

# **Jammu And Kashmir Agrarian Reforms (Validation) Act, 1997**

JAMMU & KASHMIR

India

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### **Act 28 of 1997**

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Jammu And Kashmir Agrarian Reforms (Validation) Act, 1997(Act No. 28 of 1997)[Received the assent of the Governor on 29th September, 1997 and published in Government Gazette dated 1st October, 1997.]An Act to provide for validation of certain orders, proceedings and acts of Naib-Tehsildars in attesting mutations under the provisions of the Jammu and Kashmir Agrarian Reforms Act, 1976.Be it enacted by the Jammu and Kashmir State Legislature in the Forty eight Year of the Republic of India as follows :

### **1. Short title and commencement**

(1) This Act may be called the Jammu and Kashmir Agrarian Reforms (Validation) Act, 1997.(2)It shall come into force at once.

### **2. Validation of certain orders, proceeding and acts**

(1) Notwithstanding anything contained in any law or judgement, decree or order of any court, all orders made, proceedings taken and acts done, in the matter of attestation of mutation, by the Naib-Tehsildars during the period commencing from 01-06-1991 and ending with the date 23-05-1994, shall be deemed to be always to have been validly made, taken or done.(2)For purpose of Jammu and Kashmir Agrarian Reforms Act, 1976 (Act No. XVII of 1976) and any other law for the time being in force, all orders made, proceedings taken and acts done during the validation period by the Naib-Tehsildars shall be as good as if such Naib-Tehsildars were authorised under the provisions of Jammu and Kashmir Agrarian Reforms Act, 1976 and the rules made thereunder.Notifications, Circulars, Orders, Etc. Agrarian Reforms Act, 1976 Field officers to take recourse of the provisions of the Act in its right perspective and will not apply harshly and the right in land may not be extinguished in that case of displaced personsCircular No. Rev(LB)92/85 dated 10.07.1985, Revenue DepartmentIt has been represented to me by the representatives of the

displaced persons that the field officers do not give benefit of the provisions of the J&K Agrarian Reforms Act, 1976 in respect of such cases where a displaced person has been found to be in cultivating possession of one piece of land in a single village. They have prayed that their right in land should not be abridged only for the reason that they were cultivating only a piece of land in Kharif, 1971 in a village in which land stands allotted to them. In terms of the provisions of sub-clause (ii) of clause (c) of sub-section (2) of section 4 of the said Act, the interests in land allotted to the displaced persons under various Government orders mentioned in Schedule II appended to the Act, have been safe-guarded in the matter of extinguishment of rights in land. Similarly, the interests of displaced persons in respect of evacuee land, if any; allotted to them have been safeguarded under the said clause from the application of the provisions of section 4 of the Act without consideration that the same is situated in more than one village. It is, therefore, enjoined upon the field officers that they should take recourse of the provisions of the Act in its right perspective and will not apply harshly and the right in land may not be extinguished in that case of displaced persons notwithstanding the fact that such a person cultivated only one piece of land out of several pieces of land in a single village. Agrarian Reforms Act, 1976 Any decree passed or order given by the civil court for the tracks which are under settlement operations shall be forwarded to Assistant Settlement officer, Kashmir/Jammu instead of Assistant Commissioner (Revenue) who has no jurisdiction for the areas under settlement operation Circular No. SC/PA-10/Genl/94 dated 11.08.1994 It has been observed that a decree or order passed by civil court is to be forward to the Collector concerned for making entry in the land records as per standing orders.

**2. Any decree passed or order given by the civil court for the tracks which are under settlement operations shall be forwarded to Assistant Settlement officer, Kashmir/ Jammu instead of Assistant commissioner (Revenue) who has no jurisdiction for the areas under settlement operation. Therefore, all the Assistant commissioners Revenue are directed to desist from entertaining any such decree or orders received from any civil court, as Assistant Commissioner Revenue has no jurisdiction for taking any action in such matters. However, care has to be taken that any decree or order, in case found against the provisions of land laws enacted from time to time should not be entertained by Revenue officers in order to save the provisions of Agrarian Reforms Act and other such laws should not get defeated by any decree or order so passed, without jurisdiction and not recognized by law.**

**3. All concerned Revenue officers shall adhere to standing instructions strictly in this regard hence-forth. Any violation of rules shall be taken seriously.**

Agrarian Reforms Act, 1976 Dispensation with the requirement of recording certificate on the apportionment statement by the Collector Circular No. Rev(LB)10/80 dated 23.04.1998, Revenue Department Attention is invited to para 13 of the Circular instructions issued vide endorsement

No.Rev(LB)10 /80 dated 23.02.1980 in terms of which the apportionment statement, prepared by the Collector, Land Acquisition, has to be got verified and certified by the Collector, Agrarian Reforms in the light of the provisions of the J&K Agrarian Reforms Act, 1976, and the guidelines, laid down in the said circular. The Collector Agrarian Reforms has also to record necessary certificate on the apportionment statement to this effect. In view of the agrarian reforms work, having been almost completed, it is felt appropriate now to dispense with the requirement of recording such certificate by the Collector, Agrarian Reforms and to empower the concerned, Land Acquisition Collector, who completes acquisition proceedings under the State Land Acquisition Act Samvat, 1990, in respect of lands which are subject-matter of acquisition, to record the said certificate himself on the apportionment statement, after having satisfied that no deviation of any of the provisions of the J&K Agrarian Reforms Act, 1976, is made out in any manner whatsoever with regard to entitlement of the compensation amount in each such case. Agrarian Reforms Act, 1976 Determination of genuineness of land Circular No. Rev/LB/92/85 dated 01.10.1985, Revenue Department In amplification of Circular instructions issued vide endorsement No. Rev (LB) 92/85 d t. 10.7.85 with respect to the legal position about determining the cultivating position of a displaced person allotted land in more than one village and the extinguishment of rights, title and interest in such land, attention is drawn to, sub-section (1) of section 4 of the J&K Agrarian Reforms Act, 1976, under which the rights title and interest in land of any person not cultivating it personally in Kharif 1971, stand extinguished and vested in the state. But in the case of displaced persons to whom land has been allotted or held by them under Govt. Order Nos. 578/C of 1954, Govt. Order No.LB-6/C of 1958, Govt. Order No.LB-7 of 1958, Govt. Order No. Reh-371/C of 1971 Dated 9.9.1971, besides other Govt. Orders, the rights, title and interest in such land shall not be deemed to have been extinguished provided that a) such land and evacuees land, if any, allotted to the same displaced person is situated in more than one village. b) such displaced person cultivated personally the land at least in one village in Kharif 1971. It is, therefore enjoined upon the revenue officers to examine firstly whether land has been allotted or held under any of the orders mentioned in Schedule II to the J&K Agrarian Reforms Act 1976; secondly that land is held by a genuine family of a displaced person and thirdly such displaced person was cultivating the land personally at least in one village in Kharif 1971, and determine the position accordingly keeping in view definition of "family" defined in the said Act and also make necessary entries in the revenue records in favour of eligible persons. Agrarian Reforms Act, 1976 Provisions relating to prohibition on conversion in land use, ceilings on land and prohibition on transfer by those who have acquired rights under Act, are not defeated in any manner whatsoever Circular No. FC/LS/Alie/297-695/97 dated 29.12.1997, Financial Commissioner With the enactment of J&K Agrarian Reforms (Amendment) Act, 1997, the prohibition on alienation of land has been done-away with but doubts have arisen in some sections about the application of section 13, 28-A of the Act in the changed scenario brought about by the omission of section 31 from the statute Book., which is proposed to be clarified by this circular.

**2. While prior permission for alienation is not required, but the alienation of land should be in no 'case result in defeating the provisions of Agrarian Reforms Act, 1976, in as much as the use of land shall continue to be regulated under Section 13. The deregulation of the alienation of land, under no circumstances should tantamount to undermine the basic purposive**

**aspect of sub serving the agrarian economy by promoting wanton use of agricultural land for non-agricultural purposes except as provided under law.**

**3. Under section 28-A all those who have acquired rights under the Agrarian Reforms Act are debarred from transferring the land in favour of anybody whatsoever except the Government of J&K and the rationale for in-corporation of this provision in the law was/is to fructify the objective framework as espoused in the preamble of the Act and the Legislative intent to extinguish the rights of such owners who did not cultivate the land personally and its transfer in favour of tenants, as prospective owners. Section 31 alone has been omitted from Statute with a view to ensure transparency in the land transactions and to obviate speculative deals due to restrictive policy mechanism. The operation of sections 13 and 28-A shall however continue as heretofore like-wise as the alienor/alienee, shall continue to be covered by the various provisions of Agr. Reforms Act in sofar as ceiling on retention/holding of land under the said Act in various capacities is concerned. The Alienation of land Act to the extent it is not inconsistent with Agr. Act shall continue to be observed in these cases.**

**4. It is enjoined upon all the revenue officers to ensure that in the garb of alienation of land various provisions of Agr. Reforms Act in general and those relating to prohibition on conversion in land use, ceilings on land and prohibition on transfer by those who have acquired rights under Act, are not defeated in any manner whatsoever.**

Agrarian Reforms (Suspension of Operation) Act, 1975 Clarifying law on apportionment of compensation after enactment Circular No. Rev (LB) 133/76 dated 09.03.1976, Revenue Department With a view to clarifying the position of law viz-a-viz the provisions of the Jammu and Kashmir Agrarian Reforms Act, 1972 (hereinafter referred to as the Act) and Jammu and Kashmir Agrarian Reforms (Suspension of Operation) Act, 1975 (hereinafter referred to as the Suspension Act) the following may be kept in view while deciding the person to whom payment of compensation is to be made for the land acquired under the Jammu and Kashmir Land Acquisition Act, 1990. Pursuant to section 3 of the Act, with effect from 1st May, 1973, the rights and title of an owner/intermediary in land not held by him in his personal cultivation in Kharif, 1971, has been extinguished and are vested in the State and in terms of section 4 of the Act, with effect from May, 1973, the land held in personal cultivation in Kharif, 1971, but in excess of the ceiling area has also vested in the State. By virtue of section 6 of the Act, all rights in land which have been extinguished shall be deemed to have been acquired by the State and payment in lieu of such extinguishment shall be made to the person entitled, at the rates specified in this section and in the manner prescribed by rules. The Suspension Act has suspended the operation of the Act. Notwithstanding

such suspension the vesting of rights in land in the State effected by the Act, has not been annulled which in other words means that rights in land not held in personal cultivation in Kharif, 1971, or even if held in personal cultivation, but in excess of the ceiling area have vested and continued to vest in the State since May 1, 1973. The impact on the Land Acquisition Act with reference to land, rights of ownership/intermediary wherein have vested in the State under section 3 of the Act, is that such land continue to be in the possession of the tiller. The tiller is now from May 1, 1973, a tenant under the State. He retains his status as such with this difference that instead of being a tenant of a particular class under the ex-owner, he is now a tenant of that very class under the State. Thus for example if A was an occupancy tenant/protected tenant under X before Kharif, 1971, X's rights in the land have extinguished from May, 1973 and vested in the State and A continue to be an occupancy tenant/protected tenant now under the State from this date. A declaration for acquisition of such land, if made after 1st May, 1973, has, therefore to be construed to relate only to the acquisition of the tenant's rights therein because, the ownership rights of such land have already been acquired by the State by virtue of section 6 of the Act read with section 3. Payment of compensation under the Land Acquisition Act is, therefore, to be restricted to the tenant of the land alone and not to the ex-owner. Under section 29 of the Land Acquisition Act not more than 1/3rd of the compensation calculated according to the market rates, can be paid in lieu of acquisition of land as ownership of such land is vested in the State. Section 29 of the Land Acquisition Act again specifies only the maximum amount of compensation payable in respect of such land but not the exact amount. For ascertaining the exact amount of compensation that should be paid to the tenant, guidance should be sought from the circulars that have been issued, from time to time, by the Revenue Department for apportionment of as between an owner and his tenant. The combined effect of these instructions and the aforementioned provisions of law is that compensation at market rates for the entire rights in land has to be calculated in the first instance. Its apportionment as between the owner and the tenant has there-after to be worked out. The amount of compensation payable to the tenant as a result of this calculation, has to be paid to him, if it be less than or equal to the 1/3rd of the market value of such land ; If the apportioned amount exceeds 1/3rd of such market value of the land, then only 1/3rd of such market value has to be paid to the tenant. The person who was an owner or intermediary of this land prior to 1st May, 1973, payment to him in lieu of the extinguishment of his rights has to be made under section 6 of the Act. This Act being under suspension and the process of paying such ex-owner has to await until either the Act is made operative or replaced by a fresh legislation (Fresh legislation is in fact, on the anvil) It may be added that the tenant of such land was a prospective owner who was to acquire its ownership on payment of levy in full under section 6 of the Act. If the tenant has already paid instalment(s) of levy, the aggregate amount of such levy paid by him has to be refunded to him in addition to the compensation to which he is entitled as explained above. If, on the other hand, such tenant has prior to the issue of the declaration under the Land Acquisition Act, already paid the levy in full according to section 6 of the Act, he has already become an owner of such land. In such a case full compensation at market rates in accordance with the Land Acquisition Act is payable to him. In this case, however, a word of caution is necessary. The amount of levy in full must have been paid by such tenant prior to the declaration under the Land Acquisition Act. No part of levy paid after such declaration can be deemed valid payment for purposes of acquiring ownership for the simple reason that permitting a person to take any step to acquire ownership of any land after the declaration under the Land Acquisition Act would be a collusive act intended to defraud the law. Where land in

excess of ceiling area has vested in the State under section 4 of the Act, though held by an owner cultivating it personally in Kharif, 1971, or by the tiller thereof, the entire rights therein have vested in the State under section 4 and have been deemed to have been acquired by the State under section 6 of the Act. Payment of compensation to such person shall be governed either by the provisions of the Act (now under suspension) after its operation is revived or by the provisions of law that will replace the Act. Nothing is to be paid to such a person under the Land Acquisition Act. Where on the other hand, such land was held by a tiller, the rights of ownership/intermediary in such land have vested in the State by section 3 of the Act, and the rights of the tiller have also vested in the State by section 4 of the Act. All these rights have been deemed by section 6 of the Act to have been acquired by the State. No payment under Land Acquisition is called for. On the other hand payment to different interests in the land in lieu of the extinguishment of their rights to be made either in accordance with the provision of the Act (now under suspension) after its operation is revived or the new law that will replace the Act. The case of such ex-owners/intermediaries, whose rights in land have already been acquired by the State by section 6 of the Act, read with section 3 needs consideration, where the tenant's interests in the land have also subsequently been acquired under the Land Acquisition Act. An ex-owner/intermediary is compensated for postponement of the payment, due to him in lieu of the extinguishment of his rights in land, by enabling him to recover 'rent' from his erstwhile tenant in terms of section 7 of the Suspension Act. In the present case, however, no such interim relief is available to him as payment of the amount as envisaged by the Act has been kept under suspension. It is likely to be replaced by another Act which would be effective from a future date and it is not known for how long after enforcement of the new law he will have to wait till he is compensated. To meet such cases an ad hoc payment appears necessary. The Agrarian Reforms Bill of 1976, has proposed a scale of such amount for different classes of land. It would not be advisable to follow this scale until the new law is enforced. In the circumstances it would be appropriate if as an interim measure an ad hoc payment to the tune of 30% of the amount of compensation to ex-owner/intermediary is made for the time being. Agrarian Reforms Act, 1976

Effect of enactment Circular No. Rev (LB) 133/76 'dated 03.11.1976, Revenue Department In partial modification to this office Circular No. even dated 9-8-1976, last six sentences of it shall be replaced as under: "The Agrarian Reforms Act has now been passed. This Act provides for scale of amount payable to ex-owners/ex-intermediaries, whose rights in land have extinguished. Such ex-owner/intermediaries should, therefore, be paid amounts due to them in accordance with Part A of Schedule In to the Jammu and Kashmir Agrarian Reforms Act of 1976".