

[THE MAHARASHTRA RESTORATION OF LANDS TO SCHEDULED TRIBES ACT, 1974.]

[This Act received assent of the President on the 28th April 1975; assent was first published in the *Maharashtra Government Gazette*, Part IV, 'Extraordinary, on the 28th May 1975.]

Amended by Mah. 12 of 1977 (19-3-1977)\*  
 " " " 30 of 1977 (16-8-1977)\*  
 " " " 57 of 1977  
 " " " 1 of 1991 @ (1-1-1991)\*

**An Act to provide for the restoration of certain lands to persons belonging to the Scheduled Tribes.**

WHEREAS by Government Resolution in the Revenue and Forests Department, No. REV. 1070/62448-C, dated the 15th March 1971, the Government of Maharashtra appointed a Committee to inquire into and report to the State Government *inter alia* on how far the provisions of the Maharashtra Land Revenue Code, 1966, and the relevant tenancy laws have been effective in giving protection to persons belonging to Scheduled Tribes, and to suggest among other things suitable amendments therein, if any of the existing provisions are found to be inadequate :

AND WHEREAS the said Committee submitted its report to Government on the 7th April 1972 ;

AND WHEREAS the said Committee *inter-alia* recommended that provisions should be made for restoring to persons belonging to Scheduled Tribes the lands which have been duly transferred to other persons ;

AND WHEREAS after considering the aforesaid recommendation of the said Committee, the Government of Maharashtra is of the opinion that steps should be taken forthwith for restoring certain lands to persons belonging to Scheduled Tribes ; It is hereby enacted in the Twenty-fifth Year of the Republic of India as follows :—

1. (1) This Act may be called the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974.

(2) It shall extend to the whole of the State of Maharashtra.

(3) It shall come into force on such date<sup>2</sup> as the State Government may, by notification in the *Official Gazette*, appoint.

2. (1) In this Act, unless the context requires otherwise,—

(a) "Code" means the Maharashtra Land Revenue Code, 1966 ;

(b) "Collector" includes an Additional Collector, and an Assistant or Deputy Collector exercising the powers or discharging the duties of a Collector under the Code and also any other officer not below the rank of [a Tahasildar] especially empowered by the State Government to exercise the powers and perform the duties of the Collector under this Act ;

(c) "Commissioner" includes an Additional Commissioner ;

<sup>1</sup> For Statement of Objects and Reasons, see *Maharashtra Government Gazette*, 1974, Part V, page 960.

<sup>2</sup> 1st November 1975 (*vide* G.N., R. & F.D., No. REV. 1074/62448(II)-L-9, dated 1st November 1975).

<sup>3</sup> These words were substituted for the words " an Assistant or Deputy Collector " by Mah. 12 of 1977, s. 3.

\* This indicates the date of commencement of Act.

@ Section 7 of Mah. 1 of 1991 reads as under :—

7. For the removal of doubt it is hereby declared that, notwithstanding anything contained in any law for the time being in force, or any judgement or decree or order of any Court Tribunal proceedings or authority, where the Collector had not initiated *suo motu* proceedings or a tribal transferor, for restoration had not made any application during the period specified in section 36 or 36A of the said Code of lands or section 3 or 4 of the principal Act, as they stood prior to amendments made by this Act, for to tribal restoration of land under the provisions aforesaid, it shall be competent for the Collector to *suo motu* initiate any proceedings, or for the tribal-transferor to make an application, under the provisions of the said Code or the principal Act, as amended by this Act, for restoration of land to the tribal transferors.

(d) "improvements" in relation to land means any drainage works, embankments, *Bandharas*, wells or any other works appurtenant to such land constructed or maintained thereon for the purposes of agriculture, and all structures, permanent fixtures and trees on such land ;

(e) "non-Tribal" means a person who is not a Tribal and includes his successor-in-interest ;

(f) "prescribed" means prescribed by rules made under this Act ;

(g) "relevant tenancy law" means—

(i) in relation to the Vidarbha region of the State, the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958,

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of  
1958.

(ii) in relation to the Hyderabad area of the State, the Hyderabad Tenancy and Agricultural Lands Act, 1950, and

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1950.

(iii) in relation to the rest of the State, the Bombay Tenancy and Agricultural Lands Act, 1948 ;

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1948.

(h) "successor-in-interest" means a person who acquires interest in land by testamentary disposition or devolution on death ;

(i) "transfer" in relation to land means the transfer of land belonging to a tribal made in favour of a non-tribal during the period commencing on the 1st day of April 1957 and ending on the 6th day of July 1974, either—

(a) by act of parties, whether by way of sale, gift, exchange, mortgage or lease or any other disposition made *inter-vivos*, or

(b) under a decree or order of a court, or

(c) for recovering any amount of land revenue due from such Tribal, or for recovering any other amount due from him as an arrear of land revenue, or otherwise under the Maharashtra Co-operative Societies Act, 1960 or any other law for the time being in force but does not include a transfer of land falling under the proviso to sub-section (3) of section 36 of the Code ; and the expressions, "Tribal-transferor" and "non-Tribal-transferee" shall be construed, accordingly ;

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(j) "Tribal" means a person belonging to a Scheduled Tribe within the meanings of the Explanation to section 36 of the Code, and includes his successor-in-interests ;

(k) "Tribal-transferor" includes his successor-in-interest ;

(l) "non-Tribal-transferee" includes his successor-in-interest ; and if he or his successor has, on or after the 15th day of March 1971, transferred land in favour of any person, whether a Tribal or non-Tribal, includes also such person.

(2) Words and expressions used in this Act but not defined shall have the meanings respectively assigned to them in the Code or, as the case may be, in the relevant tenancy law.

3. (1) Where due to transfer—

(a) the land of a Tribal-transferor is held by a non-Tribal-transferee, or

(b) the land acquired in exchange by a Tribal-transferor is less in value than the value of the land given in exchange,

and the land so transferred is in possession of the non-Tribal-transferee, and has not been put to any non-agricultural use on or before the 6th day of July 1974, then, notwithstanding anything contained in any other law for the time being in force, or any judgment, decree or order of any Court, Tribunal or authority, the

Collector either *suo motu* at any time, or on the application of a Tribal-transferor made, [within thirty years] from the commencement of this Act shall, after making such inquiry as he thinks fit, direct that—

(i) the lands of the Tribal-transferor and non-Tribal-transferee so exchanged shall be restored to each other ; and the Tribal-transferor, or as the case may be, the non-Tribal-transferee shall pay the difference in value of improvements as determined under clause (a) of sub-section (4), or

(ii) the land transferred otherwise than by exchange be taken from the possession of the non-Tribal-transferee, and restored to the Tribal-transferor, free from all encumbrances and the Tribal-transferor shall pay such transferee and other persons claiming encumbrances the amount determined under clause (b) of sub-section (4) :

Provided that, where land is transferred by a Tribal-transferor in favour of non-Tribal-transferee before the 6th day of July 1974, after such transferee was rendered landless by reason of acquisition of his land for a public purpose, then only half the land so transferred shall be restored to the Tribal-transferor.

<sup>2</sup>[*Explanation.*—Where the lands of a Tribal and non-Tribal are purported to have been transferred to each other, otherwise than by exchange, but the date on which the instruments for such transfers are registered is the same or, where such instruments are registered on different dates, but the interval between the dates of registration is thirty days or less, then, notwithstanding anything contained in such instruments, for the purposes of this section, such transfers shall be deemed to be by way of exchange.]

Mah. LVII of 1968. <sup>3</sup>[(1A) Where any proceedings are taken under clause (ii) of sub-section (1) before the date of commencement of the Maharashtra Restoration of Lands to Scheduled Tribes (Amendment) Act, 1977 (hereinafter in this section referred to as "the commencement date"), in respect of any land purported to have been transferred by a Tribal-transferor to a non-Tribal-transferee, otherwise than by exchange, and

(a) such proceedings are pending before the Collector or any appellate or revisional authority on the commencement date; and the Collector or such authority is satisfied, after giving a reasonable opportunity of being heard to both the parties, that there were transfers of lands by way of exchange between the parties within the meaning of the *Explanation* to sub-section (1), then,—

(i) if such proceedings are pending before the Collector, the Collector shall hold a fresh inquiry under clause (i) of sub-section (1) in respect of the lands deemed to be exchanged ;

(ii) if such proceedings are pending before the appellate or revisional authority, such authority shall set aside the order of the Collector and direct the Collector to hold a fresh inquiry under clause (i) of sub-section (1) in respect of the lands deemed to be exchanged ;

(b) such proceedings have been completed by the Collector or by any such authority, but the Collector, within a period of six months from the commencement date, is on an application made by any of the parties to the exchange, or *suo motu*, satisfied after giving a reasonable opportunity of being heard to both the parties, that there were transfers of lands by way of exchange between the parties within the meaning of the *Explanation* to sub-section (1), the Collector shall forthwith pass necessary orders to restore the *status quo* and then hold a fresh inquiry under clause (i) of sub-section (1) in respect of the lands deemed to be exchanged.]

1 These words were substituted for the words "within three years" by Mah. 1 of 1991, s. 5.

2 This *Explanation* shall be deemed always to have been added by Mah. 57 of 1977, s. 2(a).

3 Sub-section (1A) was inserted, *ibid.*, s. 2(b).

(2) Where any land restored under clause (i) of sub-section (1) to a Tribal or a non-Tribal is burdened with encumbrances, then such encumbrances shall be transferred therefrom and attach themselves to the land restored to the non-Tribal or the Tribal, as the case may be.

(3) The Tribal-transferor shall, notwithstanding anything contained in any law for the time being in force in the State, be entitled to restoration of land under this section only if he undertakes to cultivate the land personally and to pay such amount to the non-Tribal-transferee as the Collector may, under the provisions of sub-section (4), determine :

Provided that, in the case of a minor, the undertaking may be given by his guardian, and in the case of any other person under disability by his authorised agent.

(4) (a) Where lands are restored under clause (i) of sub-section (1), the Collector shall in the prescribed manner determine the value of the improvements, if any, made thereon after such exchange by the Tribal-transferor or the non-Tribal-transferee. If the value of the improvements, if any, made by a Tribal-transferor is found to be more, the difference shall be payable by the non-Tribal-transferee to the Tribal-transferor; and if the value of the improvements, if any, made by the non-Tribal-transferee is found to be more, the difference shall be payable by the Tribal-transferor to the non-Tribal-transferee.

(b) The amount payable by the Tribal-transferor for the land restored to him under clause (ii) of sub-section (1) shall consist of an amount equal to 48 times the assessment of the land or the amount of consideration paid by the non-Tribal-transferee for acquisition of the land whichever is less plus the value of the improvements if any, made by the non-Tribal-transferee therein to be determined by the Collector in the prescribed manner.

*Explanation.*—In determining the value of any improvement under clause (a) or clause (b), the Collector shall have regard to—

- (i) the labour and capital provided or spent on improvements ;
- (ii) the present conditions of the improvements ;
- (iii) the extent to which the improvement is likely to benefit the land during the period of ten years next following the year in which such determination is made ; and
- (iv) such other factors as may be prescribed.

(c) The Tribal-transferor, or as the case may be, the non-Tribal-transferee who is found liable to pay the amount representing the difference in the value of improvements as determined by the Collector under clause (a) shall pay the said amount to the non-Tribal-transferee, or as the case may be, the Tribal-transferor, either in lump sum or in such annual instalments not exceeding twelve (with simple interest at  $4\frac{1}{2}$  per cent. per annum) as the Collector may direct.

(d) The Tribal-transferor to whom land is restored [under clause (ii) of sub-section (1)] of this section shall pay to the non-Tribal-transferee and other persons claiming encumbrances the amount determined under this sub-section, either in lump sum or in such annual instalments not exceeding twelve (with simple interest at  $4\frac{1}{2}$  per cent. per annum) as the Collector may direct.

(e) The apportionment of the amount determined under clause (b) amongst the transferee and the persons claiming encumbrances shall be determined by the Collector in the following manner, that is to say :—

- (i) if the total value of encumbrances on the land is less than the amount determined under clause (b), the value of encumbrances shall be paid to the holders thereof in full ;

1 This was deemed always to have been substituted for the words, brackets and figures " under clause (i) of sub-section (1) " by Mah. 30 of 1977. s. 4.

(ii) if the total value of encumbrances on the land exceeds the amount determined under clause (b), the amount shall be distributed amongst the holders of encumbrances in the order of priority:-

Provided that nothing in clauses (d) and (e) shall affect the right of holder of any encumbrances to proceed to enforce against the non-Tribal-transferee his right in any other manner or any other law for the time being in force.

(f) During any period for which payment of rent is suspended or remitted under the relevant tenancy law, the Tribal-transferor or as the case may be, non-Tribal-transferee shall not be bound to pay the amount in lump sum or the amount of any instalment fixed under this section or interest thereon, if any.

(g) If the Tribal-transferor or as the case may be, non-Tribal-transferee fails to pay the amount in lump sum or remains in arrears of two or more instalments, the amount so remaining unpaid (with interest thereon at  $4\frac{1}{2}$  per cent. per annum) shall be recoverable by the Collector as an arrear of land revenue. The amount so recovered shall be paid by the Collector to the non-Tribal-transferee and persons claiming encumbrances, if any, or as the case may be, the Tribal-transferor.

4. Where any land of a Tribal is, at any time on or after the 1st day of April 1957 and before the 6th day of July 1974, purchased or deemed to have been purchased or acquired under or in accordance with the provisions of the relevant tenancy law by a non-Tribal-transferee or where any acquisition has been regularised on payment of penalty under such law and such land is in possession of a non-Tribal-transferee and has not been put to any non-agricultural use on or before the 6th day of July 1974, then the Collector shall, notwithstanding anything contained in any law for the time being in force, either *suo motu* at any time or on an application by the Tribal made [within thirty years] from the commencement of this Act and after making such inquiry as he thinks fit, direct that the land shall, subject to the provisions of sub-section (4) of section 3, be restored to the Tribal free from all encumbrances and that the amount of purchase price or a proportionate part thereof, if any, paid by such non-Tribal-transferee in respect of such lands in accordance with the relevant tenancy law shall be refunded to such non-Tribal-transferee either in lump sum or in such annual instalments not exceeding twelve (with simple interest at  $4\frac{1}{2}$  per cent. per annum) as the Collector may direct. The provisions of clauses (d), (e), (f) and (g) of sub-section (4) of section 3 shall, so far as may be, apply in relation to the recovery of the amount from the Tribal and payment thereof to the non-Tribal-transferee and the persons claiming encumbrances, if any :

Provided that, where land is purchased or acquired by a non-Tribal-transferee before the 6th day of July 1974, after such transferee was rendered landless by reason of acquisition of his land for a public purpose, then only half the land so purchased or acquired shall be restored to the Tribal-transferor.

5. (1) A non-Tribal-transferee who after the land is ordered to be restored under clause (ii) of sub-section (1) of section 3 or under section 4 [or after the land is vested in the State Government under sub-section (1) of section 5A,] continues to be in possession of the land, then the non-Tribal-transferee shall pay to the Tribal [in the former case and to the State Government in the latter case] for the period (from the year following the year in which the land is ordered to be restored to the Tribal) till possession of the land is given to the Tribal [or, as the case may be, to the State Government], such amount for the use and occupation of the land as the Collector may fix in the prescribed manner.

1 These words were substituted for the words "within three years" by Mah. 1 of 1991, s. 6.

2 These words were deemed always to have been inserted by Mah. 30 of 1977, s. 5(a).

3 These words were deemed always to have been inserted, *ibid.*, s. 5(b).

4 These words were deemed always to have been inserted, *ibid.*, s. 5(c).

(2) If the non-Tribal-transferee fails to pay the amount, fixed by the Collector under sub-section (1), it shall be recoverable by the Collector as an arrear of land revenue.

Lands which cannot be restored to Government and to be granted to other Tribal subject to certain restrictions. 5A. (1) Where any land (not being land acquired in exchange), which is liable to be restored to a Tribal-transferor under sub-section (1) of section 3 cannot be so restored either on account of the failure of the Tribal-transferor to give an undertaking referred to in sub-section (3) of section 3 or for any reason whatsoever or where any land referred to in section 4 cannot be restored to the Tribal by reason of such Tribal expressing, during the inquiry held by the Collector, his unwillingness to refund the purchase price or proportionate part thereof to the non-Tribal-transferee, as required by the said section 4, or for any other reason, then, the Collector may, subject to rules, if any, made in that behalf, by order in writing direct that the land shall, with effect from the date of the order, be deemed to have been acquired and vest in the State Government free from all encumbrances.

(2) On such vesting of the land, the non-Tribal-transferee shall be entitled to receive from the State Government an amount equal to 48 times the assessment of the land, plus the value of the improvements, if any, made by the non-Tribal-transferee therein. The provisions of clauses (b) and (c) of sub-section (4) of section 3 shall *mutatis mutandis* apply for determining the value of improvements and for apportionment of the encumbrances, if any, on the land between the non-Tribal-transferee and the persons claiming encumbrances on the land.

(3) The land so vested in the State Government under sub-section (1) shall, subject to any general or special orders of the State Government in that behalf, be granted by the Collector to any other Tribal residing in the village in which the land is situate or within five kilometres thereof and who is willing to accept the land in accordance with the provisions of the Code, and the rules and orders made thereunder and to undertake to cultivate the land personally; so, however, that total land held by such Tribal whether as owner or tenant does not exceed an economic holding within the meaning of sub-section (6) of section 36A of the Code.

(4) The person to whom land is granted under sub-section (3), shall pay to the State Government the amount referred to in sub-section (2), either in lump sum or in such annual instalments not exceeding twelve (with simple interest at  $4\frac{1}{2}$  per cent. per annum) as the Collector may direct and shall hold the land subject to such terms and conditions as may be prescribed.

(5) Without the previous sanction of the Collector, no land granted under sub-section (3) shall be transferred, whether by way of sale (including sale in execution of a decree of a Civil Court or of an award or order of a competent authority) or by way of gift, mortgage, exchange, lease or otherwise. Such sanction shall not be given otherwise than in such circumstances and on such conditions including condition regarding payment of premium or *nazarana* to the State Government, as may be prescribed :

Provided that, no such sanction shall be necessary where the land is to be leased by a serving member of the armed forces or where the land is to be mortgaged as provided in sub-section (4) of section 36 of the Code for raising a loan for effecting any improvement on such land.

(6) If sanction is given by the Collector to any transfer under sub-section (5), subsequent transfer of the land shall also be subject to the provisions of sub-section (5).

(7) Any transfer of land, and any acquisition thereof, in contravention of sub-section (5) or (6), shall be invalid; and as a penalty therefor, any right, title or interest of the transferor and transferee in or in relation to such land shall, after giving him an opportunity to show cause, be forfeited by the Collector; and the land together with the standing crops thereon, if any, shall without further assurance vest in the State Government and shall be disposed of in such manner as the State Government may, from time to time direct.]

6. (1) An appeal against any decision or order passed by the Collector may, Appeal notwithstanding anything contained in the Code, be made to the Maharashtra Revenue Tribunal constituted under the Code.

(2) Every such appeal shall be made within a period of sixty days from the date of receipt of the decision or order of the Collector. The provisions of sections 4, 5, 12 and 14 of the Limitation Act, 1963, shall apply to the filing of such appeal.

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1963.

(3) In deciding an appeal under sub-section (1), the Maharashtra Revenue Tribunal shall exercise all the powers which a Court has subject to the regulations framed by that Tribunal under the Code and follow the same procedure which a Court follows, in deciding appeals from the decree or order of an original Court under the Code of Civil Procedure, 1908.

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1908.

7. Where no appeal has been filed within the period provided by sub-Revision. section.(2) of section 6, the Commissioner may *suo motu* or on the direction of the State Government at any time—

(a) call for the record of any inquiry or proceeding of any Collector for the purpose of satisfying himself as to the legality or propriety of any order passed by, and as to the regularity of the proceedings of, such Collector, as the case may be, and;

(b) Pass such order thereon as he thinks fit :

Provided that no such record shall be called for after the expiry of three years from the date of such order except in cases where directions are issued by the State Government; and no order of the Collector shall be modified, annulled or reversed unless opportunity has been given to the interested parties to appear and be heard.

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1959.

8. Notwithstanding anything contained in the Bombay Court-fees Act, 1959, Court-fee. every appeal before the Maharashtra Revenue Tribunal or application under this Act shall bear a court-fee stamp of such value as may be prescribed.

9. Every decision or order passed by the Collector under this Act, subject to an appeal to the Maharashtra Revenue Tribunal under section 6, and the decision of the Maharashtra Revenue Tribunal in appeal shall be final and conclusive and shall not be questioned in any suit or proceeding in any court.

Finality of  
decision or  
order of  
Collector  
and decision  
of Revenue  
Tribunal.

9A. Notwithstanding anything contained in this Act or any law for the time being in force, no pleader shall be entitled to appear on behalf of any party in any proceedings under this Act before the Collector, the Commissioner or the Maharashtra Revenue Tribunal :

Pleaders,  
etc.,  
excluded  
from  
appearance.

Provided that, where a party is a minor or lunatic, his guardian may appear, and in the case of any other person under disability, his authorised agent may appear, in such proceedings.

*Explanation.*—For the purpose of this section, the expression ‘pleader’ includes an advocate, vakil or any other legal practitioner.]

Bar of jurisdiction of civil court or authority. 10. No civil court shall have jurisdiction to settle, decide or deal with any question which under this Act is required to be decided or dealt with by the Collector, the Commissioner, the Maharashtra Revenue Tribunal or the State Government.

Powers for restoration of possession of land and of eviction of person in possession. 10A. Notwithstanding anything contained in section 5 or any other provision of this Act or in any other law for the time being in force, where possession of any land is to be restored to any Tribal-transferor or non-Tribal-transferee under any provision of this Act, it shall always be lawful for the Collector to evict any person not entitled to possession of the land, or any person wrongfully in possession thereof, at any time, in the manner provided in section 242 of the Code.]

Power to make rules. 11. (1) The State Government may, by notification in the *Official Gazette* and subject to the condition of previous publication, make rules for carrying into effect the purposes of this Act. Such rules may provide for procedure for inquiries and for levying fees for any of the purposes of this Act for which specific provision for fees has not been made.

(2) Every rule made under this Act shall be laid as soon as may be after it is made before each House of the State Legislature while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, and notify such decision in the *Official Gazette*, the rule shall from the date of publication of such notification have effect only in such modified form or be of no effect as the case may be; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done or omitted to be done under that rule.