

The Himachal Pradesh Public Premises and Land (Eviction and Rent Recovery) Act, 1971

HIMACHAL PRADESH

India

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Act 22 of 1971

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The Himachal Pradesh Public Premises and Land (Eviction and Rent Recovery) Act, 1971 (Act No 22 of 1971) For statement of Objects and Reasons, see R.H.P., Extra, dated 24th September, 1971 P. 1235. (Received the assent of the Governor on the 5th November, 1971 and was published in R.H.P. Extra., dated the 19th November, 1971 at p. 1448-1454). An Act to provide for the eviction of un-authorised occupants from public premises and for certain incidental matters. Be re-enacted by the Legislative Assembly of Himachal Pradesh in the Twenty-second Year of the Republic of India as follows: -

1. Short title, extent and commencement.

(1) This Act may be called the Himachal Pradesh Public Premises and Land (Eviction and Rent Recovery) Act, 1971. (2) It extends to the whole of Himachal Pradesh. (3) It shall come into force at once.

2. Definitions.

- In this Act, unless the context otherwise requires, - (a) "Collector" means the Collector of the district, and includes any other officer appointed by the State Government for performing the functions of the Collector under this Act; (b) "corporate authority" means any company or corporation referred to in sub-clauses (ii) and (iii) of clause (e) of this section. (c) "estate" has the meaning assigned to it in the Himachal Pradesh Land Revenue Act, 1953 (6 of 1954). (d) "premises" means any land, whether used for agricultural or non-agricultural purposes, or any building or part of a building and includes, - (i) the garden, grounds and out-houses, if any, appertaining to such building or part of a building, and (ii) any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof; (e) "public premises" means any premises belonging to, or taken on lease or

requisitioned by, or on behalf of, the State Government and includes any premises belonging to, or taken on lease by, or on behalf of-(i)any municipal corporation/committee notified area committee, panchayat samiti, Panchayat or improvement trust;(ii)any company as defined in section 3 of the Companies Act, 1956, in which not less than fifty one per cent of the paid up share capital is held by the State Government,[omitted.] [Added by section 2 of the H.P.Public Premises and land (Eviction and Rent Recovery) Amendment Act No. 4 of 1983.](iii)any corporation (not being a company as defined in section 3 of the Companies Act, 1956 or a local authority) established by or under a Central Act as defined in clause (7) of section 3 of the General clauses Act, 1897, or a Himachal Pradesh Act and owned or controlled by the State Government 1and(iv)[any cooperative society registered or deemed to have been registered under the H.P. Cooperative Societies Act 1968.] [Added by section 2 of the H.P.Public Premises and land (Eviction and Rent Recovery) Amendment Act No. 4 of 1983.](f)"prescribed" means prescribed by rules made under this Act.(g)"rent" in relation to any public premises means the consideration payable periodically for the authorised occupation of the premises, and includes-(i)any charge for electricity, water or any other services in connection with the occupation of the premises; and(ii)any tax (by whatever name called) payable in respect of the premises, where such charge or tax is payable by the State Government, the corporate authority or a local body as given in sub-clause (i) of clause (e) of this section.

3. Unauthorised occupation of public premises.

- For the purposes of this Act, a person shall be deemed to be in unauthorised occupation of any public premises-(a)where he has whether before or after the commencement of this Act entered into possession thereof otherwise than under and in pursuance of any allotment, lease or grant; or(b)where he, being an allottee, lessee or grantee, has by reason of the determination or cancellation of his allotment, lease or grant in accordance with the terms in that behalf therein contained, ceased, whether before or after the commencement of this Act, to be entitled to occupy or hold such public premises; or(c)where any person authorised to occupy any public premises has, whether before or after the commencement of this Act-(i)sub-let in contravention of the terms of allotment, lease or grant, without the permission of the State Government or of any other authority competent to permit such sub-letting the whole or any part of such public premises, or(ii)otherwise acted in contravention of any of the terms, express or implied, under which he is authorised to occupy such public premises.Explanation. - For the purposes of clause (a) a person shall not merely by reason of the fact that he has paid any rent be deemed to have entered into possession as allottee, lessee or grantee.

4. Issue of notice to show cause against order of eviction.

(1)If the Collector is of opinion that any persons are in unauthorised occupation of any public premises situate within his jurisdiction and that they should be evicted, the Collector shall issue in the manner hereinafter provided a notice in writing calling upon all persons concerned to show cause why an order of eviction should not be made.(2)The notice shall-(a)specify the grounds on which the order of eviction is proposed to be made; and(b)require all persons concerned, that is to say, all persons who are, or may be, in occupation of, or claim interest in, the public premises, to show cause, if any, against the proposed order on or before such date as is specified in the notice,

being a date not earlier than ten days from the date of issue thereof.(3)The Collector shall cause the notice to be affixed on the outer door or some other conspicuous part, of the public premises, or of the estate in which the public premises are situate, and in such other manner as may be prescribed, whereupon the notice shall be deemed to have been duly given to all persons concerned.(4)Where the Collector knows or has reasons to believe that any persons are in occupation of the public premises, then, without prejudice to the provisions of sub-section (3) he shall cause a copy of the notice to be served on every such person by post or by delivering or tendering it to that person or in such other manner as may be prescribed.

5. Eviction of un-authorised occupants.

(1)If, after considering the cause, if any, shown by any person in pursuance of a notice under section 4 and any evidence he may produce in support of the same and after giving him a reasonable opportunity of being heard, the Collector is satisfied that public premises are in unauthorised occupation, the Collector may, on a date to be fixed for the purpose, make an order of eviction, for reasons to be recorded therein directing that the public premises shall be vacated by all persons who may be in unauthorised occupation thereof or any part thereof, and cause a copy of the order to be affixed on the outer door or some other conspicuous part of the public premises or of the estate in which the public premises are situate.(2)If any person refuses or fails to comply with the order of eviction within thirty days of the date of its publication under sub-section (1), the Collector or any other officer duly authorised by him in this behalf may evict that person from, and take possession of the public premises and may, for that purpose, use such force as may be necessary.

6. Disposal of property left on public premises by un-authorised occupants.

(1)Where any persons have been evicted from any public premises under section 5, the Collector may, after giving fourteen days' notice to the persons from whom possession of the public premises has been taken and after publishing the notice in at least one newspaper having circulation in the locality, remove or cause to be removed or sell by public auction any property remaining on such premises.(2)Where any property is sold under sub-section (1), the sale proceeds thereof shall, after deducting the expenses of the sale and the amount, if any, due to the State Government, a corporate authority or a local body as given in sub-section (i) of clause (e) of section 2 on account of arrears of rent or damages or costs, be paid to such person or persons as may appear to the Collector to be entitled to the same:Provided that where the Collector is unable to decide as to the person or persons to whom the balance of the amount is payable or as to the apportionment of the same, he may refer such dispute to the civil court of competent jurisdiction and the decision of the court thereon shall be final.

7. Power to require payment of rent or damages in respect of public premises.

(1)Where any person is in arrears of rent payable in respect of any public premises, the Collector may, by order require that person to pay the same within such time as may be specified in the

order.(2)Where any person is, or has at any time been, in unauthorised occupation of any public premises, the Collector may, having regard to such principles of assessment of damages as may be prescribed, assess the damages on account of the use and occupation of such premises and may, by order, require that person to pay the damages within such time as may be specified in the order.(3)No order under sub-section (1) or sub-section (2) shall be made against any person until after the issue of a notice in writing to the person calling upon him to show cause within such time as may be specified in the notice why such order should not be made, and until his objections, if any, and any evidence he may produce in support of the same have been considered by the Collector.

8. Power of Collector.

- A Collector shall, for the purpose of holding any inquiry under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, when trying a suit, 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 documents;(c)any other matter which may be prescribed.

9. Appeals.

(1)An appeal shall lie from every order of the Collector made in respect of any public premises under section 5 or section 7 to the Commissioner.(2)An appeal under sub-section (1) shall be preferred-(a)in the case of an appeal from an order under section 5, within thirty days from the date of publication of the order under sub-section (1) of that section; and(b)in the case of an appeal from an order under section 7, within thirty days from the date on which the order is communicated to the appellant:Provided that the Commissioner may entertain the appeal after the expiry of the period of thirty days if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time(3)Where an appeal is preferred from an order of the Collector, the commissioner may stay the enforcement of that order for such period and on such conditions as he deems fit.(4)Every appeal under this section shall be disposed of by the Commissioner as expeditiously as possible.(5)The costs of any appeal under this section shall be in the discretion of the Commissioner.

10. Finality of orders.

- Save as otherwise expressly provided in this Act, every order made by the Collector or Commissioner under this Act, shall be final and shall not be called in question in any original suit, application or execution proceeding, 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.

11. Offences and penalty.

(1)If any person who has been evicted from any public premises under this Act again occupies the premises without authority for such occupation, he shall be punishable with imprisonment which

may extend to one year, or with fine which may extend to one thousand rupees, or with both.(2)Any Magistrate convicting a person under sub-section (1) may make an order for evicting that person summarily and he shall be liable to such eviction without prejudice to any action that may be taken against him under this Act.

12. Power to obtain information.

- If the Collector has reasons to believe that any persons are in unauthorised occupation of any public premises, the Collector or any other officer authorised by him in this behalf may require those persons, or any other person to furnish information relating to the names and other particulars of the persons in occupation of the public premises and every person so required shall be bound to furnish the information in his possession.

13. Liability of heirs and legal representatives.

(1)Where any person against whom any proceeding for the determination of arrears of rent or for the assessment of damages is to be or has been taken dies before the proceeding is taken or during the pendency thereof, the proceeding may be taken or, as the case may be, continued against the heirs or legal representatives of that person.(2)Any amount due to the State Government, any corporate authority or a local body as mentioned in sub-clause (i) of clause (e) of section 2 from any person whether by way of arrears of rent or damages or costs shall, after the death of the person, be payable by his heirs or legal representatives, but their liability shall be limited to the extent of the assets of the deceased in their hands.

14. Recovery of rent etc., as arrears of land revenue.

- If any person refuses or fails to pay the arrears of rent payable under sub-section (1) of section 7 or the damages payable under sub-section (2) of that section or the costs awarded to the State Government, any corporate authority or a local body as given in sub-clause (i) of clause (e) of section 2 under sub-section (5) of section 9 or any portion of such rent, damages, or costs, within the time, if any, specified therefor in the order relating thereto, the Collector shall proceed to recover the amount due as arrear of land revenue.

15. Bar of jurisdiction.

- No civil court shall have jurisdiction to entertain any suit or proceeding in respect of the eviction of any person who is in unauthorised occupation of any public premises or the recovery of the arrears of rent payable under sub-section (1) of section 7 or the damages payable under sub-section (2) of that section or the costs awarded to the State Government, corporate authority or a local body as given in sub-clause (i) of clause (e) of section 2 under sub-section (5) of section 9 or any portion of such rent damages or costs.

16. Protection of action taken in good faith.

- No suit, prosecution or other legal proceeding shall lie against the State Govt. or the Commissioner or the Collector in respect of anything which is in good faith done or intended to be done in pursuance of this Act, or of any rules or orders made thereunder.

17. Power to make rules.

(1)The State Government may, by notification in the Official Gazette, make rules not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.(2)In particular, and without prejudice to the generality of the preceding sub-section, such rules may provide for all or any of the following matters, namely:- (a) the form of any notice required or authorised to be given under this Act, and the manner in which it may be served; (b) the holding of inquiries under this Act; (c) the procedure to be followed in taking possession of public premises; (d) the manner in which damages for unauthorised occupation may be assessed and the principles which may be taken into account in assessing such damages; (e) the manner in which appeals may be preferred and the procedure to be followed in appeals; and (f) any other matter which has to be or may be prescribed.(3) All rules made under this Act shall as soon as may be after they are made, be laid before the State Legislature and shall be subject to such modifications as the State Legislature may make during the session in which they are so laid or the session immediately following.

18. Repeal.

- The Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1959 (31 of 1959), as in force in the areas added to Himachal Pradesh under section 5 of the Punjab Re-organisation Act, 1966 (31 of 1966) is hereby repealed. Notifications and Rules Under The Himachal Pradesh Public Premises and Land (Eviction and Rent Recovery) Act, 1971 Local Self Government Department Notifications Appointment of Collector Shimla-2, the 30th June, 1972 No. 1-21/72-LSG. - In exercise of the powers conferred by clause (a) of section 2 of the Himachal Pradesh Public Premises and Land (Eviction and Rent Recovery) Act, 1971 (Act No. 22 of 1971), the Governor, Himachal Pradesh is pleased to appoint all the Sub-Divisional Officers (Civil) in Himachal Pradesh to perform the functions of the Collector under the above Act. (R.H.P., dated the 15th July, 1972, P. 713) Shimla-2, the 19th December, 1974 No. 1-21/70-LSG. - In exercise of the powers conferred by clause (a) of section 2 of the Himachal Pradesh Public Premises and Land (Eviction and Rent Recovery) Act, 1971 (Act No. 22 of 1971), the Governor, Himachal Pradesh is pleased to appoint the General Assistant (II), Kangra District at Dharamsala, Himachal Pradesh to perform the functions of the Collector under the above Act, within the jurisdiction of Kangra District. (R.H.P. dated the 4th January, 1975, p. 12) Shimla-2, the 17th January, 1976 No. 1-21/70-LSG. - In exercise of powers conferred by clause (a) of section 2 of the Himachal Pradesh Public Premises and Land (Eviction and Rent Recovery) Act, 1971 (Act No. 22 of 1971), the Governor, Himachal Pradesh is pleased to appoint the General Assistant, Solan District at Solan Himachal Pradesh to perform the function/duties of the Collector under the aforesaid Act within the said district. (R.H.P., dated the

31st January, 1976, p. 152) Authoritative English text of this Department Notification No 1-21/71-LSG dated 2.2.89 as required under clause (3) of Article 348 of the Constitution of India. Government of Himachal Pradesh Local Self Government Department Notifications No. 1-21/71-LSG., Dated Shimla-2, the 2.2.89.-In exercise of the powers conferred by clause (a) of section 2 of the H.P. Public Premises and Land (Eviction and Rent Recovery) Act, 1971 (Act No 22 of 1971), the Governor of Himachal Pradesh is pleased to appoint all the Executive Engineers (B&R) Divisions of the Public Works Department, Himachal Pradesh to perform the functions of the Collector within their respective jurisdiction under the aforesaid Act as for as road side encroachments are concerned, in respect of cases dealing with unauthorised occupation of the acquired width of land of the road with immediate effect. By
Order Commissioner-Cum-Secretary (LSG) to the Government of Himachal Pradesh