

## **Water Mills (Jandar And Gharat) Act, Svt. 1989**

### **17 of 1989**

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**Water Mills (Jandar And Gharat) Act, Svt. 1989**

**17 of 1989**

Whereas it is expedient to amend the rules relating to Water Mills (Jandar and Gharat); It is hereby enacted as follows: -

**1. Title :-**

This Act may be called the Water Mills (Jandar and Gharat) Act No. XVII of 1989.

**2. Extent :-**

This Act shall extend to the whole of the Jammu and Kashmir State except the following tracts, namely: -

1[(a) canals and their off-shoots under the Irrigation Branch of the Public Works Department and areas under them;

1[(b) any tract, town or part of a town in the State which may be exempted- permanently or for some period under 2[Governments] order notified in the Jammu and Kashmir Government Gazette. ]

3[Explanation. - For purposes of 4[clause (a)] the escape water from a canal flowing down into a channel carrying water from a source other than a canal shall not be deemed to be an off-shoot of such canal].

1. In Section 2 clauses (c) and (e) renumbered as clauses (a) and (b) respectively by Act IV of 1955. (for earlier amendment see Act X of 2010).

2. Substituted by Act X of 1996 for "His Highness".

3. Explanation to section 2 inserted by Act XXV of 2007.

4. Substituted by Act IV of 1955 for "clause (c)"

**3. Commencement :-**

1[This Act shall come into operation from such date as may be fixed by the 2[Government] by notification in the Jammu and Kashmir Gazette.

1. This Act came into operation from 2nd Maghar, 1990. (G. G. 25th Magh, 1991).

2. Substituted by Act X of 1996 for "Revenue Minister".

**4. Repeal And Savings :-**

This Act when enforced shall repeal all previous rules and order relating to water mills; provided that the mills or jandars which have been constructed or erected under the existing rules under order of a competent authority, or proceedings which are being conducted or have been completed against persons for infringement of the existing rules, shall be deemed to have been respectively constructed, erected, conducted or completed under this Act.

## **5. Definitions :-**

In this Act, unless there is something repugnant to the subject or context, -

(a) the words "water mills" include jandar, gharat and any other kind of mill worked by water of a river, brook or zamindari kuhl (a small water channel);

(b) for the purposes of these rules estates are divided into three classes:-

(i) those estates where some or all such mills were separately assessed at the last Settlement;

(ii) those estates where mills were not assessed separately, but some portion of the land revenue has been allotted on mills by land-holders at bachh;

(iii) those estates where mills were neither assessed separately nor at bachh;

Explanation. - (i) An estate where there were no mills at the time of Settlement will be considered to come under the same class in which the estates of that circle or Illaqa have been placed.

(ii) Estates where some of the mills were assessed and others were not assessed at Settlement, and estates where application is made, subsequent to Settlement, for construction of a mill which would have come under assessment, had it existed or been constructed at Settlement, will be considered to come under class (b) (i).

## **6. Revenue Officers And Their Powers :-**

1Section 6 of the Land Revenue Act, No. XII of 1996 deals with different grades of Revenue Officers.

For the purposes of this Act officers of the grades mentioned hereinafter in this Act shall exercise their powers vested in them under the Land Revenue Act for discharge of their legitimate duties.

2[xxxx]

1. Section 6 of Land Revenue Act XII of 1996.

2. Certain words omitted by Act III of 2008.

### **7. Jama Or Water Mills (Jandar And Gharat) :-**

The Assessment on mills, whether imposed at Settlement or afterwards, will be treated as part of the Jama of the estate and will be subject to the usual cesses. Such assessment would be liable to suspension or remission and alluvion and diluvion in the same manner, and under the same authority, as the ordinary land revenue.

### **8. Cases In Which Assessment To Be Remitted :-**

In estate which comes under class (i) section 5, sub-section (b) of this Act -

(i) the assessment on a mill may permanently or temporarily remitted by order of the 1[Collector]; provided that the decrease or increase of the sum of assessment of such mills situated in localities falling under Schedule A of Alluvion Diluvion Rules, will be dealt with under rules for alluvion and diluvion with the consent of the Revenue Minister;

(ii) no such assessment should be permanently terminated unless the mill has been dismantled and its gear removed, or it has otherwise been satisfactorily ascertained that the mill has been permanently abandoned.

1. Substituted by Act III of 2008 for "Governor".

### **9. Points To Be Considered When Fixing Assessment :-**

The assessment on mills situated in estates of class (i) of section 5(b) and started after Settlement will be fixed by order of the 1[Collector] keeping the following points in view: -

(i) if in any estate jama has been fixed at Settlement according to classification of mills for an Assessment Circle, the Jama on new mills should be fixed according to that classification;

(ii) if there exists no such classification or definite ruling or instruction, then the assessment of new mills in the tract in question should be fixed on the same lines as have been adopted in respect of the assessment imposed on other mills with similar advantages in the same neighbourhood.

Failing these guides, the assessing officer will have regard chiefly to the following points: -

(a) situation of the new mill with reference to markets, town, etc. ;

- (b) regularity of supply of grain for milling;
- (c) sufficiency or otherwise of the water supply;
- (d) number of months during the year when the mill is expected to work;
- (e) output of flour as shown by actual measurement;
- (f) dimension and height of the mill-slucice, and any other circumstances bearing on the profits to be expected.

In no case the assessment on a mill should be less than a rupee or in fractions of a rupee.

1. Substituted by Act IV of 1995 for "Revenue Minister"

### **10. Returns To Be Submitted To Commissioner :-**

Alterations in the demand and due to the assessment of new mills or the abandonment of old ones, will be reported annually to the 1[Commissioner] for information and formal sanction to the alteration of the fixed demand.

These returns will be in Forms A and B appended to this Act and will be submitted yearly at the time of submission of Kistabandi. In order that these statements may be correctly prepared the Tehsiidar will obtain from each Patwari statements in the same form showing all changes in mills of his halqa during the preceding year, and the statements for submission to the 1[Commissioner] will be prepared after comparison with the register kept by the wasil baqi nawis under section 25 of this Act.

1. Substituted by Act IV of 1995 for "Revenue Minister"

### **11. Omitted :-**

1. Section 11 omitted *ibid*.

### **12. Where Land Revenue On Mill To Be Remitted :-**

When a mill is constructed on an area which has already been assessed to land revenue, then in assessing the revenue on the mill, the land revenue on the area should be remitted, provided that the remission so made will be in whole rupees and not in fractions of a rupee.

### **13. When A Mill Constructed On State Owned-Land :-**

1[(i) Any person constructing a mill under proper authority on a land owned by the State will be granted on mutation sanctioned by the Tehsiidar of the Tehsil concerned, occupancy right in the area in

which the mill is situated.

(ii) A person starting mill on a land held in proprietary right by a Zamindar will be shown in kasht column and the revenue chargeable thereon will be shown in the demand column.]

1. Section 13 substituted by Act I of 1994.

#### **14. Water Mills Subject To Law In Force Regarding Land Assessed To Revenue :-**

The sale and mortgage of property 1[ x x ] or occupancy rights with regard to water mills will be subject to the law in force regarding the land assessed to revenue. Such rights will not be liable to sale or attachment in the execution of an order or decree passed by any Court.

1. Words "Assamidari, Malguzari" omitted by Act VII of 1995.

#### **15. Procedure For Applying :-**

Any person wishing to start a new mill in an estate of class (i) must apply in writing to the Tehsildar, on one rupee stamp, for permission to do so, the Tehsildar will then order the Patwari to prepare Shajra and Khasra, and when these papers are received, will record statement of the applicant and issue a notice to all concerned to file their objections within a period to be specified, which shall in no case be less than a month.

The notice will be issued in duplicate, one copy to be posted in a conspicuous place in the estate in which the site of proposed mill is situated; the second copy will be placed on the file with a report of service.

#### **16. Duty Of Tehsildar :-**

After preparation of Shajra and Khasra and expiry of the period of notice, the Tehsildar should completely satisfy himself, by personal enquiry on the spot, as to whether the construction of the proposed mill is not in any way detrimental to the interests of the existing mill owners or the irrigation of land.

Even if no objections have been put in, the Tehsildar should satisfy himself that the water of the kuhl out of which the channel to work the mill has been taken out, again rejoins it and does not go away elsewhere.

If it appears that the proposed construction of the mill will be harmful so far as irrigation of land is concerned, the working of the

mill should be allowed for a period other than the one when water is required for irrigation purposes. When a channel for the water mill is taken out of a nallah wherein exists a trout nursery or where trout is stored for game purpose, the Fish Preservation Department should be consulted before the permission sought for to construct the water mill is granted. Objection, if any, raised by the Fish Preservation Department will be a sufficient justification for rejecting the application.

### **17. Objections :-**

Any person intending to put in his objections should do so in writing on one rupee stamp within the period specified in the notice. Objections put in after that period should generally be rejected unless reasonable ground for the delay caused is shown.

### **18. Tehsildar To Permit Construction :-**

If the Tehsildar is satisfied that existing rights are not interfered with and if no objections have been filed or objections filed have been rejected after due enquiry, the Tehsildar will issue orders permitting the applicant to construct the proposed mill. If the proposed mill has not been constructed or started within one year of the date of granting permission, the same will be deemed as cancelled.

### **19. Applications For Change Of Site :-**

If the existing site of a mill has become unsuitable owing to flood or diversion of the course of a river or nallah, or some other cause, the Tehsildar should, on formal applications received, pass such orders as he deems fit. For change of site two files will have to be prepared, viz. one for relinquishment of the old site and the other for construction of the new mill.

### **20. Tehsildar To Refer To Collector In Doubtful Cases :-**

If the Tehsildar finds that the proposed mill would be harmful to irrigation or existing water mills 1[or is likely to cause erosion of land] or is otherwise objectionable, he should reject the application. Doubtful cases may, if he deems fit, be referred to the 2[Collector] for instructions.

1. Inserted by Act XXV of 2007.

2. Substituted by Act III of 2008 for "Wazir Wazarat".

## **21. Provisions Of Land Revenue Act To Apply :-**

The provisions of 1[sections 11 to 15 of the Jammu and Kashmir Land Revenue Act No. XII of 1996, shall, in so far as they are applicable, apply to the proceedings and orders of Revenue officers under sections 16, 17, 18, 19, 20, 23, 24 and 28 of this Act.

1. Section 11 to 14 of the Jammu and Kashmir Land Revenue Act XII of 1996.

## **22. Patwaris Duty To Report :-**

As soon as a patwari comes to know at girdawari or otherwise that in an estate of class (i) of section 5(b) a new mill has been constructed or the site of the existing mill has been changed without permission, he should at once submit a report to the Tehsildar.

## **23. Penalty For Construction Without Permission :-**

1[(a) Any person who is proved to have constructed, or changed the existing site of, a mill of class (i) of sub-section 5(b) without proper permission shall be liable under the order of 2[Collector] to fine not exceeding Rs. 50 in each case in addition to revenue assessed on the mill which shall be realized from the date of construction. The 2[Collector] may, in addition order, for reasons to be recorded, that the mill shall be dismantled.

(b) The fine not exceeding Rs. 50 imposed on a mill which has been ordered to be dismantled shall be recurring and recoverable monthly until mill continues to exist.]

1. Section 23 substituted by Act XIV of 2005.

2. Substituted Act X of 2010 for "wazir wazarat"

## **24. Penalty For Construction Disregarding Conditions Laid Down :-**

When a mill has been permitted to be constructed subject to certain conditions and it has been found that those conditions have not been adhered to, the 1[Collector] may inflict a fine not exceeding Rs. 10 on the person committing such infringement and may also, if he thinks fit, order that the mill should be stopped.

1. Substituted Act X of 2010 for "wazir wazarat"

## **24A. Procedure Where A Mill Causes Erosion Of Land :-**

1[(i) Where a 2[Collector] find that the water outgoing from a mill

has caused any erosion of land within the area drained by such water he may require the mill owner to provide such safeguards and to repair the damage already done in such manner and within such time as he considers necessary. If such mill owner fails to comply with the directions of the 2[Collector], it shall be lawful for the 2[Collector] to order that the mill-channel and the mill shall be stopped within one month of the date of the order passed by him.

(ii) If the mill channel or the mill is to be stopped within the period prescribed under sub-section (i), the mill owner shall, at the instance of the 2[Collector] be liable to fine not exceeding rupees five per day so long the disobedience of the order continues. ]

1. Section 24-A inserted by Act XXV of 2007.

2. Substituted Act X of 2010 for "wazir wazarat"

### **25. Wasil Baqi Nawis To Keep Register :-**

A register in Form C of all mills situated in estates of class (i) will be maintained by the wasil baqi nawis of each Tehsil, and no files relating to such mills shall be consigned to record room without obtaining the certificate of the wasil baqi nawis to the effect that amaldaramad has been made in his register.

### **26. No Previous Permission Required For Construction Unless Collector Otherwise Orders :-**

In estates of classes (ii) and (iii), no previous permission is required for the construction of new mills, unless the 1[Collector] having reason to believe that the construction of new mills in any locality is objectionable, has issued order forbidding their construction without special permission in each case.

1. Substituted Act X of 2010 for "wazir wazarat"

### **27. No New Jama To Be Imposed :-**

In estates of classes (ii) and (iii) no new jama will be imposed or remitted on construction of new mills or on abandonment of old ones.

### **28. Procedure And Functions Of Patwari And Tehsildar :-**

On construction of a new mill, the patwari should write up mutation at once, and it should be disposed of by the Tehsildar who should

satisfy himself that there is no objection. If objections are put in, they should be considered and disposed of as in the case of mills in estate of class (i); but no separate file need be prepared, the matter being disposed of in the orders on the mutation. The Tehsildar may, however, if he thinks it necessary in any special case order that the matter be decided after enquiry on a separate file, the mutation remaining pending meanwhile.

### **29. No Register To Be Maintained With Respect To Such Mills :-**

No register will be maintained in the Tehsil of mills in estates of classes (ii) and (iii), and no annual returns will be prepared relating to such mills.

### **30. How Mills To Be Shown In Patwar Papers :-**

In the patwar paper, all mills in estates of classes (i), (ii) and (iii) as described under Chapter II and III will be shown as follows: -

(a) each mill be shown by the patwari under a separate Field No. In the khasra girdawari, and in the column "for changes" he will note at every harvest whether the mill is in working order or not; changes in the owner, 1[ x x ] or occupancy tenant of the mill will also be shown as usual in this column;

(b) mills, of which the site does not change, will be entered in their proper place according to locality; those, of which the situation is variable, such as those in the beds of large rivers, will be shown in the papers of the adjoining estates regardless of temporary changes of situation; each such mill will have a separate Field No. and entries regarding all such mills will be made in one place at the end of the khasra girdawari.

1. Words Malguzar, Assami omitted by Act VII of 1995

### **31. Mills To Be Shown In Jamabandi Forms :-**

Similarly, all mills will be shown in the jamabandi of the village in which they are situated. If the mill-owner is also a land-holder or an occupancy tenant, his status in respect of the gharat (water mill) in the jamabandi should be the same as he enjoys in respect of the land concerned, as is already provided for in section 13 of this Act. In case the person who has constructed a mill possesses no land in his capacity as land-holder or occupancy tenant, the entry of the mill will be made separately in the "kasht" columns of the

khewat concerned. In the former case the land and the mill revenue should be shown separately as under:-

Land revenue demand

Total demand.

Mill revenue demand

### FORM 1

#### FORM A

Annual Statement of Water Mills situated in Estates of class (i) newly started in Tehsil of the District during the year ending 19 .

Name of Mauza Hadbast No. Name of asses- sment circle. No. and date of insti- tution of file Khasra No. Name and pata- ntage of owner 1[xxx] of occup- ancy tenant. Date when mill was started Probable period of working of mill during each year. Revenue demand (imposed on the mill). Report of Tehsildar. 2[Order of Collector] Harvests from which Revenue leviabale. Remarks.

1. Words. "Malguzar. Assami" omitted by Act VII of 1955.

2. Column under "report Wazir Wazarat" omitted and for the words "order of Governor", the words "order of collector" substituted by Act IV of 1955.

### FORM 2

#### FORM B

Annual Statement of Water Mills situated in Estates of class (i) situated in in Tehsil of the District during the year ending 19 .

Name of Hadbast No. Name of asse- sment circle. No. and date of institution of file. Khasra No. Name and percentage of owner 1[x x x ] or occupancy tenant holding the mill. Harvest from which mill h a s been stopped. Report of Tehsildar Giving reasons for discontinuance or disuse of mills, etc. Report and order of higher authorities.

1. Words "Malguzar. Assami" omitted by Act VII of 1955.

### FORM 3

#### FORM C

Register of Water mills of class (i) working in Tehsil District

Name of Had- bast No. Name of asses- sment circle. SerialNo. 01 mill. Name of mill-owner Assessment No. and date of file and orders thereon. Signature of Tehsildar. Date on which constr- uction of of mill competed. Harvests from which revenue deemed leviabale. Remarks.

Reve- nue Cesses Mali- kana Total