

The Punjab Restitution of Mortgaged Lands Act, 1938

HARYANA

India

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Act 4 of 1938

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The Punjab Restitution of Mortgaged Lands Act, 1938 Punjab Act No. 4 of 1938 Statement of Objects and Reasons. - A number of mortgages of land made by members of agricultural tribes before the 8th June, 1901, i.e., the date on which the Punjab Alienation of Land Act, 1900, came into force, are still in existence, inspite of the fact that the mortgage money has been realised many times over from the profits of the land. The Bill is intended to make provision for the termination of such mortgages, on payment of reasonable compensation, where necessary, and for the restitution of possession of the land mortgaged". Punjab Gazette, 1938, part I, page 89. Preamble Received the assent of His Excellency the Governor on the 1st September, 1938, and was first published in the Punjab Gazette (Extraordinary), of the 6th September, 1938. An Act to provide for the restitution of lands on which a mortgage subsists, which was effected prior to 8th June, 1901. Preamble. - Whereas it is expedient to provide for the restitution of certain mortgaged lands in the manner hereinafter appearing, it is enacted as follows :-

1. Short title, extent and commencement.

(1) This Act shall be called the Punjab Restitution of Mortgaged Lands Act, 1938. (2) It shall apply to [Haryana] [Adaptation of Laws Order, 1968.]. (3) It shall come into force [in the principal territories] [Substituted for the words 'Punjab' by the Adaptation of Laws Order, 1968.] on such date as the [State] Government may by notification direct [and in the transferred territories on the 15th May, 1958] [Substituted for the words 'Punjab' by the Adaptation of Laws Order, 1968.].

2. Application of Act to subsisting mortgages effected prior to 8th June, 1901.

- Notwithstanding anything contained in any enactment for the time being in force, this Act shall apply to any subsisting mortgages of land, which were effected prior to 8th June, 1901 [in the principal territories and prior to 17th February, 1915, in the transferred territories] [Substituted for the words 'Punjab' by the Adaptation of Laws Order, 1968.]. Explanation. - A mortgage shall be

deemed to subsist notwithstanding a decree or order for its redemption having been passed provided redemption has not taken place before the commencement of this Act [or in the case of a mortgage in the transferred territories before the date on which the Act intended to these territories] [Substituted for the words 'Punjab' by the Adaptation of Laws Order, 1968.].

3. Definitions.

(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 for 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 occupier of land as such;(f)any right of occupancy; and(g)all trees standing on such land.(2)The expression "Collector" means 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 specially empowered by the [State] [Substituted for the word 'Provincial' by the Adaption of Laws Order, 1950.] Government to perform the duties of the Collector for the purposes of this Act.(2a)[The expression "Commissioner" means the Commissioner of the division in which the mortgaged property or any part thereof is situated, and shall include any officer specially empowered by the [State] [Inserted by Punjab Act 1 of 1943, section 2.] Government to perform the duties of a Commissioner for the purpose of this Act.](3)"Prescribed" means prescribed by rules made under this Act.(4)"Mortgagor" or "mortgagee", respectively shall include the assignee and the representative-in-interest of such "mortgagor" or "mortgagee" as the case may be.

4. Petition for restitution.

- A mortgagor to whose land the provisions of this Act apply, may at any time present a petition to the Collector praying for restitution of possession of the land mortgaged. The petition shall be duly verified in the manner prescribed for such petitions.

5. Procedure for dealing with Petition for restitution.

- On receipt of such petition the Collector, after such enquiries as may be prescribed, shall record an order in writing with reasons stating whether the mortgage in question is one to which this Act applies.

6. Petition when to be dismissed.

- If the Collector finds that the mortgage is one to which this Act does not apply, he shall dismiss the petition.

7. Power of Collector to declare and enforce orders in favour of mortgagor and to grant compensation to mortgagee in certain cases.

(1) If the Collector finds that the mortgage is one to which this Act applies he shall, notwithstanding anything contained in any other enactment for the time being in force in cases where he finds that the value of the benefits enjoyed by the mortgagee, while in possession, equal or exceed twice the amount of the principal sum originally advanced under the mortgage, order in writing -(a) that the mortgage be extinguished, and (b) where the mortgagee is still in possession, that the mortgagor be put into possession of the mortgaged land as against the mortgagee and that the title deeds, if any, be restored to the mortgagor. (2) If in cases to which this Act applies, the Collector finds that, in the value of the benefits enjoyed by the mortgagee while in possession is less than twice the amount of the principal sum originally advanced and some payment is still due to the mortgagee according to the terms of the mortgage, the Collector shall, by order in writing and notwithstanding anything contained in any other enactment for the time being in force direct that the land be restored to the mortgagor and he be put into possession subject, however, to the payment of compensation by the mortgagor to the mortgagee at rates not exceeding the following scale :- (i) thirty times the land revenue assessed on the land at the time when it was mortgaged if the mortgagee has been in possession for a period exceeding thirty years but not exceeding forty years; (ii) fifteen times the land revenue assessed on the land at the time when it was mortgaged if the mortgagee has been in possession for a period exceeding forty years but not exceeding fifty years; (iii) five times the land revenue assessed on the land at the time when it was mortgaged if the mortgagee has been in possession for a period exceeding fifty years. Explanation. - The Collector shall for the purposes of this section compute the period of possession from the date on which the mortgagee entered into possession, to the date of the presentation of the petition under section 4.

8. Effect of order of restitution when compensation is payable.

- If the Collector finds that any sum is due to the mortgage by way of compensation under sub-section (2) of section 7, he shall require the mortgagor to deposit the amount, in such manner as shall be prescribed; and on deposit of the amount, he shall declare the rights of the mortgagee extinguished and require the mortgagee to deliver possession of the land to the mortgagor together with all documents of title relating to the land.

9. Powers of the Collector to eject mortgagee.

- The Collector may after declaring the rights of the mortgagee extinguished, eject the mortgagee and order delivery of possession of the mortgaged land to the mortgagor. In case of resistance the Collector may exercise all the powers conferred on a civil court by rules 97 and 98 of Order XXI of the Code of Civil Procedure. [10. Appeals. - An appeal shall lie from an original or appellate order made under this Act, as follows, namely :- (a) to the Commissioner when the order is made by a Collector; (b) to the Financial Commissioner when the order is made by a Commissioner: Provided that when an original order is confirmed on first appeal a further appeal shall not lie.] [Substituted for the old section by Punjab Act 1 of 1943, Section 3.] [10A. Revision. - The Financial Commissioner

may, at any time, of his own motion or on application made, call for the record of any case pending or decided under this Act and may in any such case pass such order as he thinks fit :Provided that he shall not under this section pass any order reversing or modifying any proceedings or order without giving the person concerned an opportunity of being heard.] [Added by Punjab Act 1 of 1943, section 4.]

11. Limitation of appeal.

(1)The period of limitation for an appeal under the last foregoing section shall run from the date of the order appealed against, and shall be as follows :(a)when the appeals lies to the Commissioner - Sixty days;(b)when the appeal lies to the Financial Commissioner - Ninety days.(2)In computing the period of limitation for an appeal under this section the period requisite for obtaining copies of the order appealed against shall be excluded.(3)The provisions of section 5 of the Indian Limitation Act shall apply to all appeals under this Act.

12. Jurisdiction of civil courts barred.

- No civil court shall have jurisdiction to entertain any claim to enforce any right under a mortgage declared extinguished under this Act, or to question the validity of any proceedings under this Act.

13. Rule-making powers.

(1)The [State] [Substituted for the word 'Provincial' by the Adaption of Laws Order, 1950.] Government shall make rules regulating or determining the following matters, namely :-(a)the presentation and verification of petitions under section 4 of this Act;(b)the procedure by which the Collector shall deal with such petitions under sections 5, 6 and 7 of the Act and assess compensation, if any;(c)the procedure and principles by which the Collector shall assess the amount due under the mortgage, and the value of the benefits accruing to the mortgagee while in possession;(d)the procedure for making the deposit prescribed by section 8 of this Act; and(e)the procedure for enforcing ejectment of the mortgagee and delivery of possession to the mortgagor under section 9 of this Act.