

AZAD GOVERNMENT OF THE STATE OF JAMMU AND KASHMIR
LAW AND PARLIAMENTARY AFFAIRS DEPARTMENT
MUZAFFARBAD.

Dated: 9th March, 1986.

No. 381-85/LD/Leg (A)/86. The following Act of the Assembly received the assent of the President on 5th day of March, 1986, is hereby published for general information.

(ACT XIII OF 1986)

AN

ACT

to restrict the increase of rent of certain premises within limits of urban areas and the eviction of tenants thereof in Azad Jammu and Kashmir.

WHEREAS it is expedient in the public interest to restrict the increase of rent of certain premises within the limits of Urban Areas and the eviction of tenants there from in Azad Jammu and Kashmir in the manner hereinafter appearing:

It is hereby enacted as follows: -

1. Short title, Extent and Commencement. - (1) This Act may be called the Azad Jammu and Kashmir Rent Restriction Act, 1986.

(2) It extends to all the urban area in Azad Jammu and Kashmir.

(3) Nothing contained in this Act shall be deemed to affect any evacuee property as defined in the Pakistan (Administration of Evacuee Property) Act, 1957 as adapted in Azad and Kashmir.

(4) It shall come into force at once.

2. Definitions.- In this Act unless there is anything repugnant in the subject or context:-

(a) "Government" means the Azad Government of the State of Jammu and Kashmir;

(b) "Building" means any building or part of a building let for any purpose whether being actually used for that purpose or not, including any land, go downs, out-houses, 'together with furniture let therewith but does not including a room in a "sarai", hotel hostel or boarding house;

(c) "Controller" means a judicial officer who is appointed by the Government to perform the function of a Controller under this Act;

(d) "Landlord" means any person for the time being entitled

to receive rent in respect of any building or rented land

whether on his own account or on behalf or for the

benefit or for the benefit of any other person, or as a trustee, guardian, receiver, executor or administrator for any other person and includes a tenant who sub-let any building or rented land in the manner hereinafter authorized and every person from time to time deriving title under a landlord;

(e) "non-residential "building" means building being used solely for the purpose of business or trade;

(f) "prescribed" means prescribed by rules made under this Act:-

(g) "rented land" means any land let separately for the purpose of being used principally for business or trade;

(h) "residential building" means any building which is not a non-residential building;

(i) "Scheduled building" means a residential building which is being used by a person engaged in one of the professions specified in the Schedule to this Act partly for his business and partly for his residence;

Gg) "tenant" means any person by whom or on whose account rent is payable for a building or rented land and includes (i) a tenant continuing in possession after the termination of the tenancy in his favour, and (ii) the wife and children of a deceased tenant, but does not include a person placed in occupation of a building or rented land by its tenant, unless with the consent in writing of the landlord, or person whom the collection of rent or fees in a public market cart-stand, or slaughter-house or of rents for shops has been framed out or leased by a municipal, town or notified area committee or by a Development authority; and

(k) "Urban area" means any area administrated by Municipality, a municipal committee, a town committee or a notified areas committee as defined above.

Government or any officer authorized by it in this behalf may direct by a notification published in the official Gazette that all or any of the provisions of this Act shall not apply to any particular building or rented land or any class of buildings or rented lands.

(1) The Controller shall on an application by the tenant or landlord of a building or rented land, fix fair rent for such building or rented land after holding such enquiry as the Controller thinks fit.

(2) The fair rent shall be fixed after taking into consideration

the following factors;

(a) The rent of the same building or similar accommodation in similar circumstances prevailing in the locality at the time of and during the period of twelve months prior to the date of making application;

(b) the rise in the cost of construction of and the repairing charges as well as the imposition of new taxes after the commencement of the tenancy; and

(c) the rental value of the building or rented land entered in the Property Tax Assessment register of the Taxation Department or the local body relating to the period mentioned in clause (a), if any.

(3) The fair rent fixed under this section shall be payable by the tenant from a date to be fixed by the Controller not earlier than the date of filing the application.

(4) If the fair rent fixed under sub-section (2) exceeds the rent being paid by the tenant on the date of the filing of the application under this section, the maximum increase of the rent payable by the tenant shall not be more than 25% of the rent already being paid by him.

(1) When the fair rent of a building or rented land has been fixed under Section 4, or where the rent of any building or rented land has been determined by an agreement between the landlord and the tenant, no further increase in such fair rent shall, during the continuance of tenancy, be permissible within a period of three years from the date fixed by the controller under sub-section (3) of section 4, or from the date of agreement as the case may be except in cases where so addition, improvement or alteration has been carried out at the landlord's expense and at the request of the tenant.

(2) The fair rent as increased on grounds of some addition, improvement or alteration made permissible under this Section shall not exceed the fair rent payable under this Act for a similar building or rented land in the same locality with such addition, improvement or alteration and it shall not be chargeable until such addition, improvement or alteration has been completed.

(3) Any dispute between the landlord and tenant in regard to any increase claimed on grounds of some addition, improvement or alteration made permissible under this Section shall be decided by the Controller.

(1) Save as provided in Section 5, when the Controller has fixed the fair rent of a building or rented land under Section 4:-

(a) the landlord shall not claim or receive any premium or other like sum in addition to fair rent or any rent in excess of such fair rent, but the landlord may stipulate for and receive in advance an amount not exceeding one month rent;

(b) any agreement for the payment of any sum in addition to rent or of rent in excess of such fair rent shall be null and void.

(c) any sum in excess of the fair rent paid in respect of any

use or occupation of the building or rented land from the date of application for the fixation of fair rent shall be refunded to the person by whom it was paid or at the option of such person, otherwise adjusted.

(2) Nothing in this Section shall apply to the recovery of any rent which becomes due before the 1st January, 1946.

(1) No landlord shall, in consideration of the grant, renewal or continuance of a tenancy of any building or rented land required the payment of any fine, premium or any other like sum in addition to the rent.

(2) Nothing in this section shall apply to the recovery of any rent which become due before the 1st January, 1946.

Where any sum has, before the date of publication of this Act been paid by the tenant, which sum is by reason of the provisions of this Act irrecoverable, such sum may, without prejudice to any other method of recovery be deducted by the tenant by whom it was paid, or by his legal representative, from any rent payable by him to such landlord or to his legal representative.

Provided that the tenant before making such deduction obtain the approval of the Controller by an application made to him within six months of the said date.

Explanation- In computing the said period of six months the time sent after the date of the payment, in the proceedings for determination of fair rent shall be excluded.

(2) In this Section the expression 'legal representation' has the same meaning as in the Code of Civil Procedure, 1908 and includes, in the case of joint family property, the joint family of which the deceased person was a member.

Notwithstanding anything contained in any other provision of this Act, a landlord shall, subject to the approval of the Controller, be entitled to increase the rent of building or rented land if after the commencement of this Act a fresh rate, cess or tax is levied in respect of the building or rented land by the

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Government or any local authority, or if there is an increase in the amount of such a rate, cess or tax being levied at the commencement of this Act.

Provided that the increase in rent shall not exceed one half of the amount of any such rate, cess or tax or the amount of the increase in such rate, cess or tax, as the case may be.

(2) Notwithstanding anything contained in any other law for the time being in force on any agreement, no landlord shall recover from his tenant the amount of any tax or any portion thereof in respect of any building or rented land occupied by such tenant by any increase in any amount of the rent payable or otherwise save as provided in sub-section (1).

qd) No landlord or his contractor, workman, or servant shall without the previous consent of the Controller or save for the purpose of affecting repairs or complying with a requisition from a Municipal Committee willfully disturbs any convenience or assessment annexed to the premises or remove, destroy or render unserviceable anything provided for permanent use therewith or discontinue or cause to be discontinued any supply or service comprised in the fair rent.

(2) A tenant in occupation of a building or rented land may, if the landlord has contravened the provisions of this section, make an application to the Controller complaining of such contravention.

(3) If the controller, on inquiry finds that the tenant has been in enjoyment of the amenities and that they were cut off or withheld by the landlord without just or sufficient cause, he shall make an order directing the landlord to restore such amenities.

No person shall convert a residential building into a non-residential building except with the permission in writing of the Controller.

If a landlord fails to make the necessary repairs other than structural alternations, to a building, it shall be competent for the Controller to direct, on application by the tenant and after such inquiry as the Controller may think necessary that such repairs may be made by the tenant, and the cost thereof, may be deducted from the rent which is payable by him.

qd) Where a local authority, in exercise of its functions under any law for the time being in force directs the owner of a building to make such repairs to the building as may be specified and on failure of the owner to comply with such direction, the tenant is directed to make the said repairs, the tenant may comply with the direction.

(2) The amount of the expenses incurred by the tenant under sub-section (1) shall be submitted to the local authority concerned, which shall after the due verifications, certify the cost of repairs and the tenant may thereon deduct the amount so certified from the rent payable by him.

qd) A tenant in possession of a building or rented land shall not be evicted therefrom in execution of a decree passed before or after the commencement of the Act or otherwise, and whether before or after the termination of the tenancy except in accordance with the provisions of this Section.

(2) A landlord who seeks to evict his tenant shall apply to the Controller for a direction in that behalf. If the Controller after giving the tenant a reasonable opportunity of showing cause against the application, is satisfied that:-

(i) the tenant has not paid or tendered rent due by him in respect of the building or rented land, within fifteen days after the expiry of the time fixed in the agreement of tenancy with his landlord, or in the absence of any such agreement, with sixty days from the period which rent is payable; or

(ii) the tenant has without written consent of the landlord;

(a) transferred his right under the lease or sub-let entire building or rented land or any portion thereof; or

(b) used the building or rented land for a purpose other than that for which it was leased or has infringed any condition of the tenure on which the building or rented land is held by the landlord; or

(iii) the tenant has committed such acts as are likely to impair materially the value or utility of the building or rented land and; or

(iv) the tenant has been guilty of such acts and conduct as are nuisance to the occupants of buildings in the neighborhood; or

(v) where the building is situated in a place other than a hill-station, the tenant has ceased to occupy the building for a continuous period of four months without reasonable cause; or

(vi) the building or rented land is reasonably and in good faith required by the landlord for the reconstruction or erection of a building on the site, and the landlord has

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obtained the necessary sanction for the said reconstruction or erection from a Municipal committee or Town Committee for the area where such building or rented land is situated. The controller may make an order directing the tenant to put the landlord in possession of the building or rented land and if the Controller is not so satisfied he shall make an order rejecting the application;

Provided that the Controller may give the tenant a reasonable time for putting the landlord in possession of the building or rented land may extend such time so as not exceed four months in the aggregate.

Explanation: For the purpose of this clause:-

(i) Where the water charges or electricity charges or both are payable by the tenant to the landlord such charges shall be deemed rent;

(ii) rent remitted by money order to the landlord or deposited in the office of the Controller having jurisdiction in the area where the building or rented land is situated shall be deemed to have been duly tendered.

(a) A landlord may apply to the Controller for an order directing the tenant to put the landlord in possession:-

(i) in the case of a residential building, if:-

(a) he requires it in good faith for his own occupation or for the occupation of any of his children;

(b) he is not occupying another residential

building suitable for his needs at the time in the same urban area in which such building is situated; and

(c) he has not vacated such a building without sufficient cause after the commencement of this Act in the said

urban area:

(ii) in the case of a non-residential building or a scheduled or rented land if:-

(a) he requires it in good faith for his own use or for the use for any of his male children;

(b) he or his said child is not occupying in
the same urban area in which such

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building is situated for the purpose of his business any other such building or rented land, as the case may be, suitable for his needs at the time; and

(c) he has not vacated such a building or rented land without sufficient cause after the commencement of this Act in the said urban area:

Provided that were the tenancy is for a specified period agreed upon between the landlord and the tenant, the landlord shall not be entitled to apply under this sub-section before expiry of such period:

Provided further that where the landlord had obtained possession of a residential, schedule or non-residential building or rented land under the provisions of sub-paragraph (i) or sub-paragraph (ii) he shall not be entitled to apply again under the said sub-paragraphs for the possession of any other of the same class or rented land unless such residential, scheduled or non-residential building or land is no longer suitable for his needs at the time.

The controller shall, if he satisfied that the claims of the landlord is bonafide make an order directing the tenant to put the landlord in possession of the building or rented land on such date as may be specified by the Controller and if the Controller is not so satisfied he shall make an order rejecting the application:

Provided that the Controller may give the tenant a reasonable time for putting the landlord in possession of the building or rented land and may extend such time so as not to exceed four months in the aggregate:

Provided further that if the application is in respect of a residential building, the Controller shall direct the tenant within four weeks of the application to put the landlord in possession of the building if, after summary enquiry, he is satisfied that the tenant, his wife or any of his dependent children owns a residential building within the same urban area.

(4) Where a landlord who has obtained possession of building or rented land in pursuance of an order made under sub-paragraph (i) or sub-paragraph (ii) of paragraph (a) of sub-section (3), does not himself or where the building has been got vacated for the occupation of any of his children such child does not occupy it within one month of the date of obtaining possession, or having been so occupied is relet within two months of the said date to any person other than the original tenant, the tenant who has been evicted may apply to the Controller, for an order directing that he shall be restored to possession of such holding or rented land and the Controller shall make an order accordingly.

(5) Where a landlord has obtained possession of a building in pursuance of an order under clause (vi) of sub-section (2) of this section and does not have the building demolished within a period of four months from the date of taking possession of the same or does not construct the new building within a further period of two years after the expiry of the period of four months from the date of making possession of the same he shall, unless he satisfies the Court that he was unable to construct the building within the prescribed time for reasons beyond his control, be punished with imprisonment for a term which may extend to six months or with fine or with both.

(6) Where a landlord has been convicted under the provisions of sub-section (5), the tenant, who has been evicted from the building or rented land in respect of which the landlord is convicted, may apply to the Controller for an order directing that he shall be restored to possession of such building or rented land, and except in the case of a building which has been demolished, the Controller shall make order accordingly.

(7) Where, in pursuance of an order under clause (v) of sub-section (2), landlord has obtained possession of a building in this sub-section referred as the old building, and constructs a new building on the same site, the tenant who has been evicted from the old building may, before the completion of the new building and its occupation by another person, apply to the controller for an order directing that he be put in possession of such area in the new building as does not exceed the area of the old building of which he was in occupational and the Controller shall make an order accordingly in respect of the area application for or such smaller area, as considering the location and type of the new building and the needs of the tenant he deems just, and on payment of rent to be determined by him on the basis of rent of similar accommodation in the locality.

(8) In proceeding under this Section on the first date of hearing or as soon possible after that date and before issues are framed, the Controller shall direct the tenant to deposit all the rent due from him, and also to despoite regularly till the final decision of the case, before the fifteenth day of each month the monthly rent due from him. If there is any dispute about the about the amount of rent due or the rent of rent, the Controller shall determine such amount approximately and direct that the same be deposited by the tenant before a date to be fixed for the purpose. If the tenant makes default in the compliance of such an order, than if he is the petitioner, his application shall be dismissed summarily and if he is the respondent his defence shall be struck off and the landlord put into possession of the property without taking any further proceedings in the case. The Controller shall finally determine the amount of rent due from the tenant and direct that the same may be paid to the landlord, subject to adjustment of the approximate amount deposited by the tenant.

(9) Where the Controller is satisfied that any application made by a landlord for the eviction of a tenant is frivolous or vexations, the Controller may direct that compensation not exceeding ten times the monthly rent be paid by such landlord to the tenant:

(10) The rent deposited by the tenant under this Section shall, subject to the final determination of rent as payable by the tenant, be paid to the landlord at the conclusion of the proceedings or on such earlier date as may be specified by the Controller.

Eviction of tenants where the landlord is a salaried employee, widow _or_ minor orphan- (1) Notwithstanding anything continued in this Act or any other law for the time being in force.

(a) in a case where the landlord has died; or

(b) in a case where the landlord is a salaried employee and has retired or is due to retire within a period of six months, a notice in writing may be given by such landlord or the widow or minor of the deceased landlord, as the case may be, to the tenant of a residential building informing him that he or she needs the buildings for personal use and requiring him to deliver vacant possession of the building within a period of two months from the date of receipt of the notice.

Provided that no application under this Section shall be maintainable if it is made after six months from the date of the death of the landlord or, in the case of the retirement of a salaried person, before six months from or after six months of the date of his retirement;

Provided further that, in a case where the landlord has died or a salaried person has retired before the commencement of this Act an application may be made within a period of six months from the date of such commencement.

(2) The right to seek ejectment under sub-section (1) shall also be available to a landlord of a residential building who is the wife, husband or a minor child of a salaried employee referred to in sub-section (1).

(3) In the case of a landlord referred to in sub-section (1) or sub-section (2) who happens to be a landlord of more than one residential building whether or not in the same locality, action as provided for in this section shall be competent in respect of one of such residential buildings only.

(4) A landlord referred to in clause (b) of sub-section (1) or in sub-section (2) who is in occupation of a residential building owned by him shall not be entitled to seek ejectment of a tenant from a residential building situated in the locality in which the building in occupation of the landlord is situated unless he offers the building in his occupation in exchange of the building in possession of the tenant on such terms and conditions and on payment of such rent as may be determined by the Controller:

Provided that the benefit of exchange shall not be available to the tenant who refuses to accept the offer or the terms and conditions and the rate of rent determined by the Controller.

(5) A tenant who on receipt of the notice referred to in subsection (1) fails to deliver vacant possession of the building to the landlord or the widow or minor orphan of the deceased landlord within the time allowed in the notice shall be liable to be ejected summarily by the Controller on an application being made to him in this behalf.

(6) On an application being made to him under subsection (5) the Controller shall issue a notice to the tenant and on being satisfied with the bonafide of the request of the landlord or the widow or minor orphan of a deceased landlord, shall order the summary ejectment of the tenant.

(7) A landlord or widow or orphan of a deceased landlord referred to in subsection (1) or subsection (2) who, within one year of his having obtained possession of a building as provided for in subsection(6), relates the building to any person other than the previous tenant, shall be punishable with fine which may extend to rupees five thousand unless the benefit derived by the landlord is greater than the amount of fine in which case it shall be equal to the annual rent obtained by him by relating the building.

Where the ownership of a building in the possession of a tenant or rented land has been transferred by way of sale, gift, inheritance or in any other manner, whatsoever, from one person to another, the new owner shall send an intimation of such transfer in writing by registered post, to the tenant of such building or rented land, and the tenant shall not be deemed to have defaulted in the payment or rent for the purposes of clause (i) of sub-section (2) of Section 14, if the rent due is paid within thirty days from the date when the intimation should in the normal course have reached him.

The Controller shall summarily reject any application under subsection (2) or under sub-section (3) of section 14 which raises substantially the same issues as have been finally decided in a former proceeding under this Act.

Appeal.- (1) Any party aggrieved by an order of the Controller finally disposing of an application made under this Act may, within thirty days of the date of such order, prefer an appeal in writing to the District Judge having jurisdiction over the area where the building or rented land in relation to which the order is passed, is situated:

Provided that no appeal shall lie against an order made by a Controller under sub-section (6) of Section 14 determining approximately the amount of rent due or the rate or rent and directing the tenant to deposit all the rent due:

Provided further that no appeal shall be from an interlocutory order passed by the Controller.

(2) On such appeal being preferred, the District judge may hear it himself or refer it for disposal to an Additional District Judge having jurisdiction over the area where the building or rented land in relation to which the order is passed, is situated.

(3) The District Judge may recall an appeal made over by him to an Additional District Judge and either hear it himself or refer it for disposal to another Additional District Judge having jurisdiction as provided in Sub-section (2).

(4) On such appeal being preferred, the appellate authority may stay the operation of the order appealed against.

(5) The appellate authority admitting an appeal for hearing shall have the same powers to direct the tenant to deposited the rent as are vested in the Controller under this Act and, if the tenant makes default in compliance with such an order, then, if he is the appellant, his appeal shall be dismissed summarily and, if he is the respondent, his defence shall be struck off.

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(6) The appellate authority shall decide the appeal after sending for the record of the case from the Controller and after giving the parties an opportunity of being heard and, if necessary after making such further inquiry as it thinks fit either personally or through the Controller.

(7) The order of the Controller, subject to the result of appeal, if any, shall be, final and shall not be called in question in any Court of law, including High Court, by suit, appeal or otherwise.

On the application of any of the parties and after notice to the parties and after having such of them as desire to be heard, or of its own motion without such notice:-

(a) the appellate authority may at any stage withdraw any application pending with a Controller subordinate to it and transfer the same for disposal to any other Controller subordinate to it and competent to try or dispose of the same.

(b) the High Court may at any stage withdraw any appeal pending with any Appellate authority and transfer the same for disposal to any other Appellate Authority subordinate to it and competent to dispose of the same.

qd) For the purpose of this Act an Appellate Authority or a Controller appointed under this Act shall have the same powers of summoning and enforcing the attendance of witness and compelling the production of evidence as are vested in a Court under the Code of Civil Procedure, 1908.

(2) The Controller shall for the purpose of section 480 of the Code of Criminal procedure, 1898, be deemed to be Court.

Every order made under section 10, section 13, Section 19 and every order passed in appeal under section 22 shall be executed by the Controller as if it were a decree of a Civil Court.

Every landlord and every tenant of a building or rented land shall be bound to furnish to the Controller, or any person authorized by him in that behalf such particulars in respect of such building or rented land as may be prescribed.

qd) If any person contravenes any of the provisions of sub-section (1) of Section 10, Section 11 or Section 22, he shall be punished with fine which may extend to one thousand rupees.

(2) No Court shall take cognizance of an offence under this

Section except upon:-

(a) a complaint of facts, which constitute such offence, filed with the sanctions of the Controller in writing or

(b) a report in writing of such facts made by the Controller.

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Government may be notification make rules for the purpose of carrying out all or any of the provision of this Act.

(a) Any order made by a Controller a Rent Controller or any Court or appellate or revisional authority in any processing under any of the said enactments before the commencement of the Rent restriction Act, 1952, before the first day of July, 1946, shall be deemed to have effect as an order under this Act;

(b) all proceedings which immediately before the commencement of this Act were pending with any Controller or Appellate Authority under the Azad Jammu and Kashmir rent Restriction Act, 1952, shall stand transferred to and be continued before the Controller or the Appellate Authority, as the case may be, appointed under this Act as if the same were instituted under the provisions of this Act and any order made in any such proceedings as aforesaid shall for all purposes have effect as an order made under this Act.

Repeal.- The Azad Jammu and Kashmir Rent Restriction Act, 1952 (Council Order No. 659/52 a define Azad Jammu and Kashmir Rent Restriction Ordinance, 1986 (Ordinance XXIX of 1986) are hereby repealed.

Savings.- Notwithstanding any judgment decree or order of any court including High Court everything done. All actions taken notifications issued orders or appointments made proceedings initiated. jurisdiction or powers exercised under the provisions of the Azad Jammu and Kashmir Rent Restriction Ordinance 1980 (Ordinance XX of 1980) or its succeeding Ordinance issued from time to time shall be deemed to have been validly done, taken, issued, made, initiated or exercised under this Act.

Sd/-
(Syed Atta Mohy-ud-Din Qadri)
Deputy Secretary Law.