

Standing Order No. 1 Of The Financial Commissioner Himachal Pradesh

HIMACHAL PRADESH

India

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Rule

STANDING-ORDER-NO-1-OF-THE-FINANCIAL-COMMISSIONER-HIMACHAL PRADESH of 1800

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Standing Order No. 1 Of The Financial Commissioner Himachal Pradesh Proceedings And Suits Between Landowners And Tenants

1. Notice of Resumption of lease on cessation of inability or disability.

- The procedure connected with the issue of notices by the Revenue Officer for resumption of lands leased to lessees by landowners under sub-section (3) of section 30 of the H.P. Tenancy and Land Reforms Act, 1972, on the cessation of inability or disability as described in sub-section (1) of section 30 of the Act. Care should be taken that the particulars required are correctly mentioned as such notices are frequently set aside owing to defects of form. The form of notices to be used is given hereunder:- Notices Issued By A.B. Assistant Collector Of The District Notice of Resumption issued pursuant to the provisions of sub-section (3) of section 30 of the H.P. Tenancy and Land Reforms Act, 1972.

Person on whose application this notice is issued C.D. (with father's name and residence)

Person on whom the notice is to be served E.F. (with father's name and residence)

Lease to which the notice relates

(Give for each field included in the lease its number and its area, also, the total area of the lease and the estate and tehsil in which situate.) Whereas C.D. has made an application to this office stating that he is the landowner of the lease above described, and the inability/disability, on account of which the lease aforesaid was given has ceased and he wants to resume the lease and prayed that E.F. the lessees thereof, be ejected, and Whereas it appears from the annual record that E.F. holds as

a lease of C.D., and is liable to ejectment by notice in accordance with the provisions of clause.....(here mention the relevant-clause) of sub-section (1) of section 30 of the H.P. Tenancy and Land Reforms Act, 1972. This Notice of Ejectment is issued against E.F. the said lessee, and he is hereby informed that he must vacate the land immediately after harvesting the crop then current and in case the lessee has any objection, it should be filed on.....before the undersigned.Dated at the Revenue office of(Seal and signature of Revenue Officer),This day of 19

2. Ejectment of Tenants failing to satisfy decrees for arrears of rent.

- The ejectment of tenants who have failed to satisfy decrees for arrears of rent is provided in section 37 of the H.P. Tenancy and Land Reforms Act, 1972. Sub-section (2) of section 39 of the H.P. Tenancy and Land Reform Act, 1972 empowers a Revenue Officer the attendance of both parties before him and to take such action as may prevent the acquisition by the landowner of a valuable property for the often comparatively nominal amount of the unsatisfied arrear of rent. When the arrear remains unsatisfied on account of poverty or other reason, the retention of his holding by the tenant is not advisable. It is probable that the landowner would readily accept a suggestion that his tenant's rights including the tenant's claim to compensation under sections 49 and 52 of the H.P. Tenancy and Land Reforms Act, 1972 would be most equitably extinguished by a money payment to the tenant. An arrangement of this sort, of course, depends on the consent of the landowner but where it has been tried, it is believed that as a rule, he at once admits the fairness of the suggestion and allows the defaulting tenant half or more of the value or some other equivalent of the tenant right. The Court should keep in view the provisions of section 41 of the Act. If the injury caused by the act or omission on which the suit is based is capable of being remedied, or that an award of compensation will be sufficient satisfaction to the landowner, therefore, the court may order the tenant to remedy the injury within a specified period instead of ordering his ejectment.

3.

The Collectors should impress upon the Revenue Officers of their districts, that the provisions of the H.P. Tenancy and Land Reforms Act are worked considerably. When a landowner seeks to eject a tenant because of an unsatisfied decree of arrears of rent a class of case in which the law is sometimes mechanically enforced the provisions of sub-section (2) of section 39 should be sympathetically applied. In all such cases, the Revenue Officer concerned should cause the defaulting tenant served with a notice to appear before him personally. On his appearance, the tenant should be clearly warned-of the danger of his ejectment. If the difference between the arrears of rent due and the value of the tenant's right is great, the Revenue Officer should endeavour to effect some compromise between the parties. The form of notice required to be served on the tenant is prescribed below: Notice Issued By A.B. Assistant Collector Of The District.....Notice of ejectment issued pursuant to the provisions of sub-section (1) of section 39 of the H.P. Tenancy and Land Reforms Act, 1972.

Landowner on whose application this notice is issued.

C.D. (with father's
name and residence)

Tenancy on whom this notice is to be served.

E.F. (with father's
name and residence)

Tenancy to which the notice relates. (Give for each field included in the tenancy its number and its area, also of the tenancy and the estate and tehsil in which situate).

Whereas on the.....day of.....19.....in the Court of.....at.....a decree for Rs.....and cost Rs.....on account of an arrear of rent due in respect of the tenancy above described was passed in favour of the C.D., landowner-plaintiff against E.F., tenant-defendant, whereas a sum of Rs.....is still due under this decree as set out in the account annexed. This Notice of Ejectment is issued against E.F. the said tenant, and he is hereby informed that if he does not pay to this office the said amount of Rs.....which is still due under the decree, within fifteen days from the receipt of this notice, he will be ejected from the said tenancy. Dated at the Revenue Office of this day of 19 (Seal and Signature of Revenue Officer) Account Of Sums Due Under The Decree Amount of decree.....Rs. Cost decreed against defendant.....Rs. Cost of execution to date.....Rs. Total Rs. Paid by defendant. Balance now due.

4. Establishment of right of occupancy.

- In connection with suits to establish right of occupancy, paragraphs 208-211 of the Settlement Manual and paragraph 800 of the Land Administration Manual may be consulted. When Revenue Court passes a judgment giving a right of occupancy, the decree should invariably specify the section and clause which define the class of right affirmed.

5. Suits for and to contest ejectment.

- Suits (a) by landowners for the ejectment of tenants and (b) tenants to recover possession or to obtain compensation in case of wrongful ejectment are dealt with in paragraphs 801-805 of the Land Administration Manual.

6. Summary of the provisions of the H.P. Tenancy and Land Reforms Act, 1972 relating to ejectment of tenants.

- The following summary of the provisions of the H.P. Tenancy and Land Reforms Act, 1972 so far as it deals with the ejectment of tenants may prove useful to Revenue Officer:-(a) a notice of ejectment can only be served by a Revenue Officer in the five months between 16th June and 15th November; (b) if compensation is found to be due, the Revenue Officer is bound to stay ejectment until it is paid (Section 51); (c) save in accordance with the provisions of section 40, an order of ejectment can only be executed between 1st May and 15th June.

7. The question of compensation must be decided in all ejectment and enhancement of rent suits.

- The provisions of section 51 of the H.P. Tenancy and Land Reforms Act, 1972 by which the Court is required to direct the tenant to file a statement of his claim, if any, to compensation for improvements or for disturbance and of the grounds thereof, are obligatory as mentioned in paragraph 804 of the Land Administration Manual, and should be observed in all suits brought by tenants to contest liability to ejectment or by landowners to eject tenants or enhance their rent.

8. Decree not to be executed till compensation has been paid.

- In suits to contest liability to ejectment the court is bound if the tenant fails to direct his ejectment by its decree. But, if a Court directs the ejectment of a tenant, it is further bound to determine the amount of compensation due to the tenant and to stay execution of the decree until the landowner pays into Court that amount less any arrears of rent or costs proved to be due to him from the tenant. The subject of compensation for improvements is dealt with in paragraphs 71, 72, 74-78 of the Land Administration Manual.

9. Compensation for disturbance.

- Revenue Courts must not overlook the question of compensation for disturbance that is due to a tenant (other than a joint owner of the land in suit) who has cleared and brought under cultivation waste land in which he does not enjoy a right of occupancy. Compensation on this account is due in addition to any compensation for improvements but only if the tenant is ejected from the land. Paragraph 73 of the Punjab Land Administration Manual explains in detail the circumstances for payment of compensation for disturbance.

10. Scale of compensation for disturbance.

- In dealing with the claims of tenants for compensation on account of disturbance, Revenue Officer and Courts should comply with the provisions of section 50 of the H.P. Tenancy and Land Reforms Act, 1972, which prescribes the maximum scale for such compensation. The sum actually awarded is to be determined on the merits of each case.

11.

Paragraphs 807 and 808 of the Land Administration Manual lay down the guidelines for dealing with suits for arrears of rent. It is generally seen that in these suits sufficient use is not made of the documentary evidence available in the patwaris record and registers. The outturn of each class of land has to be ascertained with due care. In such suits it is necessary, therefore, to have a finding on each of the following points:-(a) The area under each kind of crop grown in the harvest for which the rent is claimed. (b) The approximate gross outturn. (c) The share of the produce after deducting Kamiana and reapers dues, if any, to which the landowner is entitled. (d) The prices at which the

landowner's share should be commuted. For achieving this objective the following guidelines are laid down:-(i) Information under head (a) can be obtained from the khasra girdawari. (ii) Courts should insist on landowners claiming arrears of rent in kind to file with their plaints not only the usual extracts from the jamabandi, but also one from the khasra girdawari for the harvests for which the suit is filed. (iii) Patwaris should also be directed to note on the extract from the jamabandi the amount of demand payable for the land in dispute for each harvest, the land revenue and cesses being shown separately. The areas to be ascertained as under each crop will, of course, be that under matured crops, failed crops (kharaba) being deducted. Information under head (c) above can be had from the extract of the jamabandi which should show in the rent column the share of the produce due to the landowner. Paragraphs 807 and 808 of the Land Administration Manual provide the guiding principles in regard to information on (b) and (d) above. Important. - Collectors should stress upon Tehsildars to send a copy of the harvest prices recorded for each assessment circle to each Revenue Court every six months.

12. Tabular statement to be given in judgment.

- Every judgment in which a decree is passed for arrears of rent payable in kind should contain a statement in the following form, showing the process by which the decree has been arrived at:-

Village			Assessment Circle						
Harvest	Crops	Soil	Matured area	Average out turn per acre	Gross out turn	Deduction for Kamianas etc.	Landowners share	Average price by circle notebook	Value of land owner's share
1	2	3	4	5	6	7	8	9	10

For sufficient reasons, the amount calculated at the circle rate of outturn can be departed from. The harvest may have been above or below a normal yield owing to exceptionally good or bad rainfall or irrigation. Such reasons must be taken into consideration before deciding on the amount to which the landowner is entitled. It is not intended to bind the courts to hard and fast rules, or to insist that all rents should be decreed by mere rule of thumb. All that is stressed upon the Revenue Courts is that they shall have before them such data as are available for right decision in suits of this kind and that they shall make an intelligent use of them.

13. Responsibility of first Court of Appeal.

- All Appellate Courts should insist that the particulars set forth in paragraphs 8 and 9 above shall always be contained in the judgement of the court of first instance.