

The Gujarat Agricultural Credit (Provision of Facilities) Act, 1979

GUJARAT

India

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Act 19 of 1979

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The Gujarat Agricultural Credit (Provision of Facilities) Act, 1979 Gujarat Act No. 19 of 1979 For Statement of Objects and Reasons, see Gujarat Government Gazette, Extra-ordinary, Part V, dated the 21st March, 1979, p. 267-269. This Act was assented to by the President on the 3rd June, 1979. An Act to make better provision for the adequate supply of credit for increasing agricultural production and development in the State of Gujarat and for that purpose to remove restrictions on alienation of certain agricultural lands so as to enable banks and other institutional credit agencies to provide credit on such lands; and to provide for the speedy recovery of the dues of such banks and credit agencies which provide credit; and to provide for matters commented with, and incidental to the purpose aforesaid. It is hereby enacted in the Thirtieth Year of the Republic of India as follows:-

Chapter I Preliminary

1. Short title, extent and commencement.

(1) This Act may be called the Gujarat Agricultural Credit (Provision of Facilities) Act, 1979. (2) It extends to the whole of the State of Gujarat. (3) It shall come into force on such date as the State Government may by notification in the Official Gazette, appoint.

2. Definitions.

(1) In this Act, unless the context otherwise requires, -(a) "agriculture" includes making land fit for cultivation, cultivation of land, improvement and development of land including development of sources of irrigation, raising and harvesting of crops, horticulture, forestry, planting and farming and cattle breeding, animal husbandry, dairy farming seed farming, fishing, pisciculture, apiculture, sericulture, piggery, poultry farming and such other activities as are generally carried on by

agriculturists, dairy farmers, cattle breeders, poultry farmers and other categories of persons engaged in similar activities including marketing of agricultural products, their storage and transport and the acquisition of implements and machinery in connection with any such activity; and also includes the purpose enumerated in section 116 of the Co-operative Societies Act; and the term "agricultural purpose" shall be construed accordingly;(b)"agriculturist" means a person who is engaged in agriculture and includes a co-operative society registered under the Co-operative Societies Act as a co-operative farming society;(c)"Agro-Industries Corporation" means a company or other body corporate one of the principal objectives of which is to undertake activities connected with or intended for the development of, agriculture and not less than fifty-one percent paid-up share capital of which is held by the Central Government or any State Government or Governments or partly by the Central Government and partly by one or more State Governments.(d)"bank" means-(i)a banking company as defined in the Banking Regulation Act, 1949; (X of 1949)(ii)the State Bank of India constituted under the State Bank of India Act, 1955; (XXI of 1955).(iii)Subsidiary Bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959; (XXXVIII of 1959).(iv)a corresponding new bank constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970; (5 of 1970).(v)any banking institution notified by the Central Government under section 51 of the Banking Regulation Act, 1949; (X of 1949).(vi)the Agricultural Refinance and Development Corporation constituted under the Agricultural Refinance and Development Corporation Act; 1963; (10 of 1963).(vii)any Agro-Industries Corporation;(viii)the Agricultural Finance Corporation Limited, a company incorporated under the Companies Act, 1956; (I of 1956).(ix)any other financial institution notified by the State Government in the Official Gazette as a Bank, for the purposes of this Act.(e)"Co-operative Societies Act" means the Gujarat Co-operative Societies Act, 1961; (Gujarat X of 1962).(f)"Co-operative society" means a co-operative society registered or deemed to be registered under the Co-operative Societies Act, the object of which is to provide financial assistance to its members and includes a co-operative land development bank;(g)"financial assistance" means assistance granted by way of loans, advances, guarantees or otherwise to an agriculturist-(i)for any agricultural purpose; or(ii)for the purpose of carrying out any State-sponsored scheme; or(iii)for relief against distress caused by fire or by serious drought, flood or other natural calamities;(h)"Government Company" means a Government Company as defined in section 617 of the Companies Act, 1956 (I of 1956).(i)"prescribed" means prescribed by rules made under this Act;(j)"Registrar" means a person appointed to be the Registrar of Co-operative Societies under the Co-operative Societies Act;(k)"States-sponsored scheme" means a scheme sponsored or adopted by the State Government or an officer authorised by it in that behalf, for the development of agriculture and notified as such by the State Government or the authorised officer, by a notification in the Official Gazette, for the purposes of this Act.

Chapter II

Rights of Agriculturists to Alienate Land in Favour of Banks

3. Removal of restriction on alienation of land by agriculturists in favour of banks.

- Notwithstanding anything contained in any law for the time being in force or in any custom or usage having the force of law, restricting the right of an agriculturist to alienate his land or any of this interest therein, it shall be lawful for an agriculturist to mortgage, or create a charge on, his land or any interest therein, in favour of a bank for the purpose of obtaining financial assistance from that bank.

4. Charge on crop and other movable property in favour of a bank.

(1) It shall be lawful for an agriculturist to create a charge on the moveable property owned by him, or on the crops raised by him, standing or otherwise, or other produce from land cultivated by him, to the extent of his interest therein, in favour of a bank, to secure financial assistance from that bank, notwithstanding that he may not be the owner of the land on or from which the crop or other produce is raised. (2) Where a charge is created by an agriculturist under sub-section (1) on any movable property, crops or other produce to secure any financial assistance given to him by a bank, then, notwithstanding anything to the contrary in the Co-operative Societies Act, no subsequent charge in respect of financial assistance provided to such agriculturist by a co-operative society shall have priority over such charge on the crops or other produce raised by him, or, as the case may be, on any other moveable property, in respect of any financial assistance given to him by the bank. (3) A bank may distrain and sell, through an officer designated by the State Government in this behalf, the crop or other produce or other movables charged to that bank to the extent of the agriculturist's interest therein, and appropriate the proceeds of such sale towards all moneys due to the bank from that agriculturist, in respect of the financial assistance.

5. Creation of charge on land in favour of a bank by declaration.

(1) Where an agriculturist creates a charge on land or any other immovable property, which he owns or in which he has an interest, in respect of any financial assistance given to him by a bank, he may make a declaration in accordance with the form set out in the Schedule or as near there to as circumstances permit, declaring that thereby he creates in favour of the bank, a charge on such land or his interest therein or other immovable property, as the case may be, to secure the financial assistance provided to him by the bank. (2) A declaration made under sub-section (1) may be varied from time to time by the agriculturist with the consent of the bank in whose favour the declaration has been made. Such variation shall take effect from such date on which the variation, if it had been an original declaration would have effect under section 8.

Chapter III

Charge and Mortgages in Favour of Banks by Agriculturists and Priorities thereof

6. Notice of creation of charge and mortgage in favour of bank to be given to cooperative society.

- A charge or mortgage, on any land or interest therein may be credited by an agriculturist under section 3, notwithstanding anything to the contrary contained in the Co-operative Societies Act, and notwithstanding that such land or interest therein, stands already charged or mortgaged to co-operative society provided that prior notice thereof is given by such agriculturist to the co-operative society concerned.

7. Priority of charges and mortgages in favour of a bank, Government and cooperative society.

(1)Notwithstanding anything to the contrary contained in any law for the time being in force-(a)any charge or mortgage created by an agriculturist on any land or interest therein, in favour of a bank, as security for financial assistance given to him by that bank, shall after the commencement of this Act, if prior in time have priority over any subsequent charge or mortgage in favour of Government or a co-operative society; and(b)any charge or mortgage created by an agriculturist on any land or interest therein in favour of a bank, as security for financial assistance given to him by that bank shall have priority over any other charge or mortgage in or over such land or interest therein in favour of any person other than Government or co-operative society or any other bank notwithstanding that such other charge or mortgage is prior in time to the charge or mortgage created in favour of the bank as security; for financial assistance given to such agriculturist.(2)Where different charges or mortgages on the same land or interest therein, are created an agriculturist in favour of Government, one or more co-operative societies or one or more banks, any such charges or mortgages created as security for financial assistance given by Government, co-operative society or bank by way of term loan for development purposes, shall have priority over any other charges or mortgages created in favour of Government co-operative societies or banks, provided a notice of such financial assistance by way of term loan for development purposes has been given to such Government co-operative society or bank, provided a notice of such financial assistance by way of term loan for development purposes has been given to such Government cooperative society or bank, and that Government co-operative society or bank has consented to such financial assistance being given; and where more than one such charge or mortgage is created as security for financial assistance by way of term loan for development purposes, the charges or mortgages by way of security for the term loan for development purposes shall rank in priority inter-se in accordance with the dates of their creation.Explanation. - For the purposes of this section, the expression "term loan for development purpose" means financial assistance which generally results in improvement of agriculture or building up of tangible assets in agriculture; but does not include financial assistance for working capital expenses, seasonal agricultural operations or marketing crops.(3)Nothing in this section apply-(i)to borrowings only from one or more co-operative societies, and(ii)to the recovery of sums due to Government as arrears of land revenue.

8. Exemption from registration of charge or mortgage in favour of bank.

- Notwithstanding anything contained in the Registration Act, 1908 (XVI of 1908), it shall not be necessary to register a charge in respect of which a declaration has been made under sub-section (1) of section 5, or in respect of which a variation has been made under sub-section (2) of that section, or a mortgage executed by an agriculturist in favour of a bank and such charge, variation or mortgage shall have effect from the date it is created or made, provided that the bank sends within such time, and in such manner as may be prescribed, a copy of the instrument whereby the charge, variation or mortgage is created or made to the registering Officer within the local limits of whose jurisdiction the whole or any part of the property charged or mortgaged is situated, and such Registering Officer shall file a copy or copies, as the case may be, in his Book No. 1 prescribed under section 51 of the Registration Act, 1908 (XVI of 1908).

9. Noting of charge or mortgage created in favour of bank in Record of Rights.

- Whenever a charge or mortgage is created by an agriculturist on land or any interest therein in favour of a bank as security for financial assistance given to him by that bank, the bank shall give intimation to the village accountant or such other revenue officer as may be designated in this behalf by the State Government, of the particulars of the charge or mortgage in its favour. The village accountant or such other revenue officer shall make a note of the particulars of charge or mortgage in the Record of Rights relating to the land over which the charge or mortgage has been created. The bank shall likewise give an intimation to the village accountant or such other revenue officer as soon as the financial assistance given by it to the agriculturist ceases to be outstanding and thereupon the village accountant or such other revenue officer shall make a suitable note in the Record of Rights about release of the land from the charge or mortgage, as the case may be.

10. Restrictions on sale of land by agriculturist borrower.

(1)Notwithstanding anything contained in any law for the time being in force an agriculturist who has availed himself of financial assistance from a bank by creating a charge or mortgage on land or interest therein shall not after he had availed of such assistance and so long as such assistance continues to be outstanding, enter into an agreement of sale of the land, without prior permission in writing of that bank.(2)Any agreement of sale entered into, in contravention of sub-section (1) shall be void and unenforceable.(3)Notwithstanding the lease of the land which is subject to the charge or mortgage in favour of the bank, or lease of any interest therein or creation of any tenancy rights on such land the land shall continue to be subject to such charge or the mortgage:Provided that where the lessee of land or interest therein becomes occupant of such land, such occupant shall hold the land subject to the charge or mortgage created by the lessor in favour of the bank except in the case where the amount of loan given by the bank to the lessor is misused by the lessor.(4)The question whether the amount of loan granted by the bank to the lessor is misused or not shall be inquired into and decided upon by an officer authorised by the State Government in this behalf and any decision by such officer shall, subject to an appeal if any made to the State Government in such

manner and within such time as may be prescribed, be final.

Chapter IV

Arrangements for Recovery of Dues by Banks from Agriculturists

11. Recovery of dues of bank through authorised officer.

(1) Such officer as may be authorised by the State Government for the purpose of this section (hereinafter referred to as the "authorised officer") may, on the application of a bank, after making such inquiry as he deems fit, make an order on any agriculturist or his heirs or legal representatives, directing the payment of any sum due to the bank on account of financial assistance availed of by the agriculturist, by the sale of any land or interest therein on which a charge or mortgage is created as security for such financial assistance: Provided that no order shall be made by the authorised officer under this section for the payment of any sum or the sale of any land or interest therein on which such charge or mortgage is created, unless the agriculturist or the heirs or legal representatives of the agriculturist, as the case may be, - (i) have become liable to repay such sum to the bank under the terms and conditions of the grant of the financial assistance and have committed default in repayment of such sum or have otherwise failed to comply with the terms and conditions of the grants, and (ii) have been served in the prescribed manner with a notice in writing by the authorised officer calling upon them to pay the amount due. (2) Every application by a bank under sub-section (1) shall be made on a court-fee stamp of a prescribed amount. (3) Every order passed by the authorised officer under sub-section (1) shall be deemed to be a decree of a Civil Court of competent jurisdiction and shall be executed in the same manner as a decree of such Court. (4) Nothing in this section shall debar a bank from seeking to enforce its rights in any other manner under any other law for the time being in force.

12. Rights of bank to acquire and dispose of land or interest therein.

(1) Notwithstanding anything contained in any law for the time being in force, a bank shall have power to itself to acquire agricultural land or interest therein on which a charge or mortgage has been created in its favour by an agriculturist in respect of any financial assistance availed of by him, provided the said land or interest therein has been sought to be sold by public auction and no person has offered to purchase it for a price which is sufficient to pay to the bank the moneys due to it: Provided that no such land or interest herein shall be sought to be sold by public auction, by the bank, without the previous permission in writing of the Collector of the district in which such land is situated. (2) A bank which acquires any land or interest therein in pursuance of the power vested in it under sub-section (1) shall dispose of it by sale, within a period to be specified by the State Government in this behalf. (3) If the bank leases out any land or any interest therein acquired by it under subsection (1), pending sale thereof as indicated in sub-section (2) the period of lease shall not exceed one year at a time and the lessee shall not acquire any right to purchase such land or interest leased to him, notwithstanding any provisions to the contrary in any other law for the time

being in force.(4)A sale by a bank of land or interest therein under this section shall be subject to the provisions of any law for the time being in force imposing restrictions on purchase of land by non-agriculturists or by a person not belonging to a Scheduled Tribe or Scheduled Caste or on fragmentation of land or imposing ceiling on acquisition of land or interest therein.

13. Exemption to banks from registrations on acquisition of land in excess of ceiling.

- Nothing in any law for the time being in force imposing a ceiling or limit on the holding of land or regulating the price at which such land may be sold or acquired shall apply to a bank acquiring land under this Act at a price which is adequate to cover its dues and holding such land till such time as the bank sells the land in the manner provided in section 12.

14. Land not vesting in Government to be charged for unrecovered dues in certain cases.

- Where by an order made by a Tribunal under section 21 of the Gujarat Agricultural Lands Ceiling Act, 1960 (Gujarat XXVII of 1961), any portion of land on which mortgage or charge is created in favour of a bank is declared as surplus land and the amount of compensation apportioned to the bank under section 24 of that Act in respect of the mortgage or charge on the land declared as surplus is less than the amount due from the agriculturist on account of the financial assistance given to the agriculturist by the bank, then notwithstanding anything contained in any law for the time being in force, the balance of the amount due shall be a charge on the portion of the land which the agriculturist is entitled to hold under the order made under section 21 of that Act.

15. Recovery of dues in respect of financial assistance to carry out State Sponsored scheme as arrears of land revenue.

- Notwithstanding anything contained in the foregoing provisions of this Chapter, the State Government may, by an order published in the Official Gazette, direct that any amount due from the agriculturist towards financial assistance given to him by a bank for the purpose of carrying out any State sponsored scheme may be recovered on behalf of such bank as an arrear of land revenue. Any amount so recovered on behalf of the bank shall be paid over to the bank after deducting such portion thereof as cost of collection as the Collector may determine to be reasonable.

Chapter V

Financing of Co-Operative Societies by Banks

16. Bank eligible to become member of co-operative society.

- Notwithstanding anything contained in the Co-operative Societies Act or any law for the time being in force, it shall be lawful for a bank to become a member of a co-operative society.

17. Inspection of books of co-operative society by bank.

(1) A bank shall have the right to inspect the books of any co-operative society which has either applied to the bank for grant of financial assistance to be provided to its members or which is indebted to the bank on account of any financial assistance given earlier by the bank to the society for such purpose. (2) The inspection may be carried out by an officer or any other member of the paid staff of the bank with the previous sanction in writing of the Registrar. (3) The Officer or other member of the paid staff of the bank authorised to carry out such inspection shall at all reasonable times have access to the books of accounts, documents, securities, cash and other properties belonging to or in the custody of the cooperative society inspected by him and shall also be supplied by such society such information statements and returns as may be required by him to assess the financial condition of the society and the safety of financial assistance to be given or already given to the society.

18. Disputes between bank and co-operative society.

(1) Notwithstanding anything contained in the Co-operative Societies Act or any other law for the time being in force, any dispute touching the constitution, management or business of a co-operative society between a bank which has given to a co-operative society any money, loan or advance for the purpose of providing financial assistance to its members and the cooperative society to which such money, loan or advance has been given, other than disputes regarding disciplinary action taken by the society or its committee against paid employee of the society shall be referred by either of the parties to the dispute to the Registrar for decision. (2) Where any question arises whether, for the purposes of sub-section (1), a matter referred to for decision is a dispute or not the question shall be decided by the Registrar, whose decision shall be final.

19. Settlement of disputes.

- If the registrar is satisfied that any matter referred to him or brought to his notice is a dispute referred to in section 18, the Registrar shall decide the dispute himself or refer it for disposal to a nominee or a board of nominees appointed by him and thereafter all the provisions of the Co-operative Societies Act relating to the settlement of disputes, procedure for settlement of disputes, appeals against the decisions in such disputes, enforcement of the decisions, awards or orders in such proceedings and all other matters relating to such disputes shall, mutatis mutandis apply as if it were a dispute within the meaning of section 96 of that Act.

20. Recovery of money awarded.

- The provisions of section 157 of the Co-operative Societies Act shall so far as may be, apply to the recovery of any amount found due to a bank under section 19 as if such amount were a sum due to the Government.

21. Power of bank to proceed against defaulting members of a co-operative society.

(1) If a co-operative society is unable to pay its debts to a bank from which it has borrowed, by reason of its members defaulting in the payment of the money due by them, the bank may direct the committee of such society to proceed against such members by taking all such actions as are provided by the Co-operative Societies Act. (2) If the committee of the co-operative society fails to proceed against its defaulting members within a period of ninety days from the date of receipt of such direction from the bank, the bank itself may, under intimation to the Registrar, proceed against such defaulting members in which event, the provisions of the Co-operative Societies Act and the rules and the bye-laws made thereunder shall apply, as if all references to the society or its committee in the said provisions, rules and bye-laws were reference to the bank. (3) Where a bank has obtained a decree or an award against a co-operative society indebted to it, the bank may proceed to recover such moneys firstly from the assets of the co-operative society and secondly from the members of the co-operative society to the extent of their debts due to the society. Explanation. - In this Act "committee", in relation to a co-operative society, means a committee as defined in clause (5) of section 2 of the Co-operative Societies Act.

22. Audit inquiry and inspection report of societies to be made available to banks.

- The Registrar shall draw the attention of a bank financing a co-operative society to the defects noticed in every audit or inquiry or inspection conducted under the Co-operative Societies Act, and shall also supply to the bank a copy of each of such audit, inquiry or inspection report if demanded in writing by it.

Chapter VI

Miscellaneous

23. Exemption from legislations relating to money lending and relief of agricultural indebtedness.

- Nothing in the Bombay Money-lenders Act, 1946 (Bombay XXXI 1947) or any other law relating to money lending and money-lenders or in any law relating to relief of agricultural indebtedness for the time being in force shall apply to financial assistance availed of by an agriculturist from a bank.

24. Mortgage executed by managers of joint Hindu families.

(1) Notwithstanding anything contained in any law for the time being in force mortgages executed after the commencement of this Act by the manager of a joint Hindu family in favour of a bank for securing financial assistance shall be binding on every member of such joint Hindu family. (2) Where a mortgage executed in favour of a bank is called in question on the ground that it was executed by

the manager of joint Hindu family for a purpose not binding on the members (whether such members have attained majority or not) thereof, the burden of proving the same shall lie on the party alleging it.

25. Modified application of section 8 of the Act XXXII of 1956.

- Section 8 of the Hindu Minority and Guardianship Act, 1956 (XXXII of 1956), shall apply to mortgage in favour of a bank subject to the modification that reference to the Court therein shall be construed as reference to the Collector or his nominee, and the appeal against the order of the Collector or his nominee shall lie to the State Government.

26. Mortgages not to be questioned on insolvency of mortgagors.

- Notwithstanding anything contained in the Provincial Insolvency Act, 1920, (V of 1920) or any corresponding law for the time being in force, a mortgage executed in favour of a bank shall not be called in question in any insolvency proceedings on the ground that it was not executed in good faith for valuable consideration or on the ground that it was executed in order to give the bank a preference over other creditors of the mortgagor.

27. Power of State Government to make rules.

(1)The State Government may, by notification in the Official Gazette, and subject to the condition of previous publication, 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 be made for all or any of the following matters, namely:-(a)the manner of serving notice on an agriculturist under the proviso to subsection (1) of section 11;(b)any other matter which is to be, or may be, prescribed.(3)All rules made under this section shall be laid for not less than thirty days before the State Legislature as soon as may be after they are made and shall be subject to rescission by the State Legislature or to such modifications as the State Legislature may make during the session in which they are so laid or the session immediately following.(4)Any rescission or modification so made by the State Legislature shall be published in the Official Gazette and shall thereupon take effect.

Schedule

[See Section 5(1)]Declaration Under Sub-Section (1) of Section 5I..... (aged..... years) residing at Being desirous of availing myself of financial assistance from the Bank..... make this declaration as required by section 5(1) of the Gujarat Agricultural Credit (Provision of Facilities) Act, 1979, that I Own the land I have interest as a tenant in the land, in the area specified below and I hereby create a charge on the said land/ interest in the said land, in favour of the Bank for securing the financial assistance which the bank may give and for all future assistance, if any, which the bank may give to me together with interest and costs and expenses thereon.

Name of Village	Name of Taluka	Name of District	Survey No.	
City Survey No.	Boundaries		Areas	
Plot No.	Plot Hissa No.	South East	North West	Hectares
AssessmentRs. P.	Approximate Value	Encumbrances, if any	Remarks if any	
Nature	When created	Amount		

In witness whereof I, Shri hereunder set my hand this day of In the year one thousand nine hundred and.....WitnessSigned and delivered by the above named in the presence of-(1)(2)Signature of the declarant.Attested by:Forwarded with compliments to the Village Accountant or other designated revenue officer with a request to include the particulars of the charge Create under the declaration in the Record of Rights and to return to the bank for its records.Manager/Agent.....Bank.DatePlace :.....Returned with compliments to the Manager/Agent.....Bank. The charge created under the declaration is duly included in the Record of Rights on theday of.....19.....Date:.....Village Accountant or both or designated revenue officer.Forwarded with compliments to the Sub-Registrar, with a request to record the particulars of the charge.....created under the declaration in this office.Manager/Agent..... Bank.Date :.....Place :.....Returned with compliments to the Manager/Agent..... Bank. The charge created under the declaration is duly recorded.Date:.....Sub-Registrar.