

**Himachal Pradesh Co-Operative (Agriculture And Rural)
Development Banks Act, 1979**

23 of 1979

[25 September 1979]

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Himachal Pradesh Co-Operative (Agriculture And Rural) Development Banks Act, 1979

23 of 1979

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PREAMBLE

An Act to supplement the provisions of the Himachal Pradesh Co-operative Societies Act, 1968 (Act No. 3 of 1969) in order to facilitate the working of the Co-operative²[Agriculture and Rural] Development Banks in the State of Himachal Pradesh with a view to providing for the grant of long term loans to owners of land or other immovable property to carry out agricultural improvements to acquire land for the formation of economic holdings and other like purposes to enable them to discharge their debts and thereby to promote thrift and self help among them.

Amended, repealed or otherwise effected:-

Act No. 16 of 1987³ assented to by the President on 22-7-1987 and published in R.H.P. Extra., dated 28-7-1987 at pages 1255-1267 effective w.e.f 16-11-1987. vide Notification No. 7-41/748-IV dated 12-11-1987 published in R.H.P. Extra dated 17-12-1987 p. 2469-2470.

BE it enacted by the Legislative Assembly of Himachal Pradesh in the Thirtieth Year of the Republic of India as follows:-

1. For statement of Objects and Reasons see R.H.P. Extra, dated 30-4-1979, p, 1609.

2 Substituted. for the works "Co-operative Land Development Banks" vide ibid.

3 For statement of Objects and Reasons see R.H.P. Extra, dated 16-5-1987, p, 815.

CHAPTER 1 PRELIMINARY

1. Short title, extent and commencement :-

(1) This Act may be called the Himachal Pradesh Co-operative¹ [Agriculture and Rural] Development Banks Act, 1979.

(2) It extends to whole of the State of Himachal Pradesh.

(3) It shall come into force on such date² as the State Government may, by notification in the Official Gazette, appoint.

1 The word "Land" subs vide Act No. 16 of 1987 effective w.e.f. 16-11-87.

2 The Act came in to force w.e.f. 15-11-1979 vide Not. No. 7-41/79-II Co-op(s)-II dated 14-11-1979 published in R.H.P. Extra dated 19-11-1979 p 2511.

2. Definitions :-

In this Act, unless the context otherwise requires,-

(a) "Board" means the Board of Directors of the State Bank;

²[(aa) "Gehan" means a special charge on movable or immovable property, in favour of the Agriculture and Rural Development Bank or a Primary Agriculture and Rural Development Bank by a mere declaration in writing by the borrowers for securing the payment of money advanced, or to be advanced, by way of loan, which will have all the characteristics of a valid mortgage;]

(b) "land" shall have the meaning assigned to it in clause (7) of section 2 of the Himachal Pradesh Tenancy and Land Reforms Act,

1972 (8 of 1974);

(c) ¹["Agricultural and Rural] Development Bank" means a ¹ [Primary Agriculture and Rural Development Bank] or State Bank registered or deemed to be registered under the Himachal Pradesh Co-operative Societies Act, 1968 (3 of 1969);

(d) ¹ ["Agriculture and Rural Development Bank" means a ¹ [Co-operative Agricultural and Rural Development Bank] registered under the Himachal Pradesh Co-operative Societies Act, 1968 (3 of 1969) and affiliated as a member of the State Bank;

¹[(dd) "mortgage" means a security by way of mortgage for the payment of any definite and certain sum of money advanced or lent at the time, or previously due or owing, or forborne to be paid, being payable or for the repayment of money to be thereafter lent, advanced or paid, or which may become due upon on a current account, together with any sum already advanced or due, or without, as the case may be, and includes any charge or lien on any property for securing money or moneys worth; and]

(e) "Official Gazette" means the Rajpatra, Himachal Pradesh;

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

(g) "Registrar" means the person appointed by the State Government to be the Registrar of Co-operative Societies for the State of Himachal Pradesh or any person appointed by the State Government to assist the Registrar under section 3 of the Himachal Pradesh Co-operative Societies Act, 1968 (3 of 1969);

(h) "State Government" means the Government of Himachal Pradesh;

(i) "State Bank" means the Himachal Pradesh ³[State Co-operative

Agriculture and Rural Development Bank Ltd.], established for the purposes of this Act;

(j) "State" means the State of Himachal Pradesh;

(k) "trustee" means the trustee referred to in section 5(i) of this Act;

(l) "Collector" means the Collector of the District or such other officer not below the rank of the Assistant Collector 1st Grade as may be specially empowered by the State Government to discharge the functions of a Collector for the purposes of this Act;

(m) "Commissioner" means the Financial Commissioner of Himachal Pradesh for the time being and includes any other officer specially empowered by the State Government to exercise the powers of the Commissioner under this Act; and

(n) "joint Hindu family" consists of all persons lineally descended from the same common ancestor, and their wives and unmarried daughters.

1 The word "Land" subs vide Act No. 16 of 1987 effective w.e.f. 16-11-87.

2. Clause "(aa)" and "(dd)" added and for the words "Land Development Bank" and "Primary Land Development Bank" the words "Agriculture and Rural Development Bank" and "Primary Agriculture and Rural Development Bank" subs. vide Act No. 16 of 1987, w.e.f. 16-11-87.

3 Substituted. for the words "Co-operative Land Development Bank Ltd." vide Act No. 16 of 1987 w.e.f. 16-11-87.

CHAPTER 2 BANKS AND LOANS

3. Purposes for which loans may be issued :-

The ¹[Agriculture and Rural Development Banks] shall advance

loans, other than short-term loans only for the purpose hereinafter enumerated as purposes for which loans may be advanced, that is to say :-

(i) land improvement and productive purposes;

(ii) the erection, re-erection or repairing of houses for agricultural purposes;

(iii) the purchase of or acquisition of title to agricultural land by tenants under any law for the time being in force in any part of the State;

(iv) the liquidation of debts under any Act for the time being in force in any part of the State.

Explanation 1.-For the purposes of this section, short-term loan means a loan for a duration of less than 18 months.

Explanation 2.-Land improvement and productive purposes mean any work, construction or activity which adds to the productivity of the land and, in particular, include the following, that is to say :-

(a) construction and repair of wells (including tubewells), tanks and other works for the storage, supply or distribution of water for the purpose of agriculture, or for the use of men and cattle employed in agriculture;

(b) renewal or reconstruction of any of the foregoing works, or alterations therein, or additions thereto;

(c) preparation of land for irrigation;

(d) drainage, reclamation from rivers or other waters, or protection from floods or from erosion or other damage by water of land used

for agricultural purposes or waste land which is culturable;

(e) building and similar improvements;

(f) reclamation, clearance and enclosure or permanent improvement of land for agricultural purposes;

(g) horticulture;

(h) purchase of oil-engines and electrical motors for any of the purposes mentioned therein;

(i) purchase of tractors or other agricultural machinery and implements;

(j) increase of the productive capacity of land by addition to it of special variety of soil;

(k) construction of permanent farm houses, cattle sheds and sheds for processing of agricultural produce at any stage;

(l) purchase of machinery for crushing sugarcane, manufacturing gur or khandsari or sugar and other like purposes;

(m) purchase of land under the Himachal Pradesh Holdings (Consolidation and Prevention of Fragmentation) Act, 1971 (20 of 1971);

(n) such other purposes as the Board may, from time to time with the approval of the Registrar, declare to be improvement or productive purpose for the purposes of this Act.

1 Substituted. for the words "Land Development Bank" vide ibid.

4. Institution of Agriculture and Rural Development Banks

:-

(1) There shall be a State Bank for the State of Himachal Pradesh, and as many ²[Primary Agriculture and Rural Development Banks] or branches as may be deemed necessary.

(2) A reference to Land Mortgage Bank in any law, or instrument, for the time being in force in the State shall, with effect from the commencement of this Act, be construed as a reference to a ¹[Agriculture and Rural Development Bank] within the meaning of this Act.

(3) With effect from the commencement of this Act, and until such time as the names of the Land Mortgage Banks and societies functioning in the State at the commencement of this Act are changed into [Agriculture and Rural Development Bank], all acts done by them or mortgages and other documents executed by them, or in their favour, and all suits and other proceedings filed by or against them shall be deemed to have been done, executed or filed, as the case may be, by or against them as [Agriculture and Rural Development Bank].

1 Substituted. for the words "Land Development Bank" vide Act No. 16 of 1987 w.e.f. 16-11-87.

2 Substituted. for the words "Primary Land Development Bank" vide ibid.

CHAPTER 3 TRUSTEES

5. Appointment of trustee :-

(i) The Registrar or any other person appointed by the State Government in this behalf shall be the trustee for the purpose of securing the fulfilment of the obligations of the State Bank to the holders of debentures issued by the Board.

(ii) The trustee shall be a corporation sole, by the name of the trustee for the debentures in respect of which he is appointed, and shall have perpetual succession and a common seal, and in his corporate name may sue and be sued.

6. Vesting of property in trustee :-

The ¹[gehan created or mortgage executed) and other assets deemed to have been transferred by the ²[Primary Agriculture and Rural Development Bank] to the State Bank under section 38 shall vest in the trustee, from the date of such transfer.

1 Substituted for the words "mortgages" vide Act No 16 of 1987 w.e.f. 16-11-87.

2 Substituted for the words "Primary Land Development Banks" vide ibid.

7. Debenture holders to have first charge on gehan, mortgages, hypothecations, etc. :-

The holders of the debentures shall have a floating charge on,-

(i) all such ¹[gehan, mortgages, hypothecations] and assets;

(ii) the amount paid under such [gehan, mortgages, hypothecations] and remaining in the hands of the State Bank or of the trustee; and

(iii) the other properties of the State Bank.

1 Substituted for the words "mortgages" vide ibid.

8. Powers and functions of the trustee :-

The powers and functions of the trustee shall be governed by the provisions of the Act and by the instrument of trust executed between the State Bank and the trustee, as modified from time to

time by mutual agreement between the State Bank and the trustee.

CHAPTER 4 DEBENTURES

9. Issue of debentures by the Board :-

(1) With the previous sanction of the trustee and of the State Government, the State Bank may issue debentures of one or more denominations for such periods as it may deem expedient on the security of the ¹[gehan or mortgages or hypothecation held or mortgages, charges or by hypothecation partly held or partly to be acquired] and other assets transferred or deemed under the provisions of section 38 to have been transferred by the [Primary Agriculture and Rural Development Banks] to the State Bank or on the security of all or any other assets and properties of the State Bank and also against the [Gehan or mortgages hypothecation] which are to be acquired or have been deemed to be acquired by the State Bank.

²[(2) Notwithstanding anything contained in sub-section (1), in respect of loans guaranteed by the Government and guaranteed to any person or to any body of persons, whether incorporated or not and whether or not established by or under any law for the time being in force if such a body is approved by the Government, the Board may, with the prior permission of the trustees, issue debentures, on the strength of such Government guarantee and without the security of gehan or mortgages or hypothecation and other assets, of one or more denominations, for such periods as it may deem expedient and subject to such conditions as the Government may think fit to impose].

1 Substituted for the words "mortgages" vide ibid.

2 Sub-section (2) subs. vide Act No. 16 of 1987 w.e.f. 16-11-87.

10. Redeemable period of debentures :-

Such debentures may contain a term fixing a period of not exceeding 30 years from the date of issue during which they shall be irredeemable, or reserving to the Board the right to call in any

time any of the debentures in advance of the date fixed for redemption, after giving, to the debenture-holder concerned, not less than three months notice in writing.

11. Maximum limit of debentures :-

The total amount due on debentures issued by the Board and outstanding at any time shall not exceed,-

(a) where debentures are issued against ¹[gehan, mortgages or hypothecation] held, the aggregate of,-

(i) the amounts due on the [gehan, mortgages or hypothecation];

(ii) the value of the properties and other assets transferred under section 38 by the ²[Primary Agriculture and Rural Development Banks] to the State Bank and subsisting at such time; and

(iii) the amounts paid under the [gehan, mortgages or hypothecation] aforesaid and the unsecured amounts remaining in the hands of the State Bank or the trustee;

(b) where the debentures are issued otherwise than on [gehan, mortgages or hypothecation] held, the total amount as calculated under clause (a) increased by such portion of the amount obtained on the debentures as is not covered by a [Gehan, mortgages or hypothecation].

1 Substituted. for the words "mortgages" vide ibid.

2 Substituted. for the words "Primary Land Development Banks" vide ibid.

11A. Power to borrow money by issue of bonds or by way of loans :-

¹[(1) Notwithstanding anything contained in the Himachal Pradesh Co-operative Societies Act, 1968 (3 of 1969) the Board may, with

the prior approval of the Government and subject to the regulations made under this Act, borrow money by issue of bonds:

Provided that the issue of the bonds shall be in conformity with such directions or instructions as may be issued by the Reserve Bank of India or the National Bank for Agriculture and Rural Development from time to time.

(2) The bonds shall be in the form of promissory notes and shall be repayable on the expiry of such period or periods from the date of issue thereof as may be approved by the Reserve Bank of India or the National Bank for Agriculture and Rural Development:

Provided that the Board may repay the amount due under the bonds at any time before the period or periods so fixed after issuing a notice in such manner as the Board may direct in that behalf to the holders of the bonds.

(3) Notwithstanding anything contained in the Himachal Pradesh Co-operative Societies Act, 1968 (3 of 1969), the Board may borrow money by way of loans from the Government,²[the National Bank for Agriculture and Rural Development, the Reserve Bank of India or such other financial institutions as may be approved by the trustee].

1 Section 11-A added vide ibid.

2. Section 12 subs. vide H.P. Act No, 16 of 1987 w.e.f. 16 11-87

12. Charge on movable or immovable property of the borrower for amounts borrowed :-

¹[(1) Notwithstanding anything contained in the Himachal Pradesh Co-operative Societies Act, 1968 (3 of 1969) or in any other law for the time being in force, any person owning any land or having interest in any land a tenant or occupier or owning any other movable or immovable property who applies to the Agriculture and

Rural Development Bank for a loan, shall make a declaration in the prescribed form creating a gehan or mortgage or hypothecation in favour of the Agriculture and Rural Development Bank on the land or other movable or immovable property or interest therein or any movable property or movable assets to be acquired with the loan, specified in the declaration, for the repayment of the loan or advance granted or to be granted to him by the Agriculture and Rural Development Bank, together with interest on such amount of the loan or advance and expressly reserving in favour of the Agriculture and Rural Development Bank a right of sale without intervention of court, in case of default.

(2) A declaration under sub-section (1) may be varied or cancelled at any time by the member with the prior approval of the Agriculture and Rural Development Bank.

(3) No land or other movable or immovable property or any movable property or movable assets to be acquired with the loan or advance in respect of which a declaration under sub-section (1) has been made and no part thereof or of the interest in such land or movable or immovable property shall, without the consent of the Agriculture and Rural Development Bank, be sold or otherwise transferred until the entire amount of the loan or advance taken by the member from the Agriculture and Rural Development Bank, together with interest thereon, has been paid to the bank, and any transaction made in contravention of this sub-section shall be null and void.

(4) Notwithstanding anything contained in the Registration Act, 1908 (16 of 1908) or any other law for the time being in force, it shall not be necessary to register any gehan or mortgage or hypothecation created or executed in favour of the Agriculture and Rural Development Bank; provided the Agriculture and Rural Development Bank sends, within such time and in such manner as may be prescribed, a copy of the declaration of instrument whereby the gehan or mortgage or hypothecation has been created or executed for the purpose of securing repayment of the loan, to the registering officer within the local limits of whose jurisdiction the whole or any part of the property to which the gehan or mortgage

or hypothecation relates is situated.

(5) On receipt of the copy of the declaration or instrument sent under sub-section (4), the registering officer shall file a copy or copies thereof, as the case may be, in Book No. 1, referred to in section 51 of the Registration Act, 1908 (16 of 1908) and thereupon, such gehan or mortgage or hypothecation shall be deemed to create an interest in the property to which the declaration or instrument relates and shall constitute notice to any one dealing with the said property.

(6) Any person who makes any false statement in a declaration under sub-section (1) shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both.]

1. Section 12 subs. vide H.P. Act No, 16 of 1987 w.e.f. 16 11-87

12A. Applicant for loan from the Agriculture and Rural Development Bank to furnish declaration :-

¹[(1) Every person who applies for a loan from the Agriculture and Rural Development Bank shall make a declaration in the prescribed form before an officer specified by the Registrar in this behalf that the movable or immovable property on which the gehan or mortgage or hypothecation is created as security for the loan is free from encumbrances, that he is in actual possession thereof and that he has the right to create the gehan or mortgage or hypothecation, as the case may be, thereon in favour of the Agriculture and Rural Development Bank.

(2) Notwithstanding anything contained in any law for the time being in force, where a declaration under sub-section (1) in respect of any movable or immovable property is false or defective, the Agriculture and Rural Development Bank shall, subject to the provisions of section 38, have a first charge on all other movable and immovable properties of the applicant, and all such properties shall be deemed to have been included in the gehan created or

mortgage or hypothecation executed by the applicant as security for the loan granted to him by the Agriculture and Rural Development Bank.

(3) Any person, who makes a false declaration under sub-section (1) or makes any statement which is false in any such declaration shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both.

(4) The amount of loan that may be sanctioned on the basis of a declaration made under sub-section (1) shall be subject to such limit as may be prescribed.]

1 Section. 12-A. added vide H. P. Act No. 16 of 1987 w.e.f. 16-11-1987.

13. Guarantee by State Government of principal and interest on debentures issued under section 9 :-

The principal of, and interest on, the debentures issued under section 9 ¹[or bonds issued or loans raised under section 11-A to such a maximum amount as may be fixed by the Government from time to time] shall carry the guarantee of State Government subject to such conditions as it may deem fit to impose.

1 Added vide H.P. Act No. 16 of 1987 w.e.f. 16-11-87.

14. Power of Board to make regulations :-

The Board may, subject to the approval of the trustee and of the State Government, make regulations not inconsistent with the provisions of this Chapter :-

(i) for fixing the period of debentures and the rate of interest payable thereon;

(ii) for calling in debentures after giving notice to debenture-holders;

(iii) for the issue of new debentures in place of debentures damaged or destroyed;

(iv) for converting one class of debentures into another bearing a different rate of interest; and

(v) generally for carrying out the provisions of this Chapter.

14A. Security for loans :-

¹[(1) Subject to the provisions of this Act, the Agriculture and Rural Development Bank and the Primary Agriculture and Rural Development Bank may advance loans to individuals and institutions on the security of lands and other fixed assets or of assets acquired by the loans borrowed which have been hypothecated to the Agriculture and Rural Development Bank, as or the Primary Agriculture Rural Development Bank as the case may be, on the basis of principles of valuation approved by the Registrar :

Provided that the Agriculture and Rural Development Bank and the Primary Agriculture and Rural Development Bank may, for such purposes and for such periods as may be specified by the Government by special or general order, advance loans without such security of land but on the specific guarantee of the Government for the repayment of the principal and payment of interest thereon:

Provided further that the Agriculture and Rural Development Bank and the Primary Agriculture and Rural Development Bank may, with the previous approval of the Registrar and subject to such restrictions and limitations as may be prescribed, advance loans for such purposes and for such periods as may be determined by the Board.

(2) Notwithstanding anything contained in any other law for the time being in force, the Agriculture and Rural Development Bank or a Primary Agriculture and Rural Development Bank may, under any land development scheme prepared and approved under the provisions of the Himachal Pradesh Land Development Act, 1973 (14 of 1973) or under this Act, grant or advance loans to any person or a group of persons with or without security of land for carrying out the work specified in the scheme, subject to such terms and conditions as are agreed upon between the Government and the Agriculture and Rural Development Bank or the Primary Agriculture and Rural Development Bank, as the case may be.

(3) All loans and advances granted and all amounts payable to, or recoverable by, the Agriculture and Rural Development Bank or the Primary Agriculture and Rural Development Bank shall, in case of default of payment, in addition to other remedies available to the Banks, be recoverable in the same manner as if they are arrears of public revenue due on land.

(4) All loans and advances granted by the Agriculture and Rural Development Bank under this section shall be granted in conformity with the directions or instructions as may be issued by the National Bank for Agriculture and Rural Development established under section 3 of the National Bank for Agriculture and Rural Development Act, 1981 (64 of 1981).

1. Sections 14-A, 14-B, 14-C added vide *ibid*.

14B. Money borrowed for development of land :-

Where the Agriculture and Rural Development Bank has granted a loan for improvement of any land situated in any area or areas covered by any specific programme of agricultural development, to a person appearing to the Agriculture and Rural Development Bank to have title to the said land or to be in lawful possession thereof, and the money has been either in whole or in part utilised for such improvement, any person acquiring title to such land on ground of superior title or on any other ground shall be liable to repay to the Agriculture and Rural Development Bank so much of the loan as

has been utilised for the improvement of the land together with interest thereon.

14C. Loans to persons having restricted rights of transfer :-

(1) Notwithstanding anything contained in any law, custom or usage, where the Agriculture and Rural Development Bank makes a loan or an advance to a member belonging to a Scheduled Caste or Scheduled Tribe or to any person having restricted rights of alienation over immovable property, it shall be competent to such member or person to create a gehan or mortgage or hypothecation on such property in favour of such Agriculture and Rural Development Bank as security for such loan.

(2) The Agriculture and Rural Development Bank shall, in the event of default by the member or person and without prejudice to any other remedy available to it either under a law or contract or otherwise, be entitled to take possession of such property and lease the same to any person belonging to the same caste or tribe as the member belongs in case the defaulter is a member of a Scheduled Caste or Scheduled Tribe and in any other case to any person and appropriate the net receipts from the lease in repayment of the moneys due to it; and the member or person shall not be entitled to recover possession of such property until the amount due to the Agriculture and Rural Development Bank has been repaid in full.

CHAPTER 5 GRANT OF LOANS-MODE THEREOF

15. Mode of dealing with applications for loan :-

(1) When an application for loan is made for any of the purposes mentioned in section 3, a public notice shall be given of the application in such a manner, as may be, prescribed calling upon all persons interested to present their objections, if any, in person, at a time and place fixed therein. The State Government may, from time to time, prescribe the officer by whom such public notice shall be given and the manner in which the objections shall be heard and disposed of.

(2) The prescribed officer shall consider every objection submitted under sub-section (1) and make an order in writing either upholding or over ruling it :

Provided that when the question raised by an objection is in the opinion of the officer, one of such a nature that it cannot satisfactorily be decided except by a civil court he shall postpone the proceedings on the application until the question has been so decided.

(3) A notice under sub-section (1), published in the manner prescribed, shall, for the purpose of this Act, be deemed to be proper notice to all persons having or claiming interest in the land to be improved, redeemed, purchased or offered as security for the loans under this Act.

(4) If any person interested, fails to appear to present his objections as required under sub-section (1), the questions at issue will be decided in his absence and such person will have no claim whatsoever against the property for which the loan applied for will be sanctioned till such time as the loan together with interest thereon or any other dues arising out of the loan are paid in full by the loanee.

(5) Notwithstanding anything contained in any other law for the time being in force in the State, a¹[Agriculture and Rural Development Bank] shall have the right to obtain free of charge copies of Farad, Jamabandi, Khasra Girdawari, 5 years sales statistics and encumbrance certificate under section 57, prescribed in Appendix "I" of Article-II of the Indian Registration Act, 1908 (16 of 1908) on the lines to be specified by the Registrar. These copies shall, as far as possible, be supplied by the concerned officers of the Revenue Department within 15 days from the date of request by the \1\[Agriculture Rural and Development Bank.]

1. Substituted for the words "Land Development Bank" vide H. P. Act No. 16 of 1986 w.e.f. 16-11-1987.

16. Order granting loan conclusive of certain matters :-

A written order by the ¹[Agriculture and Rural Development Bank], or committees authorised under the bye-laws of the Bank to make loans for all or any of the purposes specified in section 3, granting, either before or after the commencement of this Act, a loan to or with the consent of a person mentioned therein, for the purpose of carrying out the work specified therein for the benefit of the land or for the productive purposes specified therein, shall for the purposes of this Act be conclusive of the following matters, that is to say :-

(a) that the work described or the purpose for which the loan is granted, is an improvement or productive purpose, as the case may be, within the meaning of section 3;

(b) that the person had at the date of the order a right to make such an improvement, or to incur expenditure for productive purpose, as the case may be; and

(c) that the improvement is one benefiting the land specified and productive purposes concerns the land offered in security, or any part thereof as may be relevant.

1 Substituted for the words "Land Development Bank" vide Act No. 16 of 1987 w.e.f. 16-11-1987.

17. The Agriculture and Rural Development Bank to have prior charge on land :-

¹[1] Notwithstanding anything contained in any law for the time being in force in the State, where a ²[gehan created or mortgage or hypothecation executed] in favour of [Agriculture and Rural Development Bank] is in respect of land in which a tenant purchaser or tenant has an interest, the [gehan created or mortgage or hypothecation executed] may be against, the security of such interest, and the rights of the ³[Agriculture and Rural Development Bank] shall not be affected by the failure of the tenant purchaser or tenant to comply with the requirements of such law and the sale of the land and his interest therein under such law

shall be subject to the prior charge of the [Agriculture and Rural Development Bank].

[(2) Notwithstanding anything contained in any law for the time being in force, a gehan created or mortgage or hypothecation executed in favour of the Agriculture and Rural Development Bank or a Primary Agriculture and Rural Development Bank shall take precedence over any attachment or equitable mortgage over the properties where, after publication of a notice in the prescribed form, the claim or interest under such attachment or equitable mortgage has not been notified to such bank within the time prescribed in the said notice.].

1 Section 17 remembered on 17(1) and new Sub-section (2) added vide ibid.

2 Substituted for "mortgage vide ibid.

3 Substituted for "mortgage vide ibid.

18. Omitted :-

¹[x x x x x x x x]

1 Section 18 omitted vide ibid.

19. Section 8 of Act XXXII of 1956 to apply to mortgages to [Agriculture and Rural Development Bank] subject to modifications :-

Section 8 of the Hindu Minority and Guardianship Act, 1956 (32 of 1956) shall apply to ¹[gehan, mortgage or hypothecation] in favour of the [Agriculture and Rural Development Bank] subject to modifications that reference to the court therein shall be construed as reference to the Collector of the district in which the property to be ²[involved] is situated or his nominee and the appeal against the order of the Collector or his nominee shall lie to the Commissioner.

1 Substituted. for the words "mortgage" vide ibid

2 Substituted. for the words "mortgaged" vide Act No. 16 of 1987 w.e.f. 16-11-1987.

20. Restriction on lease :-

(1) Notwithstanding anything contained in the Transfer of Property Act, 1882 (4 of 1882), or any other law for the time being in force, no mortgagor of property mortgaged to an ¹[Agriculture and Rural Development Bank] shall except with the prior consent in writing of the Bank and subject to such terms and conditions as the Bank may impose, lease or create any tenancy rights on any such property:

Provided that, if the lease is given or the tenancy is created with the prior consent of the Bank, the rights of the Bank shall also be enforceable against the purchaser, the lessee or the tenant, as the case may be, as if he himself were a mortgagor.

(2) Where land, mortgaged with possession to an [Agriculture and Rural Development Bank] is in actual possession of tenant, the mortgagor or the [Agriculture and Rural Development Bank] shall give notice to the tenant to pay rent to the [Agriculture and Rural Development Bank] during the currency of the lease and the mortgage and on such notice being given, the tenant shall be deemed to have attorned to the [Agriculture and Rural Development Bank].

1 Substituted. for the words "Land Development Bank" vide ibid

21. Power of the Agriculture and Rural Development Bank to receive money and grant valid discharge :-

¹[Notwithstanding that a Gehan created or mortgage or hypothecation executed in favour of the Agriculture and Rural Development Bank has been transferred, or is deemed under the provisions of section 38, to have been transferred, to the Agriculture and Rural Development Bank,-

(a) all moneys due under the gehan or mortgage or hypothecation shall, in the absence of any specific direction, to the contrary issued by the Board or the trustees and communicated to the person who created the gehan or executed the mortgage or hypothecation, be payable to the Agriculture and Rural Development Bank and such

payment shall be as valid as if the gehan or mortgage or hypothecation had not been so transferred; and

(b) the Agriculture and Rural Development Bank shall, in the absence of any specific direction to the contrary issued by the Board or the trustees and communicated to the Agriculture and Rural Development Bank be entitled to sue on the gehan or mortgage or hypothecation or take any other proceeding for the recovery of the moneys due under the gehan or mortgage or hypothecation.

1 Sections 21 and 22 subs. vide ibid.

22. Powers of the Agriculture and Rural Development Bank in case security property is destroyed or becomes insufficient :-

Where any property which is subject to a gehan or mortgage or hypothecation in favour of the Agriculture and Rural Development Bank is wholly or partially destroyed for any reason the security is rendered insufficient and the person who created the gehan or executed the mortgage or hypothecation having been given a reasonable opportunity by the Board or the Committee of the Agriculture and Rural Development Bank, as the case may be, to provide further security enough to render the whole security sufficient, or to repay such portion of loan as may be determined by the Bank, has failed to provide such security, or to repay such portion of the loan, the whole of the loan shall be deemed to fall due at once; and the Board or the Committee, as the case may be, shall be entitled to take action against the person who created the gehan or executed the mortgage or hypothecation under this Act.

Explanation.-Security shall be deemed insufficient within the meaning of this section, unless the value of the property (including improvements made thereon) exceeds the amount for the time being due to the Agriculture and Rural Development Bank by such proportion as may be specified in the regulations made by the Board.]

CHAPTER 6 DISTRAINT AND SALE OF PRODUCE

23. Distraint when to be made :-

(1) If any instalment payable under a ¹[gehan created or mortgage or hypothecation] executed in favour of or transferred or deemed to be transferred under section 38 to the State Bank or any part of such instalment has remained unpaid for more than one month from the date on which it fell due, the Board may, in addition to any other remedy available to the Bank apply to the Registrar, for the recovery of such instalment or part thereof by distraint and sale of the ²[produce of land to which the gehan or the mortgage or hypothecation] relates including the standing crops thereon and other moveable property of the default.

(2) On receipt of such application, the Registrar may notwithstanding anything contained in the Transfer of Property Act, 1882 (4 of 1882) or any other law for the time being in force, take such action as is necessary to distrain and sell such produce :

Provided that no distraint shall be made after the expiry of twelve months from the date on which the instalment fell due.

(3) The distress shall not be excessive, the value of the property distrained shall be, as nearly as possible, equal to the amount due and the expenses of the distraint and the cost of the sale. Any mistake, defect or irregularity in this respect shall not invalidate a distraint or sale made under this Act.

1 Substituted. for the words "mortgage" vide H.P. Act No. 16 of 1987 w.e.f. 16-12-1987.

2 Substituted. vide ibid.

24. Distraint how to be affected :-

(1) Before or at the time when a distraint is made under section 23, the distrainer shall serve or cause to be served upon the defaulter written demand specifying the amount for which the distraint is made.

(2) The demand shall be dated and signed by the distrainer and shall be served upon the defaulter by delivering a copy to him or to some adult male member of his family at his usual place of abode or to his authorised agent, or when such service cannot be effected, by affixing a copy of the demand on some conspicuous part of his abode and of his land.

25. Sale of property distrained :-

(1) If, within fifteen days from the date of service of the demand referred to in section 24, the defaulter does not pay the amount for which the distraint was effected, the distrainer may sell in auction the distrained property or such part thereof as may in his opinion be necessary to satisfy the demand together with the expenses of the distraint and cost of the sale.

(2) From the proceeds of such sale, a deduction shall be made at a rate not exceeding 5 paise in a rupee on account of the cost of the sale.

(3) From the balance shall be deducted the expenses incurred by the distrainer on account of the distraint.

(4) The remainder, if any, shall be applied to the discharge of the amount for which distraint was made.

(5) The surplus, if any, shall be delivered to the person whose property has been sold and he shall be given a receipt for the amount discharged from the proceeds of sale.

CHAPTER 7 SALE OF MORTGAGED PROPERTY

26. Power of sale when to be exercised :-

¹[(1) Notwithstanding anything contained in the Transfer of

Property Act, 1882(4 of 1882) or any other law for the time being in force, where a gehan or mortgage or hypothecation has been created or executed moveable or immoveable property in accordance with the provisions of sub-section (1) of section 12 in favour of the Agriculture and Rural Development Bank or a Primary Agriculture and Rural Development Bank, the Board or the Committee of such bank or any person authorised by the Board or such Committee shall, in case of default in the payment of sums due to the bank, have power, in addition to any other remedy available to the Primary Agriculture and Rural Development Bank to bring to sale the property to which Gehan or mortgage or hypothecation relates without intervention of the court.

(2) No such power shall be exercised, unless and until (a) the Board or the Committee has previously authorised such sale in the exercise of the power conferred on it by sub-section (1), after hearing and deciding the objections, if any, of the person who created the gehan or executed the mortgage or hypothecation or any other person having any interest in the security property;

(b) notice in writing requiring payment of sums due to the Agriculture and Rural Development Bank or any part thereof, has been served upon-

(i) the person creating or executing the Gehan or mortgage or hypothecation;

(ii) any person who has any interest or charge upon the property to which the Gehan or mortgage or hypothecation relates or any other right to redeem the same;

(iii) any surety for the payment of the sums due to the Agriculture and Rural Development Bank or any part thereof; and

(iv) any creditor of the person creating or executing the Gehan or mortgage, who has in a suit for the administration of his estate, obtained a decree for sale of the property to which gehan or

mortgage or hypothecation relates;

(c) there has been default in payment of such sums due to the Agriculture and Rural Development Bank for a period of six months after service of the notice referred to in clause (b) :

Provided that the objection to give such notice to the persons mentioned in sub-clauses (ii) and (iv) shall be confined to cases where the Board or the Committee has notice of such claims; and

(d) the Registrar, in case where the amount claimed by the State Bank is disputed, has certified that the amount claimed or lesser amount is due from the person creating or executing the gehan, mortgage or hypothecation.]

1. Section 26 Substituted. vide H. P. Act No. 16 of 1987 w.e.f. 16-11-1987.

27. Application for sale and manner of sale :-

(1) In exercise of the power of the sale conferred by section 26, the Board or any person duly authorised by the Board, may apply to the sale officer appointed in that behalf under section 35 to sell the ¹[property to which the gehan, mortgage or hypothecation relates] or any part thereof and such officer shall, after giving notice in writing to all the persons referred to in section 26, sell such property, in the manner prescribed subject to any previous charge on the basis of registered deed.

(2) The sale shall be by public auction and shall be held in the village where the ¹[property to which the gehan mortgage or hypothecation relates] is situated or at the nearest place of public resort if the sale officer is of the opinion that the property is likely to be sold to better advantage there.

(3) The Registrar may set aside a sale on the application of ²[the

person creating or executing the gehan, mortgage or hypothecation] or any other person interested in [the property to which the gehan, mortgage or hypothecation relates], presented to him within 30 days of the sale, if in his opinion there has been an illegality or material irregularity in conducting the sale.

(4) On the sale being set aside by the Registrar under sub-section (3), fresh sale shall be conducted in accordance with the provisions of this Chapter.

1 Substituted for "mortgaged property" vide H. P. Act No. 16 of 1987 w.e.f. 16-11-1987.

2 Substituted. for "mortgagor" vide ibid.

28. Application to set aside sale on deposit and confirmation of sale in default or on dismissal of such application :-

(1) When a ¹[property to which the gehan, mortgage or hypothecation relates] has been sold under this Chapter, the ²[the person creating or executing the gehan, mortgage or hypothecation] or any person having right or interest therein affected by the sale, may, at any time, within thirty days from the date of sale, apply to the Board to have the sale set aside on his depositing at the office of the State Bank,-

(a) for payment, to the said Bank, the amount specified in the proclamation of sale together with subsequent interest and the cost, if any, incurred by the Bank in bringing the property to sale; and

(b) for payment to the purchaser, a sum equal to two per cent of the purchase money.

(2) If such deposit is made, the Board shall make an order setting aside the sale.

(3) Where no application is made under sub-section (1) or where such application is made and disallowed, the Board shall apply to the Registrar to make an order confirming the sale and no such officer confirming the sale, it shall become absolute.

1 Substituted for "mortgaged property" vide H. P. Act No. 16 of 1987 w.e.f. 16-11-1987.

2 Substituted word `mortgaged" vide ibid.

29. Distribution of the proceeds of sale :-

(1) The proceeds of every sale under this Chapter shall be applied by the sale officer, first in payment of all costs, charges and expenses properly incurred by him as incidental to the sale or any attempted sale determined in the prescribed manner; secondly, in payment of all interest due on account of the ¹[gehan or mortgage or hypothecation] in consequence whereof the ²[xxxx] property was sold; thirdly, in payment of the principal money due on account of the mortgaged; and lastly, the residue, if any, shall be paid to the person proving himself interested in the property sold, or, if there are more such persons than one, then to such persons according to their respective interests therein or upon their joint receipt.

(2) (a) Any person dissatisfied with the decision of the sale officer in regard to the distribution of such residue may, within thirty days of the communication to him of such decision, institute a suit in a court to establish the right he claims.

(b) The sale officer shall not distribute such residue until thirty days have elapsed from communication of his decision to all the persons concerned, or if a suit has been instituted within the said period of thirty days by any such person, until the suit is disposed of or otherwise than in accordance with the decision of the court therein.

Explanation.-In this sub-section court means the civil court which

would have jurisdiction to entertain a suit to enforce the [gehan or mortgage or hypothecation] and within the limits of whose jurisdiction the property sold is situated.

1 Substituted for the word "mortgage" vide ibid.

2 The word "mortgaged" Omitted vide ibid.

30. Certificate to purchaser :-

Where a sale of [xxxx] property has become absolute, the sale officer shall grant a certificate specifying the property sold and the name of the person who at the time of the sale is declared to be purchaser. Such certificate shall bear date, the day on which the sale became absolute.

31. Delivery of property to purchaser :-

(1) Where the ¹[XXXXX] property sold is in the occupation of the ²[the person creating the gehan or executing the mortgage or hypothecation] or of some person on his behalf or of some person claiming under a title other than a lease for a period not exceeding five years created by the [the person creating the gehan or executing the mortgage or hypothecation] subsequent to the ³[gehan or mortgage or hypothecation] in favour of the State Bank and a certificate in respect thereof has been granted under section 30, the Collector shall, on the application of the purchaser, order delivery to be made by putting such purchaser, or any person, whom, he may appoint to receive delivery on his behalf, in possession of the property.

(2) Where the property sold is in the occupation of a tenant or other person entitled to occupy the same and certificate in respect thereof has been granted under section 30, the Collector shall on the application of the purchaser and after notice to such tenant or other person, order delivery to be made by affixing a copy of the certificate of sale in some conspicuous place on the property and proclaiming to the occupant by beat of drum or other customary mode at some convenient place that the interest of the [the person creating the gehan or executing the mortgage or hypothecation] has been transferred to the purchaser.

(3) In regard to the cases dealt within the sub-sections (1) and (2) the provisions of rules 97 to 103 to Order XXI of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908), shall, Mutatis Mutandis and so far as may be, apply.

1 The word "mortgaged" Omitted vide Act No. 16 of 1987, dated 16-11-1987.

2 Substituted. for "mortgagor" vide ibid.

3 Substituted. for the words "mortgage" vide "ibid".

32. Right of Agriculture and Rural Development Bank to purchase the [xxx] property at sale :-

Notwithstanding anything contained in any law for the time being in force, including a law imposing a ceiling on agricultural holdings, it shall be lawful for the ¹ [Agriculture and Rural Development Bank] to purchase any ²[XXXXX] property sold under this Chapter and the property so purchased shall be disposed of by such Bank by sale within such period as may be fixed by the Board.

1 Substituted. for "Land Development Bank" vide ibid.

2 Word "mortgaged" omitted vide H. P. Act No 16 of 1987 w.e.f. 16-11-1987.

33. Appointment of receiver and his powers :-

(1) The Board may, on its own motion, or in the case of ¹[gehan, mortgage or hypothecation executed in favour of Agriculture and Rural Development Banks] on the application of such banks and under circumstances in which the power of sale conferred by section 26, may be exercised, appoint in writing a receiver of the produce and income of the [xxx] property or any part thereof and such receiver shall be entitled either to take possession of the property or collect its produce and income, as the case may be, to retain out of any money realised by him his expenses of management including his remuneration, if any, as fixed by the Board, and to apply the balance in accordance with the provisions of sub-section (8) of section 69-A of the Transfer of Property Act,

1882, (4 of 1882).

(2) A receiver appointed under sub-section (1) may, for sufficient cause and on application made by the ²[the person who created the gahen or executed the mortgage or hypothecation, as the case may be,] be removed by the Board.

(3) A vacancy in the office of the receiver may be filled up by the Board.

(4) Nothing in this section shall empower the Board to appoint receiver where the ³[x x x] property is already in the possession of a receiver appointed by a civil court.

1 Substituted for "mortgages executed in favour of the land Development Bank" vide ibid.

2 Substituted. for "mortgagor" vide ibid.

3 Word "mortgaged" omitted vide H. P. Act No 16 of 1987 w.e.f. 16-11-1987.

34. Title of purchaser not to be impeached on the ground of irregularity etc. :-

When a sale purported to have been made in exercise of the power of sale given by section 26 has been confirmed under sub-section (3) of section 28, the title of the purchaser shall not be impeachable on the ground that no case had arisen to authorise the sale or that due notice was not given or that the power was otherwise improperly or irregularly exercised but any person damnified by an unauthorised or improper or irregular exercise of the power shall have his remedy in damages against the ¹[Agriculture and Rural Development Bank.]

1 Substituted. for "Land Development Bank" vide ibid.

35. Appointment of sale officers :-

The State Government may appoint any officer to be a sale officer

for the purpose of conducting sales under this Chapter.

36. Recovery of loans on certificate by Registrar :-

(1) Without prejudice to any other remedy available to an [Agriculture and Rural Development Bank] for recoveries of arrears of any sum advanced by it to any of its members and on its furnishing a statement of accounts in respect of the arrears, the Registrar may, after making such enquiries as he deems fit, grant a certificate for the recovery of the amount stated therein to be due as arrears.

(2) A certificate by the Registrar under sub-section (1) shall be final and conclusive as to the arrear due. The arrears stated to be due therein shall be recoverable according to the law for the time being in force for the recovery of arrears of land revenue.

(3) It shall be lawful for the Collector to take any precautionary measures provided in the law for the time being in force, for the recovery of arrears to land revenue until the arrears due to the [Agriculture and Rural Development Bank] together with interest and any incidental charges incurred in the recovery of such arrears are paid or security of such arrears is furnished to the satisfaction of the Registrar.

(4) It shall be competent for the Registrar or a person authorised by him in this behalf to direct conditional attachment of the property of the ¹[person who has created gehan or executed the mortgage or hypothecation] until the arrears due to the [Agriculture and Rural Development Bank] together with interest and any incidental charges incurred in recovery of such arrears, are paid or security for payment of such arrears, is furnished to the satisfaction of the Registrar and the provisions of section 74 of the Himachal Pradesh Co-operative Societies Act, 1968 (3 of 1969), shall apply mutatis mutandis to conditional attachment of any property made or to be made under this section.

1 Substituted. for "mortgagor" vide ibid.

37. Collector to make recoveries during a certain period :-

(1) Without prejudice to any other remedy available to an [Agriculture and Rural Development Bank] for recoveries of arrears of any sum advanced by it to any of its members and on its furnishing a statement of accounts in respect of the arrears, the Registrar may, after making such enquiries as he deems fit, grant a certificate for the recovery of the amount stated therein to be due as arrears.

(2) A certificate by the Registrar under sub-section (1) shall be final and conclusive as to the arrear due. The arrears stated to be due therein shall be recoverable according to the law for the time being in force for the recovery of arrears of land revenue.

(3) It shall be lawful for the Collector to take any precautionary measures provided in the law for the time being in force, for the recovery of arrears to land revenue until the arrears due to the [Agriculture and Rural Development Bank] together with interest and any incidental charges incurred in the recovery of such arrears are paid or security of such arrears is furnished to the satisfaction of the Registrar.

(4) It shall be competent for the Registrar or a person authorised by him in this behalf to direct conditional attachment of the property of the ¹[person who has created gehan or executed the mortgage or hypothecation] until the arrears due to the [Agriculture and Rural Development Bank] together with interest and any incidental charges incurred in recovery of such arrears, are paid or security for payment of such arrears, is furnished to the satisfaction of the Registrar and the provisions of section 74 of the Himachal Pradesh Co-operative Societies Act, 1968 (3 of 1969), shall apply mutatis mutandis to conditional attachment of any property made or to be made under this section.

1 Substituted. for "mortgagor" vide ibid.

38. Gehan, mortgage or hypothecation] executed in favour and other assets of [Primary Agriculture and Rural Development Banks to stand transferred to State Bank :-

¹²[The ³[gehan created, mortgage or hypothecation executed or deemed to have been created or executed] in favour of and all other assets transferred ⁴[or deemed to have been transferred] to, [Primary Agriculture and Rural Development Bank] by the members thereof, shall with effect from the date of such ⁵[creation], execution or transfer, be deemed to have been transferred by such [Primary Agriculture and Rural Development Bank] to the State Bank.

1 Substituted. "mortgages vide ibid.

2 Substituted. for "Primary Land Development Bank" vide ibid.

3 Substituted. for the words "mortgages executed" vide ibid.

4 Added vide ibid.

5 Word "creation" Added vide ibid.

39. Power of Board of trustee to direct distraint and sale of produce and the sale of [X X X] property, etc. :-

¹(1) The Board or trustee may direct the committee of a [Primary Agriculture and Rural Development Bank] to take action against a defaulter under ²[section 22 or] section 23, or section 26 and if the committee neglects or fails to do so, the Board or the trustee may take such action.

(2) (a) Where such action is taken by the Board the provisions of this Act and of any rules or regulations made thereunder shall apply in respect thereto as if all references to the [Primary Agriculture and Rural Development Bank] and to its committee in the said provisions were references to the State Bank and the Board respectively.

(b) Where such action is taken by the trustee, the provisions of this Act or any rules or regulations made thereunder shall apply in

respect thereto all references to the [Agriculture and Rural Development Bank] or to its committee in the said provisions were references to the trustee.

1 Word "mortgaged" omitted vide ibid.

2 Substituted. for the words and figures "section 22 or" vide ibid.

40. Gehan or mortgage or hypothecation not to be questioned in insolvency proceedings :-

¹[Notwithstanding any thing contained in the Insolvency Act, 1955 (2 of 1956), a gehan created or mortgage or hypothecation executed in favour of the Agriculture and Rural Development Bank shall not be called in question on the ground that it was not created or executed in good faith or for valuable consideration or on the ground that it was created or executed in order to give such bank a preference over the other creditors of the person who created the gehan or executed the mortgage or hypothecation].

1 Section 40 subs. vide ibid.

41. Priority of gehan, mortgage and hypothecation :-

¹[Any amount payable under a Gehan created or mortgage or hypothecation executed in favour of the Agriculture and Rural Development Bank shall have priority over any claim of the Government arising from a loan under the Land Improvement Loans Act, 1883 (19 of 1883) or any other law for the time being in force in the State, granted after the creation of the gehan or the execution of the mortgage or hypothecation].

1 Section 41 subs. vide Act No. 16 of 1987 w.e.f. 16-11-1987.

42. Right of [Agriculture and Rural Development Bank] to pay prior debts of the mortgagor :-

(1) Where a ¹[gehan is created or mortgage or hypothecation] is executed in favour of the ²[Agriculture and Rural Development Bank] for payment of prior debts of the ³[person who created the gehan or executed the mortgage or hypothecation] the Bank may

notwithstanding the provisions of sections 83 and 84 of the Transfer of Property Act, 1882 (4 of 1882), by notice in writing require any person to whom any such debt is due to receive payment of such debt or part thereof from the [Agriculture and Rural Development Bank] at its registered office within such period as may be specified in the notice. If any such person fails to receive such notice or such payment, such debt, or part thereof, as the case may be, shall cease to carry interest from the expiration of the period specified in the notice ⁴[except in cases where such person proves to the satisfaction of the Board or the committee of the [Agriculture and Rural Development Bank], as the case may be, that the failure to receive notice or payment was due to causes beyond his control:]

Provided that where there is a dispute as regards the amount of any such debt, the person to whom such debt is due, shall be bound to receive payment of the amount offered by the [Agriculture and Rural Development Bank] toward the debt, but such receipt shall not prejudice the right, if any, of such person, to recover the balance claimed by him.

1 Substituted. for "mortgage" vide ibid.

2 Substituted. for "Land Development Bank" vide ibid.

3 Substituted. for mortgagor" vide ibid.

4 Added vide ibid.

43. Power to summon witnesses and requisition documents

:-

(1) Subject to such restrictions, limitations and conditions as may be prescribed, the Registrar and persons subordinate to the Registrar, who are, authorised by him in this behalf by general or special order in writing, or officers of [Agriculture and Rural Development Banks] which are registered or deemed to be registered under the Himachal Pradesh Co-operative Societies Act, 1968 (3 of 1969), as the State Government may, by notification in the Official Gazette, authorise in this behalf, shall have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (5 of 1908), when trying a suit, in respect of the following matters, namely:-

(a) enforcing the attendance of any person and examining him on oath or affirmation;

(b) compelling the production of documents; and

(c) issuing commissions for the examination of witnesses.

(2) Any of the officers or persons authorised by or under sub-section (1) may require any person (s) present before him, to furnish any information or to produce any document then and there in his (or their) possession or power.

(3) Any officer or person before whom any document is produced under sub-section (1) or sub-section (2) shall have power to take, or to authorise, the taking of, such copies of documents of any entries therein as such officer or person may consider necessary. Copies so taken shall, when certified in such manner as may be prescribed, be admissible in evidence for any purpose in the same manner and to the same extent as the original document or entries therein, as the case may be.

(4) (a) Any person who wilfully or without reasonable excuse disobeys any summons, requisition or order issued under sub-section (1) or sub-section (2) shall be punishable with fine which may extend to fifty rupees and in the case of a continuing disobedience with an additional fine which may extend to five rupees for every day during which such disobedience continues after conviction for the last such disobedience.

(b) No court inferior to that of a Magistrate of the First Class shall try any offence punishable under clause (a).

(c) Every offence under clause (a) shall, for the purpose of Code of Criminal Procedure, 1973 (2 of 1974), be deemed to be non-cognizable.

(d) No prosecution shall be instituted under clause (a) without the previous sanction of the Registrar, who will accord such sanction, only after giving the party concerned an opportunity to be heard.

44. Registration of documents executed on behalf of a Agriculture and Rural Development Bank :-

(1) Notwithstanding anything contained in the Indian Registration Act, 1908 (16 of 1908), it shall not be necessary for any Director, Secretary or other officer of a ¹ [Agriculture and Rural Development Bank] to appear in person or by agent at any registration office in any proceeding connected with the registration of any instrument executed by him in his official capacity or to sign as provided in section 58 of that Act.

(2) Where any instrument is so executed, the registering officer to whom such instrument is presented for registration may, if he thinks fit, refer to such Director, Secretary or Officer for information respecting the same, and on being satisfied of the execution thereof, shall register the instrument. Special provisions for [gehan created or mortgage or hypothecation] executed by managers of joint Hindu family.

1. Substituted. for the words "Land Development Bank" vide Act No. 16 of 1987 w.e.f. 16-11-87

45. Special provisions for gehan created or mortgage or hypothecation executed by managers of joint Hindu family :-

(1) Notwithstanding anything contained in any law for the time being in force, the ¹[gehan created or mortgage or hypothecation] in respect of loans by the [Agriculture and Rural Development Banks] either before or after commencement of this Act by the manager of joint Hindu family for the improvement of agricultural land or other purposes enumerated in this Act shall be binding on every member of such joint Hindu family.

(2) Where a ²[gehan created or mortgage or hypothecation] executed in favour of the ³[Agriculture and Rural Development Bank] is called in question on the ground that it ⁴[was created] by a person governed by a custom or the manager of a joint Hindu family for a purpose not binding on the reversioners and the members thereof, whether major or minor, the burden of proving the same shall, notwithstanding any law to the contrary, be on the party raising it.

1 Substituted. for the words "mortgage" or "mortgages" vide ibid.

2 Substituted. for "mortgage" vide H.P. Act o. 16 of 1987 w.e.f. 16-11-1987

3 Substituted. for "Land Development Bank" vide ibid.

4 Substituted. for "was executed" vide ibid

46. Proof of documents or entries in documents :-

The ¹[Primary Agriculture and Rural Development Bank] or the State Bank may grant copies of any document obtained and kept by it in the course of its business or of any entries in such documents; and any copy so granted shall, when certified in such manner as may be prescribed, be admissible in evidence for any purpose in the same manner and to the same extent as the original document, or the entries therein, as the case may be.

1 Substituted. for "Primary Land Development Bank" vide ibid.

47. Service of notice under the Act :-

Whenever under the provisions of this Act any notice is required to be given to any person in writing, it shall be sufficient to send such notice by registered post at his last known address.

48. Officers of the [Agriculture and Rural Development Banks] and sale officers not to bid at sale :-

(1) At any sale of movable or immovable property held under the provisions of this Act in order to recover any money due to a [Agriculture and Rural Development Bank], no Director, Secretary

or other officer of such Bank (except on behalf of the bank of which he is Director, Secretary or officer) and no sale officer or other person having any duty to perform in connection with such sale, shall, either directly or indirectly, bid for or acquire or attempt to acquire any interest in such property.

(2) Every person contravening the provisions of the foregoing subsection (1) shall, on conviction, be punished with fine which may extend to five hundred rupees.

(3) No prosecution under this section shall be lodged, except with the previous sanction of Registrar.

49. Delegation of certain powers by Board :-

The Board may, if it thinks fit, delegate all or any of its powers under sections 3, 16, 23, 24, 27, 33, 37, 39 and 42 to an executive committee constituted by it and consisting of two or more of its members.

49A. Employees etc. to be public servants :-

¹[Any employee of the Agriculture and Rural Development Bank engaged in the recovery of loans under the provisions of this Act or the rules or any person appointed as liquidator or arbitrator shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code, 1860 (45 of 1860)].

1 "49-A" added vide ibid.

50. Powers of Board to make regulations :-

Notwithstanding anything contained in the Himachal Pradesh Co-operative Societies Act, 1968, or the rules made thereunder, the Board shall have a general power of supervision over the ¹[Primary Agriculture and Rural Development Banks] and may make regulations not inconsistent with this Act or the rules made thereunder-.

(a) for the inspection of the account books and proceeding of the [Primary Agriculture and Rural Development Banks];

(b) for the submission of returns and reports by the [Primary Agriculture and Rural Development Banks] in respect of their transactions;

(c) for the periodical settlement of accounts between the [Primary Agriculture and Rural Development Banks] and the State Bank and for the payment of the amounts recovered by the [Primary Agricultural and Rural Development Banks] and ²[on gehan or mortgage or hypothecation transferred, or deemed under the provisions of section 38 to have been transferred, the State Bank];

d) prescribing the form in which application to a ³[Agriculture and Rural Development Bank] for loans should be made and for the valuation of the properties offered as security for such loan;

[(e) prescribing the proportions by which the property, to which gehan, mortgage or hypothecation relates, should exceed the amount for the time being due on the gehan or mortgage or hypothecation for security to be sufficient within the meaning of Explanation under section 22];

(f) for the maintenance and utilisation of guarantee funds.

(g) for the investment of money realised from the ⁴[person creating or executing a gehan or mortgage or hypothecation]; and

(h) generally for the purpose of safeguarding the interest of the parties concerned and for carrying out the purposes of this Act.

1 Substituted. for "Primary Land Development Bank" vide H.P. Act No. 16 of 1987 w.e.f. 16-11-1978.

2 Substituted. for "on mortgages transfer to the State Bank" vide ibid.

3 Clause (e) subs. vide ibid.

4 Substituted. for "Land Development Bank" vide ibid.

51. Primary Agriculture and Rural Development Banks :-

The provisions of Chapters VI, VII and VIII shall apply mutatis mutandis to all the ¹ [Primary Agriculture and Rural Development Banks] as they apply to the State Bank with the modification that reference there to the State Bank and Board shall be construed as reference to the [Primary Agriculture and Rural Development Banks] and committee respectively.

1 Substituted. for "Land Development Bank" vide Act No, 16 of 1987 w.e.f. 16-11-1987.

52. Provisions for guarantee fund to meet certain losses :-

(1) It shall be competent for the State Government to constitute one or more guarantee funds on such terms and conditions as it may deem fit, for the purpose of meeting losses that might arise as a result of loans being made by¹[Agriculture and Rural Development Banks] on titles to immovable property subsequently found to be defective or for any other purpose under this Act for which in the opinion of the State Government, it is necessary to provide for or create a separate guarantee fund.

(2) The State Bank and the [Primary Agriculture and Rural Development Banks] shall contribute to such funds at such rate as may be prescribed, and the maintenance and utilisation of such funds shall be governed by such regulations as may be made by the Board in this behalf.

1 Substituted. for "Primary Land Development Bank" vide ibid.

53. Remission of fees :-

No fee shall be chargeable in respect of registration of any instrument executed in favour of the [Agriculture and Rural Development Bank], by any of its officers or members, under any

law for the time being in force in the State.

54. Registrars power to permit any Co-operative Bank to function as a [Agriculture and Rural Development Bank] :-

It shall be competent for the Registrar to permit any co-operative bank to function as a [Agriculture and Rural Development Bank] under such terms and conditions and for such period as he may deem fit.

55. Power of State Government to make rules :-

(1) The State Government may make¹ rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for:-

(i) the manner of affecting distraint;

(ii) the custody, preservation and the sale of distrained property;

(iii) the investigation of claims by persons other than the defaulters, to any right or interest in the distrained property; and the postponement of the sale pending such investigation;

(iv) immediate sale of perishable articles;

(v) the due proclamation and the conduct of sale;

(vi) the deposit of the purchase money;

(vii) the resale of the property, if the purchase money is not deposited;

(viii) the recovery of expenses of the proclamation;

(ix) the manner of giving public notice of the application of the loan;

(x) the person competent to give public notice;

(xi) the manner of hearing and disposing of objections in regard to application of loan;

²(xii) the rate at which the State Bank and the \1\[Primary Agriculture and Rural Development Banks] shall contribute to the guarantee fund;

³[(xiii) the form of declaration under section 12;

(xiv) the form of notice under sub-section (2) of section 17;and

(xv) any other matter required or allowed by this Act to be prescribed.]

(3) All rules made by the State Government under this section shall be laid before the Legislative Assembly as soon as may be after they are made.

1 Rules made vide Not. No. 7-41/69-Co-op-IV, dated 16-8-90 (Appended).

2 Substituted. for "Primary Land Development Bank" vide H.P. Act No. 16 of 1987.

3. Added vide ibid.

56. Repeal :-

The Punjab Co-operative Land Mortgage Banks Act, 1957 (26 of 1957) as in force in the areas added to Himachal Pradesh under section 5 of the Punjab Re-organisation Act, 1966 (31 of 1966) and the Punjab Co-operative Land Mortgage Banks Act, 1957, as in force in the areas which comprised in Himachal Pradesh immediately before the 1st November, 1966 are hereby repealed.

57. Savings :-

The repeal of the Acts by section 56 shall not affect-

(a) the previous operation of the said Acts or anything duly done or suffered thereunder; or

(b) any right, privilege, obligation or liability required, accrued or incurred under the said Act; or

(c) any penalty, for forfeiture or punishment incurred in respect of any offence committed against the said Act; or

(d) any investigation, legal proceedings or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment, as aforesaid; and any such investigation, legal proceedings or remedy may be instituted, continued or enforced and such penalty, forfeiture or punishment may be imposed as if the said Acts had not been repealed.