

GOVERNMENT

SIKKIM



GAZETTE

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GOVERNMENT OF SIKKIM
LAW DEPARTMENT
GANGTOK.

Notification No. 5/LD/85

Dated the 29th June, 1985.

The following Act of the Sikkim Legislative Assembly having received the assent of the Governor on the 28th day of June, 1985, is hereby published for general information:—

THE SIKKIM CULTIVATORS' PROTECTION ACT, 1985

(Act No. 5 of 1985)

AN
ACT

to make provisions for protection of cultivators against termination of cultivation of lands cultivated by them, for restoration of such lands in case of illegal termination, for limiting the liability of the cultivators for termination of cultivation by owner in certain circumstances and for other matters connected therewith.

Be it enacted by the Legislative Assembly of Sikkim in the Thirty sixth Year of the Republic of India as follows namely;

1. (1) This Act may be called the Sikkim Cultivators' Protection Act, 1985. *Short title, extent, commencement and duration.*
 - (2) It extends to the whole of Sikkim.
 - (3) It shall come into force at once.
2. In this Act, unless there is anything repugnant in the subject or context,— *Definitions.*
 - (a) "agricultural year" means the year commencing from the first day of February;
 - (b) "civil court" does not include the High Court or the Supreme Court;
 - (c) "cultivator" means a person who cultivates the land of another person on condition of payment of rent, in cash or in kind, or on condition of delivering or receiving share or any fixed quantity of the produce and includes a persons who cultivates the land of another person on any terms and conditions except as a paid servant or hired labourer but does not include persons who are cultivating under work permits granted under laws in force at present in the State of Sikkim with their addresses outside the country.

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- (d) "owner" means a person whose land is cultivated by a cultivator;
- (e) "personal cultivation" means cultivation of the land by the owner him, self or through members of his family or his heirs and dependents or through paid servants or hired labourer;
- (f) "prescribed" means prescribed by rules made under this Act;
- (g) "Prescribed authority" means the District Collector within whose jurisdiction the land is situated and shall also include any other officer specially empowered by the State Government in this behalf.

Act to prevail over other laws, customs, etc.

- 3. (1) The provisions of this Act and of any rules made thereunder shall have effect notwithstanding anything to the contrary contained in any other law or in any custom, usage, contract or instrument.
- (2) Any law or custom or usage having the force of law immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act.
- (3) Any other law in force immediately before the commencement of this Act shall cease to have effect in so far it is inconsistent with any of the provisions of this Act.

Protection against termination of cultivation.

- 4. (1) No owner shall have the right to terminate the cultivation of his land by a cultivator except in execution of an order made by the prescribed authority.
- (2) The prescribed authority shall not make an order for termination of the cultivation by a cultivator except on one or more of the following grounds and on no other ground, namely:—

- (a) the cultivator has, without any reasonable cause, failed to cultivate the land or a part of the land exceeding one fourth of the total area of the land in any agricultural year;
- (b) the cultivator has failed to pay the rent in cash or in kind or a share or fixed quantity of the produce from the land within the period as stipulated in any contract or in the absence of any contract within a period of two months from the date of harvest of any particular crop;
- (c) the cultivator has sublet the land to another person for cultivation;
- (d) the owner having no land other than the land which is being cultivated by the cultivator desires to cultivate the land personally;

Provided that the owner shall have no right to terminate the cultivation of the land on this ground unless he has given notice of not less than six months of his intention to resume personal cultivation and such notice expires with the beginning of the agricultural year next following.

- (e) the cultivator has erected or caused to be erected a residential house or any other permanent structure on the land without the written permission of the owner.
- (3) The prescribed authority while making an order under sub-section (2) shall also determine the amount which is to be paid by the owner to the cultivator or by the cultivator to the owner as the case may be:

Provided that no order under sub-section (2) shall be made except after giving the owner and the cultivator an opportunity of being heard

Restoration of possession to cultivator in certain cases.

- 5. If any owner terminates or causes to be terminated the cultivation of any land by a cultivator in contravention of the provisions of this Act, the prescribed authority, shall, on receipt of any application made by or on behalf of the cultivator and after giving the cultivator and the owner an opportunity of being heard and after making such inquiries as such authority may deem necessary, by order direct—

- (a) in case where such land has not been cultivated or has been cultivated by the owner or by any person on his behalf other than the cultivator, that the land be immediately restored to the cultivator and further that forty per cent of any produce of the land shall be forfeited to the State Government and the remaining sixty per cent of such produce shall be retained by the cultivator;

- (b) in case where such land has been cultivated by a new cultivator engaged by the owner, that the land be restored at the end of the cultivation season to the applicant cultivator and further that the new cultivator shall retain fifty per cent of the produce harvested before restoration and make over the remaining fifty per cent of such produce to the applicant cultivator.
6. For the cultivation of any land, no cultivator shall be required to pay or deliver to the owner and no owner shall be entitled to receive from the cultivator, more than half of the principal produce of the land or the price thereof, as the case may be, as rent or share or on any other account. *Limit of liability of cultivators.*
7. (1) If a cultivator -
- (a) surrenders his right to cultivate in respect of the land cultivated by him as a cultivator, or *Surrender or abandonment.*
- (b) abandons cultivation of such land, the owner of the land shall give information in writing of such surrender or abandonment to the prescribed authority within three months from the date of surrender or abandonment.
- (2) on receipt of such information the prescribed authority shall, after giving the cultivator and the owner an opportunity of being heard and making such inquiries as he may deem necessary, by order, determine whether the cultivator voluntarily surrendered or abandoned his right of cultivation in relation to such land.
- (3) If the prescribed authority determines that the cultivator had not voluntarily surrendered or abandoned the cultivation of the land which was being cultivated by him as such and that he had been compelled by force or otherwise to surrender or abandon the cultivation of such land, the prescribed authority shall restore to the cultivator the cultivation of the land.
- (4) If the cultivator or his heirs are not available or is not willing to be restored to the cultivation of such land, or if the prescribed authority determines that the cultivator had voluntarily surrendered or abandoned such land, the owner may, with the permission of the prescribed authority -
- (a) resume personal cultivation of such land, or
- (b) have such land cultivated by another cultivator of the locality who is willing to cultivate the land as cultivator.
8. Where a cultivator cultivating any land dies, the cultivation of such land may be continued for the remaining period of that agricultural year by the lawful heirs of the cultivator and if such lawful heir continues the cultivation, he shall have all the rights and be subject to all the liabilities of a cultivator under this Act in respect of such land. *Continuation of right of cultivation on cultivator's death.*
9. (1) If the cultivator fails or omits or neglects to pay the rent in cash or in kind or a share or fixed quantity of the produce payable to the owner, the owner shall be entitled to recover such rent or produce due to him or its value in cash. *Cultivator and the owner to receive their dues.*
- (2) If the produce of any land cultivated by cultivator whether before or after it is harvested is taken away by owner forcibly or otherwise, the cultivator shall be entitled to recover from such owner the share or quantity of the produce due to him or its value in cash.
10. Every dispute between a cultivator and the owner in respect of the following matters, namely:— *Jurisdiction to certain disputes.*
- (a) division or delivery of the produce or payment of rent;
- (b) recovery of rent, share or fixed quantity of the produce under the provisions of sub-section (1) or sub-section (2) of section 9;
- (c) termination of cultivation by the cultivator or the owner;
- (d) the type of the house or other structure erected on the land, shall be decided by the prescribed authority.
11. Any person aggrieved by an order of the prescribed authority may, within thirty days from the date of receipt of such order, prefer an appeal to such officer or authority, as the State Government may, by notification in the Official Gazette, appoint: *Appeal.*
- Provided that such officer or authority may, if the appellant was prevented by sufficient cause from preferring the appeal, entertain the appeal preferred beyond the said period of thirty days.

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- Procedure and execution.* 12. (1) The procedure to be followed by the prescribed authority or by the officer or authority referred to in section 11 shall be such as may be prescribed.
- (2) An order made by the prescribed authority or the officer or authority referred to in section 11 shall be executed by the prescribed authority in such manner as may be prescribed.

Protection of action taken in good faith. 13. No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done under or in pursuance of the provisions of this Act or rules made thereunder.

Bar of Jurisdiction. 14. No order or other proceedings whatsoever under this Act, shall be questioned in any civil court and no civil court shall entertain any suit or proceedings in respect of any matter for which provisions is made in this Act.

Pending proceedings to abate and not to be maintainable. 15. Notwithstanding anything contained in any other law for the time being in force, all suits and other proceedings including appeals instituted and pending in any court, tribunal or other officer or authority for eviction of any cultivator, after the expiration of the Sikkim Cultivators Protection (Temporary Provisions) Act, 1975 and before the commencement of this Act, shall abate and shall not be maintainable.

1 of 1975.

Restoration of possession to cultivators evicted on or after expiration of Act 1 of 1975. 16. Notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other officer or authority and subject to the provisions of this Act, every cultivator who had been evicted from any land on or after the expiration of the Sikkim Cultivators Protection (Temporary Provisions) Act, 1975 but before the commencement of this Act on any ground shall, on an application made to the prescribed authority within a period of three months from the commencement of this Act, be entitled to be restored to the possession of such land and to hold it with all the rights and subject to all the liabilities of a cultivator under the provisions of this Act:

1 of 1975.

Provided that any application received after the period of three months aforesaid, may be received after the said period if the prescribed authority is satisfied that the applicant had sufficient cause for not making the application within the said period of three months.

- Power to make rules.* 17. (1) The State Government may make rules for carrying out the purposes of this Act.
- (2) In particular, and without prejudice to the generality of the foregoing provisions, such rules may provide for all or any of the following matters, namely:—
- (a) the period within which the cultivator shall pay or deliver to the owner, the rent, or share or fixed quantity of the produce to which the owner is entitled under this Act;
 - (b) the procedure to be followed by the prescribed authority or the other officer or authority referred to in section 12;
 - (c) the manner in which the final order by the prescribed authority or other officer or authority shall be executed;
 - (d) any other matter which is necessary for proper implementation or enforcement of this Act.

B. R. PRADHAN,
Secretary to the Govt. of Sikkim,
Law Department.

F. No. 16 (193) LD/84.