

The Redemption of Mortgages (Himachal Pradesh) Act, 1971

HIMACHAL PRADESH

India

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Act 13 of 1971

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The Redemption of Mortgages (Himachal Pradesh) Act, 1971 (Act No. 13 of 1971) Published in R.H.P. Extraordinary dated 5th November 1971 at pages 1335-1342. Received the assent of the Governor on the 20th October, 1971. An Act to provide a summary procedure for the redemption of certain mortgages of land in Himachal Pradesh. Be it enacted by the Legislative Assembly of Himachal Pradesh in the Twenty-second Year of the Republic of India as follows:-

1. Short title, extent, commencement and limitation of scope of Act to certain mortgages.

(1) This Act may be called the Redemption of Mortgages (Himachal Pradesh) Act, 1971. (2) It extends to the whole of Himachal Pradesh. (3) It shall come into force at once. (4) It shall apply only to mortgages of land-(a) in which, whatever the mortgage money, the land mortgaged, after excluding the area of any share in the common land of the village or of a sub-division of the village appertaining thereto and mortgaged therewith, does not exceed in area of 50 acres; or (b) in which, whatever the area the principal money secured under the mortgage does not exceed 5,000 rupees.

2. Definitions.

- In this Act, unless there is something repugnant in the subject or context,-(1) the expression "land" means land which is not occupied as the site of any building in a town or village and is occupied or let for agricultural purposes or purposes subservient to agriculture or for pasture, and includes-(a) the sites of buildings and other structures on such land; (b) a share in the profits of an estate or holding; (c) any dues or any fixed percentage of the land revenue payable to land-owner; (d) a right to receive rent; (f) any right of occupancy; (2) the expression "Collector" shall mean the Collector of the District in which the mortgaged property or any part thereof is situated, and shall include an Assistant Collector of the 1st grade; (3) "prescribed" shall mean prescribed by rules made under this

Act.

3. Application of certain sections of the Punjab Tenancy Act, 1887 and the Himachal Pradesh Act No. 15 of 1954.

- Subject to the provisions of this Act and the rules thereunder, the provisions of sections 79, 85, 86, 87, 89, 90, 91, 92 and 101 of the Punjab Tenancy Act, 1887, as applicable to the areas added to Himachal Pradesh under section 5 of the Punjab Re-organisation Act, 1966 and sections 113, 119, 120, 121, 123, 124, 125, 126 and 135 of the Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act, 1953, as in force in the areas comprised in Himachal Pradesh immediately before 1st November, 1966, shall, so far as may be, apply to all proceedings of a Collector under this Act in the respective areas.

4. Petition for redemption, verification, deposit and particulars to be contained in petition.

- The mortgager or other person entitled to institute a suit for redemption may, at any time after the principal money becomes payable and before a suit for redemption is barred, present a petition to the Collector applying for an order directing that his mortgage be redeemed, and where the mortgage is with possession that he be put in possession of the mortgaged property. The petition shall be duly verified in the manner prescribed by law for the verification of plaints, and shall state the sum which the petitioner declares to the best of his belief to be due under the mortgage. The petitioner shall at the same time deposit such sum with the Collector. The petitioner shall state in his petition such particulars and file therewith such documents as may be prescribed.

5. Mortgagee to be summoned.

- When the petition has been duly presented and the deposit has been made, the Collector shall issue to the mortgagee a summons to appear on a date to be therein specified. Every summons shall be accompanied by a copy of the petition, with the date of deposit endorsed thereon.

6. Procedure when petitioner is absent and mortgagee present.

- Where the mortgagee appears and the petitioner does not appear when the petition is called on for hearing, the Collector shall, unless he adjourns the proceedings, make an order that the petition be dismissed, unless the mortgagee admits the claim, in which case the Collector shall make an order-(a)that the mortgage be redeemed;(b)that where the mortgage is with possession the mortgagor be put in possession of the mortgaged property as against the mortgagee;(c)that the mortgagee deposits with the Collector the mortgage-deed, if any, if then in his possession or power, and that it be delivered to the petitioner;(d)that subject to the mortgage-deed, if any, being so deposited by the mortgagee the sum in deposit be paid to him:Provided that no such order shall be made inconsistent with any condition of the mortgage whereby a season or period of the year is fixed for redemption or for surrendering possession.

7. Procedure when petitioner is present and mortgagee absent.

- When the petitioner appears, but the mortgagee does not appear, when the petition is called on for hearing, the Collector shall, unless he adjourns the proceedings, inquire in a summary manner (a) whether the petitioner is entitled to redeem the mortgaged property, and (b) whether the sum deposited by the petitioner is the sum rightly due under the mortgage. If the Collector is not satisfied that the petitioner is entitled to redeem, he shall dismiss the petition. If the Collector is satisfied that the petitioner is entitled to redeem, and that the sum deposited is the sum rightly due under the mortgage, he shall make an order as laid down in clauses (a), (b), (c) and (d) of section 6 of this Act. If the Collector is satisfied that petitioner is entitled to redeem, but is of opinion that a sum larger than that in deposit is due under the mortgage, he shall fix a period not exceeding 30 days within which the petitioner shall deposit the difference, together with any further sum which may be due on account of interest up to the date of deposit. If the petitioner makes such deposit within such period or such further period not exceeding 30 days, as the Collector may fix, the Collector shall make an order in manner aforesaid. If the petitioner fails to make such deposit within the period fixed, the Collector shall dismiss the petition.

8. Procedure when both parties are in attendance, order for redemption.

- Where both parties appear when the petition is called on for hearing, the Collector shall inquire from the mortgagee whether he admits that the petitioner is entitled to redeem, whether he is willing to accept the sum in deposit in full discharge of the mortgage debt, and where the mortgage is with possession whether he is willing to surrender possession of the mortgaged property. If the mortgagee replies in the affirmative, the Collector shall make an order as laid down in clauses (a), (b), (c) and (d) of section 6 of this Act. If the mortgagee admits the petitioner's title to redeem, but demands payment of a sum larger than that in deposit, the Collector shall inquire from the petitioner whether he is willing to pay such larger sum, and if he replies in the affirmative, the Collector shall fix a period not exceeding 30 days within which the petitioner shall deposit the difference, together with any further sum which may be due on account of interest up to the date of deposit. If the petitioner makes such deposit within such period or such further period not exceeding 30 days, as the Collector may fix, the Collector shall make an order as laid down in clauses (a), (b), (c) and (d) of section 6 of this Act. If the petitioner fails to make such deposit within the period fixed, the Collector shall dismiss the petition.

9. Procedure in contentious cases.

- If the mortgagee raises objection on any ground other than the amount of the deposit, or if the petitioner is not willing to pay the sum demanded by the mortgagee, the Collector may either (a) for reasons to be recorded dismiss the petition, or (b) make a summary inquiry regarding the objection raised by the mortgagee or regarding the sum due.

10. Inquiry into objection raised by mortgagee.

- If on inquiry regarding any objection so raised by the mortgagee the Collector is of opinion that it bars redemption or is a sufficient cause for not proceeding further with the petition he shall dismiss the petition; but if he is not of that opinion, he shall, unless he dismisses the petition under section 11 make an order as laid down in clauses (a), (b), (c) and (d) of section 6 of this Act.

11. Inquiry regarding sum due.

- If on inquiry regarding the sum due the Collector is of opinion that the sum deposited is the sum rightly due under the mortgage, he shall, unless he dismisses the petition under section 10, make an order as laid down in clauses (a), (b), (c) and (d) of section 6 of this Act, but if he is of opinion that a sum larger than the sum deposited should be deposited by the petitioner, he shall, unless he dismisses the petition under section 10, fix a period not exceeding 30 days within which the petitioner shall deposit the difference, together with any further sum which may be due on account of interest upto the date of the deposit. If the petitioner makes such deposit within such period or such further period not exceeding 30 days, as the Collector may fix, the Collector shall make an order as laid down in clauses (a), (b), (c) and (d) of section 6 of this Act. If the petitioner fails to make such deposit within the period fixed, the Collector shall dismiss the petition.

12. Saving of suits to establish rights and setting aside ex-parte orders or orders of dismissal.

- Any party aggrieved by an order made under sections 6, 7, 8, 9, 10 or 11 of this Act may institute a suit to establish his rights in respect of the mortgage, but, subject to the result of such suit, if any, the order shall be conclusive. Notwithstanding anything in this section a mortgagee against whom an ex-parte order under section 7 has been made or a petitioner whose petition has been dismissed in default under section 6 may apply to the Collector to have such order or dismissal set aside, and the Collector may in his discretion set aside, such order or dismissal on such terms as to costs or otherwise as he may deem fit: Provided that the order or dismissal shall not be set aside unless notice of the application has been served on the opposite party.

13. No second petition.

- The dismissal of a petition under this Act shall bar any further petition under this Act by the same petitioner or his representative in respect of the same mortgage.

14. Return of deposit.

- If the Collector dismisses a petition under this Act, he shall order that the sum deposited by the petitioner be returned to him.

15. Deposit not to be attached.

- No sum deposited with the Collector by a petitioner under the provisions of this Act shall be attached by any Court or Revenue Officer.

16. Cessation of interest.

- When the petitioner has deposited with the Collector the sum declared by him to be due on the mortgage, and such sum is accepted by the mortgagee, or is found by the Collector to be the sum actually due, interest on the mortgage shall cease from the date of the deposit. Where the Collector finds that a further sum is due and the petitioner deposits such further sum, interest shall cease from the date of such further deposit: Provided that nothing in this section shall be deemed to deprive the mortgagee of his right to interest when there exists a contract that he shall be entitled to reasonable notice before payment or tender of the mortgage money: Provided further that where a suit is instituted under section 12, the court may pass such order as to interest as it deems fit.

17. Power to make rules.

(1) The State Government may, by notification in the Rajpatra, Himachal Pradesh, make rules for carrying out the purposes of this Act. (2) Every rule made under this Act shall be laid, as soon as may be after it is made, before the Legislative Assembly while it is in session for a total period of not less than fourteen 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 sessions aforesaid, the Assembly makes any modification in the rule or decides that the rule 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 rule.

18. Repeal and savings.

- The Redemption of Mortgages (Punjab) Act, 1913 as applied to Himachal Pradesh by the Himachal Pradesh (Application of Laws) Order, 1948 and the Redemption of Mortgages (Punjab) Act, 1913 in its application to the areas added to Himachal Pradesh by section 5 of the Punjab Re-organisation Act, 1966 are hereby repealed: Provided that anything done or any action taken or rules made or notification issued in exercise of the powers conferred by or under the provisions of the Acts so repealed to the extent of their being consistent with the provisions of this Act, shall be deemed to have been done, taken, made or issued in exercise of the powers conferred by or under this Act, as if this Act was in force on the day on which such thing was done, action taken, rules made or notification issued.