

Himachal Pradesh Agricultural Credit Operations And Miscellaneous Provisions (Banks) Act, 1972

7 of 1973

[18 April 1973]

CONTENTS

1. Short Title, Extent And Commencement
2. Definitions
3. Removal Of Restrictions On Alienation
- 4 . State Government May By Notification Vest Agriculturists Not Having Alienable Rights With Such Rights
5. Charge On Crop And Other Movable Property In Favour Of Bank
6. Creation Of Charge On Land In Favour Of A Bank By Declaration
7. Removal Of Disability In Creation Of Charges And Mortgages
- 8 . Priority Of Charges And Mortgages In Favour Of The Government, A Bank And A Co-Operative Society
9. Registration Of Charge And Mortgage In Favour Of Banks
10. Noting Of Charge Or Mortgage Created In Favour Of A Bank, In The Record-Of-Rights
- 1 1 . Restrictions On Creation Of Tenancy By An Agriculturist Borrower
12. Removal Of Bar To Attachment And Sale By Process Of Court
13. Recovery Of Dues Of A Bank Through A Prescribed Authority
- 1 4 . Right Of A Bank To Acquire And Dispose Of Immovable Property
15. Exemption To Banks From Restrictions On Acquisition Of Land In Excess Of Ceiling
16. Bank Eligible To Become Member Of A Co-Operative Society
17. Power Of Co-Operative Societies To Borrow From Banks
18. Inspection Of Books Of A Co-Operative Society By A Bank
19. Disputes Between A Bank And A Co-Operative Society
20. Settlement Of Disputes
21. Procedure For Hearing Of Disputes
22. Decision Of Registrar Or His Nominee Or Board Of Nominees
23. Recovery Of Money Awarded
24. Powers Of A Bank To Proceed Against Defaulting Members Of A Co-Operative Society
- 2 5 . Audit, Inspection And Inquiry Reports Of Societies To Be Available To Banks
26. Exemption From Legislations Relating To Money Lending And
27. Mortgages Executed By Managers Of Joint Hindu Families
28. Modified Application Of Section 8 Of Act No. Xxxii Of 1956

29. Power Of State Government To Make Rules

Himachal Pradesh Agricultural Credit Operations And Miscellaneous Provisions (Banks) Act, 1972

7 of 1973

[18 April 1973]

An Act to make provisions to facilitate adequate flow of credit for agricultural production and development through banks and other institutional credit agencies and for matters connected therewith and/or incidental thereto. Be it enacted by the Legislative Assembly of Himachal Pradesh in the Twenty-third Year of Republic of India as follows:- 1. For Statement of objects and Reasons, see R.H.P. Extra, dated the 10th June, 1972, p. 525 and for Authoritative Hindi Text See R.H.P. Extra., dated 3-1-1987, P. 45.

1. Short Title, Extent And Commencement :-

(i) This Act may be called the Himachal Pradesh Agricultural Credit Operations and Miscellaneous Provisions (Banks) Act, 1972.

(ii) It shall extend to the whole of the State of Himachal Pradesh.

(iii) It shall come into force from such date¹ as the State Government may, by notification in the Official Gazette, appoint in this behalf and different dates may be appointed for different provisions of Act and for different areas of the State.

1. The Act enforced in the whole of Himachal Pradesh w.e.f. the 15th September, 1973, vide Not. No. 8-29/71-Fin, (W & M), dated the 31st August, 1973, published in R.H.P., dated 8-9-1973, P. 1338.

2. Definitions :-

In this Act, unless the context otherwise require,-

(a) "agriculture" and "agriculture purpose" shall include making land fit for cultivation, cultivation of land, improvement of land including development of sources of irrigation, raising and harvesting of crops, horticulture, forestry, planting and farming and cattle breeding, animal husbandry, dairy farming, seed farming, pisciculture, apiculture, sericulture, piggery, poultry farming and such other activities as are generally carried on by agriculturists, dairy farmer, cattle breeders, poultry farmers and other categories of persons engaged in similar activities including marketing of agricultural products, their storage and transport and the

acquisition of implements and machinery in connection with any such activity;

(b) "agriculturist" means a person who is engaged in agriculture;

(c) "Agro-Industries Corporation" means a company or other body corporate, one of the principal objectives of which is to undertake activities connected with or intended for the development of agriculture and not less than fifty-one per cent of the paid-up share capital of which is held by the Central Government or by any State Government or Government or partly by the Central Government and partly by one or more state Government;

(d) "bank" means,-

(i) a banking company as defined in the Banking Regulation Act, 1949 (10 of 1949);

(ii) the State Bank of India constituted under the State Bank of India Act, 1955 (23 of 1955);

(iii) a subsidiary bank as defined in the State Bank of (Subsidiary Banks), Act 1959 (38 of 1959);

(iv) a corresponding new bank constituted under the Banking companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970);

(v) any banking institution notified by the central Government under section 51 of the banking Regulation Act, 1949 (10 of 1949);

(vi) the agricultural refinance Corporation constituted under the Agricultural Refinance Corporation Act, 1963 (10 of 1963);

(vii) the Agro-Industries Corporation as defined in sub-section (c);

(viii) the Agricultural Finance Corporation Limited, a company in incorporated under the Company Act, 1956 (1 of 1956);

(ix) any other financial institution¹ notified by the State Government in the Official Gazette as a bank for the purpose of this Act;

(e) "co-operative society" means a co-operative society registered or deemed to be registered under the Himachal Pradesh Co-operative Societies Act, 1968 (3 of 1969) the object of which is to provide financial assistance as defined in clause (f) of this section to its members and includes a co-operative land mortgage/development bank; and

(f) "financial assistance" for the purpose of this Act means assistance granted by way of loans, advances, guarantee or otherwise for agricultural purpose.

1. For such institutions see Not. No. 9-29/71-Fin. (W & M), dated the 15th Jan. 1975, 8-2/71-Fin. (W&M) dated 24th July, 1976 and 8-29-71 Fin. (W&M) dated 29th January, 1979. appended.

3. Removal Of Restrictions On Alienation :-

Notwithstanding anything contained in any law for the time being in force or any custom or tradition, it shall be lawful for an agriculturist, whose rights of alienation of land or of any interest therein are restricted, to alienate the land or his interest therein, including by creation of a charge or mortgage on such land or interest in favour of a bank for the purpose of obtaining financial assistance from that bank.

4. State Government May By Notification Vest Agriculturists Not Having Alienable Rights With Such Rights :-

Notwithstanding anything contained in any law for the time being in force, the state Government may, by notification¹ in the Official Gazette, vest any class or classes of agriculturists not having rights of alienation in land or any interest therein including

- (i) persons belonging to scheduled tribes covered by the Himachal Pradesh Transfer of Land (Regulation) Act, 1969 (15 of 1969),
- (ii) tenants other than occupancy tenants,
- (iii) occupancy tenants of the areas falling within Himachal Pradesh prior to 1st November, 1966,
- (iv) lessees of the State Government who are agriculturists, with rights of alienation including the right to create a charge or mortgage on such land or interest in favour of a bank for the purpose of obtaining financial assistance from that bank without any restrictions, or subject to such restrictions as may be specified in the notification.

1. See Not. No. 8-29/71 Fin. (W & M), dated the 5th June, 1973 (Appended).

5. Charge On Crop And Other Movable Property In Favour Of Bank :-

(1) It shall be lawful for an agriculturist to create a charge on the movable property owned by him or on the crops raised by him, standing or otherwise, or other produce from land cultivated by him, to the extent of his interest therein, in favour of a bank, to secure financial assistance from that bank, notwithstanding that he may not be owner of the land on and from which the crop is raised.

(2) Notwithstanding anything to the contrary in the Himachal Pradesh Co-operative Societies Act, 1968 (3 of 1969) or any other law for the time being in force, no charge in respect of financial

assistance extended by a co-operative society to an agriculturist shall have priority over a charge on the crops raised by him, standing or otherwise, or any other movable property in respect of any financial assistance given to him by a bank provided the financial assistance made by the bank is prior in point of time to that of the financial assistance extended by the co-operative society.

(3) A bank may, distrain and sell through an official of the State Government, designated¹ in this behalf by the State Government, the crop or other produce or other movable charged to that bank to the extent of the agriculturists interest therein and appropriate the proceeds of such sale towards all moneys due to the bank from that agriculturists.

1. See Not. No. 8-29/71 Fin. (W & M) dated 31st March, 1979 and Fin. 1 F (F) 1-26/83 dated 11th April, 1985 (Appended).

6. Creation Of Charge On Land In Favour Of A Bank By Declaration :-

(1) Where an agriculturist creates a charge on land, or any other immovable property which he owns or in which he has an interest in respect of any financial assistance given to him by a bank, he may make a declaration on the lines of the form set out in the schedule hereto or as near thereto as circumstances permit, declaring that thereby he creates, in favour of the bank, a charge on such land or his interest therein or other immovable property as the case may be, to secure the financial assistance given to him by the bank.

(2) A declaration made under sub-section (1) may be varied from time to time by the agriculturist with the consent of the bank in whose favour the declaration has been made. Such variation shall take effect from such date on which the variation, if it had been original declaration, would have effect under section 9.

7. Removal Of Disability In Creation Of Charges And Mortgages :-

Notwithstanding anything to the contrary contained in the Himachal Pradesh Co-operative Societies Act, 1968 (3 of 1969) or any other law for the time being in force and notwithstanding that any land or interest therein stands already charged or mortgaged to a co-operative society, it shall be lawful for an agriculturist to create a charge or mortgage on such land or interest therein in favour of a

back as security for any financial assistance given to the agriculturist by that bank.

8. Priority Of Charges And Mortgages In Favour Of The Government, A Bank And A Co-Operative Society :-

(1) Notwithstanding anything to the contrary in any law for the time being in force but subject to any prior claim of the Government in respect of land revenue,-

(a) no charge or mortgage created on any land or interest therein, after the commencement of this Act, in favour of the Government or a co-operative society shall have priority over a charge or mortgage on such land or interest created by an agriculturist in favour of a bank as security for financial assistance given to the agriculturist by the bank after the commencement of this Act and prior to the charge or mortgage in favour of the Government or the co-operative society; and

(b) any charge or mortgage created on any land or interest therein in favour of a bank in respect of financial assistance given to an agriculturist by that bank shall have priority over any other charge or mortgage that may have been created over such land or interest in favour of any person other than the Government, a co-operative society or any other bank, prior to the date on which the charge or mortgage was created in favour of the bank.

(2) Where different charges or mortgages over the same land or interest therein have been created by an agriculturist in favour of the Government, a co-operative society or a bank or more than one bank, any such charge or mortgage created as security for financial assistance given by the Government, co-operative society or the bank or banks by way of term loan for development purposes shall have priority over the other charges or mortgages created in favour of the Government, co-operative society or any of the banks, provided prior notice of any such financial assistance by way of term loan for development purpose had been given to such Government, co-operative society or bank and such Government, co-operative society or bank has concurred in such financial assistance and where more than one such charge or mortgage is as security for financial assistance given by way of term loan, the charges or mortgages by way of security for term loan for development purposes will rank for priority in accordance with the dates of their creation.

Explanation.-For the purpose of this section "term loan for

development purposes" shall mean financial assistance which would generally lead to improvement of agriculture and/or building up of assets in agriculture but shall not include financial assistance for meeting working capital, expenses/seasonal agricultural operations and marketing of crops.

(3) Nothing in this section shall apply to borrowings only from one or more co-operative societies including land mortgage banks.

9. Registration Of Charge And Mortgage In Favour Of Banks :-

(1) Notwithstanding anything contained in the Indian Registration Act, 1908 (16 of 1908), a charge in respect of which a declaration has been made under sub-section (1) of section 6 or in respect of which a variation has been made under sub-section (2) of that section or a mortgage executed by an agriculturist in favour of a bank in respect of financial assistance given by that bank, shall be deemed to have been duly registered in accordance with the provisions of that Act with effect from the date of such charge, variation or mortgage as the case may be, provided that the bank sends to the Sub-Registrar within the local limits of whose jurisdiction the whole or any part of the property charged or mortgaged is situate, within the time stipulated by the State Government for this purpose, by a registered post acknowledgement due, a copy of the document creating such charge, variation or mortgage duly certified to be a true copy by an employee of the bank authorised to sign on its behalf.

(2) The Sub-Registrar receiving the declaration in respect of a charge or variation or a mortgage referred to in sub-section (1) shall, as immediately as practicable on receipt thereof, record in a register to be maintained in this behalf, the fact of the receipt of such declaration, variation or mortgage for registration.

10. Noting Of Charge Or Mortgage Created In Favour Of A Bank, In The Record-Of-Rights :-

Whenever a charge or a mortgage on land or interest therein is created in favour of a bank by an agriculturist, the bank may give intimation to the Tehsildar or such other revenue official as may be designated in this behalf by the State Government of the particulars of the charge or mortgage in its favour. The Tehsildar or the other revenue official shall make a note of the particulars of charge or mortgage in the record-of rights relating to the land over

which the charge or mortgage has been created.

11. Restrictions On Creation Of Tenancy By An Agriculturist Borrower :-

(1) Notwithstanding anything contained in any law for the time being in force, an agriculturist who has availed himself of financial assistance from a bank by creating a charge or mortgage on land or interest therein, shall not, so long as the financial assistance continues to be outstanding, lease or create any tenancy rights on such land or interest therein without prior permission in writing of the bank if he has not already leased or created tenancy right thereon at the time of availing of the financial assistance from the bank.

(2) Any lease granted or tenancy rights created in contravention of this section shall be void.

12. Removal Of Bar To Attachment And Sale By Process Of Court :-

Nothing in any law shall prevent in any manner a bank from causing any land or any interest therein charged or mortgaged to it by an agriculturist to secure any financial assistance, to be attached and sold through a civil court and applying the proceeds of such sale towards all money due to it from that agriculturist including the costs and expenses as may be awarded by the court.

13. Recovery Of Dues Of A Bank Through A Prescribed Authority :-

(1) an official of the State Government notified by the State Government as the prescribed authority¹ for the purpose of this section may on the application of a bank, make an order on any agriculturist or his heir or legal representative, directing the payment of any sum due to the bank on account of financial assistance availed of by the agriculturist, by the sale of any land or any interest therein upon which the payment of such money is charged or mortgaged:

Provided that no order shall be made by the prescribed authority under this section for the sale of any land or any interest therein or any other movable- able property upon which the payment of money is charged or mortgaged unless the agriculturist or the heir or legal representative of the agriculturist as the case may be, has

been served with a notice by the prescribed authority, calling upon him to pay the amounts due.

(2) Every order passed by the prescribed authority in terms of sub-section (1) shall be deemed to be a decree of a civil court and shall be executed in the same manner as a decree of such court.

(3) Nothing in this section shall debar a bank from seeking to enforce its rights in any other manner open to it under any other law for the time being in force.

1. See Not. Nos. 8-29/71-Fin (W&M) dated 31st March, 1979 and Fin-I F (F) 1-26/83 dated 11th April, 1985 (Appended).

14. Right Of A Bank To Acquire And Dispose Of Immovable Property :-

(1) Notwithstanding anything contained in any law for the time being in force, a bank shall have power to itself acquire agricultural land or interest therein or any other immovable property which had been charged or mortgaged to it by an agriculturist in respect of any financial assistance availed of by him, provided the said land or interests therein or any other immovable property has been sought to be sold by public auction and no person has offered to purchase it for a price which is sufficient to pay to the bank the moneys due to it.

(2) A bank which acquires land or interest therein or any other immovable property in exercise of the power vested in it under sub-section (1) shall dispose it of by sale, within a period to be specified by the State Government in this behalf.

(3) If the bank has to lease out any land acquired by it under sub-section (1), pending sale thereof as indicated in sub-section (2), the period of lease shall not exceed one year at a time and the lessee shall not acquire any interest in that property notwithstanding any provisions to the contrary contained in any other law for the time being in force.

(4) A sale by a bank of land or interest therein in terms of this section shall be subject to any provisions of any law in force which may place restrictions on purchase of land by non-agriculturists or ceiling for acquisition of land or by a person not belonging to a particular tribe or scheduled caste or fragmentation of land.

15. Exemption To Banks From Restrictions On Acquisition Of Land In Excess Of Ceiling :-

Nothing in any law for the time being in force placing a ceiling or

limit on the holding of land shall apply to a bank acquiring a land in terms of section 14 and holding such land till such time the bank is in a position to sell the land in the manner provided in section 14 or otherwise, at a price which is adequate to cover its dues.

16. Bank Eligible To Become Member Of A Co-Operative Society :-

Notwithstanding anything contained in the Himachal Pradesh Co-operative Societies Act, 1968 (3 of 1969), or any law for the time being in force, it shall be lawfull for a bank to become a member of a co-operative society.

17. Power Of Co-Operative Societies To Borrow From Banks :-

Notwithstanding anything contained in the Himachal Pradesh Co-operative Societies Act, 1968 (3 of 1969), it shall be lawful for any co-operative society to borrow from a bank.

18. Inspection Of Books Of A Co-Operative Society By A Bank :-

(1) A bank shall have the right to inspect the books of any co-operative society which has either applied to the bank for financial assistance or is indebted to the bank on account of financial assistance granted earlier.

(2) The inspection may be carried out by an officer or any other member of the paid staff of the bank with the previous sanction in writing of the Registrar of Cop-operative Societies.

(3) The officer or any other member of the paid staff of the bank undertaking such inspection, shall, at all reasonable times, have access to the books of accounts, documents, securities, cash and other properties belonging to or in the custody of the co-operative society inspected by him, and shall also be supplied by such society such information, statements and returns as may be required by him to assess financial condition of the society and the safety of financial assistance to be made to the society or already made to it.

19. Disputes Between A Bank And A Co-Operative Society :-

(1) Notwithstanding anything contained in any other law for the time being in force, any dispute touching the constitution, management or the business of a co-operative society between a

bank financing or co-operative society and the co-operative so society so financed other than disputes regarding the disciplinary action taken by the society or its committee against a paid employee of the society, shall be referred by either of the parties to the dispute to the Registrar of Co-operative Societies for decision.

(2) Where any question arises whether, for purposes of the foregoing sub-section, a matter referred to for decision is a dispute or not, the question shall be decided by the Registrar of Co-operative Societies whose decision shall be final.

20. Settlement Of Disputes :-

(1) If the Registrar is satisfied that any matter referred to him or brought to his notice is a dispute within the meaning of section 19, the Registrar shall decide the dispute himself or refer it for disposal to a nominee or a board of nominees appointed by him.

(2) Where any dispute is referred under the foregoing sub-section for decision to the Registrars nominee or board of nominees, the Registrar may at any time, for reasons to be recorded in writing, withdraw such dispute from his nominee or board of nominees and may decide the dispute himself or refer it again for decision to any other nominees appointed by him.

(3) Notwithstanding anything contained in section 19, the Registrar may, if he thinks fit, suspend proceedings in regard to any dispute if the question at issue between a co-operative society and a bank is one involving complicated questions of law and fact, until the question has been tried by a regular suit instituted by one of the parties to the dispute. If any such suit is not instituted within two months from the Registrars order suspending proceedings, the Registrar shall take action as is provided in sub- section (1).

21. Procedure For Hearing Of Disputes :-

The Registrar or his nominee or board of nominees hearing a dispute under the last preceding section shall hear the dispute in the manner that may be prescribed by the Registrar in this behalf.

22. Decision Of Registrar Or His Nominee Or Board Of Nominees :-

When the dispute is referred for decision, the Registrar or his nominee or the board of nominees may, after giving a reasonable opportunity to the parties to the dispute to be heard, make an

award on the dispute, on the expenses incurred by the parties to the dispute in connection with the proceedings and fees, expenses payable to the Registrar or his nominee or, as the case may be, to the board of nominees. Such an award shall not be invalid merely on the ground that it was made after the expiry of the period fixed for deciding the dispute by the Registrar and shall, subject to appeal or review or revision by the co-operative tribunal of the State, be binding on the parties to the dispute.

23. Recovery Of Money Awarded :-

Every award given by the Registrar or the Registrars nominee or the board of nominees under section 22, shall, if not carried out, on a certificate signed by the Registrar, be deemed to be a decree of a civil court and shall be executed in the same manner as a decree of such court.

24. Powers Of A Bank To Proceed Against Defaulting Members Of A Co-Operative Society :-

(1) If a co-operative society is unable to pay its debts to a bank from which it has borrowed, by reason of its members defaulting in the payment of the moneys due by them, the bank may direct the committee of such society to proceed against such members by taking action under the Himachal Pradesh Co-operative Societies Act, 1968 (3 of 1969).

(2) If the committee of the co-operative society fails to proceed against its defaulting members within a period of ninety days from the date of receipt of such direction from the bank, the bank itself may proceed against such defaulting members in which event, the provisions of the Himachal Pradesh Co-operative Societies Act 1968 (3 of 1969), the rules and the bye-laws made thereunder shall apply as if all references to the society or its committee in the said provisions, rules and bye-laws were references to the bank.

(3) Where a bank has obtained a decree or award against a co-operative society indebted to it, the bank may proceed to recover such money firstly from the assets of the co-operative society and secondly from the members of the co-operative society to the extent of their debts due to the society.

25. Audit, Inspection And Inquiry Reports Of Societies To Be Available To Banks :-

The Registrar of Co-operative Societies shall draw the attention of the bank financing a co-operative society to the defects noticed in every audit, inquiry or inspection of such society conducted as per provisions of the Himachal Pradesh Co-operative Societies Act, 1968 (3 of 1969), and shall also supply a copy each of such audit, inquiry or inspection report if demanded, in writing by the bank.

26. Exemption From Legislations Relating To Money Lending And :-

Culturists debt relief.-Nothing in any law for the time being in force dealing with money lending or agriculturists debt relief shall apply to financial assistance availed of by an agriculturist from a bank.

27. Mortgages Executed By Managers Of Joint Hindu Families :-

(1) Notwithstanding anything contained in any law for the time being in force, mortgages executed after the commencement of this Act by the manager of a joint Hindu family in favour of a bank for securing financial assistance for an agricultural purpose shall be binding on every member of such joint Hindu family.

(2) Where a mortgage executed in favour of a bank is called in question on the ground that it was executed by the manager of a joint Hindu family for a purpose not binding on the members (whether such members have attained majority or not) thereof, the burden of proving the same shall lie on the party alleging it.

28. Modified Application Of Section 8 Of Act No. Xxxii Of 1956 :-

Section 8 of the Hindu Minority and Guardianship Act 1956 (32 of 1956), shall apply to mortgages in favour of a bank subject to the modification that reference to the court therein shall be construed as reference to the Collector or his nominee and the appeal against the order of the Collector or his nominee shall lie to the Commissioner.

29. Power Of State Government To Make Rules :-

(1) The State Government may make rules¹ to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of this Act and all such rules shall be published in the Official Gazette.

(2) The rules framed under sub-section (1) shall be subject to previous publication.

(3) Every rule made under this section shall be laid, as soon as may be after it is made, before the Himachal Pradesh Legislative Assembly while it is in session and if, before the expiry of the session in which it is so laid or the session immediately following, the House makes any modification in the rule or decides that the rule should not be made, rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

1. Rules made vide Not. 8-29/71-Fin (W&M) dated the 31st July, 1975 (Appended).