

The West Bengal Government Land (Regulation of Transfer) Act, 1993

WEST BENGAL

India

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Act 27 of 1993

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The West Bengal Government Land (Regulation of Transfer) Act, 1993 West Bengal Act 27 of 1993 Assent of the President of India was first published in the Calcutta Gazette, Extraordinary, dated the 4th March, 1997. An Act to provide for the regulation of transfer of Government land and for certain incidental matters. Whereas it is expedient to provide for the regulation of transfer of Government land leased to persons of different categories of income and different cross-section of people with a view to preventing illegal transfer of such Government land and possession thereof for speculative purposes and ensuring the use of such Government land by persons, eligible for allotment of such Government land, for whom, and for the purpose for which, such Government land is intended and for certain incidental matters; It is hereby enacted as follows:-

Chapter I Preliminary

1. Short title, extent and commencement.

(1) This Act may be called the West Bengal Government Land (Regulation of Transfer) Act, 1993. (2) It extends to the whole of West Bengal. (3) It shall come into force at once.

2. Definitions.

- In this Act, unless the context otherwise requires, -(a) "appellate authority" means any authority, not below the rank of District Judge, appointed by the Government in respect of any Government estate or class of Government estates by notification for the purposes of this Act, and includes different such authorities for different Government estates or different classes of Government

estates;(b)"competent authority" means any officer, not below the rank of Deputy Magistrate, appointed by the State Government by notification to perform the functions of the competent authority under this Act in respect of such Government estate or Government estates or class of Government estates or classes of Government estates as may be specified in the notification;(c)"family" has the same meaning as in clause (2) of the Explanation to clause (1) of sub-section (1) of section 13 of the West Bengal Premises Tenancy Act, 1956;(d)"Government estate", in relation to any local area, means an area planned or developed by the State Government or any Government undertaking for residential or commercial purpose or for such other purpose as the State Government or the Government undertaking, as the case may be, may determine;(e)"Government land" means any land comprised in a Government estate;(f)"Government undertaking" means a body corporate constituted by or under a State Act and owned or controlled or managed by the State Government, and includes any company, as defined in section 3 of the Companies Act, 1956, which in under the management of, or in which not less than fifty-one per cent of the paid up share capital is held by the State Government;(g)"land" includes buildings and other things attached to the earth or permanently fastened to anything attached to the earth.Explanation. - "Building" shall include a building under construction;(h)"lease" has the same meaning as in the Transfer of Property Act, 1882;(i)"lessee" includes an individual, a family, a firm, a company, or an association or body of individuals, whether incorporated or not;(j)"notification" means a notification published in the Official Gazette;(k)"prescribed" means prescribed by rules made under this Act;(l)"relation" means, -(A)in the case of an individual or family, -(a)any of the two persons who are said to be related to each other so as one is the father, mother, brother or sister of the other, or(b)any of the two persons who are said to be related to each other by marriage, such as husband and wife,but does not include -(i)any of the two persons who are said to be related to each other by half blood when they are descended from a common ancestor but by different wives, or(ii)any of the two persons who are said to be related to each other by uterine blood when they are descended from a common ancestress but by different husbands, or(iii)any of the two persons who are said to be related to each other so as one is the stepfather or stepmother of the other;(B)in the case of a firm, company or association or body of individuals, whether incorporated or not, any other body corporate under any law for the time being in force or registered or established under any law for the time being in force and compatible with such firm, company or association or body of individuals.Explanation. - In this clause, "ancestor" includes the father and "ancestress" the mother;(m)"transfer of Government land" includes the transfer of any right, title, interest or possession in such land, either in whole or in part, and also includes the transfer to a tenant or licensee of the right of enjoyment of such land or the transfer of management of such land by an instrument creating a power-of-attorney within the meaning of the Powers-of-Attorney Act, 1882, or by any other instrument having effect by virtue of any law other than this Act.Explanation. - "Tenant" shall have the same meaning as in the West Bengal Premises Tenancy Act, 1956.

Chapter II

Bar to application of certain enactments

3. Certain enactments not to apply to transfer of Government land.

- Notwithstanding anything contained in this Act or in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act, or in any decree or order of any court, tribunal or other authority, nothing contained in the Transfer of Property Act, 1882, or the Indian Contract Act, 1872, or the West Bengal Premises Tenancy Act, 1956, shall apply, or shall be deemed ever to have applied, to any transfer of Government land to a lessee, either by lease or by any other instrument, by or on behalf of the State Government, and such transfer of Government land shall take effect, and shall be deemed always to have taken effect, as if the Transfer of Property Act, 1882, or the Indian Contract Act, 1872, or the West Bengal Premises Tenancy Act, 1956, has not been passed.

4. Bar to registration of document.

- Notwithstanding anything contained in the Registration Act, 1908, no registering officer shall register any document relating to the transfer of Government land, held by any lessee on lease, in favour of any person, not being the State Government or a Government undertaking, except with the permission granted by the competent authority in writing in this behalf.

5. Permission by competent authority to be valid notwithstanding anything to the contrary contained in the Act or in any other law.

- Any restriction, condition or limitation contained in the permission as aforesaid shall be valid and shall take effect according to its tenor and intent, notwithstanding anything to the contrary contained in this Act or in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act, or in any decree or order of any court, tribunal or other authority.

Chapter III

Transfer or sale of Government land

6. Bar to transfer of Government land.

(1) Save as otherwise provided in this Act, no transfer of Government land held on lease by any lessee shall be made in favour of any person, not being the State Government or a Government undertaking. (2) Any transfer of Government land made by any lessee shall be subject to the provisions of this Act.

7. Transfer of Government land to relation.

(1) Notwithstanding anything contained in this Act, lessee may, for the purpose of transfer of Government land held by him on lease to his relation, make an application to the competent

authority in such manner as may be prescribed.(2)The competent authority shall, on receipt of the application under sub-section (1), cause such enquiry as it thinks fit and shall, after being satisfied that the transfer of such Government land is intended to be made by the lessee in favour of his relation eligible for allotment of such Government land under any scheme of allotment by the State Government of such Government land for the time being in force, grant permission for such transfer on such condition and in such form as may be prescribed.

8. Transfer of right of enjoyment of Government land to tenant or licensee.

(1)Notwithstanding anything contained in this Act, a lessee may, for the purpose of transfer of the right of enjoyment of Government land held by him on lease to any person, not being that State Government or a Government undertaking, as a tenant or licensee for a limited period on account of his being unable to undertake the maintenance of any building thereon, make an application to the competent authority in such manner as may be prescribed.(2)The competent authority shall, on receipt of the application under sub-section (1), cause such enquiry as it think fit and shall, after being satisfied that the transfer of the right of enjoyment of such Government land is intended to be made by the lessee in favour of tenant or licensee, as the case may be, eligible for allotment of such Government land under any scheme of allotment by the State Government of such Government land for the time being in force for a limited period on account of the inability of the lessee or his family occupying the building as aforesaid to undertake the maintenance of such building, grant permission for such transfer on such condition and in such form as may be prescribed.

9. Transfer of management of Government land by instrument creating a power-of-attorney.

(1)Notwithstanding anything contained in this Act, a lessee may, for the purpose of transfer of management of Government land held by him on lease to any person, not being the State Government or a Government undertaking, by an instrument creating a power-of-attorney within the meaning of the Powers-of-Attorney Act, 1882, or by any other instrument having effect by virtue of any law other than this Act, for reasons beyond his control, make an application to the competent authority in such manner as may be prescribed.(2)The competent authority shall, on receipt of the application under sub-section (1), cause such enquiry as it thinks fit and shall, after being satisfied that the transfer of management of such Government land to such person by the lessee is necessary, grant permission for such transfer in such form as may be prescribed.

10. Disposal of Government land by lessee.

(1)Notwithstanding anything contained in this Act, a lessee, who intends to dispose of any Government land held by him on lease for pecuniary or other compelling reasons but who is unable to dispose of such Government land in favour of his relation, may make an application to the competent authority for permission for disposal of such Government land in favour of any person named in the application, not being a relation, in such manner as may be prescribed. A copy of every such application shall be sent by the lessee to the Secretary to the Government of West Bengal,

Urban Development Department.(2)On receipt of the application under sub-section (1), the competent authority may, if it is satisfied after such enquiry as it thinks fit that the reasons stated by the lessee for the disposal of such Government land are cogent and that the person named in the application is eligible for allotment of such Government land under any scheme of allotment by the State Government of such Government land for the time being in force, and if the State Government does not give any notice to the competent authority within a period of sixty days from the date of the application under sub-section (1) of its intention to exercise the right of pre-emption within a period of one hundred and twenty days from the date of the notice, grant permission for the disposal of such Government land in favour of the person named in the application under sub-section (1) on such condition and in such form as may be prescribed :Provided that if the State Government exercises the right of pre-emption within the period of one hundred and twenty days as aforesaid, -(a)the building, if any, constructed by the lessee on such Government land shall be taken over by the State Government at such valuation as may be made by the competent authority on the basis of the cost of construction of such building less depreciation at the rate in vogue or at the market value of such building, whichever is less, and(b)the lease of Government land shall determine upon payment to the lessee the value of such Government land which shall be the amount of salami of premium paid by him to the State Government in consideration of the price thereof and an interest at the admissible to the deposit in the savings bank account current at any nationalised bank:Provided further that in the case of any dispute between the parties in respect of the valuation of the building, such dispute shall be decided by the competent authority and the decision of the competent authority shall be final and binding on both the parties.

11. Sale of Government land.

(1)No court, tribunal or other authority exercising any power of attachment under any law for the time being in force shall proceed to put on sale any Government land held by any person on lease unless a notice in writing has been served upon the State Government in the Urban Development Department, calling upon that Government to exercise the right of pre-emption within a period of sixty days from the date of service of the notice.(2)If the State Government exercises the right of pre-emption within the period of sixty days as aforesaid, -(a)the valuation of the building, if any, constructed by the lessee on such Government land, and(b)the value of such Government land (other than building),shall be made or determined, as the case may, be in accordance with the first proviso to sub-section (2) of section 10, and upon deposit of the value of such building, if any, and Government land (other than building) with the court, tribunal or other authority, as the case may be, the lease of Government land shall determine, and the State Government shall re-enter.

Chapter IV Miscellaneous

12. Appeal.

(1)Any person aggrieved by any order of the competent authority under section 7, section 8, section 9 or section 10 or by any order regarding valuation made by the competent authority under

sub-section (2) of section 11, may prefer an appeal to the appellate authority against such order within a period of thirty days from the date of communication of the order to him by the competent authority: Provided that the appellate authority may entertain an appeal preferred after the expiry of the period of thirty days as aforesaid, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within such period. (2) On receipt of an appeal under sub-section (1), the appellate authority shall, after giving the appellant a reasonable opportunity of being heard, make such order within a period of ninety days from the date of admission of the appeal as it deems fit, and shall communicate the order to the competent authority within seven days from the date of the order.

13. Revision.

- The State Government may call for and examine any records of any proceedings before the competent authority or the appellate authority within a period of thirty days from the date of the order by the competent authority or the appellate authority, as the case may be, and may make such order thereon as that Government thinks fit. The State Government shall communicate every such order to the appellate authority and the competent authority within fifteen days from the date of the order.

14. Orders under the Act to be final and not to be questioned in civil court.

- Any order made by -(a) the competent authority, if not annulled or varied by any order made by the appellate authority under section 12 or by the State Government under section 13, or (b) the appellate authority, if not annulled or varied by any order made by the State Government under section 13, or (c) the State Government under section 13, shall be final and shall not be questioned in any civil court.

15. Determination of lease.

(1) Where a lessee makes any transfer of Government land held by him on lease to any person, not being the State Government or a Government undertaking, in contravention of the provisions of this Act, the lease shall determine forthwith, notwithstanding anything to the contrary contained in any instrument in this behalf, and the State Government shall re-enter. If the transferee is in possession of the Government land as aforesaid, the State Government may direct the competent authority to use such force as may be necessary to take possession of the Government land after giving the transferee a notice in writing to vacate such land within a period of thirty days from the date of service of the notice: Provided that if the lessee or the transferee makes any application to the competent authority within the period of thirty days as aforesaid giving the reasons for such transfer and the competent authority is satisfied that there is prima facie justification for such transfer, it shall cause such enquiry as it thinks fit and shall decide whether or not the transfer has been made in contravention of the provisions of this Act and shall proceed accordingly. (2) The competent authority shall, while using force to take possession of the Government land under sub-section (1), be deemed to be an Executive Magistrate within the meaning of the Code of Criminal Procedure, 1973.

16. Submission of annual return.

(1) Every lessee or his heir or successor or transferee occupying any Government land shall submit an annual return to the competent authority showing such particulars regarding such occupation, in such form, and within such period, as may be prescribed. (2) If, upon the submission of such return, the competent authority is satisfied that the Government land has been transferred in contravention of the provisions of this Act, the provisions of section 15 shall apply to such transfer.

17. Power of competent authority and appellate authority to summon and enforce attendance of witnesses etc.

- The competent authority and the appellate authority shall, for the purposes of -(a) summoning and enforcing the attendance of any witness, or (b) production of any document, while performing any function or discharging any duty under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit.

18. Power of entry and inspection, etc.

- The competent authority or the appellate authority, while performing any function or discharging any duty under this Act may -(a) at any time between sunrise and sunset and after giving not less than twenty-four hours' notice in writing enter and inspect or authorise any officer subordinate to it enter and inspect any premises, and (b) by order in writing, require any person to produce for inspection such rent receipts or other documents relevant to the enquiry, at such time, and at such place, as may be specified in the order.

19. Protection of action taken in good faith.

- No suit, prosecution or other legal proceeding shall lie against the State Government or any officer of that Government or the competent authority or the appellate authority or any officer authorised by the competent authority or the appellate authority for anything which is in good faith done or intended to be done under this Act or the rules made thereunder.

20. Competent authority and appellate authority etc. to be public servants.

- The competent authority and the appellate authority and any officer performing any function or discharging any duty under this Act shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

21. Bar to jurisdiction of courts.

- No court shall have jurisdiction to decide or to deal with any question which is required to be decided or dealt with under the provisions of this Act and no court shall have jurisdiction to entertain any suit or proceeding in respect of any such question.

22. Act to have overriding effect.

- The provisions of this Act shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force or in any judgement, decree or order of any court, tribunal or other authority, or in any instrument having effect by virtue of any law other than this Act, or in any contract, express or implied, or in any custom or usage.

23. Power to relax.

- The State Government may, if it considers necessary so to do, dispense with or relax the requirement of any of the provisions of this Act in respect of any Government land to such extent and subject to such conditions as it may deem fit.

24. Power to make rules.

(1)The State Government may make rules for carrying 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 matters which under any provision of this Act, are required to be prescribed or to be provided for by rules.(3)Every rule made under this Act, shall be laid, as soon as may be after it is made, before the State Legislature, while it is in session, for a total period of thirty days which may be comprised in one session or in two successive sessions.

25. Power to remove difficulties.

- If any difficulty arises in giving effect to the provisions of this Act, the State Government may make such order, or do such thing, not inconsistent with the provisions of this Act, as appears to that Government to be necessary or expedient for removing the difficulty :Provided that no such order shall be made after the expiry of a period of two years from the date of publication of this Act in the Official Gazette.