

Himachal Pradesh Agricultural Credit Operations and Miscellaneous Provisions (Banks) Rules, 1975

HIMACHAL PRADESH

India

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Rule

HIMACHAL-PRADESH-AGRICULTURAL-CREDIT-OPERATIONS-AND-MISCELLANEOUS-PROVISIONS-(BANKS)-RULES-1975

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Himachal Pradesh Agricultural Credit Operations and Miscellaneous Provisions (Banks) Rules, 1975 Published vide Notification No. 8-29/71-Fin.(W&M) dated 31st July, 1975. Finance Department No. 8-29/71-Fin.(W&M). - In exercise of the powers conferred by section 29(1) of the Himachal Pradesh Agricultural Credit Operations and Miscellaneous Provisions (Banks) Act, 1972 (Act No 7 of 1973) the Governor, Himachal Pradesh, is pleased to make the following rules entitled as the Himachal Pradesh Agricultural Credit Operations and Miscellaneous Provisions (Banks) Rules, 1975, the same having been previously published in the Himachal Pradesh Rajpatra, dated the 5th April, 1975.

Chapter I Preliminary

1. Short title and commencement.

(1) These rules shall be called the Himachal Pradesh Agricultural Credit Operations and Miscellaneous Provisions (Banks) Rules, 1975. (2) These shall come into force at once.

2. Definitions.

- Under these rules, unless there is anything repugnant in the subject or context:- (a) "Act" means the Himachal Pradesh Agricultural Credit Operations and Miscellaneous Provisions (Banks) Act, 1972

(Act No. 7 of 1973);(b)"Collector" means the head revenue officer of a district and includes any officer appointed or authorised by the Government under these rules to exercise all or any of the powers of a Collector;(c)"Section" means a section of the Act; and(d)all other words and expressions used in these rules but not defined in these rules shall have the meanings respectively assigned to them in the Act.

Chapter II

Distrain and Sale of Movables

3. Application by the bank for distraint-section 5(3).

(1)Where any charge has been created on any crop, produce or other movable property in favour of a Bank in respect of financial assistance and the whole or any part of the amount due in respect thereof remains unpaid, the Bank may apply to the Collector of the district concerned for distraint and sale of such crop, produce or property.(2)Every application under sub-section (1) shall be in Form 'A'.(3)The copy of the document creating the charge duly certified to be a true copy by an employee of the Bank authorised to sign on its behalf shall be filed along with the application referred to in sub-rule (1).

4. Service of notice to show cause against distraint on the agriculturist or his legal representative etc.

- If the Collector is satisfied that the application is in order, he shall cause to be served on the agriculturist or his heir or legal representative, a written notice of demand in form 'B' calling upon him to pay the amount specified in the notice within a period of fifteen days from the date of service thereof, or to show cause why the property charged may not be distrained and sold.

5. Mode of service of notice under rule 4.

- The notice referred to in rule 4 shall be served by delivering a copy to the agriculturist or his heir or legal representative or to any adult male member of his family at his usual place of residence or to his authorised agent, or when such service cannot be effected, by affixing a copy of the notice on some conspicuous part of his residence.

6. Procedure where no cause is shown against distraint of property charged.

- If the amount specified in the notice referred to in rule 4 or the balance if any, is not paid within the time allowed therefor, or if no cause is shown, or where cause shown is considered by the Collector to be insufficient, he shall attach the property charged.

7. Custody of distrained property.

- The Collector shall make proper arrangements for custody and preservation of distrained property during the interval between distraint and sale thereof. The applicant or an officer of the Bank concerned, if so authorised by the applicant, shall, if required by the Collector, undertake the custody and preservation of the property distrained.

8. Time when the distraint can be made.

- The attachment shall be made at any time between sun rise and sun-set.

9. Distraint of crops or ungathered produce.

- If crops or ungathered produce of the land belonging to the agriculturist or his heir or legal representative are distrained, the Collector may cause them to be sold when it becomes fit for reaping or gathering, or at his option may cause them to be reaped or gathered in due season and stored in proper place until sold.

10. Entry of the distrainer on private premises for distraining.

(1) Wherever the Collector for the purpose of the attachment of the properties referred to in sub-rule (1) of the rule 3 has the information for the reasons to believe that-(a) any portion of the properties to be attached under Act and the Rules framed thereunder, has been concealed or is likely to be concealed; (b) any person who has been required under these rules to produce or cause to be produced, any books, accounts, documents, or other information in his custody or power has omitted or failed to produce, or cause to be produced, such books, accounts, documents or other information; or (c) any books, accounts, receipts, vouchers, certificates, reports or other documents belonging to any property to be attached are likely to be tampered with, falsified or manufactured: he may authorise any of his subordinate officer to effect the search or inspection under this rule. (2) Whenever any place liable to search or inspection under sub-rule (1) is closed, any person residing in, or being in charge of, such place, shall, on demand of the officer authorised by the Collector under sub-rule (1) and on production of authority to conduct the search in question, allow free ingress thereto, and afford all reasonable facilities for search therein. (3) If ingress to such place cannot be obtained under sub-rule (2), it shall be lawful, in any case for an officer conducting search or inspection, to enter such place and search therein, and in order to effect entrance into such place, stable, cow-shed, grainery, godown, out-house or other building, to break open the lock of any door, box, safe, almirah or other receptacle for exercising the powers conferred by sub-rule (1) where the keys thereto are not available, if after notification of his authority and purpose and demand of admittance duly made, he cannot otherwise obtain the admittance. Provided that, if any such place is an apartment in the actual occupancy of a female who, according to custom, does not appear in public, such officer shall before entering such apartment give notice to such female that she is at liberty to withdraw and shall afford her every reasonable facility for withdrawing, and may then break open the apartment and enter it. (4) Before making a search under this rule, the officer

authorised to do so shall call upon two or more independent respectable inhabitants of the locality in which the place to be searched is situate or of any other locality if no such inhabitant of such locality is available or is willing to be a witness to the search, to attend and witness the search and may issue an order in writing to them or any of them so to do.(5)The search shall be made in their presence, and a list of all things seized in the course of such search and of the places in which they are respectively found shall be prepared by such officer and signed by such witness; but no person witnessing a search under this rule shall be required to attend the Court as a witness of the search unless specifically summoned by it.(6)The occupant of the place searched, or some persons on his behalf, shall, in every instance, be permitted to attend during search, and a copy of the list prepared under this rule, signed by the said witness shall be delivered to such occupants or person When any person is searched under this rule, a list of all things taken in possession shall be prepared and a copy thereof shall be delivered to such person.(7)Any person who, without reasonable cause, refuses or neglects to attend and witness search under this rule, when called upon to do so by an order in writing delivered or tendered to him, shall be deemed to have committed an offence under section 187 of the Indian Penal Code.

11. Sale of distrained property by public auction.

(1)The Collector may sell or cause to be sold by public auction any property distrained under rule 6 or such part thereof as may in his opinion be necessary to satisfy the demand together with expenses of the distraint and the costs of the sale.(2)The distrainer shall at any time before the date of sale cause proclamation of the date and place of the intended sale to be made by beat of drum in the village in which the agriculturist or his heirs, or legal representatives reside or the properties referred to in sub-rule (1)of rule 3 are kept and in such other place or places as the Collector may consider necessary to give due publicity to the intended sale.(3)The Collector may in his discretion adjourn the sale to a specified day recording the reasons for such adjournment. Where a sale is adjourned for a longer period than fifteen days, a fresh proclamation under sub-rule (2) shall be made unless the agriculturist or his heir or legal representative consents to waive it.

12. Recovery of sale proceeds from purchaser.

- The purchaser shall not be permitted to carry away any part of the property until he has paid for it in full.

13. Release of distrained property on payment of the amount due by the agriculturist or any person claiming interest in the property.

- Where prior to the date fixed for sale, the agriculturist or his heir or legal representative or any person acting on his behalf or any person claiming an interest in the property distrained pays the full amount due, including interest, and other expenses incurred in the distraint and sale of the property charged, the distrainer shall not proceed with the sale and shall release the property forthwith.

Chapter III

Charge and Mortgage of Immovable Properties

14. Time limit within which intimation of charge/mortgage etc. is to be sent by the Bank to the Registrar.

(1) Within a period one month from the date of such execution, a copy of document creating a charge, variation or mortgage referred to in (sic) section (1) of section 9 shall not be a carbon copy but shall be neatly hand-written, printed, or type-written, or a cyclostyled copy of type-written matter on only one side of the paper. (2) Such copy shall be sent by the Bank to the Sub-Registrar of the area.

15. Inspection of the records of the Sub-Registrar.

- Where a copy of the document creating a charge, variation or mortgage has been sent to the Sub-Registrar under section 9, the Bank or any employee thereof duly authorised in this behalf, may at any time inspect the relevant record of the Sub-Registrar concerned to ensure whether the said copy has been filed in accordance with sub-section (1) of the said section.

16. Noting of charge or mortgage under section 10.

- The Tehsildar to whom the intimation is given by the Bank under section 9, shall not normally take more than 30 days from the receipt of intimation from the Bank to make a note in the record-of-rights under section 10.

Chapter IV

Sale of land and interest therein

17. Action to be taken by the Bank prior to the making of application under section 13.

- If an agriculturist has defaulted in the repayment of three consecutive instalments, the Bank shall serve a registered notice on the defaulter calling upon him to clear the dues within one month from the date of the issue of the notice and if the borrower does not comply with the notice within the stipulated period, a second notice giving him a further period of one month shall be served upon him through registered post. After the expiry of the period of the second notice, it shall be presumed that the means available to the Bank have been exhausted. Thereafter, the Branch Manager of the Bank may move the Collector within the local limits of whose jurisdiction the whole or any part of the property charged or mortgaged is situated; for initiating the action under section 13.

18. Application under section 13.

(1) Every application by a Bank under sub-section (1) of section 13 for the sale of any land or interest therein shall be made by the bank in Form 'C' to the Collector. The application shall be accompanied by sufficient number of copies thereof along with copies of notices in Form 'D' for service on the agriculturist or his heirs or legal representatives. (2) The copy of the document creating the charge duly certified to be a true copy by an employee of the Bank authorised to sign on its behalf shall be filed along with the application referred to in sub-rule (1).

19. Service notice under Section 13.

- On receipt of the application referred to in rule 18, the Collector shall cause to be noted thereon, the date of its presentation and if it is satisfied that the application is in order, a notice in Form 'D' shall be served on the agriculturist or his heirs or legal representatives, as the case may be.

20. Supply of certified copy of the order passed by the prescribed authority to the aggrieved party.

- Any person affected by any order passed by the Collector under sub-section (1) of section 13 of the Act, shall be entitled to be furnished with a certified copy thereof and any other connected document on application duly made in that behalf.

21. Time within which the Bank has to dispose of the property under section 14(2).

- A Bank acquiring land or interest therein under sub-section (1) of section 14 shall dispose it of by sale, within a period not exceeding five years from the date on which the 1st public auction under sub-section (1) of section 13 was concluded by the Collector.

22. Notice, summon etc. to be issued under the Act/Rules.

- Every order, notice, summon or intimation issued by any authority under the Act or under these Rules shall bear the signatures of such authority or such other authority as may be duly authorised in this behalf, and shall be authenticated by the seal of such authority. Form "A" (See rule 3(2)) Before the Collector....., Tehsil....., District....., Applicant (Bank). Versus..... Opposite party (Agriculturist or his heirs or legal representatives). Application under sub-section (3) of section 5 of the Himachal Pradesh Agricultural Credit Operations and Miscellaneous Provisions (Banks) Act, 1972, for the distraint and sale of crop, produce or other movable property.

1. Name and address of the agriculturist. (If the agriculturist is dead, the name of his heir or legal representative should also be stated.)

2. The amount of the financial assistance
 3. Date when the charge was created
 4. Date when the loan was actually advanced
 5. The nature of the transaction and the terms of the loan
 6. Total amount due (including interest)
 7. Payments, if any, made by agriculturist along with the date of such payment
 8. Net amount due on the date of application (excluding cost)
 9. Description of the property charged/mortgaged
- It is, therefore, requested that the property hereinbefore mentioned may be distrained and sold, and the amount due be paid to the
Bank. Agent/Officer-in-charge..... Bank. Dated..... 19 Enclosures:

1.

2.

3.

4.

Form "B" (See rule 4) Before Collector District..... Notice under rule 4 of the Himachal Pradesh Agricultural Credit Operations and Miscellaneous Provisions (Banks) Rules, 1975. To Shri..... Whereas Shri..... borrowed a sum of Rs..... on..... 197 as financial assistance from..... Bank..... Branch, district..... by creating a charge on the crops, produce or other movables specified below; And whereas, the amount due to the said Bank has not yet been paid, and the Bank has made an application (copy enclosed) that the property specified below be distrained and sold; You are, therefore, called upon to pay the sum of Rs..... within a period of fifteen days from the date of service of this notice and/or to show cause why the property specified below be not distrained and sold, and the amount due be not paid to the Bank from the sale proceeds thereof. Description of the crop, produce or other movable charged..... (Distraîner). Dated..... Seal. Form "C" (See rule 18) Before the Collector....., Sub-Division..... District..... Applicant (Bank). Versus..... Opposite party (Agriculturist or his heirs or legal representatives). (sic) location under section 13(1) of the Himachal Pradesh Agricultural Credit Operations and Miscellaneous Provisions (Banks) Act, 1972, for the sale of land or interest therein.

Name of the agriculturist to whom the financial assistance was granted (if

1. the agriculturist is dead, the name of his heirs or legal representatives should also be stated)
2. The amount of the financial assistance

3. Date when the deed was executed
4. Date when the deed was registered
5. Date when the loan was actually advanced
6. The nature of the transaction and the terms of the loan
7. Total amount due (including interest)
8. Payments, if any, made by the agriculturist along with the date of such payments
9. Net amount due on the date of application (excluding cost)
10. Description of the property charged/mortgaged

It is, therefore, requested that the amount due to the Bank may be directed to be paid by the sale of the property hereinbefore

mentioned. Agent [Officer-in-charge.....Dated.....Enclosures:

1.

2.

3.

4.

Form "D" (See rules 18 and 4) Before the

Collector.....Sub-Division.....District.....Notice under section 13(1)

of the Himachal Pradesh Agricultural Credit Operations and Miscellaneous Provisions (Banks) Act, 1972 To Shri.....Whereas, Shri.....borrowed a sum of Rs.....as

financial assistance from.....Branch, district..... on the basis of a deed of charge/mortgage executed on.....in respect of the property specified below: -And whereas, the amount due to

the said Bank has not yet been paid and the Bank has made an application (copy enclosed) that the property specified below be sold. Now, therefore, in exercise of the powers under the proviso to

section 13(1) of the Himachal Pradesh Agricultural Credit Operations and Miscellaneous Provisions (Banks) Act, 1972, you are hereby called upon to pay the entire amount due to the said Bank, within

a period of one month from the date of service of this notice. Please take notice that in the case of default, the property specified below shall be sold in accordance with the provisions of the Act and

rules made thereunder: -Description of the property

charged/mortgaged:.....Dated.....199Seal.....(Prescribed Authority) Enclosures:

1.

2.

3.

4.

(R.H.P., dated the 9th August, 1975, p. 924-927).