

The Jammu and Kashmir Public Premises (Eviction of Unauthorised Occupants) Act, 1988

JAMMU & KASHMIR

India

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Act 17 of 1988

- Published on 31 August 1988
- Commenced on 31 August 1988
- [This is the version of this document from 31 August 1988.]
- [Note: The original publication document is not available and this content could not be verified.]

The Jammu and Kashmir Public Premises (Eviction of Unauthorised Occupants) Act, 1988(Act No. 17 of 1988)[Received the assent of the Governor on 31st August, 1988 and is published in Government Gazette Dated 1st September, 1988.]An Act to provide for the eviction of unauthorised occupants from public premises and for certain incidental matters.Be it enacted by the Jammu and Kashmir State Legislature in the Thirty-ninth Year of the republic of India as follows:-

1. Short title, extent and commencement.

(1)This Act may be called the Jammu and Kashmir Public Premises (Eviction of Unauthorised Occupants) Act, 1988.(2)It extends to the whole of the State of Jammu and Kashmir.(3)[It shall come into force on such date as the Government may, by notification in the Government Gazette, appoint.] [Enforced w.e.f. 26th January, 1989.]

2. Definition.

- In this Act,unless the context otherwise requires,-(a)["appellate officer" in respect of a public premises means the District Magistrate of the District in which such public premises are situate.] [Inserted by Act No. 7 of 2016, dated 23.7.2016.](aa)[[Renumbered 'a' by Act No. 7 of 2016, dated 23.7.2016.] "estate officer" means an officer appointed as such by the Government under section 3;(b)"premises" means any land or any building or part of a building includes,-(i)the garden, grounds and out houses, if any, appertaining to such building or part of a building; and(ii)any fittings affixed to such building or part of building for the more beneficial enjoyment thereof;(c)"prescribed" means prescribed by rules made under this Act;(d)"public premises" means-(1)any premises belonging to, or taken on lease or requisitioned by, or on behalf of, the Government;(2)any premises belonging to, or taken on lease, or on behalf of,-(i)any company as

defined in section 3 of the Companies Act, 1956 in which not less than fifty-one per cent of the paid up share capital is held by the Government or any company which is a subsidiary (within the meaning of that Act) of the first mentioned company;(ii)any corporation (not being a company as defined in section 3 of the companies Act, 1956, or a local authority) established by or under a State or Central Act and owned or controlled by the Government;(iii)any University established or incorporated by or under any State Act;(3)any premises belonging to any town area committee; and(4)any premises belonging to the Development Authority constituted under the Jammu and Kashmir Development Act, whether such premises are in the possession of or leased out by the said Authority;(e)"rent" in relation to any public premises, means the consideration payable periodically for the authorised occupation of the premises, and includes-(i)any charge for electricity, water or any other services in connection with the occupation of the premises,(ii)any tax (by whatever name called) payable in respect of the premises, where such charge or tax is payable by the Government or the corporate authority;(f)"statutory authority" in relation to the public premises referred to in clause (d) of this section means-(i)in respect of the public premises referred to in item (i) of sub-clause (2) of that clause, the company or the subsidiary company, as the case may be, referred to therein,(ii)in respect of the public premises referred to in item (ii) of sub-clause (2) of that clause, the corporation referred to therein,(iii)in respect of the public premises referred to in sub-clause (3) of that clause, committee referred to in that sub-clause;(g)"unauthorised occupation in relation to any public premises", means the occupation by any person of the public premises without authority for such occupation, and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever.

3. Appointment of estate officer.

- The Government may by notification in the Government Gazette, -(a)appoint such persons, being gazetted officers of Government or officers of equivalent rank of the statutory authority, as it thinks fit, to be estate officers for the purpose of this Act:Provided that an officer of a statutory authority shall only be appointed as an estate officer in respect of the public premises controlled by that authority;(b)define the local limits within which, or the categories of public premises in respect of which, the estate officers shall exercise the powers conferred, and perform the duties imposed, on estate officers or under this Act.

4. [Issue of notice to produce documents in proof of authorization of occupation. [Substituted by Act No. 7 of 2016, dated 23.7.2016.]

(1)If the Estates Officer has reasons to believe that any person is in unauthorized occupation of any public premises and that he should be evicted, the Estates Officer shall call upon such person by a notice in writing to produce any documentary or other evidence within a period of seven days from the date of issuance of such notice to prove that he had been duly authorized by the Competent Authority to occupy such public premises failing which the person/persons shall be evicted after expiry date.(2)When a person is served with a notice under sub-section (1), the burden of proving that he has been duly authorized to occupy public premises by the authority competent to do so shall be upon such person.(3)The notice shall be serve upon such occupant by having it affixed on the

outer door or some other conspicuous part of the public premises and also be published in at least two leading newspapers or in such other manner as may be prescribed, whereupon the notice shall be deemed to have been duly served to all persons concerned.(4)Where the Estates Officer knows or has reasons to believe that more than one person is in occupation of the public premises, then, without prejudice to the provisions of sub-section (3) he shall cause a copy of the notice to be served on every such person in the manner as aforesaid.]

5. Eviction of unauthorised occupants.

- [(1) If after a person who has been served with a notice to produce proof or evidence under section 4 fails to produce any such proof or evidence within the stipulated period, or if after considering the proof or evidence, if any, produced by him, the Estates Officer is satisfied that the public premises is in unauthorized occupation, the Estates Officer shall make an order of eviction for reasons to be recorded therein directing that the public premises shall be vacated, on such date as may be specified in the order, by such person or all such persons who may be in occupation thereof or any part thereof and cause a copy of the order to be affixed on the outer door or some other conspicuous part of the public premises.] [Substituted by Act No. 7 of 2016, dated 23.7.2016.](2)If any person refuses or fails to comply with the order of eviction on or before the date specified in the said order or within seven days of the date of its publication under sub-section (1), whichever is later, the estate officer or any other officer duly authorised by the estate officer in this behalf may after the date so specified or after the expiry of the period aforesaid, whichever is later, evict that person from and take possession of, the public premises and may, for the purpose, use such force as may be necessary.

6. Power to remove unauthorised construction, etc.

(1)No person shall-(a)erect or place or raise any building or any movable or immovable structure or fixture,(b)display or spread any goods,(c)bring or keep any cattle or other animal, on, or against, or in front of, any public premises except in accordance with the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy such premises.(2)Where any building or other immovable structure or fixture has been erected, placed or raised on any public premises in contravention of the provisions of sub-section (1), the estate officer may serve upon the person erecting such building or structure or fixture, a notice requiring him either to remove, or to show cause why he shall not remove such building or other structure or fixture from the public premises within such period, not being less than five days as he may specify in the notice; and on the omission or refusal of such person either to show cause or to remove such building or other structure or fixture from the public premises, or where the cause shown is not, in the opinion of the estate officer, sufficient, the estate officer may by order, remove or cause to be removed the building or other structure or fixture from the public premises and recover the cost of such removal from the person aforesaid as an arrear of land revenue.(3)Where any moveable structure or fixture has been erected, placed or raised, or any goods have been displayed or spread, or any cattle or other animal has been brought or kept, on any public premises, in contravention of the provisions of sub-section (1) by any person, the estate officer may, by order, remove or cause to be removed without notice, such structure, fixture goods, cattle or other animal, as the case may be, from the public premises

and recover the cost of such removal from such persons as an arrear of land revenue.

7. Order of demolition of unauthorised construction.

(1)Where the erection of any building or execution of any work has been commenced, or is being carried on, or has been completed, on any public premises by any person in occupation of such public premises under an authority (whether by way of grant or any other mode of transfer), and such erection of building or execution of work is in contravention of, or not authorised by, such authority, then, the estate officer may, in addition to any other action that may be taken under this Act or in accordance with the terms of the authority aforesaid, make an order, for reasons to be recorded therein, directing that such erection or work shall be demolished by the person at whose instance the erection of work has been commenced, or is being carried on, or has been completed, within such period as may be specified in the order: Provided that no order under this sub-section shall be made unless the person concerned has been given, by means of a notice of not less than five days served in the prescribed manner, a reasonable opportunity of showing cause why such order should not be made. (2)Where the erection or work has not been completed, the estate officer may, by the same order or by a separate order, whether made at the time of the issue of the notice under the proviso to sub-section (1) or at any other time, direct the person at whose instance the erection or work has been commenced, or is being carried on, to stop the erection or work until the expiry of the period within which an appeal against the order of demolition, if made may be preferred under section 12. (3)The estate officer shall cause every order made under subsection (1), or, as the case may be, under sub-section (2), to be affixed on the outer door, or some other conspicuous part, of the public premises. (4)Where no appeal has been preferred against the order of demolition made by estate officer under sub-section (1) or where an order of demolition made by the estate officer under that sub-section has been confirmed on appeal, whether with or without variation, the person against whom the order has been made shall comply with the order within the period specified therein, or, as the case may be, within the period, if any, fixed by the appellate officer on appeal, and, on the failure of the person to comply with the order within such period, the estate officer or any other officer duly authorised by the estate officer in this behalf, may cause the erection or work to which the order relates to be demolished. (5)Where an erection or work has been demolished, the estate officer may, by order, require the person concerned to pay the expenses of such demolition within such time and in such number of instalments, as may be specified in the order.

8. Power to seal unauthorised construction.

(1)It shall be lawful for the estate officer, at any time, before or after making an order of demolition under section 7, to make an order directing the sealing of such erection or work or of the public premises in which such erection or work has been commenced or is being carried on or has been completed in such manner as may be prescribed for the purposes of carrying out the provisions of this Act, or for preventing any dispute as to the nature and extent of such erection or work. (2)Where any erection or work or any premises in which any erection or work is being carried on has or have been sealed, the estate officer may, for the purpose of demolishing such erection or work in accordance with the provisions of this Act, order such seal to be removed. (3)No person shall remove such seal except-(a)under an order made by the estate officer under sub-section (2); or (b)under an

order of the appellate officer made in an appeal under this Act.

9. Disposal of property left on public premises by unauthorised occupants.

(1)Where any person have been evicted from any public premises under section 5 or where any building or other work has been demolished under section 7, the estate officer may, after giving fourteen days notice to the person from Whom possession of the public premises has been taken and after publishing the notice in at least one newspaper having circulation in the locality, remove or cause to be removed or disposed of by public auction any property remaining in such premises.(2)Where any goods, materials, cattle or other animal have been removed from any public premises under section 6, the estate officer may, after giving fourteen days notice to the persons owning such goods, material, cattle or other animal and after publishing the notice in at least one newspaper having circulation in the locality, dispose of by public auction, such goods, materials, cattle or other animal.(3)Where any property is sold under sub-section (1) the sale proceeds thereof shall, after deducting the expenses of the sale and the amount, if any, due to the Government or the corporate authority on account of arrears of rent or damages or cost, be paid to such person or persons as may appear to the estate officer to be entitled to the same:Provided that where the estate officer is unable to decide as to the person or persons to Whom the balance of the amount is payable or as to the apportionment of the same, he may refer such dispute to the civil court of competent jurisdiction and the decision of the court thereon shall be final.(4)Notwithstanding anything contained in sub-section (1) and (2) the giving or publication of any notice referred to therein shall not be necessary in respect of any property which is subject to speedy and natural decay, and the estate officer may, after recording such evidence as he may think fit, cause such property to be sold or otherwise disposed of in such manner as he may think fit.(5)The expression "costs", referred to in sub-section (3) shall include the cost of removal recoverable under section 6 and the cost of demolition recoverable under section 7.

10. Power to require payment of rent or damages in respect of public premises.

(1)Where any person is in arrears of rent payable in respect of any public premises, the estate officer may, by order, require that person to pay the same within such time and in such instalments as may be specified in the order.(2)Where any person is, or has at any time been in unauthorised occupation of any public premises, the estate officer may, having regard to such principles of assessment of damages as may be prescribed assess the damages on account of the use and occupation of such premises and may, by order, require that person to pay the damages within such time and in such instalments as may be specified in the order.(3)While making an order under sub-section (1) or sub-section (2), the estate officer may direct that the arrears of rent or, as the case may be, damages shall be payable together with simple interest at such rate as may be prescribed.(4)No order under sub-section (1) or sub-section (2) shall be made against any person until after the issue of a notice in writing to the person calling upon him to show cause within such time as may be specified in the notice, why such order should not be made, and until his objections, if any, and any evidence he may produce in support of the same, have been considered by the estate officer.

11. Powers of estate officers.

- An estate officer shall for the purpose of holding any inquiry under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, Samvat 1977, when trying a suit in respect of the following matter, namely(a)summoning and enforcing the attendance of any person and examining him on oath;(b)requiring the discovery and production of documents;(c)any other matter which may be prescribed.

12. Appeals.

- [(1) An appeal shall lie from every order of the Estates Officer made in respect of any public premises under section 5 or section 7 or section 8 or section 10 to the District Magistrate of the District in which public premises are situate.] [Substituted by Act No. 7 of 2016, dated 23.7.2016.](2)an appeal under sub-section (1) shall be preferred,-(a)in the case of an appeal from an order under section 5, within twelve days from the date of publication of the order under sub-section (1) of that section;(b)in the case of an appeal from an order under section 7, or 10 within twelve days from the date on which the order is communicated to the appellant; and(c)in the case of an appeal from an order under section 8, within twelve days from the date of such order:Provided that the appellate officer may entertain the appeal after the expiry of the said period of twelve days, if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.(3)Where an appeal is preferred from an order of the estate officer, the appellate officer may stay the enforcement of that order for such period and on such condition as he deems fit:Provided that where the construction or erection of any building or other structure or fixture or execution of any other work was not completed on the day on which an order was made under section 7 for the demolition or removal of such building or other structure or fixture, the appellate officer shall not make any order, for the stay of enforcement of such order, unless such security as may be sufficient in the opinion of the appellate officer, has been given by the appellant for not proceeding with such construction, erection or work pending the disposal of the appeal.(4)Every appeal under this section shall be disposed of by the appellate officer as expeditiously as possible.(5)The costs of any appeal under this section shall be in the discretion of the appellate officer.

13. Finality of orders.

- Save as otherwise expressly provided in this Act, every order made by an estate officer or appellate officer under this Act shall be final and shall not be called in question in any original suit, application or execution proceeding and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

14. Offences and penalty.

(1)If any person unlawfully occupies any public premises, he shall be punishable with simple imprisonment for a term which may extend to six months, or with fine which may extend to five

thousand rupees, or with both: Provided that a person who, having been lawfully in occupation of any public premises by virtue of any authority (whether by way of grant, allotment or by any other mode whatsoever) continue to be in occupation of such premises after such authority has ceased to be valid, shall not be guilty of such offence. (2) If any person who has been evicted from any public premises under this Act again occupies the premises without authority for such occupation, he shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to five thousand rupees, or with both. (3) Any Magistrate convicting a person under sub-section (2) may make an order for evicting that person summarily and he shall be liable to such eviction without prejudice to any other action that may be taken against him under this Act.

15. Offences under section 14 to be cognizable.

- The Code of Criminal Procedure, Samvat 1989, shall apply to an offence under section 14 as if it were a cognizable offence- (i) for the purpose of investigation of such offence, and (ii) for the purpose of matter other than- (1) matters referred to in section 57 of that code, and; (2) arrest of a person except on the complaint of, or upon information received from,- (a) an officer as may be appointed by the Government, in the case of an offence in relation to the public premises specified in sub-clause (1) of clause (d) of section 2; (b) an officer equivalent to the rank of an aforesaid officer of the Government or where it is not possible to specify an officer of such equivalent rank, such executive officer as may be appointed by the statutory authority in the case of an offence in relation to the public premises specified in sub-clause (2) of clause (d) of section 2; (c) the Secretary of the Town Area Committee in the case of an offence in relation to the public premises belonging to that committee; (d) such officer, in the case of an offence in relation to the public premises belonging to the Development Authority, as may be appointed by the Government.

16. Power to obtain information.

- If the estate officer has reason to believe that any person is in authorised occupation of any public premises, the estate officer or any other officer authorised by him in this behalf may require those persons or any other person to furnish information relating to the names and other particulars of the person in occupation of the public premises and every person so required shall be bound to furnish the information in his possession.

17. Liability of heirs and legal representatives.

(1) Where any person against whom any proceeding for the determination of arrears of rent or for the determination of the amount payable by way of interest on such arrears of rent or damage is to be or has been taken, dies before the proceedings is taken or during the pendency thereof, the proceeding may be taken or, as the case may be, continued against the heirs or legal representatives of that person. (2) Where any person from whom any cost of removal of any building or other structure or fixture, or as the case may be, any goods, cattle or other animal is to be recovered under sub-section (2) or sub-section (3) of section 6, or any expenses of demolition are to be recovered under section 5 or section 7, or dies, before any proceeding is taken for the recovery of such cost or during the pendency thereof, the proceeding may be taken or, as the case may be, continued against

the heirs or legal representatives of that person.(3)Any amount due to the Government or the corporate authority from any person whether by way of arrears of rent or damages or costs of removal referred to in section 6 or expenses of demolition referred to in section 6 or expenses of demolition referred to in section 7 or interest referred to in sub-section (3) of section 10 or any other cost or costs shall, after the death of the person, be payable by his heirs or legal representatives but their liability shall be limited to the extent of the assets of the deceased in their hands.

18. Recovery of rent, etc., as an arrear of land revenue.

- If any person refuses or failed to pay the expenses of demolition payable under sub-section (5) of section 7 or the arrears of rent payable under section (1) of section 10 or the damages payable under sub-section (2) or the interest determined under sub-section (3) of that section or the costs awarded to the Government or the corporate authority under sub-section (5) of section 12 or any portion of such rent, damages, expenses, interest or costs within the time, if any, specified therefor in the order relating thereto, the estate officer may issue a certificate for the amount due to the Collector who shall proceed to recover the same as an arrear of land revenue.

19. Bar of jurisdiction.

- No [civil court] [Substituted 'court' by Act No. 7 of 2016, dated 23.7.2016.] shall have jurisdiction to entertain any suit or proceeding in respect of -(a)the eviction of any person who is in unauthorised occupation of any public premises, or(b)the removal of any building, structure or fixture or goods, cattle or other animal from any public premises under section 6, or(c)the demolition of any building, or other structures made, or ordered to be made, under section 7, or(d)the sealing of any erection or work or of any public premises under section 8, or(e)the arrears of rent payable under sub-section (1) of section 10 or damages payable under sub-section (2), or interest payable under sub-section (3), of that section, or(f)the recovery of -(i)costs of removal of any building, structure or fixture or goods, cattle or other animal under section 6, or(ii)expenses of demolition under section 7; or(iii)costs awarded to the Government or statutory authority under sub-section (5) of section 12, or(iv)any portion of such rent, damage, costs of removal, expenses of demolition or costs awarded to the Government or the statutory authority.

20. Over-riding effect of the Act.

- The provisions of this Act shall have effect notwithstanding anything to the contrary contained in any other law or any other law or any instrument having effect by virtue of such other law.

21. Protection of action taken in good faith.

- No suit, prosecution or other legal proceeding shall lie against the Government or the corporate authority or the appellate officer or the estate officer in respect of anything which is in good faith done or intended to be done in pursuance of this Act or of any rules or orders made thereunder.

22. Delegation of powers.

- The Government, may, by notification in the Government Gazette, direct that any power exercisable by it under this Act except under section 2 shall, subject to such conditions, if any, as may be specified in the notification, be exercisable also by an officer of the Government.

23. Power to make rules.

(1)The Government may, by notification in the Government Gazette, 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 provide for all or any of the following matters, namely(a)the form of any notice required or authorised to be given under this Act and the manner in which it may be served;(b)the holding of inquiries under this Act;(c)the distribution and allocation of work to estate officers and the transfer of any proceeding pending before an estate officer to another estate officer;(d)the procedure to be followed in taking possession of public premises;(e)the manner in which damages for unauthorised occupation may be assessed and the principles which may be taken into account in assessing such damages;(f)the manner in which the sealing of any erection or work or any public premises shall be made under section 8;(g)the rate at which interest shall be payable on arrears of rent specified in any order made under sub-section (1) of section 10 or damages assessed under sub-section (2) of that section;(h)the manner in which appeals may be preferred and the procedure to be followed in appeals;(i)any other matter which has to be or may be prescribed.(3)Every rule under this section shall be laid, as may be after it is made, before each House of the State Legislature while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rules should not be made, the rules 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 rule.

24. Repeal.

(1)The Jammu and Kashmir Public Premises (Eviction of Unauthorised Occupants) Act, 1959 is hereby repealed.(2)Notwithstanding such repeal or any judgement, decree or order of any court, anything done or any action taken (including rules or orders made, notices issued, evictions ordered or effected, damages assessed, rents or damages or costs recovered and proceedings initiated) or purported to have been done or taken under the Jammu and Kashmir Public Premises (Eviction of unauthorised Occupants) Act, 1959 shall be deemed to be as valid and effective, as if such thing or action was done or taken under the corresponding provisions of this Act and accordingly-(a)no suit or other legal proceeding shall be maintained or continue in any court for the refund of any rent or damages or costs recovered under the Jammu and Kashmir Public Premises (Eviction of Unauthorised Occupants) Act, 1959 where such refund has been claimed merely on the ground that the said Act has been repealed; and(b)no court shall enforce a decree or order directing the refund of any rent or damages or costs recovered under the Jammu and Kashmir Public Premises (Eviction of Unauthorised Occupants) Act, 1959 merely on the ground that the said Act has been repealed.