

The Jammu and Kashmir Common Lands (Regulation) Act, 1956

JAMMU & KASHMIR

India

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Act 24 of 1956

- Published on 23 October 1956
- Commenced on 23 October 1956
- [This is the version of this document from 23 October 1956.]
- [Note: The original publication document is not available and this content could not be verified.]

The Jammu and Kashmir Common Lands (Regulation) Act, 1956 Act No. 24 of 1956 [Received the assent of the Sadar-i-Riyasat on 23rd October, 1956 and published in Government Gazette dated 8th November, 1956.] An Act to regulate the rights in common lands. Be it enacted by the Jammu and Kashmir State Legislature in the Seventh Year of the Republic of India as follows :-

1. Short title, commencement, extent and application.

(1) This Act may be called the Jammu and Kashmir Common Lands (Regulation) Act, 1956. (2) It shall come into force at once. (3) It shall extend to the whole of the State of Jammu and Kashmir. (4) Save as elsewhere expressly provided in this Act, nothing contained herein shall apply to land situated in an area declared as Municipality under the provisions of the Jammu and Kashmir Municipal Act, 2008, or a Cantonment under the Provision of Central Cantonment Act, 1924 for the time being in force.

2. Definitions.

- In this Act, unless the context otherwise requires, -(a) "Collector" means the Collector of the district in which the village is situated or any other officer appointed by the Government to perform the duties of a Collector under this Act ; (b) "Commissioner" includes a Settlement Commissioner ; (c) "Inhabitant" of a village means, a person whether a proprietor or a non-proprietor, a tenant or a non-tenant, who ordinarily resides in the village : Provided that temporary absence or absence in relation to employment elsewhere shall not affect his residence in the village ; (d) "prescribed" means prescribed by rules made under this Act ; (e) "Revenue Officer" except for the purposes of sub-section (4) of section 15, means Tehsildar and Assistant Commissioner and includes Settlement Tehsildar and Assistant Settlement Officer ; (f) the words and expressions not denied but used in this Act shall have the meanings assigned to them in the Jammu and Kashmir Land Revenue Act, 1996, and the

Jammu and Kashmir Tenancy Act, 1980.

3. Exercise of right over pathways and places used for common or public purposes.

(1)Notwithstanding anything to the contrary contained in any other law for the time being in force, and notwithstanding any agreement, custom or usage or any decree or order of any Court or other authority, every inhabitant of a village shall exercise the right of user in respect of any road, street, lane, path, channel, drain, well, tank or any source of water-supply in a village including the village of which he is not an inhabitant :Provided that such right was exercised by such inhabitant or any of his predecessors-in-title for one year continuously at any time prior to the commencement of the Jammu and Kashmir Common Lands (Regulation) Ordinance, 1956 (VII of 1956).(2)The right of user permitted by sub-section (1) shall not be deemed to include or otherwise confer, create or assign any right of encroachment, whether by means of construction, including fencing, walling or putting any barrier or by breaking up of land, diversion or otherwise.

4. Penalty for denial of or obstruction in the exercise of right or for encroachment.

(1)Where any inhabitant of a village is denied, or obstructed in, the lawful exercise of his right of user as provided in section 3, or where any person has taken possession of or brought under cultivation or otherwise encroached upon any road, street, land, path, channel, drain well, tank, or any source of water-supply, a Revenue Officer may, on his own motion or on the application of any person interested and after such enquiry as may be deemed necessary,-(a)direct the free exercise of the right of user and the removal of the obstruction, where the exercise of such right is found to have been denied or obstructed ;(b)eject the person who has taken possession of or brought under cultivation or otherwise encroached upon such road, street, lane, path, channel, drain, well, tank, or any source of water-supply ;(c)inflict a fine not exceeding Rs. 200 on such person or persons as are found to have denied or obstructed the exercise of the right of user in respect of or to have taken possession of or brought under cultivation or otherwise encroached upon such road, street, lane, path, channel, drain, well, tank or any source of water-supply.(2)(i)Orders of removal of obstruction or ejectment under sub-section (1) shall be enforced in the manner provided in the Code of Civil Procedure, 1977 for the time being in force in respect of the execution of a decree, whereby a Civil Court has adjudged ejectment from or delivery of possession of immovable property.(ii)In enforcing these orders a Revenue Officer shall have all the powers in regard to contempts, resistance and the like which a Civil Court may exercise in the execution of a decree of the description mentioned in clause (i).(iii)Any fine, if not paid in cash, shall be recovered as an arrear of land revenue under the provisions of the Jammu and Kashmir Land Revenue Act, 1996.

5. Right of water.

- No land-owner shall be competent to curtail or terminate the supply or use of water from any source enjoyed immediately before 17th October, 1950 by any person in respect of the land, in which

the right of such land-owner has been extinguished under the provisions of the Jammu and Kashmir Big Landed Estates Abolition Act, 2007, and a breach of this provision shall constitute a cognizable offence punishable with imprisonment which may extend to six months and shall be triable by a Court not below the rank of a Second Class Magistrate.

6. Assignment of land for village abadi.

(1) Where in any village, no land is recorded for extension of the village abadi, or if the land so reserved is inadequate, a Collector may, notwithstanding anything contained in any law for the time being in force, by an order in writing, assign in the manner prescribed other land for such purpose from either of the following categories of land, namely:-(a) land owned by the State in the village : Provided it is not required for any State purpose ; (b) waste land in the village Shamilat ; (c) waste land in any proprietary holding in the village ; and (d) cultivated land in the village : Provided that unless land included in any preceding category be not available or be not suitable, no land from the next category shall be assigned. (2) The land assigned under sub-section (1) shall, subject to the other provisions of this Act, be apportioned for building purposes amongst the inhabitants of the village in such manner as may be prescribed. (3) Where the land is assigned out of the land owned by the State, the inhabitants of the village in whose favour it is apportioned shall, subject to the payment of a premium equal to ten times the letting value of such land, be granted the right of ownership in such land : [Provided that no premium shall be charged from a person belonging to a weaker section of the society who is not in a position to pay it :] [Proviso inserted by Act XIV of 1981, Section 2.] (4) (i) Where the land is assigned out of the land held in ownership right, all rights, title and interest (including the contingent interests, if any, recognised by any law, custom or usage for the time being in force) of the land-owner shall, notwithstanding anything to the contrary contained in any law, custom or usage for the time being in force, except as otherwise provided in this Act, be extinguished and such rights, title and interest shall be vested in the inhabitants of the village in whose favour it is apportioned, free from all encumbrances : [Provided that where the land held in ownership right is apportioned to a person belonging to a weaker section of the society who is not in a position to pay the compensation, the compensation payable to the owner for such land shall be paid by the Government and any reference in sections, 7 and 9 to an inhabitant of the village, so far as it relates to payment of compensation, shall in relation to cases covered by this proviso, be construed as a reference to the Government. Explanation. - For the purposes of this section person belonging to a weaker section of the society means the person who does not own either in his own name or in the name of any of dependent family member any site of building or built up house in the village.] [Proviso and the explanation added by Act XIV of 1981, Section 2.] (ii) The inhabitants of the village in whose favour such land is apportioned shall be liable to pay and the land-owner concerned shall be entitled to receive and be paid such compensation as may be determined under this Act.

7. Determination of compensation.

(1) Any land-owner whose rights have been distinguished under section 6 may, within six months from the date of the order of assignment made by the Collector, apply to the Collector, in such form as may be prescribed, for the determination of the amount of compensation payable to him by the concerned inhabitants of the village : Provided that the Collector may entertain the application after

the expiry of the said period of six months, if he is satisfied that the applicant was prevented by the sufficient cause from filing the application in time.(2)On receipt of an application under sub-section (1) the Collector shall, after giving the applicant an opportunity of being heard and after making such enquiry as may be prescribed, make an award determining the amount of compensation payable in accordance with the provisions of section 8.(3)Where there is any dispute as to the person or persons who are entitled to the compensation, the Collector shall decide such dispute, and if he finds that more than one person is entitled to compensation, he shall apportion the amount thereof amongst such persons.(4)Where the compensation is payable to a minor or to a person having a limited interest, the Collector may make such arrangements as may be equitable having regard to the interests of the minor, the parties concerned and their reversioners.

8. Principles of compensation.

- The amount of compensation payable under this Act shall, when the land is waste, be twenty times the land revenue paid and in other cases ten times the amount of annual rent and other dues, if any, received by the land-owners:Provided that where the rent or other dues is or are paid wholly or partly in kind, the amount of such annual rent or other dues shall be calculated on the basis of the average of the price of the produce during a period of twelve years, commencing from the first day of April, 1943.

9. Payment of compensation and premium.

(1)The premium payable shall be deposited with the Collector, and the compensation awarded under this Act shall either be paid in cash to the party entitled to it or to be deposited with the Collector by the concerned inhabitants of the village within a period of three months of the date of the order of grant of ownership or award, as the case may be :Provided that the Collector may, having regard to the amount of compensation or premium or for other reasons to be recorded by him, allow such inhabitants of the village to pay the compensation or premium in such instalments payable within a period not exceeding three years in any case, as he thinks fit.(2)When an inhabitant of a village makes a default in the payment of the premium or compensation, the amount due may be recovered in the same manner as an arrear of land revenue.

10. Assignment of land for village abadi by mutual consent.

(1)Notwithstanding anything contained in section 6, when the land-owners of a village voluntarily agree to assign any land out of the village Shamilat or other proprietary holding for purposes of the village Abadi, it shall be lawful for the Collector, after such enquiry as may be necessary, to assign by an order in writing such land for such purposes, and from the date of such order all rights, title and interest (including the contingent interest, if any, recognised by any law, custom or usage for the time being in force) in such land shall be extinguished and such rights, title and interest shall be vested free from any encumbrance in the inhabitants of the village amongst whom such land is apportioned.(2)No claim for compensation on account of the extinction of the rights, title and interest in such land shall be entertained at any time after the order of assignment is made.(3)The apportionment of land amongst the inhabitants shall be made by the Collector in the manner as may

be prescribed.

11. Vesting of rights in non-proprietors and non-tenants and prohibition of encroachment on vacant land.

- Notwithstanding anything to the contrary contained in other law for the time being in force, and notwithstanding any agreement, instrument, custom or usage or any decree or order of any Court or other authority-(a)all rights, title and interests whatever in the land which is situated in the Abadi-Deh of village and which is under the house owned by a non-proprietor or a non-tenant shall, at the commencement of this Act, vest in the said non-proprietor or non-tenant ;(b)no person shall, except as provided in this Act, take possession of or otherwise encroach upon any land vacant at the commencement of this Act other than that used as a courtyard or compound of a house, a vegetable garden, a Sagzar or a Wari, which is included in the Abadi-Deh of any village.

12. Determination of vacant land for building and other purposes.

(1)The Government shall determine the extent of the vacant land as defined in clause (b) of section 11 and may grant it for building and other purposes in such manner and on such conditions as may be prescribed.(2)In the matter of such determination, the Government may consider-(a)any general scheme of rural housing or development already sanctioned by it ; and(b)the requirements of land for any public purpose.(3)[Where any land is granted to any person for building purposes under sub-section (1) he shall hold it on lease basis for a period of ten years on payment of Rupee one per maria per annum and on the expiry of said period of ten years, all rights, title and interest in such land shall vest in such person :Provided that such person shall not transfer his lease-hold rights without previous permission of the Revenue Minister except for mortgaging his lease-hold rights with any financial institution for securing loan for building purposes.] [Sub-section (3) substituted by Act No. XXIV of 1911, Section 2.]

13. Penalty.

(1)When any person has contravened the provision of clause (b) of section 11 or any of the conditions laid down under sub-section (1) of section 12, it shall be lawful for a Revenue Officer having jurisdiction to eject and impose a fine not exceeding Rs. 200 on such person.(2)The provisions of sub-section (2) of section 4 shall apply to all the proceedings taken under this section.

14. Certain mortgages and charges not enforceable against land assigned.

- Notwithstanding anything contained in any contract or in any law for the time being in force-(a)no claim or liability, whether under any decree or order of a Civil Court or otherwise, enforceable against a land-owner for any money which is charged on, or is secured by a mortgage of, any land held under him which has been assigned to village Abadi under section 6, shall be enforceable against the land, but every such claim or liability shall be deemed to be a charge on the compensation payable to the land-owner in respect of such land;(b)no encumbrance on the land

assigned to village Abadi under section 10 shall be enforceable against the land but shall be deemed to be a charge on the other property of the land-owner.

15. Appeal.

(1)An appeal shall lie from-(a)any order made by a Revenue Officer to the Collector ;(b)any order or award made by the Collector to the [Commissioner] [Now Divisional Commissioner.] ; and(c)any order of the [Commissioner] [Now Divisional Commissioner.], to the Financial Commissioner :Provided that when an original award or order is confirmed on first appeal, a further appeal shall not lie.(2)The period of limitation for an appeal under this section shall run from the date of the award or order appealed against and shall be as follows :

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|---|----------------|
| (a) when the appeal lies to the Collector | 30
... days |
| (b) when the appeal lies to the [Commissioner] [Now Divisional Commissioner.] or the Financial Commissioner | 60
... days |

(3)In computing the period for an appeal from an order or award under this Act, the provisions of the Jammu and Kashmir Limitation Act, 1995 shall apply.(4)For the purposes of this Act, the Collector, the [Commissioner] [Now Divisional Commissioner.] and the Financial Commissioner may, in so far as may be necessary or expedient to do so, exercise all the powers of Revenue Officer or a Revenue Court, as the case may be, under the Jammu and Kashmir Land Revenue Act, 1996 and the Jammu and Kashmir Tenancy Act, 1980.

16. Bar of jurisdiction.

- Save as otherwise expressly provided in this Act, every order made by the Revenue Officer, [Commissioner] [Now Divisional Commissioner.] or Financial Commissioner and every award or order made by the Collector shall be final and no proceedings or order taken or made under this Act shall be called in question by any Court or before any officer or authority.

17. Bar to legal proceeding.

- No prosecution, suit or other legal proceedings shall lie against the Government or any officer so authorised for anything which is in good faith done or intended to be done in pursuance of this Act or of any rules made thereunder.

18. Power to make rules.

(1)The Government may make rules to carry out the purposes of this Act.(2)In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :-(a)the manner in which the land may be assigned or apportioned under this Act ;(b)the form and manner in which an application for determination of compensation may be made by the land-owner ;(c)the manner in which inquiries may be held under this Act

;(d)the manner in which compensation may be paid ;(e)the manner in, and conditions upon, which vacant Abadi land may be granted ;(f)the manner in which appeals may be filed ; and(g)any other matter which has to be, or may be prescribed.

19. Repeal and savings.

(1)The Jammu and Kashmir Common Lands (Regulations) Ordinance, 1956 (Ordinance VII of 1956) is hereby repealed.(2)Notwithstanding such repeal, anything done or any action taken in the exercise of any power conferred by or under the said Ordinance shall be deemed to have been done or taken in the exercise of powers conferred by this Act and any penalty incurred or proceeding commenced under that Ordinance shall be deemed to be a penalty incurred or proceeding commenced under this Act, as if this Act were in force on the day on which such thing was done or action was taken.