

Himachal Pradesh Village Common Lands (Vesting And Utilisation) Act, 1974

18 of 1974

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Himachal Pradesh Village Common Lands (Vesting And Utilisation) Act, 1974

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AN ACT

to provide for vesting and utilisation of village common lands in the State of Himachal Pradesh.

Be it enacted by the Legislative Assembly of the State of Himachal Pradesh in the Twenty fifth Year of the Republic of India as follows:-

1. Short title, extent and commencement :-

- (1) This Act may be called the Himachal Pradesh Village Common Lands Vesting and Utilisation Act, 1974.
- (2) It extends to the whole of the State of Himachal Pradesh.
- (3) It shall come into force at once.

2. Definitions :-

In this Act, unless there is anything repugnant in the subject or context, -

(a) "Collector" means the Collector of the district in which the estate is situated and includes an Officer, not below the rank of an Assistant Collector of the First Grade, appointed by the State Government to perform the functions of a Collector under this Act;

(aa) "handicapped person" means a crippled or physically or medically deficient person whose annual income from all sources does not exceed rupees seven thousand and five hundred and who, on account of injury, disease, or congenital deformity, is substantially prevented from or is incapable of leading a normal life or earning full wages for the work in which he is employed; or obtaining or keeping employment or undertaking work on his own of a kind in view of that injury, disease or deformity which work would have suited his age, experience and qualifications.

Explanation.-For the purposes of this clause, a person who has incurred physical disablement to the extent of fifty percent or more shall, be deemed to be substantially incapable or disabled person;

(aaa) "houseless person" means a person who owns no house or a site to construct a house for himself;

Provided that a person whose father is alive or whose annual income from all sources exceeds Rs. 3,000/- shall not be deemed to be a houseless person,"

(b) "inhabitant of an estate" means a person, whether a proprietor or a non-proprietor, who ordinarily resides in an estate:

Provided that a temporary absence or absence in relation to employment elsewhere shall not affect his residence in the estate;

(c) "landless person" means a person who holding no land for agricultural purposes, whether as an owner or a tenant, earns his livelihood principally by manual labour on land and intends to take the profession of agriculture and is capable of cultivating the land personally;

Provided that a person whose father is alive or whose annual income from all sources exceeds Rs. 3,000/- shall not be deemed to be a landless person; and

(d) "landowner" means a person having a share in the share land as recorded in the land records and includes a panchayat;

(dd) Other eligible person means a person;

(i) who, holding land for agricultural purposes less than an area whether as an owner or a tenant, earns his livelihood principally by

manual labour on land and intends to take the profession of agriculture and is capable of cultivating the land personally;

(ii) Whose father is not alive; and

(iii) Whose annual income from all sources does not exceeds Rs.3,000/-;

and shall not include a person who holds a share or a portion of an estate jointly owned or cultivated by two or more persons;

(e) "panchayat" means a panchayat constituted under the Himachal Pradesh Panchayati Raj Act, 1968; (19 of 1970).

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

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

(h) the words "land" and "private forests" have the same meanings as assigned to these words in the Himachal Pradesh Ceiling on Land Holdings Act, 1972; (19 of 1973) and

(i) all other words and expressions used in this Act but not defined in it shall have the same meanings as assigned to such words and expressions in the Punjab Land Revenue Act, 1887 (17 of 1887) or the Himachal Pradesh Land Revenue Act, 1954 (6 of 1954) as the case may be.

3. Vesting of rights in the State Government :-

(1) Notwithstanding anything to the contrary contained in any other law for the time being in force or in any agreement instrument custom or usage or any decree or order of any court or other authority all rights, title and interests including the contingent interest, if any of the landowner in the lands in any estate-

(a) vested in a Panchayat under section 4 of the Punjab Village Common Lands (Regulation) Act, 1961 (18 of 1961) as in force in the areas added to Himachal Pradesh under section 5 of the Punjab Re-organisation Act, 1966 (31 of 1966) except lands used or reserved for the benefit of village community including streets, lanes, playgrounds, schools, drinking wells or ponds, within abadi deh or garah deh;

(b) described in the revenue records as shamilat tara,, partis, pannas and thola and not used according to revenue records for the benefit of the village community or a part thereof or for common purposes of the village in the areas added to Himachal Pradesh under section 5 of the Punjab Re-organisation Act, 1966; (31 of 1966) and

(c) described in revenue records as shamilat, shamilat deh, shamilat taraf, shamilat chak and patti in the areas comprised in Himachal Pradesh, immediately before first November, 1966; shall stand extinguished and all such rights, title and interests shall vest in the State Government free from all encumbrances.

(2) The provisions of sub-section (1) of this section shall not apply to lands described in clauses (b) and (c) of that sub-section if, before the date of commencement of this Act-

(a) partition of such lands, is made by the individual co-sharers through a process of law by a competent court or authority,

(b) transfer of such lands is made by the landowner by way of sale, gift or exchange,

(c) such land built upon by an inhabitant by raising a residential house or cow-shed.

(3) The State Government shall be liable to pay, and the landowners whose rights have been extinguished under sub-section (1) of this section shall be entitled to receive the amount in lieu thereof at the following rates:-

(i) for the land reserved for grazing and other common purposes under clause (a) of sub-section (1) of section 8, five times the annual land revenue including rates and cesses chargeable thereon; and

(ii) for the remaining land, fifteen times the annual land revenue including rates and cesses chargeable thereon:

Provided that where the land vested in the State Government under this Act is not assessed to land revenue, the same shall be construed to be assessed as on similar land in the estate and if not available in the estate then in the adjoining estate or estates, as the case may be.

(4) The amount paid to a Panchayat under section 7 shall be deemed to be the Sabha Fund and shall be utilised for such purposes as are mentioned in section 40 of the Himachal Pradesh Panchayati Raj Act, 1968. (19 of 1970).

(5) The Collector may, by order in writing, at any time after the land vested in the State Government, direct the landowners to deliver possession thereof within 10 days from the service of the order to such person as may be specified in the order.

(6) If the landowners refuse or fail without reasonable cause to comply with the order made under sub-section (5), the Collector may take possession of the land and may for that purpose use such force as may be necessary.

4. Treatment of leases made by Panchayats :-

(1) The Collector shall call for from Panchayats in his district the record of leases contracts or agreements entered into by the Panchayats in respect of any land vested in the Panchayats under the Punjab Village Common Lands (Regulation) Act, 1961 (18 of 1961) and the rules made thereunder and examine such record himself as to the legality or propriety of such leases, contracts or agreements:

(2) Where on examination of the record under sub-section (1) and after making such enquiry as he deems fit, the Collector is satisfied that such leases contracts or agreements are in accordance with the provisions of the said Act and rules, he shall pass orders declaring such leases contracts or agreements having been made on behalf of the State Government.

(3) Where on such examination and enquiry the Collector finds that a lease, contract or agreement has been entered into in contravention of any of the provisions of the said Act or the rules made thereunder or has been entered into as a result of fraud or concealment of facts or is detrimental to the interest of the estate right-holders, he shall cancel such a lease, contract or agreement and such person shall be liable to ejectment under the provisions of section 150 of the Punjab Land Revenue Act, 1887:(17 of 1887).

Provided that no order under sub-sections (2) and (3) of this section shall be passed by the Collector without affording an opportunity of being heard to the parties to the lease, contract or agreement.

5. Treatment of encroachments on lands vested in the State Government :-

Where land vested in the State Government has been encroached upon by any person before or after the commencement of this Act, the Revenue Officer may of his own motion eject such person in accordance with the provisions of section 150 of the Punjab Land Revenue Act, 1887 (17 of 1887) or section 163 of the Himachal Pradesh Land Revenue Act, 1954 (17 of 1887) as the case may be.

6. Determination of amount payable to landowners :-

(1) The Collector shall cause a notice to be served, in the prescribed form and manner to the landowner whose rights have been extinguished under sub-section (1) of section 3, stating

therein, the area of land vested in the State Government and the amount proposed therefor, immediately after the commencement of this Act, calling upon him to prefer objections if any, within 60 days from the receipt of the notice:

Provided that the Collector may entertain the objections after the expiry of the said period of 60 days if he is satisfied that the landowner was prevented by sufficient cause from filing the objections within the prescribed time.

(2) The Collector after giving the landowner or landowners, as the case may be, an opportunity of being heard and making such inquiry as may be necessary shall make an award determining the amount payable by the State Government to the landowners in accordance with the provisions of sub-section (3) of section 3 and apportion the amount thereof among the landowners.

(3) Where the amount is payable to a minor, the Collector may make such arrangements as may be equitable having regard to the interest of the minor.

7. Payment of amount :-

The amount payable to a landowner under section 6 shall be paid in the manner and in such number of six monthly instalments not exceeding ten as may be prescribed.

8. Utilisation of land vested in the State Government :-

(1) All lands vested in the State Government under this Act shall be utilised for the following purposes:-

(a) an area not less than fifty per cent of the total area vested in the State Government under section 3 of this Act for grazing and other common purposes of the inhabitants of an estate; and

(b) the remaining land-

(i) for allotment to a landless person or any other eligible person; or

(ii) for allotment of site to a handicapped or houseless person for the construction of a house;

under a scheme to be framed by the State Government by notification in the Official Gazette and the allottee shall pay an amount at the rate of forty-eight times of the land revenue and rates and cesses chargeable on the land allotted to him under the said scheme, either in lump sum or in six monthly instalments not exceeding four."

(2) The land reserved under clause (a) of sub-section (1) of this

section shall be demarcated by such Revenue Officer and in such manner as may be prescribed.

(3) Any scheme framed by the State Government under clause (b) of sub-section (1) of this section may provide for the terms and conditions on which the land is to be allotted.

(4) The State Government may, by notification in the Official Gazette, add to, amend, vary or revoke any scheme made under this section.

8A. Utilisation of land for development of the State :-

Notwithstanding anything contained in Section 8 of the Act, the State Government may utilise any area of the land vested in it under the Act by lease to any person or by transfer to any Department of the Government in the interests of the development of the State, if the State Government is satisfied that there are sufficient reasons to do so subject to the condition that land for the purposes mentioned in clause (a) of sub-section (1) of section 8 in no case shall be less than fifty percent of the land vested in the Government under the Act:

Provided that when land is not used by a person for the purpose for which it has been leased the lease shall stand terminated free from all encumbrances and the Government shall re-enter on the demised premises and lease money if paid to the Government, shall be forfeited and no person shall be entitled to any compensation for any improvement made and for any building constructed thereon."

9. Appeal :-

An appeal from the order of a Collector passed under this Act shall lie to the State Government or an Officer to be authorised by it, by a notification, within 60 days of passing of the order.

10. Bar of jurisdiction :-

Save as otherwise expressly provided in this Act no order made by the Collector or the State Government or any officer authorised by it, as the case may be, shall be called in question by any court or before any officer or authority.

11. Bar to legal proceedings :-

No suit, prosecution or other legal proceeding shall lie against the State Government or any officer or authority for any act which is in

good faith done or intended to be done in pursuance of this Act or of any rules made thereunder.

12. Procedure :-

In all enquiries and proceedings under this Act the Collector and any other officer or authority shall have such powers and follows such procedure as may be prescribed.

13. Power to make rules :-

(1) The State Government may by notification in the Official Gazette make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

(a) the form and manner in which a notice is to be served under section 6;

(b) for fixing of instalments and the manner in which, the payment of amount is to be made under section 7;

(c) the manner in which the land under sub-section (3) of section 8 to be demarcated;

(d) the manner and procedure in which enquiries may be held under section 12; and

(e) any other matter which has to be or may be prescribed under this Act.

(3) The power to make any rule under sub-section (1) and (2) is subject to the condition of the rule being made after previous publication.

(4) Every rule made under this Act shall be laid, as soon as may be, after it is made, before the State Legislature while it is in session for a total period of not less than seven days, which may be comprised in one session or in two successive sessions, and if before the expiry of the session in which it is so laid or the session immediately following, the legislature requires any modification in the rule or desires that the rule should not be made, the 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.

14. Power to remove difficulties :-

If any difficulty arises in giving effect to the provisions of this Act, the State Government, may, by order published in the Official Gazette, make such provisions or give such directions not inconsistent with the provisions of this Act, as may appear to it to be necessary or expedient for the removal of the difficulty.

15. Repeal and savings :-

(1) With effect from the commencement of this Act, the Punjab Village Common Lands (Regulation) Act, 1961 (18 of 1961) in its application to the territory added to Himachal Pradesh under section 5 of the Punjab Re-organisation Act, 1966 (31 of 1966) shall stand repealed. (18 of 1974)

(2) Save as provided in section 4 the repeal of the said Act shall not affect anything done or any action taken thereunder.

(3) Subject to the provisions of sub-section (2) no authority shall pass on order in any proceedings whether instituted before or after the commencement of this Act which is inconsistent with the provisions of this Act.