

অসম



ৰাজপত্ৰ

The Assam Gazette

অসাধাৰণ

EXTRAORDINARY

প্ৰাপ্ত কৰ্ত্তব্যৰ দ্বাৰা প্ৰকাশিত

PUBLISHED BY AUTHORITY

নং 134 দিশপুৰ, বুধবাৰ, 22 অক্টোবৰ, 1975, 30 আশ্বিন, 1997 শক
No. 134 Dispur, Wednesday, October 22, 1975, 30th Asvina
1897 (S. E.)

GOVERNMENT OF ASSAM
ORDERS BY THE GOVERNOR
LAW DEPARTMENT

NOTIFICATION

The 21st October 1975

No.LJL.581/74/28.—The following Act of the Assam Legislative Assembly which received the assent of the President of India is hereby

published for general information.

ASSAM ACT XIII OF 1975

(Received the assent of the President of India on the 17th day of October, 1975)

THE ASSAM CO-OPERATIVE SOCIETIES (AMENDMENT) ACT, 1975

An

Act

Further to amend the Assam Co-operative Societies Act, 1949.

Preamble

Whereas it is expedient further to amend the Assam Co-operative Societies Act, 1949 (Assam Act I of 1950) hereinafter called the principal Act in the manner hereinafter appearing;

It is hereby enacted in the twenty sixth year of the Republic of India as follows:—

Short title, extent and commence- ment.

1. (i) This Act may be called the Assam Co-operative Societies (Amendment) Act, 1975.

(ii) It shall have like extent as the Principal Act.

(iii) Sections 2, 7, 8 and 9 shall be deemed to have come into force with effect from 1st November, 1974. The remaining sections shall come into force at once.

Insertion of two new sub- sections 2 (s) and (t).

2. In Section 2 of the Principal Act, after clause (r), the following shall be added as a new clause, namely:—

(s) "Bank" means—

(i) A Banking Company as defined in the Banking Regulation Act, 1949.

(ii) The State Bank of India constituted under the State Bank of India Act, 1955.

(iii) A subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959.

(iv) A corresponding new Bank constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970.

(v) The Agricultural Refinance Corporation constituted under the Agricultural Refinance Corporation Act, 1963.

(vi) Agricultural Finance Corporation Limited, a company incorporated under the Indian Companies Act, 1956; and

(t) A "Financing Bank" means a bank as defined in clause (s) of Section 2 of this Act or a Co-operative Bank providing working capital to a registered Co-operative Society.

Substitution
of Section 4
of Assam
Act I of 1950.

3. For Section 4 of the Principal Act the following shall be substituted, namely:—

"4(1) Societies which may be registered—A Society which has as its objects the promotion of the economic interests or general welfare of its members or of the public in accordance with the Co-operative principles, or a Society established with the object of facilitating the operations of any society may be registered under this Act with limited liability.

(2) No society shall be registered if in the opinion of the Registrar, its declared objects are unlikely to be achieved or if it is likely to be economically unsound or if it may have an adverse effect upon any registered society or the Co-operative movement as a whole."

Amendment
of Section 14
of Assam
Act I of 1950.

4.(a) In Section 14 of the Principal Act:—

in the heading, in between the words "society" and "to" the words "or financing Bank" shall be inserted.

(b) In sub-section (2) for clauses (i) and (ii) the following shall be substituted:—

"(i) When it appears to an affiliating society or a financing bank that an amendment of the bye-laws of a registered society which is a member of such society or debtor of financing bank is necessary in the interest of the society it may suggest to the affiliated society or the debtor society, as the case may be, to make such amendment within such time as it may specify. The affiliating society or the financing bank shall forward to the affiliated society or the debtor society, as the case may be, a draft of the suggested amendment of the bye-laws.

(ii) If the society fails to make the amendment within the time specified, the affiliating society or the financing bank may forward to the Registrar the amendment and the Registrar, if satisfied that the amendment is necessary in the interest of the society and not contrary to the provisions of this Act or rules, may thereupon after giving an opportunity of

showing cause to the society concerned against the proposed amendment register the amendment and forward to the society a copy thereof together with a certificate signed by him. The certificate shall be conclusive evidence that the amendment has been registered and such amendment shall thereupon be binding upon the society and its members.

(iii) If the Registrar considers that the amendment referred in clause (ii) above is not acceptable, he shall submit a report to the Government.

(iv) An affiliating society or a financing bank or the Registered Society if aggrieved by a decision of the Registrar may prefer an appeal to the Government. The orders of the Government on such appeal shall be final.

(v) The State Government may out of its own motion or the Registrar subject to such direction as may be given by the Government amend the bye-laws of any society or group of societies in the interest of public service."

Amendment of Section 15 of Assam Act 1 of 1955, 5. In Section 15 of the principal Act, for sub-section (3), the following shall be substituted, namely:—

"(3) (a) Notwithstanding anything contained in sub-sections (1) and (2) of this Section if the Registrar is of opinion that for reasons of ensuring economic viability of any registered society or societies or avoiding overlapping or conflict of jurisdictions of registered societies in any area or in order to secure proper management of any Co-operative Society, or in the public interest or in the interest of the Co-operative movement in the State as a whole, or in the interest of depositors and the Co-operative banking system in the State as a whole, it is necessary to divide, amalgamate or merge fully or partially any such society or societies with any specified society, he may, by an order published in the official Gazette make a scheme for division, amalgamation or merger, with prior approval of the State Government.

Explanation.—In this section the society which is divided, amalgamated or merged shall be referred to as "Transferor" society and the societies which are formed out of any division, amalgamation or merger under this section shall be referred to as "Transferee" society or societies.

(b) A scheme referred to in sub-section (a) in respect of division, amalgamation or merger may provide for all or any of the following matters, namely:—

(i) The transfer of the business, properties movable or immoveable assets including cash balances and reserve fund, rights, privileges, liabilities, debts

and obligations of the transferor society or societies to the transferee society or societies on such terms and conditions as may be specified in the said scheme.

(ii) The reduction of the interest or rights which the members, depositors and other creditors have in or against the transferor society or societies before division, amalgamation or merger to such extent as the Registrar considers necessary in the public interest or in the interest of the members, depositors and other creditors for the maintenance of the business of such society or societies having due regard to the assets and liabilities of the transferor society or societies.

(iii) The payment in cash or otherwise to the depositors and other creditors in full satisfaction of their claims:—

(a) in respect of their interest or rights in or against the transferor society or societies before or after division, merger or amalgamation, or

(b) where the interest or rights as aforesaid, in or against the transferor society or societies has or have been reduced under clause (ii), in respect of such interest or rights as so reduced.

(iv) (a) The allotment of shares in the transferee society to the members of the transferor society against the shares held by them in the transferor society or societies, before the division, amalgamation or merger, or

(b) where it is not possible to allot shares in the transferee society or societies to such members against the shares held by them in the transferor society or societies, the payment to such members in cash in full satisfaction of their claims in respect of their interest in the shares of the transferor society or societies or where such interest has been reduced under clause (ii), in respect of their interest in the shares as so reduced :

Provided that an aforesaid scheme shall secure—

(i) that allotment or shares or payment in cash in favour of the members of the transferor society or societies under this clause shall not be made until all the depositors and creditors of the transferor society or societies have been paid under sub-clause (a) of this clause, or, as the case may be, under sub-clause (b) of clause (iii), and

(ii) that such allotment of share or payment in cash in favour of the members of the transferor society or societies shall be made only out of the surplus of the assets of the transferor society or societies, if any, that may be left after payment to the depositors and the creditors as indicated in sub-clause (i).

(v) The continuance of the service of all or any of the employees of the transferor society or societies in the transferee society or societies on such terms and conditions of service as may be determined in this behalf :

Provided that, if any employee is found to be ineligible for continuance in service of the transferee society under the terms and conditions of the scheme, the services of such employee shall stand terminated on and from the date on which the division, amalgamation or merger takes effect and the transferee society shall within three months of the aforesaid date, make payment to such employee such compensation as such employee may be entitled under any law relating to industrial dispute in force in the State and pension, gratuity, provident fund and other retirement benefits as are ordinarily admissible to him under the rules of the transferor society in force immediately before the division, amalgamation or merger.

(vi) The scheme for division shall provide division of the assets and liabilities, the area of operation, the employees and the members of such society among the new societies into which such society is to be divided.

(e) (i) No order referred to in sub-section (a) shall be made unless a copy of the proposed order including the scheme is sent to the societies affected calling upon them to invite objections or suggestions from the members, creditors and suggestions together with their own suggestions and objections, if any, to the Registrar within thirty days from the date of receipt of the copy of the proposed order by such societies.

(ii) The Registrar shall consider the suggestions and objections which may be received under (i) above within the period referred to therein and may make such modifications in the proposed order including the scheme as he thinks just and fit and finalise the proposed order including the scheme in consultation with the State Government :

Provided that such order shall not be passed without the prior approval of the Reserve Bank of India in case of any society coming under the purview of the

Banking Regulation Act, 1949 (as applicable to Co-operative Societies) (Central Act No. 10 of 1949).

(d) An order referred to in clause (a) may contain such incidental, consequential and supplemental provisions as the Registrar in consultation with the State Government may consider necessary to give effect to the proposed division, amalgamation or merger and shall have effect on and from such date as may be specified in the final order referred to in sub clause (ii) of clause (c).

(e) On and from the date from which the division, amalgamation or merger, take effect, the assets and liabilities of the societies referred therein shall stand divided, amalgamated or merged with the assets and liabilities of the societies formed out of such division or amalgamation or merger and the members, creditors and debtors of such societies, shall be deemed to be members, creditors and debtors, as the case may be of the new society or societies as ordered by the Registrar.

(f) (i) Notwithstanding anything contained in this Act, the Registrar shall register all new societies created after division of an existing society under this Act and such registration shall be effective from the date on which the division takes effect and the registration of the society ordered to be divided shall be deemed to have been cancelled from the said date and such registration and cancellation shall be effective from the date on which the division takes effect notwithstanding the actual registration is done later on.

(ii) In case of the society directed to amalgamate or merge, the registration of the transferor society or societies shall be deemed to have been cancelled from the date on which the amalgamation or merger takes effect.

(g) The provisions of this section shall have effect notwithstanding anything to the contrary elsewhere in this Act or in any other law or agreement, award or other instrument for the time being in force.

(h) (i) Notwithstanding anything contained in the Transfer of Property Act, 1882, or the Registration Act, 1908, an order issued under this section shall be sufficient conveyance to divide or to transfer the assets and liabilities of the society or societies covered by any order passed under sub-clause (ii) of clause (c).

(ii) Notwithstanding anything contained in any other law for the time being in force no civil court

shall exercise any jurisdiction in respect of any action taken or order passed under this section and nothing done or order passed in exercise of any power under this section shall be called in question in any such court."

Insertion of a new Section 35 A in Assam Act I of 1950.

6. After Section 35 of the Principal Act, the following shall be inserted as a new section, namely:—

"35A. Notwithstanding anything contained in any law for the time being in force, the Registrar may at any time direct a particular society or a class of societies to appoint only persons having such qualifications as may be prescribed by him from time to time."

Insertion of a new Section 42 A in the Assam Act I of 1950,

7. After Section 42 of the Principal Act, the following shall be inserted as a new section, namely:—

"42A. Notwithstanding any provision contained in this act, the State Government may, by general or special order direct transfer of any Co-operative Society from one financing bank to another after prior consultation with these banks and the society for the purpose of availing finance by the society for its credit and non-credit operations, on such terms and conditions, as may be considered necessary.

Amendment of Section 44 (1) (c) of Assam Act I of 1950

8. In Section 44 of the Principal Act:—in sub-section (I), in clause (c), for the words "placed with the society" the words—

"Charged, hypothecated or pledged with the society," shall be substituted.

Amendment of Section 46 (2) of Assam Act I of 1950

9. In Section 46 of the Principal Act, for sub-section (2), the following shall be substituted, namely:—

"(2) Notwithstanding anything contained in this Act or in any other law for the time being in force,

(a) a member who makes an application for a loan to a Co-operative Society of which the majority of the members are agriculturists shall, if he owns any land or has any interest in any land as a tenant, make in such form as may be prescribed, a declaration that he thereby creates a charge upon such land or such interest, or such portion thereof, as may be specified in the declaration, for securing the repayment of the loan which the society may make to the members on the application and of future loans, if any,

that may be made to him, from time to time by the society together with interest on such loan or loans ;

(b) a declaration made under clause (a) may be varied or cancelled at any time by the member making it, with the consent of the society in whose favour it is made ;

(c) any land or interest in land in respect of which a declaration has been made under clause (a) or any part of such land or interest, shall not be sold or otherwise transferred by the member making the declaration until the entire amount of the loan or loans taken by the member from the society together with interest thereon is paid to the society :

Provided that nothing in this clause shall apply to any such part of such land or interest as may have been released from the charge created under this Section under the proviso to clause (d) ;

(d) subject to any claim of State Government in respect of land revenue or any sum recoverable as land revenue or as public demand, there shall be a first charge in favour of the society on the land or interest in land specified in the declaration made under clause (a), for and to the extent of the dues recoverable from the member making the declaration on account of the loan or loans together with any interest thereon made to him by the society:

Provided that if a part of such dues is paid by the member, the society may, on the application of the member and with the approval of the financing bank to which it may be indebted, release from the charged such part of the land or interest in the land specified in the declaration made under clause (a) as the society may, having due regard to the security of the outstanding amount of the loan or loans made to the member deem proper.

(e) Every record of rights prepared and maintained under the Assam Land and Revenue Regulation, 1886 or any other law for the time being in force shall also include the particulars of every charge on any land or any interest thereon created under clause (a)."

Insertion of a new Section 49A in Assam Act I of 1950.

10. After Section 49 of the principal Act, the following shall be inserted as a new section, namely :—

“49-A (1) Exemption from registration of mortgage deeds executed in favour of Co-operative and Development Bank or Primary Society:—Notwithstanding anything contained in the Indian Registration Act, 1908, it shall not be necessary to register mortgages executed in favour of the Co-operative land development bank or a primary society of which the majority of members are agriculturists, for the purpose of securing the repayment of a loan provided that the land development bank or the primary society concerned send within such time and in such manner as may be prescribed, a copy of the instrument whereby immovable property is mortgaged for the purpose of securing repayment of the loan to the registering officer within the local limits of whose jurisdiction the whole or any part of the property mortgaged is situate.

(2) On receipt of the copy or copies of the instrument under the preceding sub-section, the Registering authority shall file a copy or copies as the case may be in his Book No.1 prescribed under section 51 of the Indian Registration Act, 1908.

(3) The mortgages executed in favour of and all other assets transferred to a Co-operative land development bank or a primary Society of which the majority of members are agriculturists, by the members thereof, as security for repayment of loan, before or after commencement of this Act, shall, with effect from the date of such execution or transfer be deemed to have been executed or transferred by such society in favour of or to the financing bank.”

Amendment of Section 52 (1) of Assam Act I of 1950.

11. In Section 52 of the principal Act, in sub-section (1) the word “twenty” occurring between the words “than” and “per” shall be substituted by the words “twenty-five”.

Amendment of Section 53 of Assam Act I of 1950.

12. In Section 53 of the principal Act, for the punctuation full-stop “(.)” occurring at the end, the punctuation colon “(:)” shall be substituted and the following proviso shall thereafter be added, namely :—

“Provided that a registered Co-operative Society of which the majority of members are agriculturists and one of the objects is the creation of fund to be lent to its members shall carry not less than 15%

of its net profit in any year to the Agricultural Credit Stabilisation Fund as may be prescribed."

Insertion of a new Section 61A in the Assam Act I of 1950. 13. After Section 61 of the principal Act, the following shall be inserted as a new section, namely:—

"61-A (i) A financing bank shall have the right to inspect the books of any Co-operative Society which has either applied to the bank for financial assistance or is indebted to the bank on account of financial assistance granted earlier.

(ii) The inspection may be carried out by an officer or any other member of the paid staff of the financing bank with previous sanction of the Registrar in writing.

(iii) The officer or any other member of the paid staff of the financing bank undertaking such inspection, shall, at all reasonable time, have access to the books of accounts, documents, securities, cash and other properties belonging to or in the custody of the Co-operative Society inspected by him, and shall also be supplied by such society such information, statements and returns as may be required by him to assess the financial conditions of the society and the safety of the financial assistance to be made to the society or already made to it".

Amendment of Section 63 for the punctuation full-stop "(.)" occurring at the end, of Assam Act I of 1950. 14. In Section 63 of the principal Act, in clause (d) the punctuation semi-colon "(:)" shall be substituted and the following clause (e) shall thereafter be added, namely:—

"(e) a registered society and a financing bank."

Amendment of Section 64 (3) (b) of Assam Act I of 1950. 15. In Section 64 of the principal Act,—

in clause (b) of sub-section (3), the punctuation commas "(,)" occurring in between the words "may" and "unless" and the words "furnished" and "direct" and the words "unless adequate security is furnished" shall be deleted.

Amendment of Section 70 of Assam Act I of 1950. 16. For Section 70 of the principal Act, the following shall be substituted, namely:—

"70. Power of Registrar to direct payment of dues:—

Notwithstanding anything contained in Chapter X the Registrar or such other person as may be authorised by him in this behalf may, on—

his own motion or on the written requisition of a registered society or an affiliating society or a financing bank for the recovery of any loan or any other demand due by a defaulting member, after making such enquiry as he deems fit, grant a Co-operative Demand Certificate for the recovery of the amount found to be due."

Insertion
of a new
Section
70A
in
Assam
Act I
of
1950.

17. After Section 70 of the principal Act, the following shall be inserted as a new section, namely:—

"70-A(1). If any instalment of loan or interest payable by a member of a Co-operative Society or any part of such instalment has remained unpaid for more than 30 days from the date on which it fell due, the Managing Committee of the society may, in addition to any other remedy available to it, apply to the Registrar or any other officer authorised by him for the recovery of such instalment or part thereof by distraint and sale of the produce of the charged land including the standing crop.

(2) On receipt of such application the Registrar or the person authorised by him may, notwithstanding anything contained in the Transfer of Property Act, 1882 take action in the manner as prescribed for the purpose of distraining and selling such produce :

Provided that no distraint shall be made after the expiry of twelve months from the date on which the instalment fell due.

(3) The value of the property distrained shall be, as nearly as possible equal to the amount due and the expenses of the distraint and the costs of the sale."

Insertion of new section 83 (A), 18. After section 83 of the principal Act, the following shall be inserted as a new section, namely:-

"83(A) (1). A copy of the Co-operative Demand Certificate prepared under sections 70 and 83 of this Act shall be served in the manner prescribed upon the person from whom the amount is due.

(2) On receipt of a copy of the Co-operative Demand Certificate the person from whom the amount is due shall pay the same within a period of thirty days from the date of service of the Certificate; provided that the period during which the payment is to be made may be extended by Registrar for another period not exceeding thirty days for reasons to be recorded in writing.

(3) Any person violating the provision of sub-section (2) above shall, on conviction be punished with imprisonment of either description for a term which may extend to 6 months or with fine which may extend to one thousand rupees or with both."

Amendment of Schedule A, 19. The prescribed form in the "Schedule A" of the Assam Co-operative Societies Act, 1949 (Assam Act I of 1950) shall be substituted by the following form, namely:—

SCHEDULE "A"

Form (Under Section 83)

"Co-operative Demand Certificate granted under Section 83 (1) of the Assam Co-operative Societies Act, 1949 (Act, I of 1950) as amended.

(To be realised as an arrear of land revenue by the revenue authority within whose jurisdiction the judgement debtor's property is situated.)

Case No. _____ of 19 _____

Distric /Subdivision. _____

In the matter of.....

Versus

Whereas as a result of my enquiry I decide that a sum of Rs.....(Rupees.....)

by way of.....under section 70 of the Assam Co-operative Societies Act, 1949 (Act I of 1950) as amended and sum of Rs..... (Rupees.....) by way of interest is/are due from you and you have not paid;

Whereas.....has made a reference in writing to me complaining that a sum of

determining Rs. (Rupees.....) by way of.....under section.....of the Assam Co-operative Societies Act, 1949 (Act I of 1950) as amended and a sum of Rs

(Rupees.....) by way interest is/are due from you and you have evaded payment of the same and whereas a notice of demand calling on you to pay the dues within the specified time was served with notice to show cause;

And whereas you have not paid up your dues specified in the notice;

And whereas you have not submitted explanation/your explanation is unsatisfactory;

Now, therefore, I, under authority of section 70 of the Assam Co-operative Societies Act, 1949 as amended/sub-section (I) of section 83 of the Assam Co-operative Societies Act, 1949 as amended do hereby order that the above-mentioned sum of Rs.... is due to the above-named from you and that you will pay further interest on the principal sum at the rate of per cent per annum from..... together with all cost till the date of realisation.

I further order that right, title and interest of in the properties set out and described in the schedule below be sold as an arrear of land revenue under the provisions of the Assam Land & Revenue Regulation, 1886 (Regulation I of 1886) and that, if the sale proceeds should be found insufficient to discharge the dues with subsequent interest at the above rate till the date of realisation and costs in full, the balance be realised by attachment and sale of other movable and immovable property of the judgement debtor as an arrear of land revenue.

Further take notice that if you fail to pay the amount as ordered above within a period of thirty days from the date of service of the Certificate you shall also be liable to prosecution under sub-section 3 of section 83(A) of the Assam Co-operative Societies Act, 1949 as amended, in addition to other measures for recovery of the amount payable by you.

SCHEDULE

Dated Gauhati
The.....

Registrar,
Co-operative Societies, Assam.

Officer empowered under section 70/section 83(I) of Assam Co-operative Societies Act, 1949 (Act I of 1950) as amended,

N. B : The irrelevant words/portions may be struck off and relevant entries may be made where necessary."

Repeal and Savings. 20. (1) The Assam Co-operative Societies (Amendment) Ordinance, 1975 is hereby repealed. Assam Ordinance II of 1975.

(2) Notwithstanding such repeal anything done or any action taken under the Ordinance so repealed, shall be deemed to have been done or taken, as the case may be, under the corresponding provisions of this Act.

MD. SAADULLAH,
Joint Secretary to the Govt. of Assam,
Law Department.

Gauhati:—Printed and published by the Supdt., i/c., Printing Press, Directorate of Ptg. & Sty., Govt. of Assam (Ex-Gazette)
No.267—1,560+1,500—22-10-1975.