ORISSA ACT 43 OF 1975

THE ORISSA AGRICULTURAL CREDIT OPERATIONS AND MISCELLANEOUS PROVISIONS (BANKS) ACT, 1975

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SCHEDULE

ORISSA ACT 43 OF 1975

* THE ORISSA AGRICULTURAL CREDIT OPERATIONS AND MISCELLANEOUS PROVISIONS (BANKS) ACT, 1975

[*Received the assent of the President on the 24th October 1975, first published in an extraordinary issue of the* Orissa Gazette, *dated the 12th November 1975*]

AN ACT TO MAKE PROVISIONS TO FACILITATE ADEQUATE FLOW OF CREDIT FOR AGRICULTURAL PRODUCTION AND DEVELOPMENT THROUGH BANKS AND OTHER INSTITUTIONAL CREDIT AGENCIES AND FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO

Be it enacted by the Legislature of the State of Orissa in the Twenty-sixth Year of the Republic of India, as follows :—

CHAPTER I

PRELIMINARY

Short title, extent and commencement.

1. (1) This Act may be called the Orissa Agricultural Credit Operations and Miscellaneous Provisions (Banks) Act, 1975.

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

(3) It shall come into force on such date as the State Government may, by notification, appoint in this behalf and different dates may be appointed for different provisions of this Act and for different areas of the State.

Definitions

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

(*a*) "agriculture" shall include making land fit for cultivation, cultivation of land, improvement of land including development of sources of irrigation, raising and harvesting of crops, horticulture, forestry, planting and farming and cattle breeding, animal husbandry, dairy farming, seed farming, pisciculture, apiculture, sericulture, piggery, poultry farming and such other activities as are generally carried on by agriculturists, dairy farmers, cattle breeders, poultry farmers and other categories of persons engaged in similar activities including marketing of agricultural

*For the Bill see *Orissa Gazette*, Extraordinary, dated the 19th March, 1975 (No. 574).

products, their storage and transport and the acquisition of implements and machinery in connection with any such activity and the expression "agricultural purpose" shall be construed accordingly;

(*b*) "agriculturist" means a person who earns income from agriculture;

(*c*) "Agro-Industries Corporation" means a company or other body corporate, one of the principal objectives of which is to undertake activities connected with or intended for the development of agriculture and not less than fifty-one per cent of the paid up share capital of which is held by the Central Government or by any State Government or Governments or partly by the Central Government and partly by one or more State Governments ;

(*d*) "bank" means—

(*i*) a banking company within the meaning of the Banking Regulation Act, 1949, 10 of 1949

(*ii*) the State Bank of India constituted under the State Bank of India Act, 1955; 23 of 1955

(*iii*) a subsidiary Bank within the meaning of the State Bank of India (Subsidiary Banks) Act, 1959; 38 of 1959

(*iv*) a corresponding new bank within the meaning of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970; 5 of 1970

(*v*) the Agricultural Refinance Corporation established under the Agricultural Refinance Corporation Act, 1963; 10 of 1963

(*vi*) the Agro-Industries Corporation as defined in clause (*c*);

(*vii*) the Agricultural Finance Corporation Limited, a company incorporated under the Companies Act, 1956; and 1 of 1956

(*viii*) any other financial institution notified by the State Government as a bank for the purposes of this Act;

(*e*) "co-operative society" means a co-operative society registered or deemed to be registered under the Orissa Co-operative Societies Act, 1962, the object of which is to provide financial assistance as defined in clause (*f*) to its members and includes a land development bank as defined in that Act; Orissa Act 2 of 1963.

(*f*) "financial assistance" for the purpose of this Act, means assistance granted by way of loans, advances, guarantee or otherwise for agricultural purpose;

(*g*) "Registrar of Co-operative Societies" means, the person appointed as such by the State Government under section 3 of the Orissa Co-operative Societies Act, 1962. Orissa Act 2 of 1963.

CHAPTER II

RIGHTS OF AGRICULTURISTS TO CREATE CHARGE ON LAND AND INTERESTS THEREIN IN FAVOUR OF BANKS

Creation of charge on crop and other movable property in favour of banks.

3. (1) It shall be lawful for an agriculturist to create a charge on the movable property owned by him or on the crops raised by him, standing or otherwise, or other produce from land cultivated by him, to the extent of his interest therein, in favour of a bank to secure financial assistance.

(2) Notwithstanding anything to the contrary in the Orissa Co-operative Societies Act, 1962 or in any other law for the time being in force, in cases where the financial assistance given by a bank is prior in point of time to that of the financial assistance extended by a Co-operative Society, no charge in respect of such financial assistance extended by the Co-operative Society shall have priority over a charge on the crops raised by him, standing or otherwise, or on any other movable property in respect of any financial assistance given to him by a bank. Orissa Act 2 of 1963.

Creation of charge on land in favour of a bank by a declaration.

4. (1) Where an agriculturist creates a charge on land, or any other immovable property which he owns or in which he has an interest in respect of any financial assistance given to him by a bank, he shall make a declaration in the form set out in the schedule hereto or as near thereto as circumstances permit, declaring that thereby he creates, in favour of the bank, a charge on such land or his interest therein, or other immovable property, as the case may be, to secure the financial assistance given to him by the bank.

(2) A declaration made under sub-section (1) may be varied from time to time by the agriculturist with the consent of the bank in whose favour the declaration has been made and any such variation shall take effect from such date on which the variation, if it had been an original declaration, would have effect under section 7.

CHAPTER III

CHARGES AND MORTGAGES IN FAVOUR OF BANKS AND THEIR PRIORITIES

Removal of disability in creation of charge and mortgages.

5. Notwithstanding anything to the contrary contained in the Orissa Co-operative Societies Act, 1962 or in any other law for the time being in force and notwithstanding that any land or interest therein stands already charged or mortgaged in favour of a co-operative society, it shall be lawful for an agriculturist to create a charge or mortgage on such land or interest therein in favour of a bank as security for any financial assistance given to the agriculturist by that bank. Orissa Act 2 of 1963.

Priority of charges and mortgages in favour of Government or a Co-operative Society.

6. (1) Notwithstanding anything to the contrary in any law for the time being in force,—

(*a*) no charge or mortgage created on any land or interest therein, after the commencement of this Act, in favour of Government in respect of a loan under the Land Improvement Loans Act, 1883 or the Agriculturists' Loans Act, 1884 or in favour of a co-operative society in respect of a loan granted by such society, shall have priority over a charge or mortgage on such land or interest created 19 of 1883 4 of 1884

by an agriculturist in favour of a bank as security for financial assistance given to the agriculturist by the bank after the commencement of this Act and prior to the charge or mortgage in favour of Government or the co-operative society, as the case may be ; and

(*b*) any charge or mortgage created on any land or interest therein in favour of a bank in respect of financial assistance given to an agriculturist by that bank shall have priority over any other charge or mortgage that may have been created over such land or interest in favour of any person other than Government, a co-operative society or any other bank, prior to the date on which the charge or mortgage was created in favour of the bank.

(2) where different charges or mortgages over the same land or interest therein have been created by an agriculturist in favour of Government, a co-operative society or a bank or more than one bank, any such charge or mortgage created as security for financial assistance given by Government, co-operative society or the bank or banks by way of term loan for development purposes shall have priority over the other charges or mortgages created in favour of Government, co-operative society or any of the banks, provided prior notice of any such financial assistance by way of term loan for development purpose had been given to such Government, co-operative society or bank and such Government, co-operative society or bank has concurred in such financial assistance, and where more than one such charge or mortgage is as security for financial assistance given by way of term loan, the charges or mortgages by way of security for term loan for development purposes will rank for priority in accordance with the dates of their creation.

Explanation—For the purposes of this section, "term loan for development purpose" shall mean financial assistance which would generally lead to improvement of agriculture or building up of assets in agriculture, but shall not include financial assistance for meeting working capital expenses, seasonal agricultural operations and marketing of crops.

(3) Nothing in this section shall apply to borrowings only from one or more co-operative societies.

Registration of charges and mortgage in favour of banks.

7. Notwithstanding anything contained in the Registration Act, 1908, a charge in respect of which a declaration has been made under sub-section (1) of section 4, or in respect of which a variation has been made under sub-section (2) of that section, or a mortgage executed by an agriculturist in favour of a bank in respect of financial assistance given by that bank, shall be deemed to have been duly registered in accordance with the provisions of that Act, with effect from the date of such charge, variation or mortgage, as the case may be, provided that the bank sends to the Sub-Registrar within the local limits of whose jurisdiction the whole or any part of the property charged or mortgaged is situate, within a period of thirty days, by registered post with acknowledgement due, two copies of the document creating such charge, variation or mortgage duly certified to be true copies by an employee of the bank authorised to sign on its behalf. 16 of 1908

Restrictions on creation of tenancy by an agriculturist borrower.

8. (1) Notwithstanding anything contained in any law for the time being in force, an agriculturist who has availed himself of financial assistance from a bank by creating a charge or mortgage on land or interest therein, shall not, so long as the financial assistance continues to be outstanding, lease out or create any tenancy rights on such land or interest without prior permission in writing of the bank.

(2) Any lease granted or tenancy rights created in contravention of this section shall be void.

CHAPTER IV

ARRANGEMENTS FOR RECOVERY OF DUES BY BANKS

Removal of bar to attachment and sale by process of court.

9. Nothing in any law shall prevent in any manner a bank from causing any land, crop, movables or any interest therein charged or mortgaged to it by an agriculturist to secure any financial assistance, to be attached and sold through a civil court and applying the proceeds of such sale towards all moneys due to it from that agriculturist including the costs and expenses as may be awarded by the court.

Recovery of dues of a bank through a prescribed authority.

10. (1) An officer of the State Government notified by them as the prescribed authority for the purposes of this section may, on the application of a bank and after such enquiry as he deems proper, make an order on any agriculturist or his heir or legal representative, directing the payment of any sum due to the bank on account of financial assistance availed of by the agriculturist, by the sale of any land or any interest therein upon which the payment of such money is charged or mortgaged :

Provided that no order shall be made by the prescribed authority under this section unless the agriculturist or the heir or legal representative of the agriculturist, as the case may be, has been served with a notice by the prescribed authority calling upon him to pay the amounts due.

(2) Every order passed by the prescribed authority under sub-section (1) shall be deemed to be a decree of a civil court and shall be executed in the same manner as a decree of such court.

(3) Nothing in this section shall debar a bank from seeking to enforce its rights in any other manner open to it under any other law for the time being in force.

Right of a Bank to acquire and dispose of immovable property.

11. (1) Notwithstanding anything contained in any law for the time being in force, a bank shall have power to itself acquire agricultural land or interest therein or any other immovable property which has been charged or mortgaged to it by an agriculturist in respect of any financial assistance availed of by him, provided the said land or interest therein or any other immovable property has been sought to be sold by public auction and no person has offered to purchase it for a price which is sufficient to pay to the bank the money due to it.

(2) A bank which acquires land or interest therein or any other immovable property in exercise of the power vested in it under sub-section (1), shall dispose it of by sale, within a period to be specified by the State Government in this behalf.

(3) If the bank has to lease out any land acquired by it under sub-section (1), pending sale thereof as indicated in sub-section (2), the period of lease shall not exceed one year at a time and the lessee shall not acquire any interest in that property, notwithstanding any provision to the contrary in any other law for the time being in force.

(4) A sale by a bank of land or interest therein in terms of this section shall be subject to the provisions of any law in force which provides for restrictions on purchase of land by non-agriculturists or by a person not belonging to a Scheduled Tribes or Scheduled Castes or for restrictions against fragmentation of land or which provides for a ceiling on acquisition of land.

Exemption to banks from restriction on acquisition of land in excess of ceiling.

12. Nothing in any law for the time being in force placing a ceiling or limit on the holding of land shall apply to a bank acquiring land in terms of section 11 and holding such land till such time the bank is in a position to sell the land in the manner provided in that section or otherwise, at a price which is adequate to cover its dues.

CHAPTER V

FINANCING OF CO-OPERATIVE SOCIETIES BY BANKS

Banks eligible to become member of a co-operative society.

13. Notwithstanding anything contained in the Orissa Co-operative Societies Act, 1962 or in any law for the time being in force, it shall be lawful for a bank to become a member of a Co-operative Society. Orissa Act 2 of 1963.

Power of co-operative societies to borrow from banks.

14. Notwithstanding anything contained in the Orissa Co-operative Societies Act, 1962 it shall be lawful for any Co-operative Society to borrow from a Bank. Orissa Act 2 of 1963.

Inspection of books of co-operative society by a bank.

15. (1) A 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.

(2) The inspection may be carried out by an Officer or any other member of the paid staff of the bank with the previous sanction in writing of the Registrar of Co-operative Societies.

(3) The Officer or any other member of the paid staff of the bank undertaking such inspection, shall, at all reasonable times, 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 condition of the society and the safety of financial assistance to be made to the society or already made to it.

Disputes between a bank and a co-operative society.

16. (1) Notwithstanding anything contained in any other law for the time being in force, any dispute touching the constitution, management or the business of a co-operative society, between a bank financing a co-operative society and the co-operative society so financed, other than disputes regarding the disciplinary action taken by the society or its committee against a paid employee of the society, shall be referred by either of the parties to the dispute to the Registrar of Co-operative Societies for decision.

(2) Where any question arises whether, for purposes of the foregoing sub-section, a matter referred to for decision is a dispute or not, the question shall be decided by the Registrar of Co-operative Societies whose decision thereon shall be final.

Settlement of disputes.

17. (1) If the Registrar of Co-operative Societies is satisfied that any matter referred to him or brought to his notice is a dispute within the meaning of section 16, he shall decide the dispute himself or refer it for disposal to a nominee or a Board of nominees appointed by him.

(2) Where any dispute is referred under sub-section (1) for decision to the nominee or Board of nominees, the Registrar may, at any time, for reasons to be recorded in writing, withdraw such dispute from his nominee or Board of nominees and may decide the dispute himself or refer it for decision to any other nominee or Board of nominees appointed by him.

(3) Notwithstanding anything contained in section 16, the Registrar may, if he thinks fit, suspend the proceedings in regard to any dispute if the question at issue between a co-operative society and a bank is one involving complicated questions of law and fact, until the question has been tried by a regular suit instituted by one of the parties to the dispute and if any such suit is not instituted, within two months from the order of the Registrar suspending the proceedings, the Registrar shall take action as is provided in sub-section (1).

Procedure for hearing of disputes.

18. The Registrar of Co-operative Societies or his nominee or Board of nominees hearing a dispute under section 17 shall, as far as practicable, decide the dispute in the manner provided in the Orissa Co-operative Societies Act, 1962 and the rules made thereunder. Orissa Act 2 of 1963.

Decision of Registrar or his nominee or Board of nominees.

19. (1) When a dispute is referred for decision, the Registrar or his nominee or the Board of nominees may, after giving a reasonable opportunity to the parties to the dispute to be heard, make an award on the dispute, on the expenses incurred by the parties to the dispute in connection with the proceedings, on fees and on the expenses payable to the Registrar or his nominee or, as the case may be, the Board of nominees.

(2) Any such award shall not be invalid merely on the ground that it was made after the expiry of the period fixed for deciding the dispute and shall, subject to appeal, review or revision as provided under the Orissa Co-operative Societies Act, 1962, be binding on the parties to the dispute. Orissa Act 2 of 1963.

Recovery of money awarded.

20. Every award made under section 19, shall, if not carried out, on a certificate signed by the Registrar, be deemed to be a decree of a Civil Court and shall be executed in the same manner as a decree of such court.

Powers of a bank to proceed against defaulting members of a Co-operative Society.

21. (1) If a co-operative society is unable to pay its debts to a bank from which it has borrowed, by reason of its members defaulting in the payment of the moneys due by them, the bank may direct the committee of such society to proceed against such members by taking action under the Orissa Co-operative Societies Act, 1962. Orissa Act 2 of 1963.

(2) If the committee of the co-operative society fails to proceed against its defaulting members within a period of ninety days from the date of receipt of such direction from the bank, the bank itself may proceed against such defaulting members in which event, the provisions of the said Act and the rules and bye-laws made thereunder shall apply as if all references to the society or its committee in the said Act, rules and bye-laws were references to the bank.

(3) Where a bank has obtained a decree or award against a co-operative society indebted to it, the bank may proceed to recover such moneys firstly from the assets of the co-operative society and secondly from the members of the co-operative society to the extent of their debts due to the society.

Audit, inspection and inquiry reports of societies to be available to banks.

22. The Registrar of Co-operative Societies shall draw the attention of the bank financing a co-operative society to the defects noticed in every audit or inquiry or inspection of such society conducted under the provisions of the Orissa Co-operative Societies Act, 1962, and shall also supply a copy each of such audit, inquiry or inspection report if demanded, in writing, by the bank. Orissa Act 2 of 1963.

CHAPTER VI

MISCELLANEOUS

Exemption from lagislations relating to money lending and agriculturists debt relief.

23. Nothing in any law for the time being in force relating to money lending or agriculturists' debt relief shall apply to the financial assistance availed of by an agriculturist from a bank.

Mortgages executed by Managers of joint Hindu families.

24. (1) Notwithstanding anything contained in any law for the time being in force, mortgages executed after the commencement of this Act by the manager of a joint Hindu family in favour of a bank for securing financial assistance for an agricultural purpose shall be binding on every member of such joint Hindu family.

(2) Where a mortgage executed in favour of a bank is called in question on the ground that it was executed by the manager of a joint Hindu family for a purpose not binding on the members (whether such members have attained majority or not) thereof, the burden of proving the same shall lie on the party alleging it.

Modified application of section 8 of Act 32 of 1956.

25. Section 8 of the Hindu Minority and Guardianship Act, 1956, shall apply to mortgages in favour of a bank subject to the modification that reference to the court therein shall be construed as reference to the Collector or his nominee and the appeal against the order of the Collector or his nominee shall lie to the Revenue Divisional Commissioner having jurisdiction. 2 of 1956

Power of State Government to make rules.

26. The State Government may, by notification, make rules to provide for all or any of the matters for which provision is necessary or expedient for the purposes of giving effect to the provisions of this Act.

SCHEDULE

Declaration under section 4 (1)

I,..... aged.....years residing at..... being desirous of availing myself of financial assistance from the.....Bank, make this declaration as required by section 4 (1) of the Orissa Agricultural Credit Operations and Miscellaneous Provisions (Banks) Act, 1975, that I .....own/have interest as a tenant in the land specified below, and I hereby create a charge on the said land/interest in land in favour of the bank for securing the financial assistance which the bank may make and for all future assistance, if any, which the bank may make to me together with interest and costs and expenses thereon.

Name of Village	Name of Tahasil	Name of District	Survey No. / City Survey No.		Boundaries	
			Plot No.	Plot Hissa	South-East	North-West
1	2	3	4		5	

Area	Assessment		Approximate value	Encumbrances, if any		Remarks, if any
Acres	Rupees	Paise		Nature	Amount	
6	7		8	9		10

In witness whereof, I, Shri.....hereunder set my hand this.....day of.....in the year one thousand nine hundred and.....

Witnesses

Signed and delivered by the above-named in the presence of :

(1)

(2)

Signature of declarant

Attested by

Forwarded to the Sub-Registrar with a request to retain a copy of the document in his office and record the particulars of the charge..... created in the property of the executant.

Manager/Agent

.....Bank

Place

Acknowledgement

Copy to Manager/Agent.....Bank. The charge created under the declaration is duly recorded and a copy with necessary endorsement is returned herewith.

Sub-Registrar

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