

Jammu and Kashmir Alienation of Land Act, SVT. 1995 (1938 A.D)

JAMMU & KASHMIR

India

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Rule

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Jammu and Kashmir Alienation of Land Act, SVT. 1995 (1938 A.D)(Act No. 5 of Samvat 1995)[Received the assent of His Highness the Maharaja Bahadur on 18th May, 1938 /5th Jeth, 1995, and published in Government Gazette dated 24th Har, 1995]Whereas it is expedient to consolidate and re-enact the law relating to the transfer of agricultural land in the State; it is hereby enacted as follows:Preliminary

1. Short title, extent, commencement and repeal.

(1)This Act may be called the Jammu and Kashmir Alienation of Land Act No. V of Svt. 1995.(2)It extends to the whole of the Jammu and Kashmir State.(3)It shall come into force from the date on which, after receiving the assent of this Highness the Maharaja Bahadur, it is published in the Government Gazette.(4)The Jammu and Kashmir Alienation of Land Regulations Nos. 6 and 7 of 1990 and the Jammu Alienation of Land Amendment Regulation No. IV of 1993 shall be repealed from the date this Act comes into force.

2. Definitions.

- In this Act, unless there is anything repugnant to the subject or context:(1)all expressions shall, unless otherwise defined in this Act, have same meaning as assigned to them in section 2 of the Jammu and Kashmir Tenancy Act, 1980, or in section 3 of the Jammu and Kashmir Land Revenue Act, Svt. 1996; provided that the expressions "Record of Rights" and "Annual Record" shall have the meanings assigned to them in Chapter IV of the Jammu and Kashmir Land Revenue Act, Svt.

1996;(2)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 for 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 profit of an estate or holding,(c)any dues or any fixed percentage of the land revenue payable by an inferior land owner to a superior landowner,(d)a right to receive rent,(e)any right to water enjoyed by the owner or occupier of land as such, and(f)any right of occupancy.(3)[the expression "permanent alienation" includes Sale gift, bequest, grant of occupancy rights and exchange other than an exchange made for the purpose of consolidation of holdings;] [Section 2 (3) substituted by Act No. XX of Samvat 1997.](4)the expression "usufructuary mortgage" means a mortgage by which the mortgagor delivers possession of the mortgaged land to the mortgagee and authorizes him to retain such possession until payment of the mortgage money, to receive the rents and profits of the land and to appropriate them in lieu of interest or in payment of the mortgaged money or partly in lieu of interest and partly in payment of the mortgage money; and(5)the expression "conditional sale" includes any agreement whereby in default of payment of the mortgage money or interest at a certain time the land will be absolutely transferred to the mortgagee.

3. Application of Act to sections 60 and 61 of the Tenancy Act (II of 1980.).

- Notwithstanding anything contained in sections 60 and 61 of the Jammu and Kashmir Tenancy Act, when a landlord makes a claim to exercise the rights thereby conferred upon him the provisions of this Act shall apply thereto.

4. Transfer of land in favour of non-State Subject prohibited.

- Transfer of land in favour of any person who is not a State Subject, is prohibited.[4-A. Transfer of land in the form of simple mortgage permitted in favour of the Jammu and Kashmir Bank Ltd and other Scheduled Banks][Section 4-A substituted by Act, No. VII of Sambat 1975, section 2.]. - Notwithstanding anything contained in this Act, it shall be lawful for a person to transfer land in the form of a simple mortgage in favour of :-(i)the Jammu and Kashmir Bank Ltd.; or(ii)the Industrial Development Bank of India; or(iii)a Bank for the time being included in the Second Schedule to the Reserve Bank of India Act, 1934; and having an office for transacting the business of banking in State; or(iv)the Industrial Credit and Investment Corporation of India ; or(v)the Housing and Urban Development Corporation Ltd., New Delhi; or(vi)the Jammu and Kashmir State Financial Corporation established under the State Financial Corporation Act, 1951; or(vii)the Unit Trust of India; or(viii)the Life Insurance Corporation of India established under the Life Insurance Corporation Act, 1956; or(ix)the Industrial Finance Corporation of India established under the Industrial Finance Corporation Act, 1948; or(x)[the J&K Scheduled castes and other Backward Classes Development Corporation Limited registered under the companies Act: [Clause (x) inserted by Act, XXVII of Samvat 1997.]]Provided that in any suit based on such mortgage the mortgaged land shall be sold only to a permanent resident of the State who is a member of an agricultural class for purpose of this Act.]Permanent Alienation of Land

5. Sanction of Deputy Commissioner required to certain permanent alienations.

(1)A person who desires to make a permanent alienation of his land shall be at liberty to make such alienations.-(a)where the alienor is not a member of any agricultural class; or(b)where the alienor and alienee are members of an agricultural class:Provided that (i) in the Province of Kashmir and (ii) in the District of Ladakh and in the Bunji Illaqa, no member of an agricultural class shall have the power to alienate within a period of [fourteen years] [Substituted for the word "twelve" vide Ordinance No. II of Smavat 2003. (Earlier "Twelve" was substituted for "ten" vide Ordinance No VII of Sambat 2001.) from (i) 2nd October, 1934 (17th Assuj, 1991) and (ii) the passing of this Act respectively, more than one-fourth in the aggregate of the area shown against his name on 2nd October, 1934 (17th Assuj, 1991) or at the time of passing of this Act, as the case may be:Provided further that, before the expiry of the said [fourteen years] [Substituted for the word "Twelve" vide Ordinance No. II of Sambat 2003. (Earlier "Twelve" was substituted for "ten" vide Ordinance No. VII of Sambat 2001.) the Government shall cause an enquiry to be made to find out whether this restriction on alienation should or should not continue or should be altered and if so in what respects.(2)Except in the cases provided for in sub-section (1), a permanent alienation of land shall not take effect as such unless and until sanction is given thereto by the [Deputy Commissioner:] [Substituted for the Words "Wazir-i-Wazarat" by Act No. III of Sambat 2008.]Provided that :- (i)sanction may be given after the act of alienation is otherwise completed; and(ii)sanction shall not be necessary in the case of(a)a sale of a right of occupancy by a tenant to his landlord, or(b)a gift made in good faith for a religious or charitable purpose, or(c)an alienation of land not exceeding 4 Kanals in area situated in immediate vicinity of a town or village for residential purposes, made in favour of a person who has not already made such an acquisition.(3)The [Deputy Commissioner] [Substituted by Act III of Samvat 2008 for "Wazir-i-Wazarat".] shall enquire into the circumstances of the alienation and shall grant or refuse the sanction required by sub-section (2), according to rules framed by the Council in the matter under section [30] [Substituted by Ordinance VII of Samvat 2001 for "28"].

6. Agricultural classes.

- The Government shall, by notification in the Jammu and Kashmir Government Gazette, determine what persons or classes of persons in any district or group of districts are to be deemed to belong to agricultural classes for the purposes of this Act.

7. Saving for rights in land alienate.

- When a [Deputy Commissioner] [substituted by Act III of Samvat 2008 for "Wazir-i-Wazarat".] sanctions a permanent alienation of land, his order shall not be taken to decide or affect any question of title, or any question relating to any reversionary right. Temporary Alienation of Land

8. Forms of mortgage permitted in certain cases.

(1) If a member of an agricultural class mortgages his land and the mortgagee is not a member of an agricultural class, the mortgage shall be made in one of the following forms only: (a) in the form of a usufructuary mortgage, by which the mortgagor delivers possession of the land to the mortgagee and authorizes him to retain such possession and to receive the rents and profits of the land in lieu of interest and towards payment of the principal, on condition that after the expiry of term agreed on or if no term is agreed on, or if the term agreed on exceeds twenty-one years, on the expiry of twenty-one years from the date on which the possession of the land was transferred, the land shall be re-delivered to the mortgagor; or (b) in the form of a mortgage without possession subject to the condition that, if the mortgagor fails to pay principal and interest, according to his contract, the mortgagee may apply to the [Deputy Commissioner] [Substituted by Act III of Samvat 2008 for "Wazir-i-Wazarat".] to place him in possession for such term, not exceeding twenty-one years, as the [Deputy Commissioner] [Substituted by Act III of Samvat 2008 for "Wazir-i-Wazarat".] may consider to be equitable, the mortgage to be treated as usufructuary mortgage for the term of the mortgagee's possession and for such sum as may be due to the mortgagee on account of the balance of principal due and of interest due not exceeding the amount claimable as simple interest at such rate and for such period as the [Deputy Commissioner] [Substituted by Act III of Samvat 2008 for "Wazir-i-Wazarat".] thinks reasonable; or (c) in the form of a written usufructuary mortgage by which the mortgagor recognises the mortgagee as a landlord and himself remains in cultivating occupancy of the land as a tenant subject to the payment of rent at such rate as may be agreed upon not exceeding sixteen annas per rupee of the amount of the land revenue in addition to the amount of the land revenue on the tenancy and the rates and cesses, chargeable thereon and for such term as may be agreed on, the mortgagor having no right to alienate his right of cultivating occupancy and the mortgagee having no right to eject the mortgagor except on the grounds mentioned in section 44 of the Jammu and Kashmir Tenancy Act, 1980; or (d) in any other form which the Government may, by general or special order, permit to be used. (2) If in the case of a mortgage in form (c) the mortgagor is ejected or relinquishes or abandons cultivating occupancy of the land, the mortgage shall take effect as a usufructuary mortgage in form (a) for such term not exceeding twenty-one years from the date of the ejection, relinquishment, or abandonment, and for such sum of money as the Deputy Commissioner may consider to be reasonable. (3) The [Deputy Commissioner] [Substituted by Act III of Samvat 2008 for "Wazir-i-Wazarat".], if he accepts the application of a mortgagee under sub-section (1) (b), shall have the power to eject the mortgagor and to place the mortgagee in possession.

9. Rules applying to permitted mortgages.

- In the case of mortgages made under section 8: (1) no interest shall accrue during the period for which the mortgagee is in possession of the land or in receipt of rent; (2) if the mortgage is in form (a) or form (b) then at the end of the fixed period of possession the mortgage debt shall be extinguished; (3) the mortgagor may redeem his land at any time during the currency of the mortgage on payment of the mortgage debt or in the case of a mortgage in form (a) or form (b), of such proportion of the mortgage debt as the [Deputy Commissioner] [Substituted by Act III of Samvat 2008 for "Wazir-i-Wazarat".] determines to be equitable; (4) in the case of a usufructuary

mortgage the mortgagor shall be deemed to bind himself personally to repay the mortgage money; and(5)if a mortgagor who has applied to the [Deputy Commissioner] [Substituted by Act III of Samvat 2008 for "Wazir-i-Wazarat".] under sub-section (3) proves to the satisfaction of the [Deputy Commissioner] [Substituted by Act III of Samvat 2008 for "Wazir-i-Wazarat".] that he has paid the mortgage debt as [Deputy Commissioner] [Substituted by Act III of Samvat 2008 for "Wazir-i-Wazarat".] has determined to be equitable or deposit with the [Deputy Commissioner] [Substituted by Act III of Samvat 2008 for "Wazir-i-Wazarat".] the amount of such mortgage debt or of such proportion thereof, the redemption of the land shall be deemed to have taken place and the [Deputy Commissioner] [Substituted by Act III of Samvat 2008 for "Wazir-i-Wazarat".] shall eject the mortgagee if in possession, and as against the mortgagee to place the mortgagor in possession.

10. Conditions in permitted mortgages.

(1)To a mortgage made under section 8, the following conditions may be added by agreement between the parties:(a)a condition limiting the right of a mortgagor or a mortgagee in possession to cut, sell or mortgage trees or to do any act affecting the permanent value of the land; and(b)any other condition which the Government by general or special order may declare to be admissible.(2)In mortgages made under section 8 any conditions not permitted by or under this Act shall be null and void.

11. Power to revise mortgage made in form not permitted.

(1)If a member of an agricultural class makes a mortgage of his land in any manner or form not permitted by or under this Act the [Deputy Commissioner] [Substituted by Act III of Samvat 2008 for "Wazir-i-Wazarat".] shall have authority to revise and alter the terms of the mortgage so as bring it in accordance with such form of mortgage permitted by or under this Act as the mortgagee appears to him to be equitably entitled to claim.(2)If a member of an agricultural class has before the commencement of this Act made a mortgage of his land in favour of any person except a member of an agricultural class in which there is a condition intended to operate by way of conditional sale the [Deputy Commissioner] [Substituted by Act III of Samvat 2008 for "Wazir-i-Wazarat".] shall be empowered at any time during the currency of the mortgage to put the mortgagee to his election whether he will agree to the said condition being struck, cut or to accept in lieu of the said mortgage, a mortgage which may at the mortgagee's option be either in form (a) or in form (b) of section 8 and which shall be made for such period not exceeding the period permitted by the said section and for such sum of money as the Deputy Commissioner considers to be reasonable.(3). If proceedings for the enforcement of a condition intended to operate by way of conditional sale are instituted or are pending at the commencement of this Act in any Civil Court or if a suit is instituted in any Civil Court on a mortgage to which sub-section (1) or sub-section (2) applies, the Court shall remit the case to the [Deputy Commissioner] [Substituted by Act III of Samvat 2008 for "Wazir-i-Wazarat".] with a view to the exercise of the power conferred by the sub-section applying thereto.(4)When a mortgagee put to his election under sub-section (2) agrees to accept in lieu of his mortgage, a mortgage in form (b) of section 8 for the period and for the sum of money considered by the [Deputy Commissioner] [Substituted by Act III of Samvat 2008 for "Wazir-i-Wazarat".] to be reasonable and the mortgagor cannot be found, or fails to appear when duly served with notice to do

so, or refuses or neglects to execute such mortgage, the [Deputy Commissioner] [Substituted by Act III of Samvat 2008 for "Wazir-i-Wazarat"] shall have authority to execute such mortgage on such term as to costs as he may fix and the mortgage so executed shall have effect as if it had been executed by the mortgagor. The [Deputy Commissioner] [Substituted by Act III of Samvat 2008 for "Wazir-i-Wazarat".] may, for any reason which he deems sufficient, set aside any ex parte proceedings taken under this sub-section.

12. Future mortgage by way of conditional sale not permitted.

- In any mortgage of land made after the commencement of this Act by a member of an agricultural class in favour of any person who is not a member of an agricultural class, any condition which is intended to operate by way of conditional sale shall be null and void.

13. Leases and farm.

- Any member of an agricultural class may make a lease or farm of his land for any term not exceeding twenty-one years and any lease or farm made by a member of an agricultural class for a longer term than twenty-one years, be deemed to be a lease or farm for the term of twenty-one years.

14. Restriction on power to make further temporary alienation.

(1) During the currency of a mortgage made under section 8 in form (a) or form (b) or of a lease or farm under this Act, the owner shall be at liberty to make a further temporary alienation of the same land for such term as together with the term of the current mortgage, lease or farm will make up a term not exceeding the full term of twenty-one years. (2) Any such further temporary alienation, if made for a longer term than is permitted by this section, shall be deemed to be a temporary alienation for the term permitted by this section.

15. Ejectment of mortgagee, lessee or farmer remaining in possession after term.

- If a mortgagee, lessee or farmer holding possession under mortgage made under section 8 or under a lease or farm made under section 13 or under a mortgage, lease or farm made under section 14 remains in possession after the expiry of the term for which he is entitled to hold under his mortgage, lease or farm, the [Deputy Commissioner] [Substituted by Act III of Samvat 2008 for "Wazir-i-Wazarat".] may, of his own motion and shall, on the application of the person entitled to possession, eject such mortgagee, lessee or farmer and place the person so entitled in possession.

16. Temporary lease or mortgage of land for non-agricultural use for more than three years no valid without permission of Deputy Commissioner.

- No transfer of agricultural land either by way of lease or mortgage for non-agricultural use made for a period of more than three years shall be valid without the permission of the [Deputy Commissioner] [Substituted by Act III of Samvat 2008 for "Wazir-i-Wazarat".] of the locality in which the land sought to be transferred is situated. Exemption. The prohibition shall not apply when the land is used for construction of a lahri or a farmer's but as appurtenant to agriculture or required for agricultural use or for residential purposes up to 4 kanals in the immediate vicinity of a town or village

17. Resumption of certain land by Government on the report of the Revenue Minister.

- Land regarding which a transfer prohibited by section 16 is made shall be liable to resumption by Government on the report of the Revenue Minister. General Provisions

18. Effect of permanent alienation made without sanction.

- Any permanent alienation which under section 5 is not to take effect as such until the sanction of the [Deputy Commissioner] [Substituted by Act III of Samvat 2008 for "Wazir-i-Wazarat".] is given thereto shall, until such sanction is given or if such sanction is refused, take effect as a usufructuary mortgage in form (a) of section 8 for such term not exceeding twenty-one years and on such conditions as the [Deputy Commissioner] [Substituted by Act III of Samvat 2008 for "Wazir-i-Wazarat".] considers reasonable.

19. Sanction of Deputy Commissioner required to certain alienations of, or charges on, produce of land.

- Every agreement whereby a member of an agricultural class purports to alienate or charge the produce of his land or any part of or share in such produce for more than five years shall not take effect for more than five years from the date of the agreement, unless the sanction of the [Deputy Commissioner] [Substituted by Act III of Samvat 2008 for "Wazir-i-Wazarat".] is given thereto, and shall until such sanction is given or if such sanction is refused, take effect as if it had been made for five years. Explanation:-The produce of land means:(a)crops and other products of the earth standing or un-gathered on the land;(b)crops and other products of the earth which have been grown on the land during the past year and have been reaped or gathered.

20. Sale of land in execution of decree forbidden to non-agriculturist.

(1) No land belonging at the moment to a member of an agricultural class shall in execution of any decree or order of any Civil or Revenue Court, whether made before or after the commencement of this Act, be sold to any person except a member of an agricultural class: Provided that (i) in the Kashmir Province and (ii) in the Frontier District of Ladakh and Bunji Illaqa, not more than one-fourth in the aggregate of the area shown against a member of an agricultural class on (i) 2nd October, 1934 and (iii) the passing of this Act respectively, shall be sold in execution of such decree or

order for a period of 10 years from such date.(2)Nothing in this section will effect the exemption from attachment or sale of Araziat Maqbuza Assarniar Mauruse wa Malikan as laid down under section 60 (1)(c) of Act No. X of 1977.Explanation.-Araziat Maqbaza Assamian Mauruse wa Malikan include lands held by owners and occupancy tenants whether cultivated directly or through tenants-at-will.(3)Nothing in this section shall affect the right of Government to recover arrears of land revenue or any dues which are recoverable as arrears of land revenue in any manner now permitted by law.

21. Registration.

- Notwithstanding anything contained in the Registration Act, 1977 or in any rules made under section 69 of that Act,(1)an instrument which contravenes any provision of this Act shall not be admitted to registration;(2)an instrument which records or gives effect to any transaction which requires the sanction of [Deputy Commissioner] [Substituted by Act III of Samvat 2008 for "Wazir-i-Wazarat".] shall not be admitted to registration until a certified copy of the order giving such sanction is produced before the officer empowered to register such instrument:

22. Record of rights and annual record.

(1)Where by reason of any transaction which under this Act requires the sanction of a [Deputy Commissioner] [Substituted by Act III of Samvat 2008 for "Wazir-i-Wazarat"] a person claims to have acquired a right the acquisition whereof he is bound to report under section 24 of the Jammu and Kashmir Land Revenue Act, Svt. 1996, such person shall, in making his report, state whether the sanction required has been obtained or not and his right so acquired shall not be entered in the Record of Rights or in any Annual Record until he produces such evidence of the order by which such sanction is given as may be required by any rules made under this Act.(2)No right claimed by reason of any transaction or condition which is declared by this Act to be null and void shall be entered in the Record of Rights or in any Annual Record.

23. Application of certain provisions of the Land Revenue Act.

- Subject to the provisions of this Act, the provisions of Chapter II of the Jammu and Kashmir Land Revenue Act, Svt. 1996, shall, in so far as they are applicable, apply to the proceedings of Revenue officer under this Act.

24. Appearance of legal practitioners prohibited.

- No. legal practitioner shall appear on behalf of any party interested in any proceeding before a revenue officer under this Act.

25. Jurisdiction of civil courts excluded.

(1)A Civil Court shall not have jurisdiction in any matter which the Council or a revenue officer is empowered to dispose of under this Act.(2)No Civil Court shall take cognizance of the manner in which the Council or any revenue officer exercises any power vested in him by or under this Act.

26. A civil court to send copy of decree or order to Deputy Commissioner. Action to be taken by Deputy Commissioner, when decree or order contrary to Act.

(1)Notwithstanding anything contained in the Code of Civil Procedure or in any other Act for the time being in force, every Civil Court which passes a decree or order involving (i) the permanent alienation of his land by a member of an agricultural class or (ii) the mortgage by a member of an agricultural class of his land when the mortgagee is not a member of an agricultural class shall send to the [Deputy Commissioner] [Substituted by Act III of Samvat 2005 for "Wazir-i-Wazarat".] of the circle in which the land is situated, a copy of such decree or order.(2)When it appears to the [Deputy Commissioner] [Substituted by Act III of Samvat 2008 for "Wazir-i-Wazarat".] that any Civil Court has either before or after the date when this Act comes into operation, passed a decree or order contrary to any of the provisions of this Act, the [Deputy Commissioner] [Substituted by Act III of Samvat 2008 for "Wazir-i-Wazarat".] may apply for the revision of such decree or order to the Court, if any, to which an appeal would lie from such decree or order or in which an appeal could have been instituted at the time when the decree or order was passed or in any other case, to the High Court. And when the Court finds that such decree or order is contrary to any of the provisions of this Act it shall alter it so as to make it consistent with this Act. Such application shall be made within three months of the date upon which the [Deputy Commissioner] [Substituted by Act III of Samvat 2008 for "Wazir-i-Wazarat".] is informed of such decree or order.(3)When any such appellate Court passes an order rejecting such application the [Deputy Commissioner] [Substituted by Act III of Samvat 2008 for "Wazir-i-Wazarat".] may, within three months after the date upon which he is informed of such order, apply to the High Court for revision thereof.(4)Every Civil Court which passes an order on any application made under this section shall forthwith send a copy thereof to the [Deputy Commissioner] [Substituted by Act III of Samvat 2008 for "Wazir-i-Wazarat".].(5)No court-fee stamp shall be required upon such applications; and the provisions of the Court of Civil Procedure as regards appeals shall apply so far as may be to the procedure of the Court on receipt of such applications:Provided that, no appearance by or on behalf of the [Deputy Commissioner] [Substituted by Act III of Samvat 2008 for "Wazir-i-Wazarat".] shall be deemed necessary for the disposal of the application.

27. Addition to section 85 of the Tenancy Act (II of 1980).

- In sub-section (3) of section 85 of the Jammu and Kashmir Tenancy Act, 1980 the following words shall be added to clause (c) of the first group of suits therein mentioned, namely:"and suits relating to the rent to be paid under a mortgage made in accordance with form (c) as prescribed by section 8 of Jammu and Kashmir Alienation of Land Act".

28. Exercise of powers of Deputy Commissioner.

- The power conferred by this Act upon a [Deputy Commissioner] [Substituted by Act III of Samvat 2008 for "wazir-i-Wazarat"] may be exercised by a Revenue officer of higher rank, or by an officer authorized by the Government in this behalf.

29. Power of Government to exempt any areas or persons.

- The Government may, by notification in the Jammu and Kashmir Government Gazette, exempt any district or part of a district or any person or class of persons from the operation of this Act or of any of the provisions.

30. Power of Government to make rules.

(1)The Government may make rules for carrying into effect the purposes of this Act.(2)In particular and without prejudice to the generality of the foregoing power, the Council may make rules prescribing the Revenue officers to whom application may be made and the manner and form in which such application shall be made and disposed of.