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THE AZAD JAMMU AND KASHMIR GRANT OF KHALSA

WASTE LAND AS SHAMILAT-DEH ACT, 1966

(Act I of 1966)

(Passed under Notification No. 224-77/Council, dated 4th August, 1966)

WHEREAS it is expedient to regulate 'nautors' under 'Shamilat-

Deh' rights and to specify 'Shamilat-Deh' areas after demarcation of forests :-

It is hereby enacted as follows :—

1.

Short title, extent and commencement:- (1) This Act may be called the Azad Jammu and Kashmir Grant of Khalsa Waste Land as 'Shamilat-Deh' Act, 1966.

(2) It extends to the whole of the Azad Jammu and Kashmir Territory, except the areas under the Mangla Dam and such areas as have already been declared as Tourist Development Areas by the Government.

(3) Sections 7 and 9 shall come into force at once and the remaining provisions shall take effect from the date of issue of a notification under section 32 of the Punjab Land Revenue Act, 1887 (XVII of 1887), in respect of any estate, tehsil or district.

Modifications:- All laws, rules, orders and entries in the Revenue Record which are not consistent with the provisions of this Act shall be deemed to, have been modified accordingly; but all the rights already granted and mutations duly attested shall be deemed to have been granted, and attested under this Act.

Definitions:- For the purpose of this Act:

(a) 'Ailan No. 17 and Ailan No. 2' means the Rules notified under Jammu and Kashmir Revenue 'Ailan No. 17 dated 27th Bhadoon, 1984 (Bikrami) for the Jammu Province' and Ailan No. 2 dated 17th Katik, 1984 (Bikrami) for Kashmir Province, regarding mutations of 'Khalsa' Waste Land as 'Shamilat', issued in connection with Boon No. 4 ;

(b)

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'Collector' means the Collector of a District and includes any Revenue, Settlement Officer or Assistant Settlement Officer

invested with the powers of 'Collector' by the Government

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under the Punjab Land Revenue Act, 1887, as in force in
Azad Kashmir;

'demarcated forest' means such area as was under the control

of the Forest Department as demarcated forest immediately
before the commencement of this Act, and such areas as are
brought under demarcation in accordance with the provisions
of this Act;

'destitute' means a permanent resident of a village having no
land anywhere, and having no other satisfactory means of
subsistence;

'Government' means the Azad Government of the State of
Jammu and Kashmir ;

'Government Order No. 282/57' means the Azad Jammu and
Kashmir Government Order No. 282157, dated 22nd July,
1957, as amended from time to time, pertaining to the grant
of proprietary rights over illegal 'nautors' subject to certain
conditions ;

'land owner' means 'Malik' including 'Malguzar', 'Haq-
Assamidar' and occupancy and sub-occupancy tenant who
has acquired or is entitled to get proprietary rights under the
Azad Jammu and Kashmir Land Reforms Act, 1960, or any
other law ;

'Settlement Commissioner' means Commissioner appointed
under the Punjab Land Revenue Act, 1887, as in force in
Azad Kashmir;

'state trees' means State trees as denoted in section 2 of the Azad Jammu and Kashmir Land Revenue Amendment Act, 1955, and includes Ash and walnut trees ;

G) "Union Council" means Union Council constituted under the

Azad Jammu and Kashmir Basic Democracies Act, 1960.

Demarcation of forests for determination of Shamilat-deh

area:-(1) The present classification of forests shall be deemed to have been revised and only 'demarcated forests' shall, for purposes of this Act, be deemed to have been retained.

(2)

The term 'undemarcated forest' shall henceforth be

abandoned and an existing undemarcated forest shall be included in the demarcated forest if there are not less than ten state trees per acre standing on it and the rest excluded from forest which may be given in 'Shamilat-deh' :

Provided that if, at any time after the coming into force of section 7 and 9, any State trees standing in an existing undemarcated forest are cut so that their number is reduced to less than ten per acre such undemarcated forest shall be included in the demarcated forest and shall not be given in Shamilat-deh.

Explanation:- In this sub-section 'tree' means one having a diameter of not less than 12 inches.

(3) All other State-owned lands under the control of the Forest Department or 'Maqbooza-Assamian-Deh' having twenty-four or more State trees per acre shall be classed as demarcated forest and the rest may be given in 'Shamilat-deh'.

(4) While demarcating a forest it shall be ensured that Khalsa Waste of less than two acres size entirely surrounded by private holdings, and all strips of Khalsa Waste of not more than 20 Karams width between private holdings, are not included in the line and that strips of Waste not less than 25 Karams wide are always left between the line and the cultivation as 'Khalsa Sarkar'.

(5) The procedure prescribed in the Forest Law Manual for the demarcation of forests shall be followed for the decision of any disputes that may arise in enforcing the provisions of sub-sections (2), (3) or (4).

(6) Nautors in the demarcated forests shall not be regularised under this Act and the 'Nautor Kunandas' shall be ejected forthwith.

Grant of Shamilat-Deh rights:- (1) Shamilat-rights hereby granted out of State-owned lands, other than demarcated forests, shall be recorded upto the extent of 100 per cent of cultivated area in a village in 1982 (Bikrami), subject to availability of such land in that village. Only one mutation of Shamilat-Deh shall be attested in any one village under this sub-section and such mutation may be sanctioned by the Settlement Officer or Assistant Settlement Officer ;

Provided that mutation of an area in excess of 800 Kanals shall be sanctioned by the Settlement Commissioner or an officer specially authorised by him.

(2) The areas already used for grazing, burial and drinking water purposes and other existing Shamilat-Deh areas shall be deducted from the total entitlement but included in the general mutation of Shamilat-Deh referred to in sub-section (1).

(3) Out of 100 per cent of Shamilat areas, 20 per cent shall be reserved for common purposes of villagers under the management of the Union Council, and 5 per cent shall be kept for local destitutes to regularise 'nautors', if any, made by them ; otherwise it shall remain under the control of the Union Council concerned, if there is no destitute or till it is properly made over to the destitutes. The rest 75 per cent of Shamilat area may be used by the land owners for plantation within the limit of their respective shares in accordance with the distribution made by the Union Council. The Union Council may apply for assistance and obtain the orders of any Settlement or Revenue Officer not below the rank of Naib-Tehsildar while making distribution giving effect to it or for ejecting any person exceeding his share or making encroachment on the share of any other person or on the reserved areas.

(4) In determining the extent of the right of a land owner to Shamilat land, for the purpose of sub-section (3), the area owned or cultivated by him or his predecessor-in-interest in the year 1982 (Bikrami) shall be the basis. The area in respect of which occupancy rights are held by any person according to the revenue record in that year should be deducted when working out the entitlement of an individual owner. Benefit of such occupancy areas should go to future land-owners.

(5) The share of an individual land owner in Shamilat-deh area shall be in proportion to his cultivated owned land in the year 1982 (Bikrami) subject to the condition that the total holding of a land owner in a village including his own land and that given to him under this Act shall not exceed twenty kanals in the case of a local destitute or four hundred kanals in the case of others.

(6) Share in Shamilat on evictee land shall go to its allottees, but where evictee land is in the illegal possession of any person its share in Shamilat may be utilized by the concerned Union Council till the same is properly allotted to any person.

(7) All 'nautors' the mutation of which was sanctioned before the year 1982 (Bikrami) shall be included in the basic area for the purposes of calculating Shamilat rights under sub-section (1).

(8) All 'nautors' properly sanctioned after the year 1982 (Bikrami) shall be counted against the Shamilat rights of an individual land owner. He shall be entitled to his remaining share, if any, subject to the conditions laid down in this Act and in case his sanctioned 'nautors' have exceeded the limit the rights already conferred shall not be withdrawn but he shall not be given any more land under this Act.

(9) Save as otherwise provided by sub-section (5) of section 4, all illegal 'nautors' shall, subject to the conditions of plantation hereinafter contained, be regularized within the share of an individual in Shamilat-deh under this Act and assessed to land revenue and cesses according to the rates prevalent in the locality on the kind of soil and recorded as Tenants-at-will under Shamilat by mutations to be attested by a Settlement or Revenue Officer not below the rank of a Naib-Tehsildar after realising all the arrears of land revenue from the date of 'nautor' up to the extent of five years. The amount of arrears of land revenue thus realized shall be entered by the attesting Officer in the body of the mutation order and 'Part Sarkar' of the mutation order shall be consigned to the record room after making a note on it of the number and date of its remission into the Treasury.

A land owner in possession of any portion of 'nautor' in excess of his share in Shamilat-deh shall be liable to summary ejectment by any of the aforesaid officers.

(10) The provisions of this Act, in respect of Shamilat Rights shall not apply to estates mutations whereof have already been attested under Ailan No. 17 and Ailan No. 2.

(11) Till the settlement operations are started in an area when the provisions of this Act can be properly implemented, the provisions of the Government Order No. 282/57 shall continue to apply to such areas.

(12) All illegal 'nautors' regularized under sub-section (9) and all other lands newly given in Shamilat under this Act shall be used by individual land owners, for plantation of mulberry trees, fruit trees, fuel trees and such other trees as the land owner may choose. The entire benefit out of such trees, will go to him.

Further cultivation in such areas shall be stopped as soon as the mutation under sub-section (1) is sanctioned and plantation started within one year. Cultivation in such areas shall be prohibited and any person doing so shall be liable to summary ejectment and cancellation of his mutation sanctioned under sub-section (9).

(13) Any person who contravenes any direction or ejectment order issued in pursuance of sub-section (5) of section 4, or sub-section (9) or (12) of this section shall be liable to a fine up to Rs. 200 to be imposed by the Collector.

(14) A person shall be eligible for the grant of proprietary rights in such land without payment of any compensation provided that:-

(a) a minimum period of seven years has elapsed since he started plantation ;

(b) the minimum density of plantation per kanal is fifteen trees in the case of fruit trees and thirty in the case of other trees and in the same proportion in the case of mixed plantation ; and

(c) the minimum height attained by the trees is twelve feet, except in the case, of Mulberry bushes.

(15) The grant of proprietary rights shall be sanctioned by the Collector on a certificate issued by the Divisional Forest Officer of the area that the conditions prescribed in clauses (a), (b) and (c) of sub-section (14) have been satisfied and the land shall be assessed to land revenue is not already assessed. The person thus acquiring proprietary rights shall be recorded as 'MALIK HISSADAR' under Shamilat-deh instead of tenant-at-will through mutation attested by any Settlement Officer or Revenue Officer in accordance with the sanction aforesaid.

6. Khalsa Sarkar Maqbooz Mehkama Mal _ Areas:-

Notwithstanding anything contained to the contrary in any law, rule or order or any entry made in any Revenue Record, all State-owned lands other than those classified as 'demarcated forests' under section 4 or as 'Shamilat-deh' under section 5 and which are not in the possession of any other Government Department, shall be recorded as Khalsa Sarkar 'Maqbo-oza Mehkama Mal'. The Revenue Department shall have full control

over this area and shall check all encroachments over it and eject all 'Nautor Kunandas' out of it. The Government may, however, grant 'Nautors' out of it under the State Waste Land Rules, or make any other grants as it may consider proper.

Penalties:- (1) Any person who, without lawful authority, clears or breaks up any land in a forest or erects a fence or enclosure for cultivation or for any other purpose or otherwise encroaches upon or takes possession of such land by illegal trespass shall be punishable with imprisonment of either description for a term which may extend to three years and with fine.

(2) Where any person is convicted by a Court under this section or under any other law for the time being in force for breaking, clearing or otherwise encroaching upon any land in a forest, such Court shall order his ejectment and shall restore possession of such land to the Forest Officer or other authority entitled to the possession thereof.

Explanation:—For the purposes of this section, 'forest' includes both 'demarcated forest' and forest which was, before the coming into force of this Act, classified as undemarcated forest as defined under the Jammu and Kashmir Forest Act, 1987 (Bikrami).

(3) Any offence falling under sub-section (1) of this section may be compounded like any other offence under the Jammu and Kashmir Forest Act, 1987 (Bikrami).

Appeal, Review and Revision:- Subject to the provisions of this Act, the Punjab Land Revenue Act, 1887 is in force in Azad Kashmir and the Rules made thereunder shall, in so far as they are applicable, apply to all proceedings under this Act, and all appeals, reviews and revisions against the orders of a Revenue Officer shall be governed by the provisions thereof :

Provided that only one appeal shall lie against an order of ejectment passed by a Revenue Officer.

Bar of jurisdiction of Civil Courts:- (1) No Civil Court shall have jurisdiction on any matter which the Government or any Revenue Officer is competent to dispose of under this Act and shall not take cognizance of the manner in which the Government or any Revenue Officer exercises any power vested

in it or in him by or under this Act or under Government Order
No. 282/57.

(2) No Civil Court shall be competent to issue a temporary injunction in respect of any matter referred to in sub-section (1) restraining the Government or any Revenue Officer from taking any ejectment proceedings in pursuance of the provisions of this Act.