

The Bihar Agricultural Credit Operations and Miscellaneous Provisions (Banks) Act, 1977

BIHAR

India

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Act 7 of 1982

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The Bihar Agricultural Credit Operations and Miscellaneous Provisions (Banks) Act, 1977 Bihar Act 7 of 1982 Published in Bihar Gazette (Extra-ordinary) 30.1.1983. An Act to make provisions to facilitate adequate flow of credit for agricultural production and development through Banks and other institutional credit agencies and for matters connected therewith and/or incidental thereto. Be it enacted by the Legislature of the State of Bihar in the Thirty-third year of the Republic of India as follows:-

Chapter I Preliminary

1. Short title, extent and commencement.

(1) This Act may be called the Bihar Agricultural Credit Operations and Miscellaneous Provisions (Banks) Act, 1977. (2) It extends to the whole of the State of Bihar. (3) It shall come into force on such date as the State Government may, by notification in the official Gazette, appoint in this behalf and different dates may be appointed for different provisions of the Act and for different areas of the State.

2. Definition.

- In this Act, unless there is anything repugnant in the subject or context:- (a) "agriculture" and "agricultural purpose" shall include making land fit for cultivation, cultivation of land, improvement 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,

pisciculture, agriculture, 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 acquisition of implements and machinery in connection with any such activity;(b)"agriculturist" means a person who is engaged in agriculture;(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 per cent of the paid-up share capital of which is held by the Central Government or by any State Government or Government or partly by the Central Government and partly by one or more State Government;(d)"bank" means-(i)a banking company as defined in the Banking Regulation Ad, 1949 (Act X of 1949);(ii)the State Bank of India constituted under the State Bank of India Act, 1955 (Act XXIII of 1955);(iii)a subsidiary Bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959 (Act XXXVII of 1959);(iv)a corresponding new Bank constituted under the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970 (Act V of 1970);(v)any banking institution notified by the Central Government under section 51 of the Banking Regulation Act, 1949 (Act X of 1949);(vi)the Agricultural Refinance and Development Corporation constituted under the Agricultural Refinance and Development Corporation Act, 1963 (Act X of 1963);(vii)the Agro-Industries Corporation as defined in clause (c);(viii)Agricultural Finance Corporation Limited, a company incorporated under the Indian Companies Act, 1956 (Act I of 1956);(ix)a Regional Rural Bank established under the Regional Rural Bank Act, 1976 (Act 21 of 1976);(x)any other financial institution notified by the State Government in the official Gazette as a bank for the purpose of this Act.(e)"Collector" means the Collector of a district duly appointed by the State Government, which term includes Deputy Commissioner of a scheduled district;(f)"Commissioner" mean the Commissioner of a Division duly appointed by the State Government;(g)"Co-operative Society" means a co-operative society registered or deemed to be registered under the Bihar and Orissa Co-operative Societies Act, 1935 (B. & O. Act VI of 1935), the object of which is to provide financial assistance as defined in clause (i) to its members and includes a Co-operative Land Development Bank;(h)"District Judge" means the District Judge of a district or districts which term includes the Judicial Commissioner of Ranchi;(i)"Financial Assistance" for the purpose of this Act means assistance granted by way of loans, advances, guarantees or otherwise for agricultural purposes; and(j)"Registrar" means a person appointed to perform the duties of the Registrar of Co-operative Societies under the Bihar and Orissa Cooperative Societies Act, 1935 (B. & O. Act VI of 1935).

Chapter II

Rights of Agriculturists to alienate land or interest in land in favour of Banks

3. Removal of restrictions on alienation.

- Notwithstanding anything contained in any law for the time being in force any custom or usage or tradition, it shall be lawful for an agriculturists whose rights of alienation of land or his interest therein, or to create a charge or mortgage on such land or of any interest therein are restricted, to alienate the land or his interest therein, or to create a charge or mortgage on such land or interest in

favour of a bank for the purpose of obtaining financial assistance from that bank.

4. State Government may by notification vest agriculturists not having alienable rights with such rights.

- Notwithstanding anything contained in the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (Act XII of 1962) or the Bihar Tenancy Act, 1885 (Act VIII of 1885) or in any law for the time being in force, the State Government may, by notification in the official Gazette, vest (i) under-raiyats of surplus land under the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961, (ii) non-occupancy under-raiyats as defined under the Bihar Tenancy Act, 1885 and (iii) tenants other than occupancy tenants not having right of alienation in land or any interest therein, with right of alienation including right to create charge or mortgage of such land or interest in favour of a bank for the purpose of obtaining financial assistance from that bank without any restriction or subject to such restriction as may be specified in the notification.

5. Charge on crops and other movable property in favour of a bank.

(1) It shall be lawful for an agriculturist to create a charge on the movable property owned by him or on the crop 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 owner of the land on and from which the crop is raised. (2) Notwithstanding anything to the contrary in the Bihar and Orissa Cooperative Societies Act, 1935 (B. & O. Act VI of 1935) or other law for the time being in force, no charge in respect of financial assistance extended by a cooperative society to an agriculturist shall have priority over a charge on the crops raised by him, standing or otherwise, or any other movable property in respect of any financial assistance made by the bank is prior in point of time to that of the financial assistance extended by the co-operative society. (3) The crop or other produce or movables in respect of which a charge has been created in favour of the bank may be attached and sold to the extent of the interest of the agriculturists therein, in the manner laid down in the Bihar and Orissa Public Demands Recovery Act, 1914 (B. & O. Act IV of 1914) and the proceeds of such sale may be appropriated towards all moneys due to the bank from that agriculturist.

6. Creation of charge on land in favour of 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 on the lines of the Form set out in the Schedule hereto annexed or as near hereto 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 given 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 unless otherwise stipulated, take effect from the date the original

declaration became effective.

Chapter III

Charges and mortgages in favour of Banks and their priorities

7. Removal of disability in creation of charges and mortgages.

- Notwithstanding anything to the contrary contained in the Bihar and Orissa Cooperative Societies Act, 1935 (B. & O. Act VI of 1935) or any other law for the time being in force and notwithstanding the fact that any land or interest therein stands already mortgaged to or is subject to a charge of a co-operative society, it shall be lawful for an agriculturist to create a charge or mortgage on such land or interest therein in favour of a bank as security for any financial assistance given to the agriculturists by that bank.

8. Priority of charges and mortgages in favour of Government, a bank and a co-operative society.

(1)Notwithstanding anything to the contrary contained in the Bihar and Orissa Co-operative Societies Act, 1935 (B. & O. Act VI of 1935) or any other law for the time being in force-(a)Any charge or mortgage created on any land or interest therein in favour of Government shall have priority over any other charge or mortgage that might have been created on such land or interest therein by an agriculturist in favour of person or a bank or a cooperative society irrespective of the dates of creation of charges or mortgages.(b)Where charges or mortgages on any land or interest therein are created in favour of both a co-operative society and a bank priority of such charges or mortgages shall, after commencement of this Act, be determined in accordance with the dates of creation of the charges or mortgages.(c)Any charge or mortgage created on any land or interest therein in favour of a bank in respect of financial assistance given to an agriculturist by that bank shall have priority over any other charge or mortgage that may have been created over such land or interest in favour of any person other than the Government, a co-operative society or any other bank, prior to the date on which the charge or mortgage was created in favour of the bank.(d)Where different charges or mortgages over the same land or interest therein have been created by an agriculturist in favour of a cooperative society or a bank or more than one bank, any such charge or mortgage created as security for financial assistance given by the co-operative society or a bank or banks by way of term loan for development purposes shall have priority over other charges or mortgage created in favour of a co-operative society or any of the banks, provided notice of such financial assistance by way of term loan for development purposes has been given to such co-operative society or bank and such co-operative society or bank has concurred in such financial assistance and where more than one such charge or mortgage is created as security for financial assistance given by way of term loan, the charges or mortgage by way of security for term loan for development purposes shall rank for priority in accordance with the dates of their creation.Explanation. - For purposes of this section term "loan for development purposes" shall mean financial assistance which could generally lead to improvement of agriculture or building up of assets in agriculture but shall not include financial assistance for meeting working capital

expenses, seasonal agricultural operations and marketing of crops.(2)Nothing in this section shall apply to borrowing only from one or more cooperative societies or land development banks.

9. Registration of charges and mortgage in favour of banks.

(1)Notwithstanding anything to the contrary contained in the Indian Registration Act, 1908 (Act XVI of 1908) a charge in respect of which a declaration has been made under sub-section (1) of Section 6 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 in respect of financial assistance given by that bank, shall be deemed to have been duly registered in accordance with the provisions of that Act with effect from the date of such charge, variation or mortgage as the case may be, provided that the bank sends to the Sub-Registrar within the local limits of whose jurisdiction the whole or any part of the property subject to the charge or mortgage is situate, within the time prescribed by the State Govt, for this purpose, by registered post and with acknowledgement due, a copy of the document creating such charge, variation or mortgage, duly certified to be a true copy by an employee of the bank authorised to sign on its behalf.(2)As soon as possible after the receipt of a copy of the document referred to under sub-section (1) from a bank the registering officer shall cause to be registered the document so received for such purposes and shall follow the same procedure in regard to the registration of the said document as is followed in the case of registration of document granting loan under the Agriculturist Loans Act, 1884 (Act XII of 1884) or the Land Improvement Loans Act, 1883 (Act XIX of 1883).

10. Noting of charge or mortgage created in favour of a Bank in the record of rights.

- Whenever a charge or mortgage on land or interest therein is created in favour of a bank by an agriculturist, the bank shall give intimation to the Anchaladhikari 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 Anchaladhikari or the other revenue officer shall make a note of the particulars of charge or mortgage in the register prescribed by the State Government from time to time relating to the land over which the charge or mortgage has been created.

11. Restriction on creation of tenancy by an 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, so long as the financial assistance continue to be outstanding, lease or create any tenancy rights in such land or interest therein without prior permission in writing of the bank if he has not already leased or created tenancy rights therein at the time of availing of the financial assistance from the bank.(2)Any lease granted or tenancy right created in contravention of this section shall be void.

Chapter IV

Arrangements for recovery of dues by Banks

12. Removal of bar to attachment and sale by process of court.

- Nothing in any law shall prevent in any manner a bank from causing any land or any interest therein mortgaged of it or in respect of which a charge has been created in its favour by an agriculturist to secure any financial assistance to be attached and sold through a civil court and applying the proceeds of such sale towards all money due to it from that agriculturist including the costs and expenses as may be awarded by the court; Provided that houses and other buildings (with the materials and the site thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to an agriculturist and occupied by him shall not be liable to such attachment and sale.

13. Right of a bank to acquire and dispose of immovable property.

(1) Notwithstanding anything contained in any law for the time being in force, a bank shall have power to itself acquire agricultural land or interest therein or any other immovable property which has been mortgaged to it or in respect of which a charge has been created in its favour by an agriculturist for securing any financial assistance, provided the said land or interest therein or any other immovable property 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 money due to it. (2) A bank which acquires land or interest therein or any immovable property in exercise of the power vested in it under sub-section (1) shall dispose it of by sale, within a period to be specified by the State Government through notification in this behalf: Provided that the State Government may, on an application by a bank extend the period notified. (3) If the bank has to lease out any land acquired by it under sub-section (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 interest in that property 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 in terms of this section shall be subject to any provisions of any law in force which placed restrictions on purchase of land by non-agriculturist or by a person not belonging to a particular tribe or on the ground of ceiling for acquisition of land or fragmentation of land.

14. Exemption to banks from restriction on acquisition of land in excess of ceiling.

- Nothing in any law for the time being in force placing a ceiling or limit on the holding or land shall apply to a bank acquiring land in terms of Section 13 and holding such land till such time as the bank is in a position to sell the land in the manner provided in Section 13 or otherwise a price which is adequate to cover its dues.

Chapter V

Financing of Co-operative Societies by Banks

15. Bank eligible to become member of a co-operative society.

- Notwithstanding anything contained in the Bihar and Orissa Co-operative Societies Act, 1935 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.

16. Power of co-operative societies to borrow from banks.

- Notwithstanding anything contained in the Bihar and Orissa Co-operative Societies Act, 1935 it shall be lawful for any co-operative society to borrow from a bank: Provided that in the interest of promotion and growth of co-operative society the State Government may make such provision in the Rules as may be necessary from time to time to restrict the extent to which a Bank lend in areas adequately served by co-operatives.

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

(1) A bank shall have the right to inspect the book of any co-operative society which has either applied to the bank for financial assistance or is indebted to the bank on account of financial assistance granted earlier. (2) The inspection of co-operative society 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 a Registrar of Co-operative Societies. (3) The officer or any other member of the paid staff of the bank, undertaking such inspection, shall at all reasonable time, have access to the books of accounts, documents, securities, cash and other properties belonging to or in the custody of the co-operative 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 security of the money advanced or to be advanced to the society by way of financial assistance.

18. Disputes between a bank and co-operative society.

(1) Notwithstanding anything contained in any other law for the time being in force any dispute touching the constitution, management or the business of a co-operative society; between a bank financing a co-operative society and co-operative society so financial other than dispute regarding the disciplinary action taken by the society or its committee against a paid employee of the society, shall be referred by either of the parties to the dispute to the Registrar of co-operative Societies for decision. (2) Where any question arises whether, for purposes of the foregoing subsection, a matter referred to for decision is a dispute or not, the question shall be decided by the Registrar of Co-operative Societies whose decision shall be final.

19. Settlement of dispute.

(1) If the Registrar is satisfied that any matter referred to him or brought to his notice is a dispute within the meaning of Section 18, the Registrar shall decide the dispute himself or transfer it for disposal to any section exercising the powers of a Registrar in this behalf, or refer it for disposal to an Arbitrator or Arbitrators provided that nothing in the Arbitration Act, 1940 (Act X of 1940) shall apply to such reference. (2) Where any dispute is transferred or referred under the forgoing subsection for decision, the Registrar may at any time, for reasons to be recorded in writing, withdraw such dispute from any person or Arbitrator or Arbitrators to whom it has been transferred or referred, as the case may be, and may decide the dispute himself or either transfer it or refer it again for decision to any other person exercising the powers of a Registrar or to any other Arbitrator or Arbitrators. (3) Notwithstanding anything contained in Section 18, the Registrar may if he thinks fit, suspend proceeding in regard to any dispute of the question at issue between a co-operative society and a bank is one involving complicated questions of law and fact, until the question has been decided in a regular suit instituted by one of the parties to the dispute. If any such suit is not instituted within two months from the Registrar's order suspending proceedings, the Registrar may take action as it provided in sub-section (1) or may refer the case to the District Judge for decision.

20. Procedure for hearing of dispute.

- The Registrar or any person exercising the powers of a Registrar or any Arbitrator or Arbitrators hearing a dispute under the last preceding section shall mutatis mutandis, follow the procedure laid down under sections 49 and 51 of the Bihar and Orissa Co-operative Societies Act, 1935 (B. & O. Act VI of 1935) and the rules framed thereunder.

21. Decision of Registrar or any person exercising the powers of Registrar or Arbitrator/Arbitrators.

- When the dispute is referred for decision the Registrar or any person exercising the powers of a Registrar or Arbitrator or Arbitrators may after giving a reasonable opportunity to the parties to the disputes to be heard, make an award on the dispute, the expenses incurred by the parties to the dispute in connection with the proceeding and fees, expenses payable to the Registrar or any person exercising the powers of a Registrar or Arbitrator or Arbitrators, as the case may be. Such award shall not be invalid merely on the ground that it was made after the expiry of the period fixed for deciding the dispute by the Registrar and shall be final and binding on the parties to the dispute.

22. Recovery of money awarded.

- Every award given by the Registrar or any person exercising the powers of Registrar or Arbitrator or Arbitrators under section 21 shall, if not carried out, on certificate signed by the Registrar, be deemed to be a decree of a civil court having jurisdiction to entertain a suit in respect of the matter in dispute and shall be executed in the same manner as a decree of such court.

23. Powers of a bank to proceed against defaulting members of a cooperative 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 moneys due from them, the bank may direct the Committee of such society to proceed against such members by taking action under the Bihar and Orissa Co-operative Societies Act, 1935. (2) If the Committee of the co-operative society fails to proceed against its defaulting members within a period of ninety days from date of receipt of such direction from the bank, the bank itself may proceed against such defaulting members in which even the provisions of the Bihar and Orissa Co-operative Societies Act, 1935, the rules and the bye-law made thereunder, shall apply as if all references to the society or its committee in the said provisions, rules and bye-law were references to the bank. (3) Where a bank has obtained a decree or 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 cooperative society to the extent of their debts due to the society.

24. Audit, inspection and inquiry reports of societies to be available to banks.

- The Registrar of the Co-operative Societies shall draw the attention of the bank financing a co-operative society to the financial irregularities and defects noticed in an audit or inquiry or inspection of such society conducted according to the provisions of the Bihar and Orissa Co-operative Societies Act, 1935 and shall also supply a copy of such audit, inquiry or inspection report if demanded, in writing by the bank.

Chapter VI

Miscellaneous

25. Exemption from legislations relating to money-lending and agriculturists' debt relief.

- Nothing in any law for the time being in force dealing with money-lending or agriculturists' debt relief shall apply to financial assistance given to an agriculturist by a bank.

26. Mortgages executed by Karta 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 Karta of a Joint Hindu Family in favour of a bank for securing financial assistance for an agricultural purpose shall be binding on every members of such Joint Hindu Family. (2) Where a mortgage executed in favour of a bank is called in question on the ground it was executed by Karta of a 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 be on the party alleging it.

27.

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28. Power of State Government to make rules.

(1)The State Government may by notification in the official Gazette make rules consistent with the provisions of this Act, to provide for all matters for which provision is necessary of expedient for the purpose of giving effect to the provision of the Act.(2)Every rule made under this section shall be laid as soon as may be after it is made, before each House of the State Legislature, while it is in session fora total period of fourteen days which may be comprised in one session or in two successive sessions and if, before expiry of the session in which it is laid or the session immediately following both Houses agree in making any modification in the rule or both Houses agree that they should not be made, the rule shall thereafter have effect only in such modified form or be of no effect as the case may be, so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rules.

29. Repeal and Saving.

(1)The Bihar Agricultural Credit Operations and Miscellaneous Provisions (Banks) Second Ordinance, 1982 (Bihar Ordinance No. 57 of 1982) is hereby repealed.(2)Notwithstanding such repeal, anything done or any action taken in exercise of any power conferred by or under the said Ordinance shall be deemed to have been done or taken in exercise of powers conferred by or under this Act as if this Act was in force on the day on which such thing or action was done or taken.

Schedule

Declaration under Section 6(1)I.....(aged.....year.....) residing at.....being desirous of availing myself of financial assistance from Agricultural Credit Operations and Miscellaneous Provisions (Banks) Act, 1977 and I hereby create a charge on the said land/interest in land in favour of the bank for securing the financial assistance which the bank may make and for all future assistance, if any, which the bank may make to me together with interest and cost and expenses thereon.

| Name of village | Name of C.D. Block and Sub-Division | Name of District Survey No. | Boundaries | Area |
|-----------------|-------------------------------------|-----------------------------|-----------------|-------------|
| Plot No. | City | SouthEast | NorthWest | Acreskathas |
| 1 | 2 | 3 | 4 | 5 |
| Assessment | Appropriate Value | Encumbrances, if any | Remarks, if any | 6 |

| Rs. | P. | Nature | Amount |
|-----|----|--------|--------|
| 7 | 8 | 9 | 10 |

In witness whereof, I....., hereunder set my hand this..... day of..... the year..... and.....Witness signed and delivered by the abovenamed in the presence of(1)(2)Attested bySignature of declarantForwarded with compliments to the Anchal Adhikari/Revenue Officer with a request to include the particulars of the charge..... created under the declaration in the record-of-rights and/or other appropriate registers and to return to the bank for its record.Manager/Agent.....BankPlace.....Returned with compliments to the Manager/Agent..... Bank..... the charge created/under the declaration is duly included in the record-of-rights and/or..... register on the..... day of..... 19.....Anchal AdhikariRevenue OfficerForwarded with compliments to the Sub-Registrar with a request to record the particulars of the charge..... created under the declaration in his office.Manager/Agent.....BankPlace.....Returned with compliments to the Manager/Agent.....Bank.....the charge created under the declaration is duly recorded.Date.....Sub-Registrar.