

The Himachal Pradesh Requisition of Immovable Property Act, 1987

HIMACHAL PRADESH

India

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Act 1 of 1988

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The Himachal Pradesh Requisition of Immovable Property Act, 1987 Act No. 1 of 1988 Published in R.H.P. Ex-ordinary Dated pages 257-268. (As assented to by the President of India on February, 1988) An Act to provide for the requisition of immovable property or the continuance of requisition of immovable property for purposes of the State. Be it enacted by the Legislative Assembly of Himachal Pradesh in the Thirty-eighth Year of the Republic of India as follows :-

1.

(1) This Act may be called the Himachal Pradesh requisition of Immovable Property Act, 1987. (2) It extends to the whole of the State of Himachal Pradesh. (3) It shall be deemed to have come into force on the 28th day of July, 1983.

2.

In this Act, unless the context otherwise requires, :- (a) "award" means any award of an arbitrator made under section 9; (b) "competent authority" means any person or authority authorised by the Government, by notification in the Official Gazette, to perform the functions of the competent authority under this Act for such area as may be specified in the notification; (c) "Government" means the Government of Himachal Pradesh; (d) "landlord" means any person, who for the time being is receiving or is entitled to receive the rent of any premises, whether on his own account, or on account or on behalf or for the benefit of any other person, or as a trustee, guardian or receiver for any other person or who would so receive the rent or be entitled to receive the rent if the premises were let to a tenant; (e) "Official Gazette" means the Rajpatra, Himachal Pradesh; (f) the expression "person interested" in relation to any property includes all persons claiming or entitled to claim an interest in the compensation payable on account of the requisition of that property

under this Act;(g)"premises" means any building or part of a building and includes--(i)the garden, grounds and out-houses, if any, pertaining to such building or part of the building; and(ii)any fittings affixed to such building or part of the building for more beneficial enjoyment thereof;(h)"prescribed" means prescribed by rules made under this Act;(i)"property" means immovable property of every kind and includes any rights in or over such property; and(j)"tenant" means any person by whom or on whose account rent is payable for any premises and includes such Sub-tenants and other persons as have derived title under the tenant under any law for the time being in force.

3.

(1)Where the competent authority is of the opinion that any property is needed or is likely to be needed for any public purpose, being a purpose of the State, and that the property should be requisitioned the competent authority-(a)shall call upon the owner or any other person who may be in possession of the property, by notice in writing (specifying therein the purpose of the requisition) to show cause within thirty days of the date of the service of such notice on him, as to why the property should not be requisitioned; and(b)may, by order, direct that neither the owner of the property nor any other person shall, without permission of the competent authority dispose of or structurally alter the property or let it out to a tenant until the expiry of such period, not exceeding two months, as may be specified in the order.(2)If, after considering the cause, if any, shown by any person interested in the property or in possession thereof, the competent authority is satisfied that it is necessary or expedient so to do, it may, by order in writing requisition the property and may make such further orders as appear to it to be necessary or expedient in connection with the requisition :Provided that no property or part thereof--(a)which is bona fide used by the owner thereof as residence for himself or his family, or(b)which is exclusively used either for religious worship by the public or as a school, hospital, public library or an orphanage or for the purpose of accommodation of a person connected with the management of such place of worship or such school, hospital, library or orphanage,shall be requisitioned :Provided further that where the requisitioned property consists of premises which are being used as a residence by a tenant for not less than two months immediately preceding the date of the service of notice under sub-section (1), possession of the property shall not be taken unless the competent authority has provided such tenant with alternative accommodation which, in its opinion, is suitable.

4.

(1)Where any property has been requisitioned under section 3, the competent authority may, by notice in writing, order the owner as well as any other person who may be in possession of the property to surrender or deliver possession thereof to the competent authority or any person duly authorised by it in this behalf within thirty days of the service of the notice.(2)If any person refuses or fails to comply with an order made under sub-section (1), the competent authority may take possession of the property and may, for that purpose, use such force as may be necessary.(3)On taking possession of any property under this section, the competent authority shall, in the absence of an agreement as to the amount of compensation under clause (a) of sub-section (1) of section 9 and without prejudice to other provisions of this Act, tender every month payment of eighty

percentum of the rental as estimated by him, as provisional compensation for such property, to the owners or persons entitled thereto.(4)The amount paid or tendered under sub-section(3) shall be taken into account for determining the amount of compensation required to be paid under section 9 and where the compensations, so paid exceeds the compensation determined under section 9, the excess, unless refunded within three months from the date of award, shall be recoverable by deduction from the rental payable thereafter.

5.

(1)All property requisitioned under section 3 shall be used for such purposes as may be mentioned in the notice of requisition.(2)Where any premises are requisitioned under section 3, the competent authority may order the landlord to execute such repairs as may be necessary and are usually made by landlords in that locality and as may be specified in the notice within such reasonable time as may be mentioned therein and if the landlord fails to execute the repairs in pursuance of such order, the competent authority may cause the repairs specified in the order to be executed at the expense of the landlord and the cost thereof may, without prejudice to any mode of recovery, be deducted from the compensation payable to the landlord.

6.

(1)The competent authority may at any time release from requisition any property requisitioned under this Act and shall, as far as possible, restore the property in as good condition as it was when possession thereof was taken, subject only to the changes caused by reasonable wear and tear and irresistible force :Provided that where the purposes for which any requisitioned property was being used cease to exist, the competent authority shall release the property, as soon as may be, from requisition.(2)Notwithstanding anything contained in sub-section (1), the State Government shall release from requisition-(a)any property requisitioned under the Himachal Pradesh Requisitioning and Acquisition of Immovable Property Act, 1972 (20 of 1973), the possession of which is still with the Government on or before the expiry of a period of ten years from the 28th day of July, 1983;(b)any property requisitioned or deemed to be requisitioned under this Act, after the 27th day of July, 1983, on or before the expiry of a period of ten years from the date on which possession of such property was surrendered or delivered to or taken by the competent authority under section 4.(3)Where any property is to be released from requisition, the competent authority may, after such enquiry, if any, as it may in any case consider necessary to make or cause to be made, specify by order in writing, the person to whom possession of the property shall be given and such possession shall, as far as practicable, be given to the person from whom possession was taken at the time of the requisition or to the successor(s)-in-interest of such person.(4)The delivery of possession of the property to the person specified in an order under sub-section (2) shall be a full discharge of the Government from all liability in respect of the property, but shall not prejudice any rights in respect of the property to which any other person may be entitled, by due process of law, to enforce against the person to whom possession of the property is given.(5)Where any person to whom possession of any requisitioned property is to be given is not traceable and has no agent or other person empowered to accept delivery on his behalf, the competent authority shall cause a notice, declaring that the property is released from requisition, to be affixed on some conspicuous part of the property

and shall also publish the notice in the Official Gazette.(6)When a notice referred to in sub-section (5) is published in the Official Gazette, the property specified in such notice shall cease to be subject to requisition on and from the date of such publication and shall be deemed to have been delivered to the person entitled to possession thereof and the Government shall not be liable for any compensation or other claim in respect of the property for any period after the said date.(7)Where any property requisitioned under this Act or any material part thereof is wholly destroyed or rendered substantially and permanently unfit for the purpose for which it was requisitioned by reason of fire, earthquake, tempest, flood or operation of any army or violence of any mob or other irresistible force, the requisition shall, at the option of the Government, be void :Provided that the benefit of this sub-section shall not be available to the Government where the injury to such property is caused by any wrongful act or default of the Government.

7.

(1)After a period of two years from the date of requisition of any property, the owner or any person interested in such property, may apply to the competent authority to release it from requisition:Provided that such application may be made before the expiry of two years from the date of requisition of the property if circumstances have arisen which the owner or any person interested in the property could not have urged when given an opportunity to show cause under clause (a) sub-section (1) of section 3.(2)On receipt of an application under sub-section (1) the competent authority may, after calling for such information as it may find necessary, from the owner or any person interested in the property or making such further inquiry as it may consider necessary, pass orders in respect of that as it deems fit.

8.

After the application for release from requisition made under section 7 has been rejected by the competent authority and the appeal filed before the Government under section 12 has also been rejected, no further application for release will be entertained by the competent authority till the expiry of a further period of two years:Provided that another application may be made by the owner or any person interested in the property within two years of rejection of the first appeal if any further circumstances have arisen which he could not have urged in his previous application.

9.

(1)Where any property is requisitioned under this Act, there shall be paid compensation the amount of which shall be determined in the manner and in accordance with the principles hereinafter set out, that is to say--(a)Where the amount of compensation is fixed by agreement, it shall be paid in accordance with such agreement;(b)where no such agreement can be reached, the Government shall appoint as an arbitrator a person who is or has been or is qualified for appointment as a Judge of a High Court;(c)the Government may, in any particular case, nominate a person having expert knowledge as to the nature of the property requisitioned to assist the arbitrator and where such nomination is made, the person to be compensated may also nominate an assessor for the same purpose;(d)at the commencement of the proceedings before the arbitrator, the Government and the

person to be compensated shall state what in their respective opinion is a fair amount of compensation;(e)the arbitrator shall, after hearing the dispute, make an award, within a period of one year reckoned from the date of order of requisition made by the competent authority under sub-section (2)of section 3, determining the amount of compensation which appears to him to be just and specifying the person or persons to whom such compensation shall be paid; and in making the award, he shall have due regard to the circumstances of each case and the provisions of sub-section (2) of this section;(f)where there is any dispute as to the person or persons who is/are entitled to the compensation, the arbitrator shall decide such dispute and if the arbitrator finds that more than one persons are entitled to compensation, he shall apportion the amount thereof amongst such persons; and(g)nothing in the Arbitration Act, 1940 (10 of 1940) shall apply to arbitration under this section.(2)The amount of compensation payable for the requisition of any property shall, subject to the provisions of sub-sections(3) and (4), consist of--(a)a recurring payment, in respect of the period of requisition, of a sum equal to the rent which would have been payable for the use and occupation of the property, if it had been taken on lease for that period; and(b)such sum or sums, if any, as may be found necessary to compensate the person interested in all or any of the following matters, namely;--(i)pecuniary loss due to requisition;(ii)expenses on account of vacating the requisitioned premises;(iii)expenses on account of re-occupying the premises upon release from requisition; and(iv)damages (other than normal wear and tear) caused to the property during the period of requisition, including the expenses that may have to be incurred for restoring the property to the same condition in which it was at the time of requisition.(3)The recurring payment, referred to in clause (a) of sub-section (2), in respect of any property shall, unless the property is sooner released from requisition under section 6, be revised in accordance with the provision of sub-section (4),-(a)in a case where such property has been subject to requisition for a period of five years or a longer period immediately preceding the commencement of this Act-(i)in the first instance with effect from the date of such commencement, and(ii)further with effect from the expiry of five years from such commencement;(b)in a case where such property has been subject to requisition immediately before such commencement for a period shorter than five years and the maximum period within which such property shall, in accordance with the provisions of sub-section (2) of section 6, be released from requisition, extends beyond five years from the date of its requisition,-(i)in the first instance with effect from the date of expiry of five years from the date on which possession of such property has been surrendered or delivered to, or taken by, the competent authority under section 4, and(ii)further with effect from the date of expiry of a period of five years from the date on which the revision made under clause (i) takes effect;(c)in any other case, with effect from the date of expiry of five years from the date on which possession of such property has been surrendered or delivered to, or taken by, the competent authority under section 4.(4)The recurring payment in respect of any property shall be revised by re-determining such payment in the manner and in accordance with the principles set out in sub-section (1) read with clause (a) of sub-section (2), as if such property had been requisitioned under this Act on the date with effect from which the revision has to be made under sub-section (3).(5)Where there are several persons interested in the compensation, it shall be lawful for the Government either on its own motion or on an application from any person interested therein, to appoint the same or any other arbitrator to make an award or supplementary award in respect of the disputes.Explanation. - In computing the period referred to in clause(e) of sub-section (1), any period or periods during which proceedings are held up on account of any stay or injunction by an order of any court, shall be excluded.

10.

(1) The amount of compensation payable under an award shall, subject to any rules made under this Act, be paid or given by the competent authority to the person or persons entitled therein in such manner and within such time as may be specified. (2) An interest at the rate of 9 percentum per annum shall be payable on the amount of compensation or any part thereof from the date of order of requisition made by the competent authority under sub-section (2) of section 3 till the date the amount stands paid or tendered: Provided that where such compensation or part thereof is not paid or tendered within one year from the date it becomes due, interest at the rate of 15 percentum per annum shall be payable for the period exceeding one year. I. Explanation I. - For computing interest under this sub-section, the amount paid as provisional compensation under sub-section (3) of section 4, if not already reduced while making the award, shall be deducted from the amount of compensation payable under the award. Explanation II. - For the removal of doubts it is clarified that tender of amount of compensation to the persons entitled thereto shall, without prejudice to other provisions of this Act, be deemed to be the payment of compensation to the persons interested therein, for the purposes of this sub-section.

11.

(1) Any person aggrieved by an order of requisition made by the competent authority under sub-section (2) of section 3 may, within thirty days from the date of service of the order, prefer an appeal to the Government: Provided that the Government may entertain the appeal after expiry of the said period of thirty days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time. (2) On receipt of an appeal under sub-section (1), the Government may, after calling for a report from the competent authority and giving an opportunity to the parties of being heard and after making such further enquiry, if any, as may be necessary, pass such orders as it thinks fit and the orders of the Government shall be final. (3) Where an appeal is preferred under sub-section (1), the Government may stay the enforcement of the order of the competent authority for such period and on such conditions as it thinks fit.

12.

(1) Any person aggrieved by an order made by the competent authority under sections 7 and 8 may, within thirty days from the date of service of the order, prefer an appeal to the Government: Provided that the Government may entertain the appeal after the expiry of the said period of thirty days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time. (2) On receipt of an appeal under sub-section (1), the Government may, after calling for a report from the competent authority and after making such further inquiry as it may consider necessary pass such orders as it deems fit and the orders of the Government shall be final.

13.

(1) Any person aggrieved by an award of the arbitrator made under section 9 may, within sixty days

from the date of such award prefer an appeal to the High Court of Himachal Pradesh: Provided that the High Court may entertain the appeal after expiry of the said period of sixty days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time. (2) If the sum which, in the opinion of the High Court, the arbitrator ought to have awarded as compensation is in excess of the sum which the arbitrator did award as compensation, the High Court may direct that the competent authority shall pay interest on such sum in excess at the rate of 9 percentum per annum from the date of the order of requisition made by the competent authority under sub-section (2) of section 3 till the date the amount of such sum in excess stands paid or tendered: Provided that the High Court may also direct that where such sum in excess or any part thereof is paid or tendered after the date of expiry of a period of one year from the date on which the order of requisition is made under sub-section (2) of section 3, interest at the rate of 15 percentum per annum shall be payable from the date of expiry of the said period of one year on the amount of such sum in excess or part thereof which has not been paid or tendered before the date of such expiry. Explanation. - For the removal of doubts it is clarified that tender of amount of compensation to the persons entitled thereto without prejudice to the provisions contained in this Act, shall be deemed to be valid payment for the purposes of this sub-section.

14.

The competent authority and the arbitrator appointed under section 9, while holding an inquiry or arbitration proceedings, as the case may be, under this Act, shall have all powers of a civil court, while trying a suit under the Code of Civil Procedure, 1908 (5 of 1908) in respect of the following matters, namely- (a) summoning and enforcing the attendance of any person and examining him on oath; (b) requiring the discovery and production of any document; (c) reception of evidence on affidavits; (d) requisitioning any public record from any court or office; and (e) issuing commissions for examination of witnesses.

15.

The Government or the competent authority may, with a view to carrying out the purposes of section 3 or section 6 or section 9 by order require any person to furnish to such officer, as may be specified in the order, such information in his possession as may be specified relating to any property which is requisitioned or intended to be requisitioned under this Act.

16.

The competent authority or any officer, empowered in this behalf by such authority by general or special order, may enter and inspect any property for the purposes of determining whether and if so in what manner an order under this Act should be made in relation to such property or with a view to securing compliance with an order made under this Act.

17.

(1) Subject to the provisions of this section and any rules that may be made under this Act, every notice or order issued or made under this Act shall.—(a) in case of any notice or order of a general nature affecting a class of persons, be published in the Official Gazette; (b) in case of any notice or order affecting an individual, corporation or firm be served in the manner provided for the service of summons in rule 2 of Order XXIX or rule 3 of Order XXX, as the case may be, in the First Schedule of the Code of Civil Procedure, 1908 (5 of 1908); and (c) in the case of any notice or order affecting an individual person (not being a corporation or firm) be served on such person—(i) by, delivering or tendering it to that person; or (ii) if it cannot be so delivered or tendered, by delivering or tendering it to any officer or such person or any adult male member of the family of such person, or by affixing a copy thereof on the outer door or on some conspicuous part of the premises in which that person is known to have last resided or carried on business or personally worked for gain; or (iii) failing service by these means, by post. (2) Where the ownership of the property is in dispute or where the persons interested in the property are not readily traceable and the notice or order cannot be served without undue delay, the notice or order may be served by publishing it in the Official Gazette, and where possible, by affixing a copy thereof on any conspicuous part of the property to which it relates.

18.

No person interested in any property requisitioned or acquired under this Act shall, without the previous written consent of the competent authority or except for the purpose of affecting repairs or complying with municipal requirement, will fully disturb any convenience or easement attached to such property or remove, destroy or render unserviceable anything provided for permanent use therewith or discontinue or cause to be discontinued any supply or service provided for the property.

19.

(1) The Government may, by notification in the Official Gazette, direct that the powers except those under sections 11, 12 and 24 exercisable by it under this Act shall, in such circumstances and under such conditions, if any, as may be specified in the notification, be exercisable also by an officer subordinate to that Government. (2) All notifications issued under sub-section (1) shall be laid, as soon as may be, before the legislative Assembly.

20.

(1) No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Act or any order made thereunder. (2) No suit or other legal proceeding shall lie against the Government or the competent authority for any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of this Act or any order made thereunder.

21.

Save as otherwise expressly provided in this Act, no civil court shall have jurisdiction in respect of any matter which the competent authority or arbitrator is empowered by or under this Act to determine, 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.

22.

Whoever contravenes any provision of this Act or any rule made thereunder or any order made or direction given under this Act or obstructs the lawful exercise of any power conferred by or under this Act shall be punishable with fine which may extend to one thousand rupees, and when the offence is a continuing one with a further fine which may extend to fifty rupees for every day after the first during which the offence continues.

23.

The competent authority, every arbitrator and every officer empowered by the Government or by the competent authority, while exercising any power or performing any duty under this Act, shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.(45 of 1860).

24.

(1)The 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 power, such rules may provide for all or any or the following matters, namely:-(a)the procedure to be followed by the competent authority in making inquiries under section 3 or section 6;(b)the procedure to be followed in arbitration proceedings and appeals under this Act;(c)the principles to be followed in determining the amount of compensation, method of payment and conditions of such compensation;(d)the principles to be followed in apportioning the cost of proceeding before the arbitrator and an appeal under this Act;(e)the manner of service of notices and orders;(f)rent and its recovery; and(g)any other matter which has to be or may be prescribed.(3)Every rule framed 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.

25.

Notwithstanding anything to the contrary contained in any law for the time being in force-(i)any immovable property requisitioned by the competent authority under the Himachal Pradesh Requisitioning and Acquisition of Immovable Property Act, 1972 (20 of 1973) (including any property deemed to have been requisitioned under that Act) which had not been released from such requisition before the 28th day of July, 1983;(ii)any immovable property which purports to have been requisitioned after the 28th day of July, 1983, by an Officer of the Government, under the Himachal Pradesh Requisitioning and Acquisition of Immovable Property Act, 1972 (20 of 1973), and which has not been released from such requisition; shall, as from the date of such requisition, be deemed to have been requisitioned by the competent authority under the provisions of this Act for the purposes for which the said property was requisitioned or held and all provisions of this Act shall apply accordingly; Provided that all agreements for determination and awards for payment of compensation in respect of any such property for any period of requisition shall be binding in so far as future compensation is concerned shall be valid and shall be deemed always to have been valid and shall continue to be in force and shall apply to payment of compensation in respect of that property.

26.

(1)Subject to any rule that may be made in this behalf by the Government, any sum due by way of rent in respect of any requisitioned property which is in arrears may be recovered by the competent authority from the persons liable to pay the same in the same manner as an arrear of land revenue.(2)Where any person is in unauthorised occupation of any requisitioned property, the competent authority may, in the prescribed manner, assess such damages on account of the use and occupation of the said property as it thinks fit and may, by notice served by post or in such other manner, as may be prescribed by rules made in this behalf, order that person to pay the damages within such time as may be specified in the notice.(3)If any person refuses or fails to pay the damages within the time specified in the notice under sub-section (2), damages may be recovered in the same manner as arrears of land revenue.

27.

(1)The Himachal Pradesh Requisition of Immovable Property Ordinance, 1987 (7 of 1987) is hereby repealed.(2)Notwithstanding such repeal, anything done or any action taken under the Ordinance repealed under sub-section (1), shall be deemed to have been done or taken under the corresponding provisions of this Act as if this Act had come into force on the day on which such thing was done or action taken.Authorised English text of this Government Notification No. PBW(B&R) (B) 1 (1)1/85, dated 22nd February, 1991 as required under clause (3) of Article 348 of the Constitution of India.Government of Himachal PradeshPublic Works DepartmentNo.PBW(B&R)(B) 1(1)1/85 dated Shimla-2 the 22nd February, 1991.NotificationsIn exercise of the powers conferred by clause (b) of Section 2 of the Himachal Pradesh Requisition of Immovable Property Act, 1987 (Act No. 1 of 1988), the Governor of Himachal Pradesh is pleased to appoint all the Deputy Commissioners in Himachal Pradesh as "Competent Authority" within their

respective jurisdiction to perform the functions of the competent authority under the aforesaid Act. By order. A.K. Mohapatra Commissioner-cum-Secretary (PW) to the Government of Himachal Pradesh. Endst No. as above dated Shimla-2 the 22 February, 1991. Copy forwarded to :-

- 1. All Secretaries to the Government, of Himachal Pradesh.**
- 2. The Divisional Commissioner Mandi, Kangra & Shimla.**
- 3. All the Deputy Commissioners in Himachal Pradesh.**
- 4. All Head of Departments in Himachal Pradesh.**
- 5. The Engineer-in-Chief (B&R), HP, PWD & Engineer-in-Chief (IPH) U.S. Club, Shimla-1.**
- 6. The Registrar, High Court of Himachal Pradesh at Shimla.**
- 7. The Controller, Printing & Stationery, Press H.P., Shimla for publication in the Extraordinary Gazette. 2 copies of the Extraordinary Gazette containing this notification may be supplied for record.**

Deputy Secretary (PW) to the Government of Himachal Pradesh.