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THE HIMACHAL PRADESH LAND PRESERVATION ACT, 1978

(ACT NO. 28 OF 1978)¹

(Received the assent of the President of India on the 4th August, 1978 and was published in the Rajpatra, Himachal Pradesh (Extra-ordinary), dated the 26th August, 1978, pp. 1119-1129.)

An Act to provide for the better preservation and protection of certain portions of the territories of Himachal Pradesh.

It hereby enacted by the Legislative Assembly of Himachal Pradesh in the Twenty-ninth Year of the Republic of India as follows:-

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement.- (1) This Act may be called the Himachal Pradesh Land Preservation Act, 1978.

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

(3) It shall come into force at once.

2. Definitions.- In this Act, unless a different intention appears from subject or context,-

(a) "land" means land within any area preserved and protected or otherwise dealt with in the manner provided in this Act and includes benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to the earth;

(b) "cho" means a stream or torrent flowing through or from the mountainous ranges within Himachal Pradesh;

1. For Statement of Objects and Reasons see the Rajpatra, Himachal Pradesh (Extra-ordinary), dated 8th April, 1978, p. 326.

- (c) “tree”, “timber”, “forest produce” and “cattle”, respectively, shall have the meanings severally assigned thereto in section 2 of the Indian Forest Act, 1927 (16 of 1927);
- (d) “person interested” includes all persons claiming any interest in compensation to be made on account of any measures taken under this Act;
- (e) “Deputy Commissioner” includes any officer or officers at any time specially appointed by the State Government to perform the functions of the Deputy Commissioner under this Act;
- (f) “right-holder” includes-
 - (i) persons not being tenants or mortgagees having rights to, or in land; and
 - (ii) persons having rights of collection of forest produce or of grazing of pasture; and
- (g) “erosion” includes the removal or displacement of earth, soil, stones or other materials by the action of wind or water.

CHAPTER II

NOTIFICATION AND REGULATION OF AREAS

3. Notification of areas.- Whenever it appears to the State Government that it is desirable to provide for the conservation of sub-soil water or the prevention of erosion in any area subject to erosion or likely to become subjected to erosion, the State Government may, by notification published in the Official Gazette, make a direction accordingly.

4. Power to regulate, restrict or prohibit, by general or special order, within notified areas, certain matters.- In respect of areas notified under section 3 generally or the whole or any part of any such area, the State Government may, by general or special order, temporarily regulate, restrict or prohibit-

- (a) the clearing or breaking up or cultivating of land not ordinarily under cultivation prior to the publication of the notification under section 3;
- (b) the quarrying of stone or the burning of lime at places where such stone or lime had not ordinarily been so quarried or burnt prior to the publication of the notification under section 3;
- (c) the cutting of trees or timber, or the collection or removal or subjection to any manufacturing process, otherwise than as described in clause(b) of this section, of any forest produce other than grass save for *bona-fide domestic* or agricultural purposes of a right holder in such area;
- (d) the setting on fire of trees, timber or forest produce;

- (e) the admission, herding, pasturing or retention of sheep, goats or camels;
- (f) the examination of forest produce passing out of any such area; and
- (g) the granting of permits to the inhabitants of towns and villages situated within the limits or in the vicinity of any such area to take any tree, timber or forest produce for their own use therefrom or to pasture sheep, goats or camels or to cultivate or erect buildings therein and the production and return of such permits by such persons.

5. Power in certain cases to regulate, restrict or prohibit by special order, within notified areas, certain further matters.- In respect of any specified village or villages or part or parts thereof comprised within the limits of any area notified under section 3, the State Government may, by special order, temporarily regulate, restrict or prohibit-

- (a) the cultivation of any land ordinarily under cultivation prior to the publication of the notification under section 3;
- (b) the quarrying of any stone or the burning of any lime at places where such stone or lime had ordinarily been so quarried or burnt prior to the publication of the notification under section 3;
- (c) the cutting of trees or timber or the collection or removal or subjection to any manufacturing process, otherwise than as described in clause (b) of this section, of any forest produce for any purposes; and
- (d) the admission, herding, pasturing or retention of cattle generally other than sheep, goats and camels or of any class or description of such cattle.

6. Power to require execution of works and taking of measures.- In respect of areas notified under section 3 generally or the whole or any part of any such area, the State Government may, by general or special order, direct-

- (a) the levelling, terracing, drainage and embanking of fields;
- (b) the construction of earth works in fields and ravines;
- (c) the provision of drains for stream water;
- (d) the protection of land against the action of wind or water;
- (e) the training of streams; and
- (f) the execution of such other works and the carrying out of such other measures, as may, in the opinion of the State Government be necessary for carrying out the purposes of this Act.

7. Necessity for regulation, restriction or prohibition to be recited in the order under sections 4, 5 or 6 and publication of order.- Every order made under sections 4, 5 or 6 shall be published in the Official Gazette and shall set forth that the State Government is satisfied, after due inquiry, that regulations, restrictions, prohibitions or directions contained in the order are necessary for the purpose of giving effect to the provisions of this Act.

8. Proclamation of regulations, restrictions and prohibitions and admission of claims for compensation for rights which are restricted or prohibited.- (1) When in respect of any area a notification has been published under section 3, and -

- (a) upon such publication any general order made under section 4 or section 6 becomes applicable to such area, or
- (b) any special order under section 4, 5 or 6 is made in respect of such area,

the Deputy Commissioner shall cause public notice of the provisions of such general or special order to be given, and if the provisions of any such order restrict or prohibit the exercise of any existing rights, shall also publish in the language of the country and in every town and village the boundaries of which include any portion of the area within or over which the exercise of any such rights is so restricted or prohibited, a proclamation stating the regulations, restrictions and prohibitions, which have been imposed by any such order, within the limits of such area or in any part or parts thereof, fixing a period of not less than three months from the date of such proclamation and requiring every person claiming any compensation in respect of any right so restricted or prohibited, within such period either to present to such officer a written notice specifying, or to appear before him and state the nature and extent of such right and the amount and particulars of the compensation, if any, claimed in respect thereof.

(2) Any claim not preferred within the time fixed in the proclamation made under sub-section (1), shall be rejected:

Provided that with the previous sanction of the Commissioner, the Deputy Commissioner may admit any such claim as if it had been made within such period.

9. Power to fix time within which work to be executed, etc.- (1) When an order has been issued under section 6, the Deputy Commissioner may by notice require the owner or occupier of the land to execute such works or take such measures as may be specified in the notice.

(2) Every such notice shall state the time within which the works are to be executed or measures are to be taken.

(3) A person aggrieved by an order contained in such a notice as aforesaid may, within thirty days from the service of such notice or within such longer period as the Deputy Commissioner may allow in this behalf, serve a notice of his objections on the Deputy Commissioner in such manner as may be provided by the rules made under this Act.

(4) If and in so far as an objection under this section is based on the ground of some informality, defect or error in or in connection with the notice, the Deputy Commissioner shall dismiss the objection, if he is satisfied that the informality, defect or error was not a material one.

(5) If the objection is brought on all or any of the following grounds that is to say-

- (a) that the notice might lawfully have been served on the occupier of the land in question instead of on the owner, or on the owner instead of on the occupier, and that it would have been equitable for it to have been so served;
- (b) that some other person, being the owner, occupancy-tenant, mortgagee with possession, or lessee, or farm-holder, or possessing some other right in or over the land to be benefited, ought to contribute towards the expenses of executing any works or taking any measures required;
- (c) where the work or measure is work or measure for the common benefit of the land in question and other land, that some other person being the owner or occupier of land to be benefited, ought to contribute towards the expenses of executing any works or taking any measures required;

the objector shall serve a copy of his notice of objection on each other person referred to, in clauses (a) to (c) and on the hearing of the objection of Deputy Commissioner may make such order as he thinks fit with respect to the person by whom any work is to be executed or measure is to be taken and the contribution to be made by any other person towards the cost of the work or measure, or as to the proportions in which any expenses which may become recoverable by the Deputy Commissioner under sub-section (6) are to be borne by the objector and such other persons:

Provided that no such order shall be made unless the person who is likely to be affected thereby has been given a reasonable opportunity of being heard.

In exercising his power under this sub-section the Deputy Commissioner shall have regard-

- (a) as between an owner and an occupier, to the terms and conditions, whether contractual or statutory, of the tenancy and to the nature of the works and measures required, and
- (b) in any case, to the degree of benefit to be derived by the different persons concerned.

(6) Notwithstanding anything to the contrary contained in any law for the time being in force, no person required by a notice or an order under this section to execute any work or to take any measure shall be required to obtain the consent of any other person before complying with such notice or order.

(7) Subject to such right of objection as aforesaid and the right of appeal under section 15, if the person required by the notice to execute the works or to take measures fails to execute the works and take measures indicated within the time thereby limited, the Deputy Commissioner may himself or by an agent execute the works or take the measures and recover from that person the expenses reasonably incurred by him in so doing:

Provided that it shall not be necessary for the Deputy Commissioner to wait for the decision of an objection other than an objection under clause (a) of sub-section (5), or an appeal against any decision on such objection, before taking action under this sub-section.

(8) If the cost of any work executed or any measure taken by any person remains unpaid by the person from whom it is due after the date specified in a notice issued in this behalf by the Deputy Commissioner or such other date as is fixed by him, such cost shall be recoverable as an arrear of land revenue and a certificate issued by the Deputy Commissioner in this behalf shall be final and conclusive evidence of the sum so recoverable and the person liable for the same.

(9) Every order issued under this section shall be published in such manner, as may be prescribed in the rules made under this Act, and upon such publication every person affected thereby shall, unless the contrary be proved, be deemed to have had due notice thereof.

(10) The Deputy Commissioner, may, by general or special order, authorise any revenue officer subordinate to him to enquire into any objection that may be brought under this section:

Provided that no final order on any such objection shall be passed except by the Deputy Commissioner himself.

(11) In making an order on objections brought under this section, Deputy Commissioner shall be guided by such rules, if any, as the State Government may make in this behalf.

(12) For the purposes of this section, the expression "estate" shall have the meaning assigned thereto in the Himachal Pradesh Land Revenue Act, 1953 (6 of 1954).

CHAPTER III

POWER TO ENTER UPON AND DELIMIT NOTIFIED AREAS AND BEDS.

10. Power to enter upon, survey and demarcate local areas notified under section 3.- It shall be lawful for the Deputy Commissioner and any other person, as may be authorised by him, from time to time, as occasion may require,-

- (a) to enter upon and survey any land comprised within any area in regard to which any notification has been issued under section 3 or in regard to which a notification is proposed to be issued under section 6;

- (b) to erect bench-marks on and to delimit and demarcate the boundaries of any such area; and
- (c) to do all other acts and things which may be necessary in order adequately to preserve or protect any land or to give effect to all or any of the provisions of this Act:

Provided that reasonable compensation, to be assessed and determined in the manner in this Act provided, shall be made in respect of any damage or injury caused to the property or rights of any person in carrying out any operations under the provisions of this section.

CHAPTER IV

INQUIRY INTO CLAIMS AND AWARDS OF COMPENSATION

11. Inquiries into claims and awards thereupon.- (1) The Deputy Commissioner shall-

- (a) fix a date for inquiring into all claims made under section 8 and may in his discretion, from time to time, adjourn the inquiry to a date to be fixed by him;
- (b) record in writing all statements made under section 8;
- (c) inquire into all claims duly preferred under section 8; and
- (d) make and award upon such claim, setting out therein the nature and extent of the right claimed, the person or persons making such claim, the extent, if any, to which, and the person or persons in whose favour, the right established, the extent to which it is to be restricted or prohibited and the nature and amount of the compensation, if any, awarded.

(2) For the purposes of every such inquiry the Deputy Commissioner may exercise all or any of the powers of a civil court in the trial of suits under the Code of Civil Procedure (5 of 1908).

(3) The Deputy Commissioner shall announce his award to such persons interested, or their representatives, as are present and shall record the acceptance of those who accept it. To such as are not present, the Deputy Commissioner shall cause immediate notice of his award to be given.

12. Method of awarding compensation and effect of such award.-

(1) In determining the amount of compensation the Deputy Commissioner shall be guided, so far as may be, by the provisions of sections 23 and 24 of the Land Acquisition Act, 1894 (1 of 1894), and as to matters which cannot be dealt with under those provisions, by what is just and reasonable in the circumstances of each case.

(2) The Deputy Commissioner may, with the sanction of the State Government and the consent of the person entitled, instead of money, award compensation in land or by reduction in revenue or in any other form.

(3) If in any case, the exercise of any right is prohibited for a time only, compensation shall be awarded only in respect of the period during which the exercise of such rights is so prohibited.

CHAPTER V

PROCEDURE, RECORDS AND APPEAL

13. Record-of-rights in respect of notified areas.- (1) For every area, notified under section 3, the Deputy Commissioner shall prepare a record setting forth the nature, description, local situation and extent of all rights mentioned in section 4 and section 5 -

- (a) existing within such area at the time of the publication of the notification relating thereto under section 3;
- (b) regulated, restricted, or prohibited by any order under section 4 or section 5.

(2) When any award is made under section 11 its effect upon any right shall also be recorded therein.

(3) The record prepared under this section shall be presumed to be correct until contrary is proved or a new entry lawfully substituted therefor.

14. Mode of proclaiming notifications and of serving notices, orders and processes, issued under the Act.- (1) Upon the publication of a notification issued under any of the provisions of this Act, the Deputy Commissioner shall cause public notice of the substance thereof to be given at convenient places in the locality to which such notification relates.

(2) The procedure prescribed in sections 21, 22 and 23 of the Himachal Pradesh Land Revenue Act, 1953 (6 of 1954), shall be followed, as far as may be, in proceeding under this Act.

15. Appeal, review and revision.- Every order passed and every award made by the Deputy Commissioner under this Act shall for the purposes of appeal, review and revision, respectively, be deemed to be the order of a Collector within the meaning of sections 14, 15, 16 and 17 of the Himachal Pradesh Land Revenue Act, 1953 (6 of 1954):

Provided that nothing in this Act contained shall be deemed to exclude the jurisdiction of any civil court to decide any dispute arising between the persons interested in any compensation awarded as to the apportionment or distribution thereof amongst such persons or any of them.

CHAPTER VI

PUNISHMENTS, BAR OF SUITS AND RULES

16. Punishment for offences.- Any person who, within the limits of any area notified under section 3, commits any breach of any regulation made, restrictions or prohibitions imposed, order passed or requisition made under sections 4, 5, 6 or 9 or obstructs or resists in any way whatever the execution of acts or things done under section 10, shall be punished with imprisonment

for a term which may extend to 6 months, or with a fine which may extend to five hundred rupees, or with both.

17. Applications of provisions of the Indian Forest Act, 1927.- The provisions of sections 52, 54, 55, 56, 57, 58, 59, 60, 61, 62, 64 (excluding last sentence), 66 and 73 of the Indian Forest Act, 1927 (16 of 1927) shall, so far as applicable, be read as part of this Act and for the purposes of those provisions, every offence punishable under section 16 shall be deemed to be a "forest offence" and every officer employed in the management of any area notified under section 3 as caretaker or otherwise, shall be deemed to be a forest officer.

18. Power to try offences summarily.- The Chief Judicial Magistrate or any Judicial Magistrate of the first class specially empowered in this behalf by the State Government shall try summarily, under the Code of Criminal Procedure, 1973 (2 of 1974), any forest offence punishable with imprisonment for a term not exceeding six months, or with a fine not exceeding five hundred rupees, or with both.

19. Power to compound offences.- (1) The State Government may, by notification in the Official Gazette, empower a Gazetted Forest Officer-

- (a) to accept from any person, against whom a reasonable suspicion exists that he has committed any forest offence, other than an offence specified in section 62 of the Indian Forest Act, 1927 (16 of 1927), a sum of money by way of compensation for the offence which such person is suspected to have committed; and
- (b) when any property has been seized as liable to confiscation, to release the same on payment of the value thereof as estimated by such officer.

(2) On the payment of such sum of money, or such value, or both, as the case may be, to such officer, the suspected person, if in custody, shall be discharged, the property, if any, seized shall be released, and no further proceeding shall be taken against such person or property.

(3) The sum of money accepted as compensation under clause (a) sub-section (1) shall in no case exceed the sum of five hundred rupees in each case.

20. Bar to suits.- No suit shall lie against the State Government for anything done under this Act, and no suit shall lie against any public servant, for anything done, or purporting to have been done, by him, in good faith, under this Act.

21. Power to make rules.- (1) The State Government may make rules, consistent with this Act,-

- (a) regulating the procedure to be observed in any inquiry or proceeding under this Act; and
- (b) generally for the purpose of carrying into effect all or any of the provisions of this Act.

(2) All rules made under this section shall be published in the Official Gazette.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before the Legislative Assembly while it is in session for a total period of not less than fourteen days, which may be comprised in one session or in two or more successive sessions, and if before the expiry of the session in which it is so laid or the sessions aforesaid, the Assembly makes any modification in the rule or decides that the rule should not be made, the rule shall thereafter 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 under that rule.

22. Repeal and Savings.- The Punjab Preservation Act, 1900 (2 of 1900), as in force in the areas added to Himachal Pradesh under section 5 of the Punjab Re-organisation Act, 1966 (31 of 1966) and the Mandi State Anti-Erosion Act, 2004 B.K.(4 of 2004 B.K.), as in force in the areas comprised in the erstwhile princely State of Mandi, are hereby repealed:

Provided that anything done or any action taken, including rules made, notifications issued or proceedings commenced or continued under the provisions of the Acts hereby repealed shall, unless it is inconsistent with the provision of this Act, be deemed to have been done, taken, made, issued, commenced or continued under the corresponding provisions of this Act.
