

SIND ACT No. XLIX OF 1947.
[THE SIND RURAL CREDIT AND LAND TRANSFER
ACT, 1947.]

[21st August, 1947.]

An Act to regulate rural credit and the transfer of agricultural land in²[Sind].

WHEREAS it is expedient to regulate rural credit and the transfer of agricultural land in²[Sind],

It is hereby enacted as follows:—

Short title
and commen-
cement

1. (1) This Act may be called the Sind Rural Credit and Land Transfer Act, 1947.

(2) It shall come into force on such date⁴ as the Provincial Government may, by notification in the *Official Gazette*, appoint.

Definition

2. (1) In this Act, unless there is anything repugnant in the subject or context,—

(a) "agricultural year" means the year commencing on the 1st April or on such other date as the Provincial Government may, by notification in the *Official Gazette*, appoint for the whole or any part of⁵[Sind],

4["(aa) "creditor" means a person or a firm carrying on the business of advancing loans, and includes the legal representatives and successors-in-interest of such person or firm;

(ab) "debtor" means a person who owes a debt, and—

(i) who earns his livelihood mainly by agriculture and is either a land-holder or tenant of agricultural land, or

(ii) who earns his livelihood as a village artisan, or

(iii) whose total assets do not exceed five thousand rupees.

Explanation— A debtor shall not lose his status as such—

(1) through involuntary unemployment, incapacity or by bodily infirmity, or on account of his pay and allowances or pension from employment in the Armed Forces of Pakistan exceeding his income from agricultural sources;

(ii) by reason only that he derives income by using his ploughcattle for purposes of transport;

(iii) by reason only that he does not cultivate with his own hands."]

(b) "land" means land situated within³[Sind] which is occupied for agricultural purposes or for purposes subservient to agriculture or for pasture and includes—

(i) the sites of buildings and other structures

(ii) things attached to the earth or permanently fastened to anything attached to the earth but does not include trees used for timber or fuel;

(c) "landholder" means a person who holds land;

(d) "loan" means an advance, whether in cash or kind, and includes any transaction which is in substance a loan but does not include an advance made by the Central or any Provincial Government, or by a Co-operative Society registered under the Sind Co-operative Societies Act, 1925;

Sind VII of
1945.

1. For Statement of Objects and Reasons, see S. G. G., 1946, Pt. IV, pp. 287-288; and for Proceedings in Assembly, see S. L. A. Debates, 1947, Vol. I, Book No. 27, p. 73, Book No. 28, pp. 6-21.

2. Subs. by W.P.A.O., 1964, Art. 2, Sect. Pt. IV, 11(e) for "the Province of Sind".

3. Subs. for "the Province" by W.P.A.O., 1964 Art. 2, Sect. Pt. IV, S. No. 21(b).

4. Inserted by W.P. Amendment Act. 4, 1963 dated 17-4-1963 S. 2(1).

5. Came into force w.e.f. 1st June, 1949, vide G.N.R.D., No. 566-F/46, dated 10th May, 1949, see S.G.G., 1949, Pt. 1, p. 288.

¹ [District Officer (Revenue)]

- "8. If a debtor desires to mortgage his land and the mortgagee is a creditor, the mortgage shall be made in one of the following forms :-
- (a) in the form of a usufructuary mortgage on condition that after the expiry of the term agreed on, or if no term is agreed on or if the term agreed on exceeds twenty years, after the expiry of twenty years, the land shall be redelivered to the mortgagor ;
- (b) in the form of a simple mortgage subject to the condition that if the mortgagor fails to pay the principal money and interest according to his contract, the mortgagee may apply to the [Collector] to place him in possession for such term, not exceeding twenty years, as the [Collector] may consider to be equitable, the mortgage being treated as a usufructuary mortgage for such term, and for such sum as may be due to the mortgagee on account of the principal money and interest, the interest not exceeding the amount claimable as simple interest at such rate, not exceeding six percent; and for such period as the [Collector] thinks reasonable ;
- (c) in the form of a usufructuary mortgage by which the mortgagor recognizes the mortgagee as a landlord of the land and himself remains as a tenant subject to the payment of rent at such rate as may be agreed upon, not exceeding such maximum as may be prescribed for such taluka by the Board or Revenue by notification in the official Gazette, and for such term as may be agreed upon, the mortgagor having no right to alienate his holding and the mortgagee having no right to eject the mortgagor unless on the ground of failure or refusal to pay the rent agreed upon ;
- (d) in such other form as the Board of Revenue may, by general or special order, prescribe."

restrictions
a mort-
gagee.

1. Subs. by W.P. amend. Act 4 1965 of
s.5 for the original Section 8.
2. Subs. for Collector by Smith Ord. No. XXXVI of 2001

(d) in such other form as the Provincial Government may, by general or special order, prescribe.

Power to eject mortgagor. 1. 9. (1) If in the case of a mortgage in the form prescribed in clause (c) [of sub-section (3)] of section 8 the mortgagor fails, or refuses to pay the rent agreed upon, the [Collector] shall have power to eject the mortgagor and put the mortgagee in possession. On such ejection, the mortgage shall take effect as a usufructuary mortgage in the form prescribed in clause (a) of the said sub-section for such term not exceeding twenty years from the date of ejection and for such sum of money, as the [Collector] considers to be reasonable.

2. omitted 2. (2) The Collector, if he accepts the application of a mortgagee under clause (b) [of sub-section (3)] of section 8, shall have power to eject the mortgagor and, as against the mortgagor, to place the mortgagee in possession.

Rules applying to permitted mortgages. 3. 10. Notwithstanding anything contained in the Transfer of Property Act, 1882, or in any other law for the time being in force, in the case of any mortgage made in one of the forms prescribed in [sub-section (3) of] section 8—

(1) no interest shall accrue during the period for which the mortgagee is in possession of the land, or in receipt of rent;

3. 0 sub. 2. (2) if the mortgage is in the form prescribed in clause (a) or clause (b) of [that sub-section], then at the end of the term agreed on or determined under those clauses the mortgage debt shall be extinguished; Section 8

3. 0 sub. 3. (3) the mortgagor may redeem his land at any time during the currency of the mortgage on payment of the mortgage debt or, in the case of a mortgage in the form prescribed in clause (a) or clause (b) of [that sub-section] of such proportion of the mortgage debt as the Collector determines to be equitable; Section 8

3. 0 sub. 4. (4) in the case of a usufructuary mortgage in the form prescribed in clause (a) or clause (b) of [that sub-section] the mortgagor shall not be deemed to bind himself personally to repay the mortgage money; and Section 9

(5) if the mortgagor proves to the satisfaction of the Collector that he has paid the mortgage debt or such proportion of the mortgage debt as the [Collector] has under sub-section (3) determined to be equitable or deposits with the [Collector] the amount of such mortgage debt or of such proportion thereof, the redemption of the land shall be deemed to have

1. V. omitted by (w.P.) amended. Act 4 1963 of 17-1-63-56. 2. 0 sub. 3. 0 sub. 3. 702

⁵ District Officer (Revenue)

taken place, and the Collector shall have power to eject the mortgagee, if in possession, and as against the mortgagee to place the mortgagor in possession.

11. (r) In a mortgage made under ^{12-xxx-xxix} ~~sub section (3) of~~ section 8 the following conditions may be added by agreement between the parties:—

omitted
Conditions in permitted mortgages.

(a) a condition fixing the time of the agricultural year at which a mortgagor redeeming his land may resume possession thereof;

(b) conditions limiting the right of a mortgagor or a usufructuary mortgagee to cut, sell or mortgage trees or to do any act affecting the permanent value of the land; and

(c) any condition which the ^{2 [Board of Revenue]} Provincial Government by general or special order may declare to be admissible.

(2) In any mortgage made under ^{12-xxx-xxix} ~~sub section (3) of~~ section 8 any condition not permitted by or under this Act shall be null and void.

omit

12. Where a landholder—

(r) (a) has made a mortgage after the first day of January 1901 before the commencement of this Act, to which section 8 would have applied, if it had then been in force, or

Power to revise mortgage made in form not permitted.

(b) makes a mortgage after the commencement of this Act, to which section 8 applies, in any manner or form not permitted by or under this Act, the Collector may on his own motion or on the application of an interested party revise and alter the terms of the mortgage so as to bring it into accordance with such form of mortgage permitted by or under this Act, as the mortgagee appears to him to be equitably entitled to claim, and the provisions of this Act applicable to a mortgage in a form permitted by or under this Act shall apply to such mortgage.

(2) Without prejudice to the operation of section 19, nothing in this section shall apply to a decree obtained on a mortgage before the commencement of proceedings under this section, unless such decree is held by the Collector to be collusive or fraudulent.

^{3 [Collector]}

Leases as farms.

13. A ~~landholder~~ ^{landholder} may make a lease or farm of his land for any term not exceeding twenty years, and any lease or farm made by a ~~landholder~~ ^{landholder} for a longer term than twenty years shall be deemed to be a lease or farm for the term permitted by this section.

Subs. by W.P. Act. 16 of 1957
1. omitted by ... (W.P.) Amd. Act 1963 of 17-4-57
2. Subs. by W.P. Act 16 of 1957, S. 3(3); Sch. III. for Provincial Govt.
3. Subs. by W.P. Act. 49 of 1962, S. 8. for Landlord S.S.
4. Subs. by W.P. Act. 16 of 1957, S. 3(3) for Landholder S.S. / S. Subs. for Collector by S.O. 2 XXXVI of 2001

Restriction
on power to
make fur-
ther tempo-
rary aliena-
tion.

14. (i) During the currency of a mortgage made in the form prescribed in clause (a) or clause (b) of sub-section (3) of section 8 or of a lease or farm under this Act, the alienor shall be at liberty to make a further temporary alienation of the same land for such term as together with the term of such current mortgage, lease or farm will make up a term not exceeding the full term of twenty years.

(2) Any such further temporary alienation, if made for a longer term than is permitted by this section, shall be deemed to be a temporary alienation for the term permitted by this section.

Ejectment
of mort-
gagee or
lessee re-
maining in
possession
after term.

15. If a mortgagee, lessee or a farmer holding possession under a mortgage made under section 8 or under a lease or farm made under section 13 remains in possession after the expiry of the term for which he is entitled to hold under his mortgage, lease or farm, the Collector may, of his own motion, or shall, on the application of the person entitled to possession, eject such mortgagee, lessee or farmer, and place the person so entitled in possession.

Alienation
or charge
on produce.

16. (i) ~~landholder whose holding does not exceed the minimum area~~ ^{A landholder who is a debtor} or a cultivator shall not alienate or charge his produce or any part of, or share in, such produce for more than one year and any such alienation or charge made for more than one year shall not take effect for more than that period.

(2) Where the holding of a landholder exceeds the minimum area, the restrictions contained in sub-section (1) shall apply to the produce of so much of the holding as constitutes the minimum area.

(3) For the purposes of this section "cultivator" means a person who cultivates land by himself or with the help of any member of his family, but a minor or a person subject to any physical or mental disability shall be deemed to cultivate land by himself if it is cultivated by his servants or by hired labour.

17. Notwithstanding anything in the Code of Civil Procedure, 1908—

(a) not more than one-half of the produce of a judgment-debtor shall be liable to attachment in execution of any decree based on a loan;

(b) produce of more than two years shall not be sold in execution of any one of such decrees.

18. For the purposes of the execution of a decree based on a loan against the produce of a judgment-debtor, section 48 of the Code of Civil Procedure, 1908, shall have effect as if for the word "twelve", wherever it occurs, the word "six" had been substituted.

Amendment
of section
48 of the
Code of
Civil Pro-
cedure, 1908.

V of 1908

V of 1908.

Subst. by (W.P.) on 2. Apr 1963

1. Omitted, King W.P. Act no IV 9/1963. S. 65 17-4-63. S. 6
2. Subs. ibid S. 9(a)
3. Subsection (2) omitted and S. 9(b).

[19] (1) Notwithstanding anything contained in any law for the time being in force, the provisions of this section shall have effect as respect alienation of land in execution of a decree or order of a Civil or Revenue Court, whether made before or after the commencement of this Act.

- (2) No land belonging to a debtor shall be sold in execution of any decree or order of any Civil or Revenue Court.
- (3) No land belonging to a debtor shall, in execution of any decree or order of any Civil or Revenue Court be leased or farmed for a period exceeding twenty years or mortgaged, except in one of the forms permitted by section 8.
- (4) When a Civil Court orders that land be attached and alienated in the execution of a decree, the proceedings of such attachment and alienation shall be ³ [District Officer (Revenue)] transferred to the ~~Collector~~, who shall decide the period of alienation which shall not exceed twenty years.
- (5) Every lease, farm or mortgage made under sub-sections (3) and (4) shall be determinable at any time by the holder of the land by tendering to the ~~Collector~~ an amount which shall bear to the amount in consideration for which transfer has been made the same proportion as the unexpired period of transfer bears to the total period for which the transfer has been made.

Explanation.— Lease includes a temporary alienation of land and in satisfaction of amoney decree.

- (6) The ³ ~~Collector~~ shall give notice to the parties and after hearing them and recording such evidence as may be produced shall determine the amount to be tendered under sub-section (5).
- (7) When the amount as determined has been deposited with the ~~Collector~~, he shall make an order that the lease, farm or mortgage be immediately determined; that the owner be put in possession as against the lessees, farmer or mortgages, and that the amount in deposit be paid to the person entitled thereto.
- (8) For the purpose of enforcing an order under sub-section (7), the Collector may exercise all the powers of a Civil Court conferred by Rules 97 and 98 of Order XXI of the First Schedule to the Code of Civil Procedure, 1908.
- (9) Nothing in this section shall affect the right of Government to recover arrears of land revenue or any dues which are recoverable as arrears of land revenue in any manner permitted by law.]

20. The provisions of section 19 shall so far as may be, apply to [alienation of land] belonging to a [debtor] made by —

(a) a receiver or a commissioner appointed by a civil court; or

(b) a court of insolvency or a receiver or an Official Receiver or an Official Assignee appointed in, or for the purposes of, insolvency proceedings.

21. (1) Where, by reason of any transaction which under this Act requires the sanction of a ~~Collector~~, a person claims to have acquired a right the acquisition whereof he is bound to report under section 135E of the Code, such person shall, in making his

Application of section 19 to sales made by receivers, etc.

Record of rights and a mutation etc.

1. Section 19 Subs. by (W.P) Amend. Act 4 1963 s.10
2. word in s.20 Subs. inid, s.11.
3. Subs. for 'Collector' by Sindhi ORD. No. XXXVI of 2001 Dt. 28.11.2001

report, state whether the sanction required has been obtained or not, and his right so acquired shall not be entered in the record of rights or any village form recording occupancies until he produces such evidence of the order by which such sanction is given as may be required by any rules made under this Act.

(2) No right claimed by reason of any transaction which is declared by this Act to be null and void shall be entered in the record of rights or in any village form recording occupancies.

(3) Notwithstanding anything in ¹[Chapter VI of the Sind Land Revenue Act, 1967] or in the rules made under that Chapter, no entry in the mutation register shall be deemed to be a part of the record of rights or to have any force or validity under that Chapter, until it has been certified by a revenue officer not lower in rank than a Mukhtiarkar.

22. Subject to the provisions of this Act, the provisions of ²[Chapters IV and XIII of the Sind Land Revenue Act, 1967] shall, in so far as they are applicable, apply to the proceedings or orders of revenue officers held or made under this Act.

23. (1) A civil court shall have no jurisdiction in any matter which the Provincial Government or a revenue officer is empowered by this Act to dispose of.

(2) No civil court shall take cognisance of any matter in which the Provincial Government or any revenue officer exercises any power vested in it or in him by or under this Act.

24. (1) Notwithstanding anything contained in the Code of Civil Procedure, 1908, or in any other enactment for the time being in force, every civil court which passes a decree or order involving (a) the permanent alienation or (b) the mortgage of land by a landholder shall send to the ³[Collector] a copy of such decree or order.

(2) When it appears to the ³[Collector] that any civil court has passed a decree or order in respect of any alienation of land made after the commencement of this Act contrary to any of the provisions of this Act, the Collector may apply for the revision of such decree or order to the Court, if any, to which an appeal would lie from such decree or order, or in which an appeal could have been instituted at the time when the decree or order was passed, or in any other case to the High Court, and if the Court finds that such decree or order is contrary to any of the provisions of this Act, it shall alter it so as to make it consistent with this Act. Such application shall be made within two months of the date on which the Collector is informed of such decree or order.

1. Subs. by Sind Act 17 of 1975, s.3, Sch. II for "Chapter X-A of the Code"

2. Subs. by, ibid, for Chapter XII and XIII of the Code.

(3) When any such appellate court, not being the High Court, passes an order rejecting such application, the ^{Collector} may within three months of the date of the receipt of a copy of the order apply to the High Court for revision thereof. *District Officer (Revenue)*

(4) Every civil court which passes an order on any application made under this section shall forthwith send a copy thereof to the Collector.

(5) No stamp shall be required and no process fee shall be charged for an application made under sub-section (2) or sub-section (3) and the provisions of the Code of Civil Procedure, 1908, as regards appeals shall apply so far as may be to the procedure of the Court on receipt of such application:

District Officer (Revenue)

Provided that no appearance by or on behalf of the ^{Collector} shall be deemed necessary for the disposal of such application.

(6) The provisions of the preceding sub-sections shall apply, so far as may be, to alienations of land, made by a court of insolvency or by a receiver or an Official Receiver or an Official Assignee appointed in, or for the purposes of, insolvency proceedings.

"24-A. Notwithstanding anything to the contrary contained in any other law for the time being in force the burden of proving that any consideration alleged to have been paid by a creditor actually passed shall be on him, unless the consideration is acknowledged by a debtor in his own hand-writing or has been endorsed by the Registering Officer acting under clause (c) of sub-section (1) of section 58 of the Registration Act, 1908 (XVI of 1908), as having been paid in his presence."

⁶ [25. The powers conferred by this Act upon a ^{Collector} may be exercised by a revenue officer of a higher rank, or by any revenue officer, not lower in rank than an Assistant or Deputy Collector, authorised by the Provincial Government in this behalf.] *Subs. see slip*

² [26. (1) Any party aggrieved by an order passed by the Collector or other revenue officer in exercise of his powers under this Act may within 60 days from the date of the order present an appeal in writing to the ³ [Commissioner]. ⁶ *Executive District Officer (Revenue)*

(2) The ³ [Commissioner] shall then call for the records of the case from the Collector or other revenue officer and after perusing such record and after making such further enquiry as he thinks fit ⁴ [and giving an opportunity of being heard to the party aggrieved].

² [27. (1) The ⁵ [Board of Revenue] may call for the record of any inquiry or appeal for the purpose of satisfying itself as to the legality or propriety of any decision or order made thereon and as to the regularity of the proceedings held therein].

(2) If in any case it shall appear to the ⁵ [Board of Revenue] that any decision should be modified, annulled or reversed, it may ⁴ [after giving the aggrieved party an opportunity of being heard].

1. Section 24-A inserted by W.P. Act 4 of 1963, s. 12.
2. Sections 26 and 27 inserted by Sind 5 of 1950, s. 2(1).
3. The original words "Revenue Commissioner" has successively been amended by W.P. Act. 16 of 1957, s. 3(3) Sch. III Sind Ordinance 3 of 1960.

Stay.

~~The Board of Revenue or the Commissioner District (Revenue)~~
 [28. The Provincial Government or the Revenue Commissioner] may pending decision of an appeal or a proceeding in revision, as the case may be, stay the execution of an order against which the appeal is made or in respect of which the revision proceeding arises.]

Power to make rules.

[29]. (1) The Provincial Government may make rules³ consistent with this Act for carrying into effect the purposes of this Act.

(2) All rules made under this Act shall be subject to the condition of previous publication.

~~(3) All such rules shall, as soon as may be, be laid on the table of the Sind Legislative Assembly.~~

4(3)

² Original section 26 re-numbered as section 29, by Sind 5 of 1950, s. 2(ii).

³ For Rules, see G. N., R. D., No. 566-F./46, dated 5th December, 1949, S. G. G., 1949, Pt. IV-A, pp. 155-157 as subsequently amended.

⁴ Sub-section (3) omitted by W.P. Act 16 of 1957, s. 3(3) Sch III.

⁵ Subs. by Sind Act 27 of 1974, s. 2, Sch. for Section 28 as ins. by Sind 57 of 1950, s. 3(1) and amended by W.P. Act 16 of 1957, s. 3(3), Sch III and Sind Ordinance 3 of 1972, s. 2, Sch.

⁶ Subs. for 'Commissioner' by Sindh O.R.D. NO. XXXVI OF 2001.