

Himachal Pradesh Relief Of Agricultural Indebtedness Act, 1976

(Act No. 17 Of 1 976)

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For Statement of Objects and Reasons, see Rajpatra, Himachal Pradesh (Extraordinary) dated. 21st February, 1976, p. 634.

Received the assent of the President of India on the 22nd April, 1976, and was published in the Rajpatra, Himachal Pradesh (Extra-ordinary), dated the 30th April, 1976, pp. 1187-1197.

An Act to provide for relief from indebtedness to certain farmers, landless agricultural labourers and rural artisans in the State of Himachal Pradesh.

Himachal Pradesh Relief Of Agricultural Indebtedness Act, 1976

(Act No. 17 Of 1 976)

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

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement.-

(1) This Act may be called the Himachal Pradesh Relief of Agricultural Indebtedness Act, 1976.

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

(3) It shall come into force at once.

2. Definitions. -

(1) In this Act, unless the context otherwise requires, -

(a) "agriculturist" means a person who cultivates land personally;

(b) "appointed day" means the 13th November, 1975;

(c) "appellate officer" means an officer appointed under sub- section (1) of section 19;

(d) "authority" means one or more persons to be appointed by the State Government as authorities by a notification for carrying out the purposes of this Act, in respect of areas to be specified in such notification;

(e) "civil court" includes, -

(i) any court exercising jurisdiction under the Provincial Insolvency Act, 1920 (5 of 1920);

(ii) a Nyaya Panchayat established under the Himachal Pradesh Panchayati Raj Act, 1968 (19 of 1970);

(iii) a court exercising powers under the Provincial Small Cause Courts Act, 1887 (9 of 1887);

(f) "debt" with its grammatical variations and cognate expressions means any liability in cash or kind, whether secured or unsecured, due from a debtor whether payable under a decree or order of any civil court or otherwise;

(g) "debtor" means a marginal farmer, a landless agricultural labourer or a rural artisan who is in debt; but does not include a small farmer;

(h) "to hold land" with its grammatical variations and cognate expressions means to be lawfully in actual possession of land as owner, tenant or Government lessee and the expression "holding" shall be construed, accordingly;

(i) "landless agricultural labourer" means a person who does not hold any land and whose principal means of livelihood is manual labour on agricultural land and includes a person who follows anyone or more of the following agricultural occupations in the capacity of labourer on hire or exchange, whether paid in cash, in kind or partly in cash and partly in kind:-

(a) farming including cultivation and tillage of soil etc;

(b) dairy farming;

(c) production, cultivation, growing and harvesting of horticultural commodity;

(d) raising of livestock, bees or poultry; and

(e) any practice performed on a farm as incidental to or in conjunction with farm operations (including any forestry or timbering operations) and preparation for market and delivery to storage or to market or to carriage for transportation of farm products;

(j) "Local authority" means a Municipal Corporation or Municipal Committee, a Notified Area Committee or a Cantonment Board, as the case may be, constituted or deemed to have been constituted under any law relating to local authority for the time being in force;

(k) "marginal farmer" means an agriculturist who earns his livelihood mainly by agriculture and who holds land not exceeding one hectare of unirrigated or half hectare of irrigated land:

Provided that if a marginal farmer holds both classes of land then the area for the purpose of this clause shall be determined on the basis of half hectare of irrigated land counting as one hectare of unirrigated land and on the basis of this conversion ratio the total area of such farmer shall not exceed one hectare;

(l) "member of a family" means father, mother, spouse, brother, unmarried dependant sister, divorced and dependent sister, son, son's wife, or unmarried daughter, divorced and dependent daughter, son's son, sons' unmarried daughter, son's divorced and dependent daughter and includes any relation residing with and actually dependant for his maintenance on the debtor;

(m) "rural artisan" means a person who does not hold any agricultural land and whose principal means of livelihood is production or repair of traditional tools, implements and articles or things used for agriculture purposes or purposes ancillary thereto and also person who normally earns his livelihood by practising a craft either by his own labour or by the help of the labour of the members of his family in the rural area and whose annual house-hold income does not exceed two thousand and four hundred rupees;

(n) "rural area" means an area outside the jurisdiction of a local authority;

(o) "small farmer" means an agriculturist who earns his livelihood mainly by agriculture and who holds more than one hectare and less than two hectares of unirrigated or more than half hectare and less than one hectare of irrigated land:

Provided that if a small farmer holds both classes of land then the area for the purpose of this clause shall be determined on the basis of one hectare of irrigated land counting as two hectares of unirrigated land and on the basis of this conversion ratio the total area of such farmer shall not exceed two hectares;

(p) words and expressions used in this Act but not defined therein shall have the meanings, respectively assigned to them in the Himachal Pradesh Ceiling on Land Holdings Act, 1972 (19 of 1973).

(2) If a question arises whether a person is a marginal or small farmer, or a landless agricultural labourer or a rural artisan, the question shall be referred to an officer not below the rank of a Tehsildar duly appointed by the State Government in that behalf and the decision of such officer on the question shall be final and conclusive and shall not be called in question in any civil court:

Provided that no such question shall be decided unless an opportunity has been given to the interested parties to be heard.

CHAPTER II

LIQUIDATION OF CERTAIN DEBTS

3. Consequences or commencement of this Act.-

Notwithstanding

anything contained in any other law for the time being in force or in any contract, decree of any court or other instrument having force by virtue of any such law, and save as otherwise expressly provided in this Act, every debt outstanding on the appointed day, including the amount of interest, if any payable by a debtor to creditor shall be deemed to be wholly discharged, and the consequences as hereinafter set forth shall, with effect from the appointed day, ensue, namely:-

(a) no such debt due from a debtor on the appointed day shall be recoverable from him or from or against any movable or immovable property belonging to him, nor shall any such property be liable to be attached and sold or proceeded against in any manner in the execution of any decree or order relating to such debt against him;

(b) no civil court shall entertain any suit or proceeding against such debtor for the recovery of any amount of such debt, including interest, if any:

Provided that where a suit or proceeding is instituted jointly against such debtor or any other person nothing in this clause shall apply to the maintainability of a suit or proceeding in so far as it relates to such other person;

(c) all suits and proceedings (including appeals, revisions, attachment or execution proceedings) pending on the appointed day for the recovery of any such debt against such debtor shall abate:

Provided that nothing in this clause shall apply to the sale of-

(i) any movable property held and concluded before the appointed day;

(ii) any immovable property acquired before such day;

(d) every debtor undergoing detention in a civil prison in execution of any decree for money passed against him by a civil court in respect of any such debt shall be released forthwith;

(e) every property pledged or mortgaged by such debtor shall stand released in favour of such debtor, and the creditor shall be bound to return the same to the debtor forthwith. If the debtor is opposed or impeded in taking possession of the property, then he may request the District Magistrate, or any executive magistrate authorized by him to enforce delivery of possession of such property. The District Magistrate, or as the case may be, the executive magistrate shall take or cause to be taken such steps and use or cause to be used such force as may be reasonably necessary for securing the delivery of possession of the property to the debtor.

Explanation.- Nothing in this section shall be construed to entitle any such debtor to the refund of any part of a debt already repaid by him or recovered from him before the appointed day.

4. Agreement for labour in lieu of debt to become void.-

Any custom or tradition or any agreement (whether made before or after the appointed day), whereunder or by virtue of which a debtor or any member of his

family is required to work as labourer or otherwise for the creditor shall be void and of no effect and shall not be enforceable in any court.

CHAPTER III

MORATORIUM ON EXECUTION OF DECREES AGAINST SMALL FARMERS

5. Stay or proceedings in case or certain decrees.-

(1) No debt or part thereof including any interest thereon due from a small farmer as on the appointed day shall be recoverable from him for a period of one year commencing from the appointed day.

(2) All proceedings in execution of any decree for money, or proceedings for making final, any preliminary decree for foreclosure or sale, or proceedings in execution of any final decree for sale, passed by a civil court on the basis of a liability incurred before the appointed day in which the judgment debtor or defendant, as the case may be, is, on the appointed day, a small farmer, shall be stayed against such judgment debtor or defendant, on an application made by him in this behalf for a period of one year from the appointed day.

(3) All attachments of growing crops, agricultural produce, livestock and other movable property of a perishable nature made in execution of decrees for money the execution of which has been stayed under sub-section

(1) and existing on the date on which the stay order is passed shall be withdrawn.

(4) Every stay order passed by the court under this section shall relate back to the date of the application for stay filed by the judgment debtor or defendant, as the case may be, and the proceedings shall for all purposes of this Act be deemed to have been stayed with effect from such date.

6. Release of persons in detention in civil prison.-

(1) On the appointed day, every small farmer undergoing detention in a civil prison in execution of any decree for money passed by civil court in respect of his debt shall be released.

(2) No small farmer shall in any case be liable to arrest or detention in a civil prison in execution of any such decree as is referred to in sub-section

(1) for a period of one year from the appointed day.

7. Relief against default in payment or instalments.-

(1) Where a decree for payment of the decretal amount by instalments contains a provision that in default of one or more instalments, the whole amount shall become due at once, then, notwithstanding anything in such provision, non-payment of any instalment falling due during the period in which the proceedings in execution remain stayed under this Act shall not be deemed to be a default for the purposes of such provision.

(2) If the judgment debtor pays the instalment so falling due within a period of twelve months after the expiry of period prescribed in sub-section

(1) then such instalment shall be deemed to have been paid on the due date.

8. Powers of State Government to extend the period of moratorium.-

The State Government may by notification in the Official Gazette extend the period of one year referred to in sub-sections (1) and (2) of section 5 and sub-section (2) of section 6 by a further period not exceeding one year.

9. Computation of time for execution.-

In computing the period of twelve years prescribed by the Limitation Act, 1963 (3 of 1963) the period during which proceedings are stayed under this Act shall be excluded.

10. Payment of certain decrees.-

Nothing contained in this Chapter shall-

(a) apply to a decree for money arising out of claims relating to trusts or for maintenance or for profits in favour of a co-tenant, or co-owner, or for mesne profits or for damages for tort, or for contribution between co-tenants of agricultural lands ; or

(b) apply to a mortgage decree against property in the hands of a subsequent transferee who has taken the transfer in order to satisfy the mortgage subject to the mortgage on the basis of which such decree has been obtained; or

(c) apply to decisions, orders of any authority, made under the provisions of the Himachal Pradesh Co-operative Societies Act, 1968 (3 of 1969).

11. Transfer by small farmer to be voidable.-

Every transfer of property made by a small farmer against whom proceedings in execution have been stayed under this Act shall be voidable at the option of the creditor whose claim against such small farmer is defeated or delayed.

12. Restriction on amount of claim and interest in certain cases.-

(1) On the expiry of one year or such extended period as may be notified under section 8 from the appointed day, no claim arising out of any proceeding, which are stayed under sub-section (1) of section 5 or out of any decree described in sub-section (1) of that section in respect of which no execution proceedings have been taken shall ever exceed the amount of the principal by more than one hundred fifty percent, of such amount.

(2) No interest shall accrue on any amount included in any claim referred to in sub-section (1) during the period this Chapter is in operation.

CHAPTER IV

EXEMPTIONS

13. Savings.-

Subject to the provisions of section 9, nothing in this Act shall affect the debts and other liabilities of any debtor or small farmer falling under any of the following matters, namely:-

- (a) any rent due in respect of any property let out to such debtor;
- (b) any liability arising out of breach of trust or any tortious liability;
- (c) any liability in respect of wages or remuneration due as salary or otherwise for services rendered;
- (d) any liability in respect of maintenance, whether under a decree of court or otherwise ; and
- (e) debt due to:-
 - (i) the Central Government or State Government;
 - (ii) any local authority;
 - (iii) a bank as defined in the Himachal Pradesh Agricultural Credit Operations and Miscellaneous Provision (Bank) Act, 1972 (7 of 1973) ;
 - (iv) a body corporate established under any law for the time being in force;
 - (v) any co-operative society, registered or deemed to be registered under the provision of the Himachal Pradesh Co-operative Societies Act, 1968 (3 of 1969) ;
 - (f) any Government Company within the meaning of the Companies Act, 1956 (1 of 1956);
 - (g) any sum due to Government; and
 - (h) any amount recoverable as arrears of land revenue.

CHAPTER V

SCALING DOWN OF DEBTS OF SMALL FARMERS

14. Application for determination of debt.-

- (1) A small farmer may, within such time and in such manner as may be prescribed, make an application to an authority for the local area within which such small farmer ordinarily resides, for determination of this debt.
- (2) Unless the small farmer has already made an application under sub-section (1) any of his creditors may also make an application to the same authority to which, and in the same manner in which, the small farmer might have applied under that sub-section for determination of the debt in question.
- (3) If application are made to more than one authority in respect or the same debt, such applications shall, subject to such rules as may be made in this behalf be transferred to and deal with by one authority.
- (4) An application under sub-section (1) or under sub-section (2) shall be in writing in the prescribed form and shall be accompanied by such fee as may be prescribed.

15. Determination of amount.-

- (1) On receipt of application under section 14 the authority, after giving an opportunity to the parties concerned to appear and be heard, shall determine in

respect of the debt in question the amount of the principal and the amount of interest at the rate of six per centum per annum due thereon, upto the date of such determination.

(2) When the authority has determined under sub-section (1) the amount of the debt together with interest the decision of the authority to be embodied in an order, shall subject to the provisions of section 20 relating to appeal, be final and shall not be called in question in any civil court.

(3) The procedure to be followed by an authority in any proceeding before it shall, subject to the provisions of this Chapter be in accordance with such rules as may be prescribed.

(4) An order made under sub-section (2) shall be in the prescribed form and shall include such particulars as may be prescribed.

(5) The debt in excess of the debt determined under the provision of this section shall not be recoverable from the small farmer and shall stand discharged.

16. Relief to small farmers.-

Notwithstanding anything contained elsewhere in this Act in every case, the authority shall, subjects to such rules as may be made in this behalf by an order, reduce the debt to such amount as does not exceed twenty per cent of the estimated gross value of the agricultural produce earned by the small farmer in the year preceding the year in which the determination takes place, multiplied by seven and shall make a further order that the amount of the debt to be repaid in such monthly or annual instalments covering a period not exceeding seven years either with or without interest, as the authority may determine.

17. Prohibition regarding rate and amount of interest.-

Notwithstanding anything contained in any law for the time being in force or in any agreement, no small farmer shall be liable to pay after the commencement of this Act-

(a) any sum in respect of principal and interest which together exceeds the principal;

(b) on account of interest outstanding on the date, upto which such liability is computed a sum greater than the principal outstanding on such date; and

(c) any interest other than simple interest at a rate of six per cent per annum or the rate stipulated between the parties, whichever is less:

18. Bar to suits and proceedings and execution of decrees in civil or revenue courts.-

(1) No civil or revenue court shall entertain a suit, application or proceeding against a small farmer in respect of any debt to which the provisions of this Chapter apply and any suit, application or proceeding pending before such court after the commencement of this Act shall abate.

(2) Notwithstanding anything contained in any law for the time being in force, no decree of a civil court in relation to the debt to which this Chapter apply, shall be

executed.

19. Transfer of application from one authority to another.-

(1) The State Government may authorise the Collector to transfer from one authority to another, for disposal, an application made under section 14.

(2) An authority to which an application is transferred under sub-section (1) may continue the proceeding in connection with the application from the stage which has been reached when the application is transferred.

20. Appeals.-

(1) An appeal may be made in the prescribed manner to an Appellate Officer to be appointed by the State Government, against any decision or order of an authority, made under this Chapter.

(2) An appeal under sub-section (1) shall be made within thirty days from the date of the decision or order referred to in that sub-section:

Provided that the Appellate Officer may entertain the appeal after the expiry of the said period of thirty days, if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(3) The State Government may make rules regarding the procedure to be followed by an Appellate Officer and the fees to be paid by an appellant for preferring the appeal.

(4) The Appellate Officer may, after giving the appellant an opportunity of being heard, either confirm or modify the decision or order made by the authority or direct the authority to take such action as the

Appellate Officer thinks fit.

(5) An order passed by an Appellate Officer under this section shall be final.

CHAPTER VI

GENERAL

21. 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 matters which may be or have to be prescribed.

(3) The power to make any rule under sub-sections (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 maybe 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 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 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.

22. Declaration as to giving effect to certain directive principles of the State Policy.-

It is hereby declared that the provisions of this Act are for giving effect to the policy of the State towards securing the principles specified in clauses (b) and (c) of Article 39 of the Constitution.

23. Penalties.-

Whoever-

(a) after the appointed day, recovers any debt or part thereof including interest thereon from a debtor or a small farmer in contravention of the provisions of section 3 (a), section 5 (1) or Chapter V of this Act;

(b) intentionally makes any false statement before any authority or an Appellate Officer in any proceeding under this Act;

(c) intentionally produces before an authority or an Appellate Officer any false document; or

(d) abets any such act; shall, on conviction, be liable to imprisonment for a term which may extend to three years or fine which may extend to two thousand rupees or with both.

24. Power to remove difficulty.-

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 direction not inconsistent with the provisions of this Act, as may appear to it to be necessary or expedient for the removal of the difficulty.

25. Repeal and savings.-

With effect from the commencement of this Act, the Himachal Pradesh Relief of Agricultural Indebtedness Ordinance, 1975 (7 of 1975), shall stand repealed:

Provided that anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under this Act.