

# THE JAMMU AND KASHMIR MIGRANT IMMOVABLE PROPERTY (PRESERVATION, PROTECTION AND RESTRAINT ON DISTRESS SALES) ACT, 1997

(Act No. XVI of 1997)

*[Received the assent of the Governor on 30th May, 1997 and published in the Government Gazette dated 2nd June, 1997.]*

An Act to provide for the preservation, protection and restraint on distress sales of the immovable property of the migrants.

Be it enacted by the Jammu and Kashmir State Legislature in the Forty-eighth Year of the Republic of India as follows: –

**1. Short title, extent and commencement.** – (1) This Act may be called the Jammu and Kashmir Migrant Immovable Property (Preservation, Protection and Restraint on Distress Sales) Act, 1997.

(2) It extends to the whole of the State of Jammu and Kashmir.

(3) It shall come into force at once.

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

- (a) “Alienation” means sale, gift, mortgage with possession or exchange but shall not include gift in favour of an heir;
- (b) “Competent Authority” means the District Magistrate of the area and includes such other officer of the area as the Government may appoint for an area;
- (c) “Government” means the Government of the State of Jammu and Kashmir;
- (d) “Immovable Property” shall also include tenancy rights or interest created under any law for the time being in force;
- (e) “Migrant” means any person who has migrated from<sup>1</sup>[Kashmir Valley or any other part of the State] after 1st November, 1989 and is registered as such with the Relief Commissioner and includes a person who has not been so

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<sup>1</sup> Substituted for “Kashmir Valley” by Act XXXVII of 2002, s. 2.

registered on the ground of his being in service of the Government in any moving office, or having <sup>1</sup>[left the Valley or any other part of the State], in pursuit of occupation or vocation or otherwise, and is possessed of immovable property <sup>2</sup>[at the place from where he has migrated] but is unable to ordinarily reside there due to the disturbed conditions;

- (f) “prescribed” means prescribed by the rules made under this Act;
- (g) “Prescribed Authority” means the authority competent to grant permission under section 3;
- (h) “Relief Commissioner” means any authority appointed as such by the Government or any other State or Central Government for purposes of registration of the migrants;
- (i) “Unauthorized Occupant” means any person who has encroached upon or taken possession of any immovable property of a migrant without his written consent and authority of law.

**3. Restriction on alienation of immovable property.** – Notwithstanding anything to the contrary contained in any other law for the time being in force–

- (a) alienation of immovable property of a migrant by act of parties or a decree or order of a court or of a revenue officer except under such conditions as may be prescribed and with previous permission of Revenue and Relief Minister, or such officer as may be authorised by him in this behalf, is forbidden:

Provided that no such permission shall be necessary in case of a mortgage without possession of such immovable property in favour of an institution mentioned in section 4-A of the Jammu and Kashmir Alienation of Land Act, Samvat 1995 and transfer of the said immovable property in favour of Government of Jammu and Kashmir:

Provided further that the permission to alienate shall be deemed to have been granted, if an application seeking permission for alienation of such property is not decided by the prescribed authority within fifteen days from the date of receipt of such application:

Provided also that the enquiry for the purposes of the grant of permission by the prescribed authority shall be limited to the

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<sup>1</sup> Substituted for “left the Valley” by Act XXXVII of 2002, s. 2.

<sup>2</sup> Substituted for “in the Valley” *ibid*.

question of sale being not distress;

- (b) any alienation of immovable property on or after the commencement of this Act, in contravention to the provisions thereof, shall be null and void and immovable property so alienated shall, after such enquiry as may be prescribed, vest in its owner; and
- (c) no document purporting to alienate such immovable property in contravention of the provisions of this section shall be admitted to registration.

**4. Custody of immovable property.** – (1) Within 30 days from the commencement of this Act, the District Magistrate shall take over the possession of immovable property, belonging to Migrants, falling within his territorial jurisdiction and shall, on the expiry of said period of 30 days, be deemed to have the custody of such immovable property.

(2) The District Magistrate shall take all such steps as may be necessary for preservation and protection of such property:

Provided that possession of such property shall not be handed over to one save with the express consent of the migrant in writing.

**5. Eviction of unauthorised occupants.** – If any unauthorised occupant of any migrant property refuses or fails on demand to surrender possession thereof to the competent authority, such authority may use such force as is necessary for taking possession of such property and may for this purpose after giving reasonable warning and facility to any women not appearing in public to withdraw, remove or break open any lock, bolt or any door or do any other act necessary for the said purpose.

**6. Implementation of the provisions of this Act.** – (1) The competent authority may take or cause to be taken such steps and use or cause to be used such force as may be, in its opinion necessary for eviction from or delivery of possession of immovable property under this Act.

(2) At any time after the commencement of this Act, it shall be lawful for a competent authority to enter upon any immovable property of any migrant and make or cause to be made any survey including measurement and do any other act which may be necessary for carrying out the purposes of this Act:

Provided that no such survey or measurement shall be done otherwise than on a written complaint by a migrant.

**7. Appeal.** – (1) Any person aggrieved of an order passed under this Act, may file an appeal before the Financial Commissioner, Revenue:

Provided that no such appeal shall be entertained against–

- (a) an interlocutory order;
- (b) an order of eviction unless possession of the property is surrendered to the competent authority;
- (c) an order of payment of compensation determined under this Act unless the amount of compensation is deposited with the appellate authority.

(2) The period of limitation for filing of an appeal under subsection (1) shall be fifteen days from the date of order appealed against.

**8. Bar of jurisdiction of Civil Court.** – Notwithstanding anything contained in any law for the time being in force–

- (a) no civil court shall have jurisdiction to settle, decide or deal with any question or to determine any matter arising under this Act, or the rules made thereunder; and
- (b) no order of any officer or authority passed under this Act or the rules made thereunder shall be called in question in any civil court.

**9. Indemnity.** – No suit or any other legal proceedings shall lie against any officer or authority in respect of anything which is in good faith done or intended to be done under this Act.

**10. Power to issue instructions.** – The Revenue Minister may, from time to time issue such instructions not inconsistent with this Act, or the rules made thereunder as he may consider necessary for the purposes of implementing the provisions of this Act or the rules made thereunder.

**11. Act to override other laws.** – The provisions of this Act, the rules made and the instructions issued thereunder shall have effect notwithstanding anything contained in any other law or custom or usage or in any contract, express or implied or in any instrument inconsistent with the provisions of this Act.

**12. Declaration of restrictions imposed to be reasonable.** – For the removal of doubts, it is hereby declared that restrictions imposed by section 3 on the rights conferred by clause (1) of Article 19 of the Constitution of India, as applicable to the State, shall be deemed to be

reasonable restriction.

**13. Compensation.** – Any person who is an unauthorised occupant or recipient of any usufruct of any immovable property of the migrant shall pay to the migrant such compensation for the period of unauthorised occupation and in such manner as may be determined by the District Magistrate:

Provided that the same shall not be less than double the market rent/rate prevalent in that area.

**14. Power to make rules.** – The Government may make rules for carrying out the purposes of this Act.

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