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Himachal Pradesh Transfer of Land (Regulation) Act, 1968

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**THE HIMACHAL PRADESH TRANSFER OF LAND (REGULATION)
ACT, 1968**

AGREEMENT OF SECTIONS

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**THE HIMACHAL PRADESH TRANSFER OF LAND (REGULATION)
ACT, 1968**

(Act No. 15 of 1969)¹

(Received the assent of the President of India on the 15th May, 1969, and was published in Hindi and English in R.H.P.Extra., dated the 28th June, 1969 at page 526-528.)

AN ACT to regulate the transfer of Land in the "State of Himachal Pradesh" in the interest of persons belonging to the Scheduled Tribes and for matters connected therewith.

Amended, repealed or otherwise affected by,-

- (i) A.O. 1973, published in R.H.P. Extra., dated 20th January, 1973 at pages 91-112.

¹. For Statement of Objects and Reasons see R.H.P. Extra., dated the 30th November, 1968 p. 1166.

(ii) H.P. Act No. 16 of 1986², assented to by the President on 18th May, 1986 published in R.H.P. Extra., dated 2nd July, 1986 pages 1163. (to be checked)

(iii) H.P. Act No. 2 of 2003³, assented to by the President on 14th January, 2003 published in R.H.P. Extra., dated 12th March, 2003 pages 3621-3626.

Be it enacted by the Legislative Assembly of Himachal Pradesh in the Nineteenth year of the Republic of India as follows:

1. Short Title, extent and commencement.- (1) This Act may be called the Himachal Pradesh Transfer of Land (Regulation) Act, 1968.

(2) It extends to such area of the State of Himachal Pradesh, as from time to time be notified in the Official Gazette.

(3) It shall come into force at once.

2. Definitions.-In this Act, unless the context otherwise requires,-

(a) "Commissioner" means the Commissioner appointed under the Land Revenue Act in force in Himachal Pradesh;

(b) "Co-operative Land Mortgage Bank" means a Co-operative Land Mortgage Bank registered as such under the Punjab Co-operative Land Mortgage Banks Act, 1957 (26 of 1957) as in force in the State of Himachal Pradesh.;

(c) "Co-operative Society" means a Co-operative Society registered as such under the Himachal Pradesh Co-operative Societies Act, 1956(13 of 1956) or the Punjab Co-operative Societies Act, 1961 (25 of 1961), as in force in the territory transferred to Himachal Pradesh under the Punjab Re-Organisation Act, 1966(31 of 1966);

(d) "Deputy Commissioner" in relation to any district, means the Deputy Commissioner of that district;

(e) "Financial Commissioner" means the Financial Commissioner of Himachal Pradesh;

⁴[(ee) "Gram panchayat" means an Institution as established under section 8 of the Himachal Pradesh Panchayati Raj Act, 1994 (4 of 1994) ;

(eee) "Gram Sabha" means a body established under section 4 of the

² For Statement of Objects and Reasons see R.H.P. Extra., dated 8th March, 1986, pages 350.

³ Passed in Hindi by the Himachal Pradesh Vidhan Sabha. For Statement of Objects and Reasons see R.H.P. Extra., dated 28th August, 2002, pages 1524 & 1529.

⁴ Clauses (ee) and (eee) inserted by H.P. Act No.2 of 2003 published in R.H.P. (Extra-ordinary) on 12-3-2003 at page 3624.

Himachal Pradesh Panchayati Raj Act, 1994 (4 of 1994);]

- (f) "Land" means a portion of the earth's surface, whether or not under water, and includes all things attached to, or permanently fastened to anything attached to such portion but does not include minerals, natural gas, petroleum, timber, trees, growing crops and grass; .
- ⁵ [(ff) "PanchayatiRnchayat" means a Gram Panchayat or a Panchayat Smiti or a Zila Parishad constituted under the Himachal Pradesh Panchayat Raj Act, 1994(4 of 199);]
- (g) "Prescribed" means prescribed by rules made under this Act;
- (h) "Scheduled Tribes" shall have the same meaning as assigned to it in clause (25) of Article 366 of the Constitution; and
- (i) "State Government" means the Government of Himachal Pradesh.

3. Regulation of transfer of land.⁶[(1) No person belonging to Scheduled Tribe 'shall transfer his interest in any land including any constructed premises by way of sale, mortgage, lease, gift or otherwise to any person not belonging to such tribes except with the previous permission in writing of the State Government:

Provided that the State Government before 'according such permission shall consult the Gram Sabha or Panchayats at the appropriate level:

Provided further that nothing in this sub-section shall apply to any transfer,-

- (a) by way of lease of a building on rent; and'
- (b) by way of mortgage, for securing loan, to any Co-operative Land Mortgage Bank or to any Co-operative Society, all members of which belong to Scheduled Tribes:

Provided further that previous permission in writing of the State Government and prior consultation of Gram Sabha or Panchayats at appropriate level shall be required, for making the acquisition of land under Land Acquisition Act, 1894 (of 1894) in the Scheduled Areas for development of projects and before re-settling or rehabilitating persons evicted by such projects in the scheduled areas, the actual planning and implementation of the projects in the scheduled areas shall be co-ordinated at the State level;]

(2) Every transfer of interest in land made in contravention of the provisions of sub-section (1) shall be void.

4. Application for permission for transfer of land.- (1) Any person

⁵ Clause (ff) inserted by H.P. Act No.2 of 2003 published in R.H.P., (Extra-ordinary) on 12-3-2003 at page 3624.

⁶ Substituted by H.P. Act. No.2 of 2003 published in R.H.P.(Extra-ordinary) on 12-3-2003 at page 3624.

belonging to any Scheduled Tribe who desires to make a transfer of his interest of any land to a person not belonging to such tribe, may make an application to the Deputy Commissioner for the grant of permission for such transfer.

(2) Every application under sub-section (1) shall be made in the prescribed form and shall contain the prescribed particulars and shall be accompanied by such fees as may be prescribed.

⁷[(3) On receipt of any such application for the grant of permission, the Financial Commissioner shall refer the application to the Deputy Commissioner and the Deputy Commissioner, after making such inquiry as he thinks fit, shall submit the application with his remarks to the Commissioner who after recording his opinion about such transfer of land shall forward the application to the State Government for decision, and the State Govt. after due consideration shall grant or refuse the permission:

Provided that where permission is refused, the State Government shall record in writing the reasons for such refusal and shall communicate such refusal to the applicant as well as to the Gram Sabha or Panchayats at the appropriate level.]

(4) Before granting or refusing permission under this section, the ⁸[State Government] shall have regard to the following matters, namely:-

- (a) he financial position of the applicant;
- (b) he age and physical condition of the applicant;
- (c) the purpose for which the transfer is proposed to be made; and
- ⁹[(cc) recommendations of the concerned Gram Sabha or Panchayats at the appropriate level; and]
- (d) such other relevant matters as the ¹⁰[State Government] may think fit in the circumstances of the case.

5. Ejectment.-(I) if, as a result of transfer of any land in contravention of the provisions of section 3, any person other than a person belonging to any Scheduled Tribes, is found to be in possession of that land, the Deputy Commissioner or any other officer authorised in writing by the State Government in this behalf, ¹¹[or the Panchayats at the appropriate level,] may, without prejudice to the provisions of section 9 serve a notice upon such

⁷ Sub-section (3) substituted by H.P. Act No. 2 of 2003 published in R.H.P. (Extra-ordinary) on 12-3-2003 at page 3625.

⁸ .Substituted for the words "Deputy Commissioner", vide H.P. Act. No.2 of 2003 published in R.H.P. (Extra-ordinary) on 12-3-2003 at page 3625.

⁹ Inserted by H.P. Act No.2 of 2003 published in R.H.P. (Extra-ordinary) on 12-3-2003, at page 3625.

¹⁰ Substituted for the words "Deputy Commissioner", vide H.P. Act. No.2 of 2003 published in R.H.P. (Extra-ordinary) on 12-3-2003 at page 3625

¹¹ Words" or the Panchayats at appropriate level", inserted by H.P. Act. No.2 of 2003, published in R.H.P. (Extra-ordinary) on 12-3-2003 at page 3625.

person requiring him to vacate the land within ninety days from the date of service of the notice and to remove any building, fence or any other structure which may have been raised on such land:

Provided that if there are any crops actually growing on the land at the time of such requisition, such person shall be entitled to retain possession of the land until such crops are harvested.

(2) Every person to whom a requisition is made under sub-section (1) shall be bound to comply with such requisition.

¹²[**6. Appeal.**-- (1) Any person aggrieved by an order made under section 5 may, within thirty days from the date of communication of the order, prefer an appeal to the Commissioner:

Provided that the Commissioner, 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.

(2) On receipt of an appeal under sub-section (1), the Commissioner shall dispose of the appeal expeditiously after giving the appellant an opportunity of being heard.]

¹³[**6-A. Review.**- The State Government may review its order passed under section 4 for sufficient and good reasons suo-motu or on an application of an interested party:

Provided that the State Govt. shall not pass any order reversing or modifying its previous orders without giving the parties concerned an opportunity of being heard, and fresh consultation of the Gram Sabha or Panchayat concerned at the appropriate level.]

¹⁴[**7. Finality of orders.**-The orders made in appeal by the Commissioner under section-6 and, subject only to such order, the order made by the Deputy Commissioner or any other officer authorised in writing by the State Govt. under section-5 or the Panchayats at the appropriate level, shall be final.]

8. Right, title or interest held by persons belonging to Scheduled Tribes in land not to be attached.-¹⁵[(1)] No right, title or interest held by a person belonging to Scheduled Tribe in any land shall be liable to be attached or sold in execution of any decree or order in favour of any person not belonging to a Scheduled Tribe of any court except when the amount due under such decree or order. is due to the State Government or to any Co-

¹² Section 6 substituted by H.P. Act. No.2 of 2003 published in R.H.P. (Extra-ordinary) on 12-3-2003 at page 3626.

¹³ New Section 6-A inserted by H.P. Act. No.2 of 2003 published in R.H.P. (Extra-ordinary) on 12-3-2003 at page 3626.

¹⁴ Section 7 substituted by H.P. Act. No2 of 2003 published in R.H.P. (Extra-ordinary) on 12-3-2003 at page 3626.

¹⁵ Section 8 re-numbered as sub-section (1) by H.P. Act. No. 16 of 1986 published in R.H.P. (Extra-ordinary) on 2-7-1986 at page 116.

operative Land Mortgage Bank or Co-operative Society.

¹⁶[(2) Notwithstanding anything to the contrary contained in the Code of Civil Procedure or any other law for the time being in force, any court, 5 of 1908 vested with the appellate or revisional jurisdiction, may, either on its own motion or on an application moved to it by any person belonging to a Scheduled Tribe, set aside any sale of his property in execution of a decree in favour of a person not belonging to a Scheduled Tribe.

Explanation.-For the removal of doubts, it is hereby declared that the court shall not refuse to take cognizance of an application, or refuse, to exercise the power conferred upon it, under this sub-section, simply for the reason that the applicant or the person to whom the property in question belonged failed to raise the objection so that extent before the court which either passed the decree or passed any order in execution proceedings thereof.]

¹⁷**[8-A. Amendment of the Limitation Act, 1963, in its application to proceedings under section 8.**-In the Limitation Act, 1963 in its 36 of 1963 application to the proceedings under section 8, in the Schedule, after the words 'Twelve years' occurring in the second column against article 65, the words, brackets and figure but 'thirty years' in case of immovable property belonging to a member of a Scheduled Tribe specified in relation to the state of Himachal Pradesh in the Constitution (Scheduled Tribes) Order 1950, shall be inserted.]

9. Penalty.-If any person contravenes or attempts to contravene or abets the contravention of any of the provisions of section-3 or section-5, he shall be punishable with fine which may extend to ¹⁸[five thousand] rupees and in the case of a continuing contravention, with an additional fine which may extend to ¹⁹[five hundred] rupees for every day during which such contravention continues after conviction for the first such contravention.

10. Power to make rules.-(1) The State Government may make rules for the purpose of carrying out the provisions of this Act.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for-

- (a) the form of application for the grant of permission under section 4, the particulars it may contain, the fees which should accompany it and the manner of depositing such fees; and

¹⁶ Added by H.P. Act. No. 16 of 1986 published in R.H.P. (Extra-ordinary) on 2-7-1986 at page 1163.

¹⁷ Section 8-A added by H.P. Act. No. 16 of 1986 published in R.H.P. (Extra-ordinary) on 2-7-1986 at page 1163.

¹⁸ For the words "two hundred", the words "five thousand" Substituted by H.P. Act No. 2 of 2003 published in R.H.P. (Extra-ordinary) on 12-3-2003 at page 3626

¹⁹ For the words "fifty", the words "five hundred" substituted by H.P. Act. No.2 of 2003 published in R.H.P. (Extra-ordinary) on 12-3-2003 at page 3626.

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