

The Jammu and Kashmir Restitution of Mortgaged Properties Act, 1976

JAMMU & KASHMIR

India

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Act 14 of 1976

- Published on 21 April 1976
- Commenced on 21 April 1976
- [This is the version of this document from 21 April 1976.]
- [Note: The original publication document is not available and this content could not be verified.]

The Jammu and Kashmir Restitution of Mortgaged Properties Act, 1976 Act No. 14 of 1976 [Received the assent of the Governor on 21st April, 1976 and published in Government Gazette, dated 23rd April, 1976 (Extraordinary).] An Act to provide for restitution of certain mortgaged properties in the State of Jammu and Kashmir. Be it enacted by the Jammu and Kashmir State Legislature in the Twenty-seventh year of the Republic of India as follows:-

1. Short title, extent and commencement.

(1) This Act may be called the Jammu and Kashmir Restitution of Mortgaged Properties Act, 1976. (2) It shall extend 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.

2. Mortgages of immovable property to which this Act, applies.

(1) Notwithstanding anything contained in any Law for the time being in force, this Act shall, subject to the provisions of sub-section (2) apply to-(a) a mortgage of immovable property with or without possession whether in writing and registered under the Jammu and Kashmir Registration Act, Svt. 1977 or not, in which principal money or the value of the goods actually advanced by the mortgagees to the mortgagor does not exceed ten thousand rupees and which is subsisting on the date this Act comes into force; and (b) a mortgages securing lone for purposes of building of a house-boat regardless of the amount of the principal money or the value of the goods-actually advanced by the mortgagee to the mortgagor and which the subsisting on the date this Act comes into force. Explanation 1. - Mortgage in clause (b) shall include pledging of a houseboat also. Explanation 2. - In this sub-section the expression value of the goods shall mean the value agreed upon by the parties and, where there is no such agreement, the value to be determined by the Tribunal according

to the market rates prevailing at the time the goods were actually advanced.(2)Nothing is this Act shall apply to-(i)mortgage of lands for which provisions for redemption have been made in Jammu and Kashmir Agrarian Reforms Act, 1976;(ii)mortgages held by the State land Development Bank, or Land Development Bank as defined in the Jammu and Kashmir Co-operative Societies Act, 1960or any institution mentioned in section 4 (A) of the Jammu and Kashmir Alienation of Land Act, Svt, 1995 or section 140 of the Jammu and Kashmir Transfer Property Act, 1977;(iii)mortgages held by or on behalf of the Governor or the Government of Jammu and Kashmir;(iv)mortgages held by or on behalf of President of India or the Government of India; and(v)mortgages held by or on behalf of such other institutions in the State as may be notified by the Government.Explanation. - A mortgage shall be deemed to be subsisting notwithstanding decree or order for its redemption or foreclosure or sale or auction having been passed:Provided that redemption or foreclosure of sale or auction as the case may be, has not taken place before the commencement of this Act.

3. Definitions.

- In this Act unless there is anything repugnant in the subject or context-(i)"benefits" includes any payments made by the mortgagor in kind or in cash ;(ii)"Collector" means the officer designated as such under the Jammu and Kashmir Land Revenue Act, Svt. 1996;(iii)"mortgagor" and "mortgagee" respectively shall include the assignee, successor-in-interest and legal representative of such mortgagor or mortgagee, as the case may be;(iv)"prescribed" means prescribed by rules made under this Act;(v)"Subordinate Judge" means the Subordinate Judge appointed under the Jammu and Kashmir Civil Courts Act, Svt. 1977;(vi)the expressions "mortgage" "mortgagor" "mortgagee-deed" shall have the same meanings as are assigned to them in the Jammu and Kashmir Transfer of Property Act, Svt. 1977; and(vii)the words and expression used in this Act but not defined have the meaning assigned to them in the Jammu and Kashmir Transfer of Property Act, Svt 1977.

4. Jurisdiction to hear petitions.

- The Government may, by notification empower a Collector, a Chairman of the Debt Conciliation Board, appointed under the Jammu and Kashmir Debtor Relief Act, 1976 or a Judicial officer not below the rank of Subordinate Judge to Act as the Tribunal under this Act and to hear and dispose of all petitions under this Act and may likewise determine the pecuniary and territorial jurisdiction of the officers so empowered. The Tribunal shall, while exercising powers under this Act, be deemed to be a Court.

5. Suits for redemption or foreclosure to be tried petitions under this Act.

(1)The provisions of this Act shall apply to all suits for redemption, sale or foreclosure in respect of the mortgages specified in section 2 and such suits shall be triable as petitions under this Act.(2)Where in any such suit or any proceeding arising out of any such suit, pending in any Court on the date on which this Act comes into force, the Court finds that the provisions of this Act apply thereto, such suit or proceedings shall be transferred by that Court to the Tribunal exercising jurisdiction in that area under this Act.Explanation. - The word "proceeding" in this section and in section 8 shall include as appeal an application for revision or review and an application for

execution.

6. Stay of proceeding in suits and executions of a decree for ejectment or arrears of rent against the mortgagors before the Civil Courts.

- Where possession of the mortgaged property is retained by the mortgagor as a tenant on payment or rent all proceedings, in a suit by the mortgagee for ejectment of such mortgagor from such property or for arrears of its rent, or for both, or for execution of decree of ejectment or rent shall be stayed by the court, in which such suit is pending, on receipt of an intimation from the Tribunal, established under this Act, to the effect that an application under this Act is pending in respect of the said mortgaged property.

7. Petitions for restitution.

(1) Within six months from the commencement of this Act or within such extended period as the Government may, by a notification in the Government Gazette, specify in this behalf a mortgagor to the mortgage to whose property the provisions of this Act apply, may present a petition to the Tribunal for restitution of the mortgaged property. (2) Notwithstanding anything contained in sub-section (1) a mortgagor, to the mortgage of whose property the provisions of this Act apply, may, in case such property is situate in the District of Ladakh; in the sub-division of Gurez; in Macchil illaqa of Tehsil Kupwara and Tehsil Karnah; in the District of Baratuulla; in Tehsil Gool Gulabgarh, in Niabat Panchari of Tehsil Udhampur; in the territorial Jurisdiction of Police Station Dudoo Basantgarh of Tehsil Ramnagar and in the Thakra Kote and Nagote illaqa of Tehsil Reasi in the District of Udhampur; in Tehsil Budhal in the District of Rajouri; in Niabat Banni in the District of Kathua and in Marew, Warhwan and Puddar illaqa of Kishtwar in the District of Doda; and such other areas as may be notified by the Government, present a petition to the Tribunal for requisition of the mortgaged property within twice the period provided for under sub-section (1). (3) Every petition made under this section shall be accompanied by such Court-fee as may be notified by the Government and shall be verified in such manner as may prescribed.

8. Power of transfer.

- On the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard or suo moto without such notice the Revenue Minister may transfer any petition for restitution or other proceeding pending before any Tribunal to any other Tribunal competent to try or dispose of the same. (2) Where any petition for restitution or any other proceeding has been transferred under sub-section (1), the Tribunal, which thereafter hears such petition or proceeding, may, subject to any special direction in the order of transfer either re-hear it or proceed from the point at which it was transferred.

9. Procedure for dealing with petition for restitutions.

- On receipt of such petition the Tribunal shall after such enquiry, as it may consider necessary, record an order in writing giving reasons whether this Act applies or not to the mortgage with respect to which the petition is made.

10. Petition when to be dismissed.

- Where the Tribunal finds in a case, other than the one transferred to it under section 5, that the mortgage is one to which this Act does not apply, it shall dismiss the petition and such order of dismissal shall, subject to the provisions of the section 14, be final.

11. Power of the Tribunal to order restitution of mortgaged property.

(1) Notwithstanding anything contained in any other law for the time being in force or any decree. Judgement or order of any Court where the mortgage is one to which this Act applies and the Tribunal finds that the value of the benefits enjoyed by the mortgagee, equals or exceeds the costs of improvements, if any, effected by such mortgagee in accordance with the terms of the mortgagee, plus one and Half times the amount of the principal money, or the pecuniary value of the goods actually advanced under the mortgage, it shall order in writing-(a) That the mortgage be extinguished; and (b) Where the mortgagee is still in possession, that the mortgagor be put into possession of the mortgaged property as against the mortgagee and that the title deeds, if any be restored to the mortgagor; and (c) Where the mortgagee has received money in excess of one and a half times the amount of the principal money, or the pecuniary value of the goods actually advanced, and the cost of such improvements if any, that such excess amount be [recovered from the mortgagee and paid to the mortgagor.] [Substituted by Act XXXIV of 1978, Section 2.](2) If in cases to which this Act applies, the Tribunal finds that the value of the benefits enjoyed by the mortgagee while in possession, is less than the cost of improvements, if any, effected by such mortgagee plus one and half times the principal money or the pecuniary value of the goods actually advanced, it shall, by order in writing and notwithstanding anything contained in any other law for the time being in force, direct that the mortgaged property be restored to the mortgagor and he be put in possession after payment of amount if any, due to the mortgagee: Provided that, in calculating the amount due interest shall not be charged except on the principal money or the pecuniary value of the goods actually advanced, at a rate higher than 5 percent per annum: Provided further that the principal sum plus interest shall not exceed one and a half times the principal sum or the pecuniary value of the goods actually advanced: Provided also that where a mortgagee has been in possession of the mortgaged property for a period of ten years or more, it shall be conclusive proof of the fact that such mortgagee has received one and a half times the amount of the principal money or pecuniary value of the goods actually advanced as well as the cost of improvement, if any.

12. Deposit of amount due by the mortgagor.

(1) Where the Tribunal finds that any sum is due to the mortgagee under section 11, the Tribunal may

order the deposit of the amount found due from the mortgagor is such instalment as the Tribunal, with due regard to the paying capacity of the mortgagor, deems fit.(2)In determining the amount due, the Tribunal shall, where the mortgagee is in possession of mortgaged property, give credit to the mortgagor for the value of the benefits to be enjoyed by the mortgagee during the period covered by the installments.(3)The Tribunal may order that, in lieu of the deposit of the amount found due, the mortgagee shall enjoy the profits of the mortgaged property for such period, not exceeding ten years, reckoned from the date the mortgagee came into possession of such property, as may be determined by the Tribunal with due regard to the amount found due and the profits accruing from the property.(4)The mortgagor shall be deemed to have complied with the order of deposit, if the whole of the amount found due is deposit within the period covered by installments.(5)The provisions of this section and section 11 shall, in so far as they are applicable, also apply to mortgages without possession.

13. Power of the Tribunal.

(1)The Tribunal may, after declaring the rights of the mortgagee extinguish, eject the mortgagee and order delivery of possession of the mortgaged property to the mortgagor. In case of resistance the Tribunal may exercise all the powers conferred on a Civil Court by rules 97 and 98 of order XXI of the Code of Civil Procedure, 1977.(2)Where the Tribunal orders recovery of excess amount from the mortgagee under clause (c) of sub-section (1) of section 11, such recovery shall be made as if such order were a decree for money passed by a Civil Court and in executing such decree the Tribunal shall have all the powers of a civil Court executing a decree.

14. Appeal and revision.

(1)Any person aggrieved by a final order of the Tribunal under this Act may appeal to an appellate Authority appointed by the Government and there shall be no further appeal. The memorandum of appeal shall be accompanied by such Court-fee as may be notified by the Government.(2)Whenever it made to appear to the Government that a case decided finally by a Tribunal or an Appellate Authority involves a substantial question of law or a question of public interest, it may call for the records of the case and pass such order thereon as it thinks fit:Provided that the Government shall not pass an order under this sub-section against any person without giving him an opportunity of being heard.

15. Limitation for appeal.

(1)The period of limitation for an appeal under section 14 shall be sixty days from the date of the order appealed against:Provided that period of limitation for appeal from persons residing in the areas specified in section 7 of the Act shall be twice such period.(2)In computing the period of limitation for an appeal under this section the period requisite for obtaining copies of the order appealed against shall be excluded.(3)The provisions of section 5 of the Jammu and Kashmir Limitation Act 1995, shall apply to all appeals under this Act.

16. Jurisdiction of Civil Courts barred.

- No Civil Court shall have jurisdiction to entertain any claim to enforce any right under a mortgage declared extinguished under this Act or to question the validity or any proceedings under Act.

17. Rule-making power.

(1)The Government may make rules for the purpose of giving effect to the provisions of this Act,(2)In particular and without prejudice to the generality of the foregoing power the Government shall make rules regulating or determining the following matters, namely :-(a)the presentation and verification of petitions under section 7 of this Act,(b)The procedure by which the Tribunal shall deal with such petitions under sections 9, 10, and 11, of this Act;(c)the procedure and principal by which the Tribunal shall assess the amount due under mortgage and the value of the benefits accruing to the mortgagee, while in possession;(d)the procedure for making the deposit provided by section 12 of the Act;(e)the procedure for enforcing ejectment of the mortgagee and delivery of possession to the mortgagor under section 13 of this Act;(f)all other matters for carrying out generally the purposes of this Act ;

18. Effect of provisions inconsistent with enactment.

- The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other enactment or in any instrument having effect by virtue of any other enactment.

19. Repeat and saving.

(1)The Jammu and Kashmir Restitution of Mortgaged Properties Act, 2006 is hereby repeated.(2)Notwithstanding such repeal, nothing in this Act shall effect or be deemed to effect the previous operation of the Act mentioned in sub-section (1).