

**THE AZAD JAMMU AND KASHMIR REDEMPTION AND
RESTITUTION OF MORTGAGED LANDS ORDINANCE, 1969
(Ordinance III of 1969)**

*(Passed under Government Order No. 2139-2179\SL\69,
dated the 25th August, 1969)*

WHEREAS it is expedient to consolidate the law relating to the redemption and restitution of certain mortgaged of land in the Azad Jammu and Kashmir Territory in the manner hereinafter appearing;

AND WHEREAS the State Council of Azad Jammu and Kashmir is not in session and the President of the Azad Government of the State of Jammu and Kashmir is satisfied that circumstances exist which render immediate legislation necessary;

Now, THEREFORE, in exercise of the powers conferred by section 17 of the Azad Jammu and Kashmir Government Act, 1968, the President, with the concurrence of the Chief Adviser, is pleased to make and promulgate the following Ordinance :-

**CHAPTER I
PRELIMINARY**

1. **Short title, extent and commencement:-** (1) This Ordinance may be called the Azad Jammu and Kashmir Redemption and Restitution of Mortgaged Lands Ordinance, 1969.
 - (2) It extends to the whole of the Azad Jammu and Kashmir Territory.
 - (3) It shall come into force in such areas and from such dates as the Government may, by notification in the Official Gazette, direct.
2. **Definitions:-** In this Ordinance, unless the context otherwise requires, the following expressions shall have the meaning hereby respectively assigned to them, that is to say:
 - (a) 'Collector' means the Collector of the District in which the mortgaged land or any part thereof is situated, and shall include any Revenue Officer specially empowered by the Financial Commissioner to perform the duties of a Collector for the purposes of this ordinance ;

- (b) 'Commissioner' means the Commissioner of Azad Jammu and Kashmir, and shall include any officer specially empowered by the Financial Commissioner to perform the duties of a Commissioner for the purposes of this Ordinance;
- (c) 'Financial Commissioner' means any person appointed by the Government as Financial Commissioner under the Punjab Land Revenue Act, 1887 (Punjab Act XVII of 1887), as in force in the Azad Jammu and Kashmir Territory;
- (d) 'Government' means the Azad Government of the State of Jammu and Kashmir;
- (e) 'land' means land which is not occupied as the site of any building in a town or village and is occupied or let for agricultural purposes or for purposes subservient to agriculture or for pasture, and includes:
 - (i) the sites of buildings and other structures on such land;
 - (ii) a share in the profits of an estate or holding ;
 - (iii) a right to receive rent;
 - (iv) any right to water enjoyed by the owner or occupier of land as such; and
 - (v) all trees standing on such land;
- (f) 'mortgager' or 'mortgagee' includes the assignee and the representative-in-interest of such mortgagor or mortgagee, as the case may be ; and
- (g) 'prescribed' means prescribed by rules made under this Ordinance.

CHAPTER II REDEMPTION OF MORTGAGES

3. **Petition for redemption:-** After the principal money becomes due and before a suit for redemption is barred, a mortgagor of land not exceeding fifty acres in area or of land the principal money secured by which does not exceed five thousand rupees, may apply to the Collector for an order directing that the mortgage be redeemed and that he be put in possession.

Explanation I:- The area of any share in the common land of the village or of a sub-division appertaining thereto and mortgaged with the land shall not be taken into consideration while determining the area of the land mortgaged.

Explanation II:- This section shall not apply to usufructuary mortgaged effected for a specific number of years and intended to terminate without the repayment of any part of its consideration.

4. **Deposit of amount due under mortgage:-** The mortgagor shall in his application declare what sum is to the best of his knowledge due under the mortgage and deposit such sum with the Collector at the time of making the application.
5. **Power of Collector to order ejection:-** Where the Collector, after hearing the mortgagee and holding such inquiry as may be prescribed, is satisfied that the mortgagor has a right to redeem and has deposited or is prepared to pay the sum which the Collector finds due under the mortgage, he shall make an order directing that the mortgage be redeemed.
6. **Directions that the Collector shall make when ordering ejection:-** (1) Where the Collector makes an order for the redemption of a mortgage, and the whole of the mortgage amount found due has been deposited with him, the order shall direct that such amount be paid to the mortgagee and the excess, amount, if any, deposited by the mortgagor be refunded to him.
 - (2) Where the whole of the mortgage amount found due has not been deposited, the order for the redemption of the mortgage shall direct:
 - (a) that a sum which together with the sum already deposited will equal the mortgage amount found due be deposited with the Collector by the mortgagor within thirty days or within such further period as may be specified by the Collector in this behalf;
 - (b) that on deposit of such amount together with costs, if any, the mortgage shall be extinguished and the mortgagee shall deliver possession of the mortgaged land to the mortgagor, whose title thereto shall be deemed to have accrued from the date of such deposit; and

(c) that the mortgage amount found due by the Collector and deposited by the mortgagor together with costs, if any, be paid to the mortgagee.

(3) If the mortgage amount and the costs, if any, are not deposited within the period specified in sub-section (2), the petition shall be dismissed with costs.

7. **Saving of suits to establish rights:-** Any person aggrieved by an order of the Collector passed under section 5 or section 6 may institute a suit to establish his rights in respect of the mortgage ; but subject to the result of such suit, if any, the order shall be conclusive;

Provided that notwithstanding the provisions of Article 14 of Schedule I of the Limitation Act of 1908, a mortgagor may file a suit for the redemption of his mortgaged land within the un-expired period of limitation fixed by law for the redemption of the mortgaged lands.

8. **No second petition:-** The dismissal of a petition under this Chapter shall bar any further petition under this chapter by the same petitioner or his representative-in-interest in respect of the same mortgage.
9. **Cessation of interest:-** When the petitioner has deposited with the Collector the sum declared by the Collector to be due on the mortgage, and such sum is accepted by the mortgagee, or is found by the Collector to be the sum actually due, interest on the mortgage shall cease from the date of the deposit.

CHAPTER III RESTITUTION OF MORTGAGES

10. **Petition for restitution:-** The mortgagor of any subsisting usufructuary mortgage not less than twenty years old, or of any usufructuary mortgage the period whereof has expired, may present a petition to the Collector for the restitution of possession of the mortgaged land.

Explanation:- A mortgage shall be deemed to subsist for the purposes of this Chapter notwithstanding a decree or order for its redemption having been passed ; provided that redemption has not taken place before the presentation of a petition under this section.

11. **Petition when to be dismissed:-** Where the Collector is satisfied that a petition is not in respect of a subsisting usufructuary mortgage not less than twenty years old, or a usufructuary mortgage the period whereof has expired, he shall dismiss the petition, recording his reasons for such order.
12. **Power of Collector to declare and enforce orders in favour of mortgagor:-** If the Collector finds that the application is in respect of mortgaged land the possession whereof has remained with the mortgagee for a period of not less than twenty years, or is in respect of mortgaged land the term of the mortgage whereof has expired, he shall, notwithstanding anything contained in any other enactment for the time being in force or any contract or decree or order of any Court:
- (a) order that the mortgage shall be extinguished without payment of the mortgage money or any part thereof;
 - (b) in case of an express contract to the effect that the mortgagee shall be entitled to compensation for improvements made by him in the mortgaged land, determine the amount of such compensation ; and
 - (c) where the mortgagee is in possession, direct that the mortgagor be put into possession of the mortgaged land as against the mortgagee and that title deeds, if any, of such land in the possession of the mortgagee be restored to the mortgagor.
13. **Effect of order of restitution when compensation is payable:-** If the Collector finds that any sum is due to the mortgagee by way of compensation under clause (b) of section 12 he shall require the mortgagor to deposit the amount in such manner as may be prescribed; and on deposit of the amount he shall declare the rights of the mortgagee extinguished and require the mortgagee to deliver possession of the land to the mortgagor together with all documents of title, relating to the land :
- Provided that if a petitioner fails to deposit the amount within six months, his petition may be dismissed.
14. **Appeals:-** (1) Save as otherwise provided by this Ordinance, and appeal shall lie from an original order of the Collector to the Commissioner.

(2) Save as otherwise provided by this Ordinance, an appeal shall lie to the Financial Commissioner from over order passed in appeal by the Commissioner, on any one, of the following grounds, namely :-

- (a) the decision being contrary to law or to some usage having the force of law ;
- (b) the decision having failed to determine some material issue of law or usage having the force of law;
- (c) a substantial error or defect in the procedure provided by this Ordinance or by any other law for the time being in force, which possibly have produced an error or defect in the decision of the case.

15. **Revision:-** (1) The Financial Commissioner may at any time call for the record of any case pending before, or disposed of by, any Revenue Officer, sub-ordinate to him.

(2) A Commissioner may call for the record of any case pending before, or disposed of by any Revenue Officer under his control.

(3) The Financial Commissioner may in any case called for under subsection (1) and a Commissioner may in any case called for under sub-section (2) pass such order as he thinks fit:

Provided that no order shall be passed under this section reversing or modifying any proceedings or order of a subordinate Revenue Officer and affecting any question of right between private persons without giving those persons an opportunity of being heard.

16. **Limitation for appeals:-** (1) The period of limitation for an appeal under section 14 shall run from the date of the order appealed against, and shall be:

- (i) sixty days, when the appeal lies to the Commissioner ;
- (ii) ninety days, when the appeal lies to the Financial Commissioner.

(2) In computing the period of limitation for an appeal under this section, the period requisite for obtaining copies of the order appealed against shall be excluded.

(3) The provisions of section 5 of the Limitation Act, 1908 (Act IX of 1908), as in force in the Azad Jammu and Kashmir Territory, shall apply to appeals under this Chapter.

17. **Jurisdiction of Civil Court barred:-** No Civil Court shall have jurisdiction to entertain any claim or enforce any right under a mortgage declared extinguished under this Chapter or to question the validity of any proceedings under this Chapter.

CHAPTER IV SUPPLEMENTAL

18. **Collector's powers to deliver possession:-** (1) On redemption or extinguishment of a mortgage under this Ordinance, the Collector shall eject the mortgagee and deliver possession of the mortgaged land to the mortgagor.

(2) In case of resistance, the Collector may exercise all the powers conferred on a Civil Court by rules 97 and 98 of Order XXI of the Code of Civil Procedure, 1908 (Act V of 1908), as in force in the Azad Jammu and Kashmir Territory.

19. **Collector to have certain powers of Civil Courts:-** For the purpose or any proceeding under this Ordinance, the Collector shall have the same powers as are vested by the Code of Civil Procedure, 1908 (Act V of, 1908), as in force in the Azad Jammu and Kashmir Territory, in a Court trying a civil suit and, in particular, powers in respect of:

- (a) discovery and inspection;
- (b) enforcing the attendance of witnesses and requiring the deposit of their expenses ;
- (c) compelling the production of documents ;
- (d) examining witnesses on oath;
- (e) granting adjournments;
- (f) receiving evidence taken on affidavit;
- (g) issuing commissions for the examination of witnesses ; and

(h) summoning and examining *suo moto* any person whose evidence appears to be material.

20. **Application of Civil Procedure in certain matters:-** (1) Save as otherwise expressly provided in this Ordinance, the provisions of the Code of Civil Procedure, 1908 (Act V of 1908), as in force in the Azad Jammu and Kashmir Territory, relating to recognised agents and pleaders, issue and service of summons, verification of plaints, costs and appearance of parties and consequences of non-appearance, shall apply to all proceedings under this Ordinance.

(2) Notwithstanding anything contained in sub-section (1), the Collector may direct that a summons or proclamation may be sent by registered post and on proof of the fact that a summons or proclamation has been forwarded in a letter properly addressed and duly posted and registered, he may presume that the summons or proclamation was served at the time when letter would be delivered in the ordinary course of post.

21. **Return of deposit:-** If the Collector dismisses a petition under this Ordinance, he shall order that the sum deposited by the petitioner be returned to him.

22. **Deposit not to be attached:-** No sum deposited with the Collector by a petitioner under the provisions of this Ordinance shall be attached by any Court or Revenue Officer.

23. **Power to make rules:-** (1) The Financial Commissioner may make rules for the purpose of giving effect to the provisions of this Ordinance.

(2) In particular and without prejudice to the generality of the foregoing power, the Financial Commissioner may make rules regulating or determining the following matters, namely ;—

(a) the presentation of petition ;

(b) the procedure before the Collector ;

(c) the manner in which the Collector shall assess compensation;

(d) the principles on which the Collector shall assess the amount due under the mortgage ;

- (e) the procedure for making deposit; and
- (f) the procedure for ejecting the mortgagee and delivering possession of the mortgaged property to the mortgagor.

24. **Repeal and savings:-** (1) The following enactments are hereby repealed, namely:

- (a) The Redemption of Mortgages Punjab Act, 1913 (Punjab Act II of 1913), as in force in the Azad Jammu and Kashmir Territory;
- (b) The Azad Kashmir Restitution of Mortgaged Lands Act, 1949.

(2) Notwithstanding the repeal of the enactments mentioned in sub-section (1), all proceedings commenced, rules framed, orders made and other acts done under any of the repealed enactments, shall, if not inconsistent with the provisions of this Ordinance, so far as may be, be deemed to have been respectively commenced, framed, made and done under this Ordinance.
