarcity or of [famine conditions] [Substituted for 'famine conditions, or has ordered remission or suspension of collection of land revenue' by Gujarat 22 of 1987, dated 24th July, 1987.]; It is hereby enacted in the Tenth Year of the Republic of India as follows:-

## **Part I – Preliminary**

### **1. Short title extent and commencement.**

(1) This Act may be called the Bombay Execution of Decrees (Temporary Postponement) Act, 1959. (2) It extends to the whole of the [State of Gujarat] [These words were substituted for the words 'State of Bombay' by the Gujarat Adaptation of Laws (State and Concurrent Subjects) Order, 1960.]. (3) This Part and Part IV shall come into force at once. Part II shall come into force in such area, being an area where, on account of failure of crops, famine, fire, drought, flood or such other

natural calamities, [the State Government or an officer authorised by the State Government in this behalf has granted] [These words were substituted by Gujarat 28 of 1962, section 2 (i).] remission or suspension of land revenue [ [or] [These words were substituted by Gujarat 28 of 1962, section 2 (ii).] the State Government has made] a declaration of scarcity or of famine conditions, and on such date as the State Government may, by notification in the Official Gazette specify, and different dates may be specified for different areas for this purpose. Part III shall come into force in such area, being an area where, on account of any of the aforesaid calamities, the [State Government or an officer authorized by the State Government in this behalf has ordered] [These words were substituted by Gujarat 28 of 1962, section 2 (iii).] suspension or remission of land revenue, and on such date as the State Government may, by notification in the Official Gazette specify, and different dates may be specified for different areas for this purpose.(4)Part II or, as the case may be, Part III shall, unless it is sooner declared by the State Government by notification in the Official Gazette that it shall cease to be in force in any area or part thereof, cease to be in force in such area or such part and on such date as may be specified by the State Government by a notification in the Official Gazette, being the area or the part in which and the date on which, the State Government has declared the cesser of scarcity or of famine conditions or, as the case may be, [the State Government or an officer authorised by the State Government] [These words inserted by Gujarat 22 of 1987, dated 24th July, 1987.], has discontinued the suspension or remission of land revenue.

## **2. Definitions.**

- In this Act, unless the context otherwise requires-(i)"agriculturist" means a person who by himself or by his servants or tenants earns his livelihood wholly or principally by agriculture carried on within the limits of the [State of Gujarat] [These words were substituted for the words 'State of Bombay' by the Gujarat Adaptation of Laws (State and Concurrent Subjects) Order, 1960.] or who ordinarily engages personally in agriculture within those limits;Explanation. - (i) An agriculturist who, without any intention of changing his status as such, temporarily ceases to earn his livelihood by agriculture, or to engage personally in agriculture, or who is prevented from so earning his livelihood, or engaging personally in agriculture by reason of old age or bodily infirmity or necessary absence on account of service in the Armed Forces of the Union does not thereby cease to be an agriculturist within the meaning of this definition;(ii)an assignee of Government assessment or a mortgagee of lands belonging to an agriculturist is not as such an agriculturist within the meaning of this definition;(iii)in the case of members of joint family or co-owners or co-tenants, if any member, co-owner or co-tenant shall be deemed to be an agriculturist, although the other members of the joint family or other co-owners or co-tenants do not ordinarily engage personally in agriculture;(iv)"Civil Court" includes a Court of Small Causes.

## **Part II – Stay of Execution of Decrees and Postponement of Institution of Suits in Certain Cases Under Scarcity or Famine**

### **3. Stay of proceedings in case of certain decrees and postponement of certain suits.**

(1)[Save as provided in sub-section (5), on and from the date on which this Part comes into force in any area,] [Substituted by Gujarat 22 of 1987, dated 24th July, 1987.] all proceedings in execution of any decree for money, all proceedings for making final any preliminary decree foreclosure in enforcement of a mortgage and all proceedings in execution of any final decree for foreclosure or sale in enforcement of a mortgage, passed by any Civil Court in that area on the basis of any liability incurred before the commencement of this Part in that area, in which the judgement-debtor or one of the judgement-debtors is on such commencement an agriculturist, shall be stayed during the period this Part remains in force in that area.(2)In any area to which sub-section (1) applies,-(a)no application for execution of any decree referred to in that sub-section or for making final any preliminary decree for foreclosure referred to in that sub-section, shall be entertained by any Civil Court in that area so long as this Part remains in force in that area(b)no suit for money and no suit for fore-closure or sale in enforcement of a mortgage, shall be instituted, or proceeded with if instituted, in any Civil Court in that area against an agriculturist so long as this Part remains in force in that area, except in cases where an agriculturist is about to dispose of the whole or any part of his immovable property.(3)Where proceedings in execution of any decree have been stayed under sub-section (1), all attachments of growing crops, agricultural produce, live-stock and other moveable property of a perishable nature, made in execution of such decree and subsisting on the date on which the stay order is passed, shall be deemed to be withdrawn.(4)All proceedings under the Provincial Insolvency Act, 1920 (V of 1920) against an agriculturist in any area to which sub-section (1) applies whether on the application of the debtor or creditor, pending on the commencement of this Part in that area, shall be stayed during the period this Part remains in force in that area.(5)Nothing in sub-section (1) shall apply to a proceeding subsequent to the sale of any property made in execution of a decree relating to such property.

### **4. Instalment decrees.**

- Where any decree referred to in sub-section (1) of section 3 is payable by instalments and any instalment payable thereunder falls due while this Part remains in force in any area, then notwithstanding anything contained in such decree, failure to pay such instalment on the due date shall not be deemed to be a default and every such instalment shall be deemed to fall due on the expiration of one month from the withdrawal of this Part under sub-section (4) of section 1 from that area.

### **5. Exemption from arrest.**

- No agriculturist in any area in which this Part is in force shall be liable to arrest or detention in civil prison in execution of a decree referred to in sub-section (1) of section 3 during the period this Part remains in force in that area.

## **6. Computation of the period of limitation.**

(1) In computing the period of limitation prescribed by the Indian Limitation Act, 1908 (IX of 1908) or any other law for the time being in force, for-(a) a suit in a Civil Court in any area against any agriculturist for money or for foreclosure or sale in enforcement of a mortgage, referred to in clause (b) of sub-section (2) of section 3, or (b) an application in a Civil Court in any area for execution of any decree referred to in sub-section (1), of section 3 or an application in a Civil Court in any area for making final any preliminary decree for foreclosure or sale referred to in that sub-section, the period during which this Part remains in force in that area shall be excluded, and a further period not exceeding thirty days shall be added so as to make up the deficit, if any, prior to the expiry of one month from the date of withdrawal of this Part under subsection (4) of section 1 from that area. (2) In computing the period of twelve years prescribed in section 48 of the Code of Civil Procedure, 1908 (V of 1908) for an application in a Civil Court for execution of any decree referred to in sub-section (1) of section 3 the period during which this Part remains in force in that area shall be excluded. (3) In computing the aforesaid period of twelve years, the period during which proceedings were stayed under the Madhya Pradesh Temporary Postponement of Execution of Decrees Act, 1956 (M. P. Act V of 1956), shall, notwithstanding the expiry of that Act by efflux of time, also be excluded as if that Act had not expired.

## **7. Restrictions on transfer.**

- Every transfer of immovable property or of any interest therein made in any area where this Part is in force, by an agriculturist who is a judgement-debtor of any decree referred to in sub-section (1) of section 3, during the period this Part remains in force in that area shall be void as against the holder of such decree.

## **8. Payment of certain decrees.**

- Nothing contained in this Act shall-(a) prevent any decree-holder from accepting any payment under a decree or making any adjustment thereof voluntarily made by the judgement-debtor; (b) apply to a decree for money arising out of claims relating to trust, or for maintenance or for profits in favour of a co-tenant or a co-owner, or for damages for a tort or for contribution between co-tenants of agricultural land; or (c) apply to a mortgage decree sought to be executed by the sale of the mortgage property in the hands of a subsequent transferee who has taken the transfer subject to the mortgage on the basis of which such decree has been obtained.

## **Part III – Stay of Execution of Decrees and Postponement of Institution of Suits in Certain Cases not Falling under Part II.**

### **9. Application of provisions of Part II to certain cases of agriculturists not covered by that Part.**

(1) In any area where, on account of any of the calamities referred to in sub-section (3) of section 1, the State Government [or an officer authorized by the State Government in this behalf] [These words were substituted by Gujarat 28 of 1962, section 4.] has ordered suspension or remission of land revenue, the provisions of Part II shall, subject to the provisions of sub-section (3), also apply, so far as may be, in respect of a judgement-debtor, a defendant, or a person, as the case may be, who is an agriculturist in that area, provided during the period this Part remains in force in that area, he makes an application to a Civil Court of competent jurisdiction in this behalf seeking stay of execution of decrees or postponement of institution of suits in the manner and to the extent provided by Part II, and the Court, on being satisfied that it would be in the interest of the agriculturist to grant the relief prayed for, passes an order accordingly. (2) Every stay order or other order passed by the Court under sub-section (1) shall relate back to the date of the application filed by the judgement-debtor, the defendant or the person, as the case may be, and shall cease to operate when this Part ceases to apply to the area. (3) While construing the provisions of Part II in their application so far as may be for the purposes of this section—(a) the period to be excluded under section 6 shall be the period between the date of the application made under sub-section (1) and the date when this Part ceases to apply to the area or the date of rejection of the application by the Court whichever is earlier; (b) the restrictions on transfer imposed by section 7 shall be deemed to apply only to an agriculturist who has made an application under sub-section (1) and to have effect on and from the date on which the application is presented to the Court and until the date when this Part ceases to apply to the area or the date of rejection of the application by the Court, whichever is earlier.

## **Part IV – Miscellaneous**

### **10. Rules.**

(1) The State Government may make rules for carrying into effect the provisions of this Act. (2) All rules made under this section shall be laid for not less than thirty days before [the State] [Substituted for 'each House of the' by A.O., 1960.] Legislature as soon as possible after they are made, and shall be subject to such modifications as the Legislature may make during the session in which they are so laid, or the session immediately following.

### **11. Repeal and Savings.**

- The Saurashtra Execution of Decrees (Temporary Postponement) Act, 1952 (Saurashtra XIV of 1952) is hereby repealed: Provided that such repeal shall not affect—(a) the previous operation of any Act so repealed or anything duly done or suffered thereunder; (b) any right, privilege, obligation or liability acquired, accrued or incurred under any Act so repealed; or (c) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation or liability as aforesaid; and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, as if this Act had not been passed: Provided also that subject to the preceding proviso, anything done or any action taken under the Act so repealed (including notifications issued and rules made) shall, in so far as it is not inconsistent with any of the provisions of this Act, be deemed to have been done

or taken under the corresponding provision of this Act, as if the said provision was in force in the relevant part of the State when such thing was done or such action was taken, and shall continue in force accordingly unless and until superseded by anything done or any action taken under this Act.

## **12. Repeal of Bombay Ordinance No. IV of 1959).**

(1)The Bombay Execution of Decrees (Temporary Postponement) Ordinance, 1959 (Bombay Ordinance No. IV of 1959) is hereby repealed and the provisions of sections 7 and 25 of the Bombay General Clauses Act, 1904 (Bombay I of 1904) shall apply to such repeal as if that Ordinance were an enactment.(2)The Madhya Pradesh Temporary Postponement of Execution of Decrees Act, 1956 (M.P. Act V of 1956) shall stand revived.