

The Gujarat Prohibition of Transfer of Immovable Property and Provision for Protection of Tenants from Eviction from Premises in Disturbed Areas Act, 1991

GUJARAT

India

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Act 12 of 1991

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The Gujarat Prohibition of Transfer of Immovable Property and Provision for Protection of Tenants from Eviction from Premises in Disturbed Areas Act, 1991 Gujarat Act No. 12 of 1991 (First published, after having received the assent of the President in the "Gujarat Government Gazette" on the 4th April, 1991. An Act to declare certain transfers of immovable property in disturbed areas of the State to be void and to prohibit temporarily transfers of immovable property in such areas and to further amend the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 for providing protection to tenants of certain immovable properties in such areas from eviction. It is hereby enacted in the Forty-second Year of the Republic of India as follows.

1. Short title.

- This Act may be called the Gujarat Prohibition of Transfer of Immovable Property and Provision for Protection of Tenants from Eviction from Premises in Disturbed Areas Act, 1991.

2. Definitions.

- In this Act, unless the context otherwise requires, -(a) "disturbed area" means an area declared as disturbed area under section 3; (b) "fair value" in relation to immovable property in disturbed areas means such value of the property as approximate the market value of such property; (c) "prescribed" means prescribed by rules made under section 12.

3. Declaration of disturbed area.

(1)Where the State Government, having regard to the intensity and duration of riot or violence of mob and such other factors in any area of the State is of opinion that public order in that area was disturbed for a substantial period by reason of riot or violence of mob, it may, by notification in the Official Gazette, -(a)declare such area to be a disturbed area;(b)specify the substantial period (hereinafter referred to as "the specified period")Explanation. - In this section the word "riot" shall have the same meaning as in section 146 of the Indian Penal Code (XLV of 1860).(2)Where the State Government is of opinion that public order in the area declared as disturbed area under sub-section (1) has ceased to be disturbed, it may by notification in the Official Gazette rescind the notification issued under sub-section (1) in relation to such area and on such rescission the provisions of this Act shall cease to apply to such area except as respects things done or omitted to be done under this Act and except as respects the application of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (Bombay LVII of 1947) to such area, as amended by this Act.

4. Certain transfers of immovable property to be void.

(1)Notwithstanding anything contained in any other law for the time being in force but subject to sub-sections (2) and (3) all transfers of immovable property situated in a disturbed area made during the specified period shall be null and void, with effect from the date of such transfer.(2)(a)Any transferor or transferee in relation to a transfer of immovable property affected by the provisions of sub-section (1) may, within the prescribed period and in the prescribed form, make an application to the Collector for a declaration that the transfer of immovable property was made by free consent of the transferor and the transferee and for a fair value of the immovable property so transferred.(b)On receipt of such application, the Collector shall hold a formal inquiry in the manner prescribed by the Bombay Land Revenue Code, 1879 (Bombay V of 1879) and after giving an opportunity to the transferor and the transferee to be heard and after considering a£y evidence produced, decide whether the transfer of immovable property was made by free consent of the transferor and the transferee and for a fair value of the immovable property and accordingly-(i)reject the application; or(ii)by an order in writing make a declaration that the transfer of the immovable property was made by free consent of the transferor and the transferee and for a fair value of the immovable property so transferred.(3)Upon a declaration made under sub-clause (ii) of clause (b) of sub-section (2) in respect of any transfer of immovable property, such transfer of immovable property shall, with effect from the date of such transfer, be deemed to be valid for the purposes of this Act.Explanation. - For the purposes of this section and section 5, the word "transfer" in relation to an immovable property means a transfer by way of sale, gift, exchange, lease or otherwise and includes allowing the possession of such property to be taken or retained in part performance of contract of the nature referred to in section 53A of the Transfer of Property Act, 1882.

5. Prohibition of transfer of immovable property in disturbed areas.

(1)Notwithstanding anything contained in any other law for the time being in force but subject to provisions of sub-section (3), no immovable property situated in a disturbed area shall, during the

period of subsistence of the notification issued under sub-section (1) of section 3 declaring such area to be the disturbed area, be transferred except with the previous sanction of the Collector.(2)Any transfer of immovable property made in contravention of sub-section (1) shall be null and void.(3)(a)Any person intending to transfer immovable property situated in a disturbed area may, within the prescribed period and in the prescribed form, make an application to the Collector for obtaining previous sanction under sub-section (1).(b)On receipt of such application the Collector shall hold a formal inquiry in the manner provided by the Bombay Land Revenue Code, 1879 (Bombay V of 1879), and after giving an opportunity to the applicant to be heard and after considering any evidence produced, decide whether the transfer of immovable property is proposed to be made by free consent of the persons intending to be the transferor and the transferee and for a fair value of the immovable property proposed to be transferred and accordingly-(i)reject the application; or(ii)by an order in writing give previous sanction to the proposed transfer of immovable property.

6. Appeals.

- Any person aggrieved by the decision of the Collector rejecting an application under sub-clause (i) of clause (b) of sub-section (2) of section 4 or under sub-clause (i) of clause (b) of sub-section (3) of section 5 may file an appeal before the State Government in such manner, within such time, and on payment of such fees, as may be prescribed.

7. Proceedings to be judicial proceedings.

- All inquiries and proceedings before the Collector and the State Government under this Act, shall be deemed to be judicial proceedings within the meaning of sections 193, 219 and 228 of the Indian Penal Code (XLV of 1860).

8. Finality of decision of Collector and State Government.

- The decision of the Collector under section 4 or 5, subject to an appeal to the State Government under section 6 and the decision of the State Government on the appeal, shall be final and conclusive and shall not be questioned in any Court.

9. Sections 4 and 5 not to apply to certain transfers of immovable property.

- The provisions of sections 4 and 5 shall not apply to any transfer by way of mortgage of any immovable property situated in a disturbed area in favour of a financial institution for the purpose of obtaining financial assistance from such institution.Explanation. - For the purposes of this section "financial institution" means-(a)a Corporation as defined in clause (b) of section 2 of the Gujarat Public Moneys (Recovery of Dues) Act, 1979 (Gujarat 17 of 1979).(b)A Bank as defined in clause (c) of that section.

10. Protection of action taken under this Act.

- No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or purported to be done under this Act.

11. Delegation of powers.

- The State Government may, by notification in the Official Gazette, delegate any of the powers of the Collector under section 4 or 5 to any officer of the Government not below the rank of a Deputy Collector.

12. Power to make rules.

(1)The State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.(2)In particular and without prejudice to the generality of the foregoing powers, such rules may be made to provide for all or any of the following matters, namely:-(a)the period within which and the form in which, an application may be made under clause (a) of the sub-section (2) of section 4;(b)the period within which, and the form in which, an application may be made under clause (a) of sub-section (3) of section 5;(c)the manner in which, the time within which and fees on payment of which, an appeal may be filed under section 6(d)any other matter which is to be, or may be, prescribed by rules, made under this Act.(3)All rules made under this section shall be laid for not less than thirty days before the State Legislature as soon as possible after they are made and shall be subject to rescission by the State Legislature, or to such modification 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.

13. Insertion of new section 11A in Bombay LVII of 1947.

- In the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (Bombay LVII of & 947), (hereinafter referred to as "the principal Act"), after section 11, the following new section shall be inserted, namely:-

13A. Right of tenants in new buildings in disturbed areas.

- Where by reason of any riot or violence of mob any material part of the premises in a disturbed area is wholly destroyed or rendered substantially and permanently unfit for the purpose for which it was let,(a)the landlord shall erect the new building at the original site subject to the provisions of any rules, bye-laws or regulations made by a local authority not later than fifteen months from the date of the publication of the notification in the Official Gazette, issued under sub-section (1) of section 3 of the Gujarat Prohibition of Transfer of Immovable Property and Provision for Protection of Tenants from Eviction from Premises in Disturbed Areas Act, 1991 (Gujarat 12 of 1991) or the date on which the material part of premises of the building is wholly destroyed or rendered

substantially and permanently unfit, whichever is later: Provided that the State Government may for sufficient reasons extend the period of fifteen months to such further period not exceeding nine months as it thinks fit, (b) the tenant shall have the right to occupy a tenement in the new building erected at the original site by the landlord, and the provisions of sections 17B and 17C shall, so far as may be, apply. Explanation. - In this section and in sub-section (1A) of section 12, the expression "disturbed area" shall have the same meaning as assigned to it in the Gujarat Prohibition of Transfer of Immovable Property and Provision for Protection of Tenants from Eviction from Premises in Disturbed Areas Act, 1991 (Gujarat 12 of 1991)."

14. Amendment of section 12 of Bombay LVII of 1947.

- In the principal Act, in section 12, after sub-section (1), the following sub-section shall be inserted, namely: - "(1A) Where by reason of any riot or violence of mob any material part of the premises in a disturbed area is wholly destroyed or rendered substantially and permanently unfit for the purpose for which it was let, the landlord shall not be entitled to - (a) the standard rent and permitted increases due for the premises, (b) recover possession of such premises merely on the ground of non-payment of standard rent and permitted increases due, during the period in which such premises remain so destroyed or unfit."

15. Insertion of new section 17D in Bombay LVII of 1947.

- In the principal Act, after section 17C, the following new section shall be inserted, namely: - "17D. Vesting of original site in State Government. - (1) Where a landlord fails to erect a new building within the period specified in clause (a) of section 11A, the original site, irrespective of whether the premises thereon referred to in section 11A exist or not, shall vest in the State Government free from all encumbrances for the purpose of erection of new building to provide accommodation to tenants and there shall be paid to the landlord such compensation for such site as may, subject to such rules as may be made in this behalf under section 49, by an order, be determined by the Collector. (2) An appeal shall lie to the State Government from an order made by the Collector under sub-section (1) determining the amount of compensation to be paid to the landlord, within thirty days from the date of communication of the order and the State Government may pass such order as it deems fit."

16. Amendment of section 40 of Bombay LVII of 1947.

- In the principal Act, in section 49, in sub-section (2), -- (1) after clause (ai), the following clause shall be inserted, namely: - "(aai) the rules subject to which compensation may be determined by the Collector under sub-section (1) of section 17D;" (2) for clause (v), the following clause shall be substituted, namely: - "(v) levy of court-fees in suits, appeals, proceedings and applications instituted or made before the State Government, Court, Controller or Collector."

17. Repeal.

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Tenants from Eviction from Premises in Disturbed Areas Act, 1986 (Gujarat 30 of 1986) is hereby repealed.