

Madhya Pradesh Lok Dhan (Shodhya Rashion Ki Vasuli) Adhiniyam, 1987

01 of 1988

CONTENTS

1. Short Title, Extent And Commencement
2. Definitions
3. Recovery Of Certain Dues As Arrears Of Land Revenue
4. Savings
5. Act Not To Debar Recovery Of Dues Under Any Other Law
6. Power Of State Government To Make Rules
7. Repeal And Validation, Etc

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An Act to provide for the speedy recovery of certain classes of dues payable to the State Government, Government Companies and certain categories of Corporations and Banking Companies, and for matters connected therewith. Be it enacted by the Madhya Pradesh Legislature in the Thirty-eighth Year of the Republic of India as follows :-- 1. Received the assent of the President on 18-12-1987; assent first published in the Madhya Pradesh Gazette (Extraordinary), dated 2-1-1988.

1. Short Title, Extent And Commencement :-

- (1) This Act may be called the Madhya Pradesh Lok Dhan (Shodhya Rashion Ki Vasuli) Adhiniyam, 1987.
- (2) It extends to the whole of Madhya Pradesh.
- (3) It shall come into force at once.

2. Definitions :-

In this Act, unless the context otherwise requires--

- (a) "Agriculture" shall have the meaning assigned to it in clause (a) of Section 2 of the Madhya Pradesh Krishi Udhart Pravarthan Tatha Prakarn Upbandh (Bank) Adhiniyam, 1972 (No. 32 of 1973);

(b) "Banking Company" means :--

(i) a banking company as defined in the Banking Regulation Act, 1949 (No. 10 of 1949);

(ii) the State Bank of India constituted under the State Bank of India Act, 1955 (No. 23 of 1955);

(iii) a subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959 (No. 38 of 1959);

(iv) a corresponding new Bank constituted under Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (No. 5 of 1970) or the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (No. 40 of 1980);

(v) a Regional Rural Bank established under the Regional Rural Banks Act, 1976 (No. 21 of 1976); and

(vi) a financing bank or a Central Society as defined in the Madhya Pradesh Co-operative Societies Act, 1960 (No. 17 of 1961) excluding a Co-operative Land Development Bank;

(c) "Corporation" means the Madhya Pradesh Financial Corporation established under the State Financial Corporation Act, 1951 (No. 63 of 1951) and includes any other Corporation owned or controlled by the Central Government or the State Government which is declared by the State Government, by notification, to be a Corporation for the purpose of this Act;

(d) "financial assistance" means any kind of financial assistance given :--

(i) for establishing, expanding, modernizing, renovating or running any industrial concern; or

(ii) for the purpose of vocational training; or

(iii) for the development of agriculture or agro industry; or

(iv) for the purpose of carrying out any State sponsored scheme or socially desirable scheme; or

(v) for relief against distress; or

(vi) for purposes of any other kind of planned development.

(e) "Government Company" means Government company as defined in Section 617 of the Companies Act, 1956 (No. 1 of 1956);

(f) "industrial concern" shall have the meaning assigned to the expression in the State Financial Corporation Act, 1951 (No. 63 of 1951), as amended from time to time;

(g) "person" includes an heir, a legal representative, an assignee or a guarantor;

(h) "State sponsored scheme" means a scheme sponsored by way of financial assistance by the State Government under which the State Government either :--

- (i) advances money to a banking company or Government company for the purposes of disbursing loans, advances or grants or for the purposes of sale of goods on credit or hire-purchase; or
- (ii) guarantees or agrees to guarantee the repayment of a loan, advance or grant or the payment of the price of goods sold on credit or hire purchase;
- (i) "socially desirable scheme" means a scheme notified as such by the State Government under which a banking company advances money to any person by way of loan.

3. Recovery Of Certain Dues As Arrears Of Land Revenue :-

(1) Where any person is a party :--

(A) to any agreement relating to a loan, advance or grant given to him or relating to payment of price of goods sold to him on credit or relating to hire-purchase of goods sold to him by the State Government or a Corporation by way of financial assistance; or

(B) to any agreement relating to loan advance or grant given to him or relating to payment of price of goods sold to him on credit or relating to hire-purchase of goods sold to him by a banking company or a Government Company under a State sponsored scheme or as the case may be, under a socially desirable scheme; or

(C) to any agreement relating to a guarantee given by the State Government or a Corporation in respect of a loan raised by an industrial concern; or

(D) to any agreement providing that any money payable thereunder to the State Government shall be recoverable as arrears of land revenue and such person,--

(i) makes any default in repayment of the loan or advance or any instalment thereof; or

(ii) having become liable under the conditions of the grant to refund the grant or any portion thereof makes any default in the refund of such grant or portion or any instalment thereof; or

(iii) otherwise; fails to comply with the terms of the agreement then--

(a) in the case of the State Government such Officer as the State Government may, by notification, authorise in this behalf;

(b) in the case of a Corporation or a Government Company, the Managing Director thereof by whatever name called; and

(c) in the case of banking company, the local agent thereof by whatever name called, may send a certificate in such form as may

be prescribed, and consistent with the provisions of sub-section (2) of Section 4, to the Collector of the district in which such person normally resides or carries on business or owns property, or to such other subordinate officer of the Collector, as the State Government or the Collector may, by an order, specify in this behalf, mentioning the sum due from such person and requesting that such sum together with the cost of proceedings and interest on the sum due at the rate specified in the agreement, upto the date of recovery, be recovered as if it were an arrear of land revenue:

Provided that a certificate issued under this sub-section may be withdrawn by the authority issuing such certificate at any time :

Provided further that the cost of proceedings shall always be calculated at the rate of three percent, of the principal sum to be recovered.

(2) The Collector or his subordinate officer specified under sub-section (1) on receiving the certificate shall take steps to recover the amount stated therein as arrear of land revenue under the Madhya Pradesh Land Revenue Code, 1959 (No. 20 of 1959).

(3) No suit for the recovery of any sum due as aforesaid shall lie in a Civil Court against any person in respect of whom a certificate for recovery of such sum has been issued under sub-section (1):

Provided that in computing the period of limitation for institution of suit for the recovery of any such sum, the period during which the recovery is barred under this section shall be excluded.

(4) In the case of any agreement referred to in sub-section (1) between any person referred to in that sub-section and the State Government or a Corporation, no arbitration proceedings shall lie at the instance of either party either for recovery of any sum claimed to be due under the said sub-section or for disputing the correctness of such claim :

Provided that whenever proceedings are taken against any person for the recovery of such sum he may pay the amount claimed under protest to the officer taking such proceedings, and upon such payment the proceedings shall be stayed and the person against whom such proceedings were taken may make a reference under arbitration agreement or otherwise enforce an arbitration agreement in respect of the amount so paid.

(5) Save as otherwise expressly provided in the first proviso to sub-section (1) and the proviso to sub-section (4), every certificate issued under sub-section (1) shall be final and shall not be called in question in any original suit, application (including any application under the Arbitration Act, 1940) or in any reference to arbitration

and no injunction shall be granted by any Court or other authority in respect of any action taken or intended to be taken in pursuance of any power conferred by or under this Act.

(6) Any amount recovered under this Act shall, notwithstanding anything contained in any other law for the time being in force, be applied in the following manner, namely :--

(a) firstly, towards the cost of proceedings to be shared between the State Government and the authority issuing the certificate under sub-section (1), in such manner as may be prescribed;

(b) secondly, towards interest to be paid to the authority;

(c) thirdly, towards the principal amount due to be paid to the authority; and

(d) the balance, if any, as far as possible in accordance with the provisions of Section 151 of the Madhya Pradesh Land Revenue Code, 1959 (No. 20 of 1959).

4. Savings :-

(1) Nothing in Section 3 shall:--

(a) affect any interest of the State Government, a Corporation, a Government company or any banking company in any property, created by any mortgage, charge, pledge or other encumbrance; or

(b) affect any right or remedy against any person other than a person referred to in that section, in respect of a contract of indemnity or guarantee entered into in relation to an agreement referred to in that section or in respect of any interest referred to in clause (a).

(2) Where the property of any person referred to in Section 3 is subject to any mortgage, charge, pledge or other encumbrance in favour of the State Government, a Corporation, a Government company or a banking company, then--

(a) in every case of a pledge or hypothecation of goods, proceedings shall first be taken for sale of goods pledged or hypothecated and if the proceeds of such sale are less than the sum due, then proceedings shall be taken for recovery of the balance as arrear of land revenue :

Provided that where the Collector is of the opinion that it is necessary so to do for ensuring the recovery of the sum due to the State Government or to a Corporation, a Government company or a banking company, as the case may be, he may for reasons to be recorded, direct proceedings to be taken for recovery of the sum due, as arrear of land revenue before or at the same time the

proceedings to be taken for sale of the goods pledged;

(b) in every case of a mortgage, charge or other encumbrance on immovable property, such property or, as the case may be, the interest of the defaulter therein, shall first be sold in proceedings for recovery of the sum due from that person as arrear of land revenue, and any other proceedings may be taken thereafter only if the Collector certifies that there is no prospect of realisation of the entire sum due through the first mentioned process within a reasonable time.

5. Act Not To Debar Recovery Of Dues Under Any Other Law

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Nothing in this Act shall debar the recovery of dues under any other law for the time being in force :

Provided that the authority to which the sum is due shall take recourse to the provisions of only one law at a time for its recovery.

6. Power Of State Government To Make Rules :-

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

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

(a) the form of certificate to be sent under sub-section (1) of Section 3;

(b) the manner in which cost of proceedings shall be shared between the State Government and the authority in terms of clause (a) of sub-section (6) of Section 3;

(c) any other matter which is to be or may be prescribed.

(3) All rules made under this Act shall be laid on the table of the Legislative Assembly.

7. Repeal And Validation, Etc :-

(1) The Madhya Pradesh Public Moneys (Recovery of Dues) Act, 1981 (No. 27 of 1981) is hereby repealed.

(2) Notwithstanding such repeal, any proceedings instituted for the recovery of any sum under the repealed Act and pending on the date of such repeal shall be deemed to have been instituted under this Act and shall continue in accordance with the provisions of this Act.

(3) Notwithstanding any judgment, decree or order of any Court, anything done or any action taken (including orders made, notice or certificates issued and proceedings initiated to recover any amount) or purported to have been done or taken under the repealed Act shall be deemed to be as valid and effective as if such thing or action was done or taken under the corresponding provisions of this Act, and accordingly no suit or other legal proceedings shall be maintained or continued in any Court questioning the validity of any thing done or any action taken or purported to have been done or taken under repealed Act on the ground that the said Act is unconstitutional or void as it had not been reserved for the assent of the President and assented to by the President.