

THE AZAD JAMMU AND KASHMIR RESTITUTION OF MORTGAGED LAND ACT, 1949.

(Cabinet Resolution No. 341/49)

An Act to provide for the restitution of lands on which a

mortgage subsists which was effected prior to or after 1995 in which mortgagees or anyone of the mortgagees is a money lender or was carrying on money-lending business at the time the mortgagee was effected, and the mortgagor is an agriculturist.

Preamble:- Whereas it is expedient to provide for the restitution of certain mortgaged lands in the manner hereinafter appearing, it is enacted as follows :-

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Short title, extent and commencement:- (i) This Act shall be called Azad Jammu and Kashmir Restitution of Mortgaged Lands Act, 1949.

(ii) It shall apply to the territory under the Azad Jammu and Kashmir Government.

(iii) It shall come into force on such date as the Government may by notification direct.

Notwithstanding anything contained in any enactment for the time being in force, this Act shall apply to any subsisting mortgages of land, which were effected prior to or after 1995 in which the mortgagee or any of the mortgagees is a money lender or was carrying on money lending business at the time the mortgage was affected and the Mortgagor is an agriculturist.

Explanation :- A mortgage shall be deemed to subsist notwithstanding a decree or order for its redemption having been passed, provided redemption has not taken place before the commencement of this Act.

Definitions:- (i) The expression "Land" means land which is not occupied as the site of any building in a town or village and is occupied 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 profits of an estate or holding ;

(c) any right to receive rent ;

(d) any right to water enjoyed by the owner or occupier of land as such ;

e) any right of occupancy ; and

(f) all trees standing on such land.

(ii) The expression "Collector" means the Collector of the District in which the mortgaged property or any part thereof is situated, and shall include an Assistant Collector of first Grade specially empowered by the Government to perform the duties of the Collector for the purposes of this Act.

(iii) "Commissioner" means the Revenue Commissioner appointed by the Government.

(iv) "Government" shall mean the Azad Jammu and Kashmir Government.

(v) "Prescribed" means prescribed by rules made under the Act.

(vi) "Mortgagor" or "Mortgagee" respectively shall include the assignee and the representative of such mortgagee as the case may be.

(vii) The word "agriculturist" shall mean an agriculturist as defined in Jammu and Kashmir Agriculturists, Relief Act.

(viii) The expression "Principal" shall mean the amount originally advanced and in case of transactions prior to the year 1978 Bikram it shall mean the amount originally advanced plus interest at the stipulated rate upto 1st Baisakh 1978 Bikram.

Petition for restitution:- A mortgagor to whose land the, provision of this Act apply, may at any time, present a petition to the Collector praying for restitution of possession of the land mortgaged and the petition shall be duly verified in the manner prescribed for such petitions.

Procedure for dealing with petitions for restitution:- On receipt of such petition the Collector, after such enquiries as may be prescribed, shall record an order in writing with reasons stating whether the mortgage in question is one to which this Act applies.

Petition when to be dismissed:- If the Collector finds that the mortgage is one to which this Act does not apply, he shall dismiss the petition.

(1) If the Collector finds that the mortgage is one to which this Act applies, he shall, notwithstanding anything contained in any other enactment for the time being in force in cases where he finds that the value of benefits, enjoyed by the mortgagee while in possession, equals one and a half times the amount of the principal under the mortgage, order in writing :-

(a) that the mortgage be extinguished ; and

(b) where the mortgagee is still in possession, that the mortgagor be put in possession of the mortgaged land as against the mortgagee and that the title deeds, if any, be restored to the mortgagor.

(ii) If in cases to which this Act applies the Collector finds that the value of the benefits enjoyed by the mortgagee while in possession, is less than one and a half times the principal and payment is still due to the mortgagee the Collector shall, after giving credit of value of profits to the mortgagor, order the mortgagee to return possession of the land to the former subject to the mortgagor's paying balance found due to the latter.

(iii) If the Collector finds that the value of the profits enjoyed by the mortgagee, while in possession, exceeds one and a half times the principal the Collector shall order the mortgagee to repay such excess to the mortgagor besides restoring possession of the land to him.

Explanation :- The Collector shall for the purposes of this section compute the period of possession from the date on which the mortgagee entered into possession to the date of the presentation of the petition under Section 4.

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Effect of order of restitution when money is payable:- If the Collector finds that any sum is due to the mortgagee under subsection (2) of section 7, he shall require the mortgagor to deposit the amount, in such manner as shall be prescribed and on deposit of the amount he shall declare the rights of the mortgagee extinguished and require the mortgagee to deliver possession of the land to the mortgagor together with all documents of title relating to the land.

Powers of the Collector to eject mortgagee:- The Collector may, after declaring the rights of the mortgagee extinguished, eject the mortgages and order delivery of possession of the mortgaged land to the mortgagor. In case of resistance the Collector may exercise all the powers conferred on a civil court by rules 97 and 98 of order XXI of the Code of Civil Procedure.

Appeals:- Any person aggrieved by an order of the Collector under this Act may appeal:

(a) to the Commissioner ;

(b) to the Revenue Minister from an order made on appeal by the Commissioner.

Limitation of appeal :-

(i) The period of limitation for an appeal under the last foregoing section shall run from the date of the order appealed against, and shall be as follows :-

(a) When the appeal lies to the Commissioner.
Ninety days.

(b) When the appeal lies to the Revenue Minister.
Ninety days.

(ii) 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.

(iii) The provisions of section 5 of the Indian Limitation Act shall apply to all appeals under this Act.

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 of any proceedings under this Act.

Rule making power:- (i) The Government may subject to the condition of previous publication, make rules for the purpose of giving effect to the provisions of this Act.

(ii) 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 4 of this Act ;

(b) the procedure by which the Collector shall deal with such petitions under section 5, 6 and 7 of the Act and assess compensation if any ;

(c) the procedure and principles by which the Collector shall assess the amount due under the mortgage and the value of the benefits accruing to the mortgagee while in possession ;

(d) the procedure for making the deposit prescribed by the section 8 of this Act ; and

(e) the procedure for enforcing ejectment of the mortgagee and delivery of possession to the mortgagor under section 9 of this Act.