

# The Redemption of Mortgages (Punjab) Act, 1913

PUNJAB

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### Act 2 of 1913

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The Redemption of Mortgages (Punjab) Act, 1913 Punjab Act 2 of 1913 Statement of Object and Reasons. - Under section 7(5) of the Punjab Alienation of Land Act, as subsequently amended in 1907, the Deputy Commissioner has, in the case of mortgages made under section 6 of the Act, certain powers to restore mortgagors to possession of their property. The present Bill originated in a proposal to confer similar powers in respect of other mortgages. In 1908 a short draft Bill was prepared and circulated for opinion. It dealt with all mortgages of immovable property and following the lines of sections 83 and 84 of the Transfer of Property' Act provided a procedure for the deposit of the mortgaged money by the mortgagor the summoning of mortgagee, and where the mortgagee was willing to accept the sum in deposit, the redemption of the mortgage. Interest was to cease from the date of the deposit, where, however, there was any dispute, the proceedings were to be filed, Revenue Officers were to deal with mortgages concerning and Civil Courts with those concerning other immovable property. The criticisms on this Bill were generally to the effect that it did not go far enough, that a measure was required under which proceedings would be less likely to prove infructuous, and that the Collector or Court should be given some power of summary decision in contentious cases. A second draft Bill was prepared embodying the main criticisms. It was circulated and in the light of the opinions then offered, and in accordance with the recommendations of a small committee, the present bill has been drafted. It is considered that the scope of the Bill should be confined to the cases in which a special procedure is found to be most necessary, that is to say to cases in which the smaller class of mortgagors is concerned, and accordingly it has been provided that the Bill shall not apply to any mortgage in which the mortgaged property is or includes land exceeding 30 acres. The Bill deals only with the mortgages of 'land' as defined in the Punjab Alienation of Land Act, and proceedings will be before the Collector or other specially empowered Revenue Officer and will be of a summary nature. Briefly the Bill provides that a person wishing to redeem his mortgage, whether with possession or not may apply to the Collector for an order of redemption. He must at the same time, deposit the sum he declares to be due. The Collector may then send for the mortgagee. Where there is no dispute, the Collector pass an order of redemption and possession; where there is a dispute about the amount due, the Collector may endeavour to arrange an amicable settlement; and where such endeavour fails or where there is any other dispute, the Collector has power to make a summary enquiry and give a

decision and an order in accordance therewith, which shall be conclusive unless upset by a regular suit. Save in the matter of appeal, which is barred, the procedure ordinarily applicable to Revenue Officers will apply. A second petition by the same party is barred. No power is given to the Collector to vary any condition contained in a mortgage whereby any season or period is expressly fixed for the redemption of the mortgage or the surrender of the land. An Act to provide a summary procedure for the redemption of certain mortgages of land in Punjab. Whereas it is expedient to provide a summary procedure for the redemption of certain mortgages of land in Punjab; It is hereby enacted as follows :-

## **1. Title.**

(1) This Act may be called the Redemption of Mortgages (Punjab) Act, 1913. (2) Extent. - It extends to Punjab. (3) Limitation and scope of Act to certain mortgages. - It shall apply only to mortgages of land -(a) in which, whatever the mortgage money, the land mortgaged, after excluding the area of any share in the common land of the village or of a sub-division of the village appertaining thereto and mortgaged therewith, does not exceed in area [50 acres] [Substituted for the figures and words '30 acres' by Punjab Act 7 of 1934, Section 33.]; or (b) in which, whatever the area, the principal money secured under the mortgage does not exceed [5,000] [Substituted for the figures '1000' by Punjab Act 7 of 1934, Section 33.] rupees : Provided that it shall not apply to any mortgage made under section 6 of the Punjab Alienation of Land Act, 1900 [or the [Patiala Alienation of Land Act, 1972 B.K.] [Repealed by the Adaptation of Laws (Third Amendment) Order, 1951.]

## **2. Definitions.**

- In this Act, unless there is something repugnant in the subject or context, -(1) the expression "land" means land which is not occupied as the site of any building in a town or village and is occupied or let for agricultural purposes or purposes subservient to agriculture or for pasture, and includes -(a) the sites of buildings and other structures on such land; (b) a share in the profits of an estate or holding; (c) any dues or any fixed percentage of the land revenue payable by an inferior land-owner to a superior land-owner; (d) a right to receive rent; (e) any right to water enjoyed by the owner, or the occupier of land as such; and (f) any right of occupancy; (2) the expression "Collector" shall mean the Collector of the district in which the mortgaged property or any part thereof is situated, and shall include an Assistant Collector of the 1st grade : (3) "prescribed" shall mean prescribed by rules made under this Act.

## **3. Application of certain sections of Punjab Tenancy Act.**

- Subject to the provisions of this Act and the rules thereunder, the provisions of sections 79, 85, 86, 87, 89, 90, 91, 92 and 101, of the Punjab Tenancy Act, 1887, shall, so far as may be, apply to all proceedings of a Collector under this Act.

#### **4. Petition for redemption. Verification. Deposits.**

- The mortgagor or other person entitled to institute a suit for redemption may, at any time after the principal money becomes payable and before a suit for redemption is barred, present a petition to the Collector applying for an order directing that his mortgage be redeemed, and where the mortgage is with possession that he be put in possession of the mortgaged property. The petition shall be duly verified in the manner prescribed by law for the verification of plaints, and shall state the sum which the petitioner declares to the best of his belief to be due under the mortgage. The petitioner shall at the same time deposit such sum with the Collector. Particulars to be contained in petition. - The petitioner shall state in his petition such particulars and file therewith such documents as may be prescribed.

#### **5. Mortgagee to be summoned.**

- When the petition has been duly presented and the deposit has been made, the Collector shall issue to the mortgagee a summons to appear on a date to be therein specified. Every summons shall be accompanied by a copy of the petition, with the date of deposit endorsed thereon.

#### **6. Procedure when petitioner is absent and mortgagee present.**

- Where the mortgagee appears and the petitioner does not appear when the petition is called on for hearing, the Collector shall, unless he adjourns the proceedings, make an order that the petition be dismissed, unless the mortgagee admits the claim, in which case the Collector shall make an order - (a) that the mortgage be redeemed; (b) that where the mortgage is with possession the mortgagor be put in possession of the mortgaged property as against the mortgagee; (c) that the mortgagee deposit with the Collector the mortgage-deed, if any, if then in his possession or power, and that it be delivered to the petitioner; (d) that subject to the mortgage-deed, if any, being so deposited by the mortgagee the sum in deposit be paid to him : Provided that no such order shall be made inconsistent with any condition of the mortgage whereby a season or period of the year is fixed for redemption or for surrendering possession

#### **7. Procedure when petitioner is present and mortgagee absent.**

- When the petitioner appears, but the mortgagee does not appear, when the petition is called on for hearing, the Collector shall, unless he adjourns the proceedings, inquire in a summary manner (a) whether the petitioner is entitled to redeem the mortgaged property, and (b) whether the sum deposited by the petitioner is the sum rightly due under the mortgage. If the Collector is not satisfied that the petitioner is entitled to redeem, he shall dismiss the petition. If the Collector is satisfied that the petitioner is entitled to redeem, and that the sum deposited is the sum rightly due under the mortgage, he shall make an order as laid down in section 6(a), (b), (c) and (d) of this Act. If the Collector is satisfied that petitioner is entitled to redeem, but is of opinion that a sum larger than that in deposit is due under the mortgage, he shall fix a period not exceeding 30 days within which the petitioner shall deposit the difference, together with any further sum which may be due on

account of interest up to the date of deposit. If the petitioner makes such deposit within such period or such further period not exceeding 30 days, as the Collector may fix, the Collector shall make an order in manner aforesaid. If the petitioner fails to make such deposit within the period fixed, the Collector shall dismiss the petition.

## **8. Procedure when both parties are in attendance; order for redemption.**

- Where both parties appear when the petition is called on for hearing, the Collector shall inquire from the mortgagee whether he admits that the petitioner is entitled to redeem, whether he is willing to accept the sum in deposit in full discharge of the mortgage-debt, and where the mortgage is with possession whether he is willing to surrender possession of the mortgaged property. If the mortgagee replies in the affirmative, the Collector shall make an order as laid down in section 6(a), (b), (c) and (d) of this Act. If the mortgagee admits the petitioner's title to redeem, but demands payment of a sum larger than that in deposit, the Collector shall inquire from the petitioner whether he is willing to pay such larger sum and if he replies in the affirmative, the Collector shall fix a period not exceeding 30 days within which the petitioner shall deposit the difference, together with any further sum which may be due on account of interest up to the date of deposit. If the petitioner makes such deposit within such period or such further period not exceeding 30 days, as the Collector may fix, the Collector shall make an order as laid down in section 6 (a), (b), (c) and (d) above. If the petitioner fails to make such deposit within the period fixed, the Collector shall dismiss the petition.

## **9. Procedure in contentious cases.**

- If the mortgagee raises objection on any ground other than the amount of the deposit, or if the petitioner is not willing to pay the sum demanded by the mortgagee, the Collector may either (a) for reasons to be recorded dismiss the petition; or (b) make a summary inquiry regarding the objection raised by the mortgagee or regarding the sum due.

## **10. Enquiry into objection raised by mortgagee.**

- If on inquiry regarding any objection so raised by the mortgagee the Collector is of opinion that it bars redemption or is a sufficient cause for not proceeding further with the petition, he shall dismiss the petition; but if he is not of that opinion, he shall, unless he dismisses the petition under section 11, make an order as laid down in section 6(a), (b), (c) and (d) of this Act.

## **11. Enquiry regarding sum due.**

- If on inquiry regarding the sum due the Collector is of opinion that the sum deposited is the sum rightly due under the mortgage, he shall, unless he dismisses the petition under section 10, make an order as laid down in section 6(a), (b), (c) and (d) of this Act, but if he is of opinion that a sum larger than the sum deposited should be deposited by the petitioner, he shall, unless he dismisses the petition under section 10, fix a period not exceeding 30 days within which the petitioner shall

deposit the difference, together with any further sum which may be due on account of interest up to the date of the deposit. If the petitioner makes such deposit within such period or such further period not exceeding 30 days, as the Collector may fix, the Collector shall make an order as laid down in section 6(a), (b), (c) and (d) of this Act.

## **12. Saving of suits to establish right.**

- Any party aggrieved by an order made under section 6, 7, 8, 9, 10 or 11 of this Act may institute a suit to establish his rights in respect of the mortgage, but subject to the result of such suit, if any, the order shall be conclusive. Setting aside ex parte order or orders of dismissal - Notwithstanding anything in this section a mortgagee against whom an ex parte order under section 7 has been made or a petitioner, whose petition has been dismissed in default under section 6 may apply to the Collector to have such order or dismissal set aside, and the Collector may in his discretion set aside, such order or dismissal on such terms as to costs or otherwise as he may deem fit; provided that the order or dismissal shall not be set aside unless notice of the application has been served on the opposite party.

## **13. No second petition.**

- The dismissal of a petition under this Act shall bar any further petition under this Act by the same petitioner or his representative in respect of the same mortgage.

## **14. Return of deposit.**

- If the Collector dismisses a petition under this Act, he shall order that the sum deposited by the petitioner be returned to him.

## **15. Deposit not to be attached.**

- No sum deposited with the Collector by a petitioner under the provisions of this Act shall be attached by any Court or Revenue Officer.

## **16. Cessation of interest.**

- When the petitioner has deposited with the Collector the sum declared by him to be due on the mortgagee, and such sum is accepted by the mortgagee, or is found by the Collector to be the sum actually due, interest on the mortgage shall cease from the date of the deposit. Where the Collector finds that a further sum is due and the petitioner deposits such further sum, interest shall cease from the date of such further deposit : Provided that nothing in this section shall be deemed to deprive the mortgagee of his right to interest when there exists a contract that he shall be entitled to reasonable notice before payment or tender of the mortgage money : Provided also that where a suit is instituted under section 12, the court may pass such order as to interest as it deems fit.

## **17. Power to make rules.**

- The [State] [Substituted for the word 'Provincial' by the Adaptation of Laws Order, 1950.] Government shall have power to make rules, consistent with this Act, for carrying out the purposes of this Act.