GOVENRMENT OF ORISSA

LAW AND COMMERCE DEPARTMENT

THE ORISSA CO-OPERATIVE LAND MORTGAGE BANK ACT, 1938

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Orissa Act III of 1938.

THE ORISSA CO-OPERATIVE LAND MORTGAGE BANK ACT, 1938.

[The assent of the Governor to the Act was published in the Orissa Gazette of the 18th March 1938.]

AN ACT TO FACILITATE THE WORKING OF A CO-OPERATIVE LAND MORTGAGE BANK IN THE PROVINCE OF ORISSA.

Preamble.

Bihar and Orissa Act VI of 1935. Madras Act VI of 1932.

WHEREAS it is expedient to supplement the provisions of the Bihar and Orissa Co-operative Societies Act, 1935, and the Madras Co-operative Societies Act, 1932, which are in force in different parts of the Province of Orissa in order to facilitate the working of a Co-operative Land Mortgage Bank in the Province with a view to provide for the grant of long term loans to proprietors of estates and owners of land or other immovable property, to enable them to discharge their debts, to carry out agricultural improvements, to acquire land for the formation of economic holdings and other like purposes and thereby to promote thrift and self-help among them;

It is hereby enacted as follows:-

CHAPTER I.

PRELIMINARY.

Short title.

1. This Act may be called the Orissa Co-operative Land Mortgage Bank Act, 1938.

Extent and commencement.

2. (1) Sections 1 and 2 of the Act extend to the whole of the Province of Orissa and shall come into force at once.

(2) The Provincial Government may, by notification in the *Orissa Gazette,* from time to time, apply the whole or any of the remaining provisions of this Act of any local area in the Province of Orissa, from such date as may be specified in the notification and may cancel or modify such notifications.

Definitions.

3. In this Act, unless there is anything repugnant in the subject or context-

(a) “Provincial Mortgage Bank” means The Orissa Provincial Co-operative Land Mortgage Bank, Limited;

(b) "managing committee" means the Board of Directors or Board of Management or other body to whom the management of the affairs of the Provincial Mortgage Bank is entrusted;

(c) "prescribed" means prescribed by rules made by the Provincial Government under this Act;

(d) "Registrar" means the person appointed by the Provincial Government to be Registrar of Co-operative Societies for the Province of Orissa under the provisions of the Bihar and Orissa Co-operative Societies Act, 1935 or the Madras Co-operative Societies Act, 1932, and includes a person appointed under section 4;

(e) "Trustee" means the Trustee referred to in section 6;

(f) "Collector" means the Chief Revenue Officer of the district whether he is called the Collector, Deputy Commissioner or by any other name.

Conferral of Registrar's powers.

4. The Provincial Government may, by notification, for the whole or for any specified part of the Province, appoint any person other than the Registrar to exercise all or any of the powers and to perform all or any of the duties conferred and imposed on the Registrar by or under this Act, either concurrently with, or in-subordination to, or in exclusion of, the Registrar, subject to such control as the Provincial Government may direct.

CHAPTER II.

DEBENTURES.

Issue of debentures.

5. (1) With the previous sanction of the Trustee, the managing committee may, for the purpose of investment in land mortgage business and for no other purpose, issue debentures of such denominations, for such periods and at such rates of interest as it may deem expedient on the security of the mortgages and other assets of the land mortgage business held by the Provincial Mortgage Bank.

(2) Every debenture may contain a term fixing a period not exceeding ten years from the date of issue during which it shall be irredeemable or reserving to the managing committee the right to call it in at any time in advance of the date fixed for redemption, after giving to the holders of the debenture not less than three months' notice in writing.

(3) The total amount due on debentures issued but the managing committee and out-standing at any time shall not exceed the total amount due on the mortgages, the amounts paid thereunder and remaining in the hands of the managing committee or of the Trustee at

such time and the value of all other assets of the land mortgage business held by the Provincial Mortgage Bank and subsisting at that time.

Appointment and powers of Trustee.

6. (1) The Registrar or such other person as the Provincial Government may appoint in this behalf, shall be the Trustee for the purpose of securing the fulfilment of the obligations of the Provincial Mortgage Bank to the holders of debentures issued by the managing committee.

(2) The powers and functions of the Trustee shall be governed by the instrument of trust executed between the Provincial Mortgage Bank and the Trustee. The form of such instrument, or any modification which the parties thereto may mutually agree to make in any of its terms after its execution, shall be subject to the previous approval of the Provincial Government.

Vesting of property in Trustees.

7. The mortgage and other assets held by the Provincial Mortgage Bank shall vest in the Trustee and the holders of debentures shall have floating charge on all such mortgages and assets and on the amounts paid under such mortgage and remaining in the hands of the managing committee or of the Trustee.

Guarantee by Government of principal of, and interest on, debentures issued under section 5.

8. (1) The principal of, and the interest on the debentures issued under section 5 shall carry the guarantee of the Provincial Government to such maximum amount as may be fixed under sub-section (2) and subject to such conditions as may be imposed by the Provincial Government.

(2) Subject to the provisions of sub-sections (3), (4) and (5), the Provincial Government may, after consulting the Legislative Assembly, fix from time to time the maximum amount of the guarantee referred to in sub-section (1).

(3) The Provincial Government may, after consulting the managing committee and the Trustee, by notification and by notice published for not less than fourteen days in such of the principal newspapers in and outside the Orissa Province as they may select, discontinue the guarantee given under sub-section (1), or restrict the maximum amount thereof or modify the conditions subject to which it is given with effect from a date specified in such notice not being earlier than six calendar months from the date of the first publication of the notification in the *Orissa Gazette.*

(4) In cases where the maximum amount of the guarantee is to be restricted or any of the conditions subject to which it is given is to be modified, the notice shall set forth, with sufficient clearness, the scope and effect of the restriction or modification, as the case may be.

(5) Any discontinuance, restriction or modification notified under sub-section (3) shall not affect in any way the guarantee carried by

any debentures issued prior to the date on which such discontinuance, restriction or modification takes effect.

Regulations under Chapter II.

9. The managing committee may, subject to the approval of the Trustee, make regulations not inconsistent with the provisions of this Chapter-

(a) for fixing the period of debentures and the rate of the interest payable thereon;

(b) for calling in debentures in advance of the date fixed for redemption after giving notice to the holders thereof;

(c) for the issue of new debentures in place of debentures damaged or destroyed and fixing the fee for such issue;

(d) for converting one class of debentures into another class bearing a different rate of interest; and

(e) generally for carrying out the provisions of this Chapter.

CHAPTER III.

DISTRAINT AND SALE OF PRODUCE OF MORTGAGE LAND.

Distraint when to be made.

10. (1) If any instalment payable under a mortgage executed in favour of the Provincial Mortgage Bank or any part of such instalment has remained unpaid for more than one month from the date on which it fell due, the managing committee may, in addition to any other remedy available to the Provincial Mortgage Bank, apply to the Registrar or any person authorized by him in this behalf for the recovery of such instalment or part thereof by distraint and sale of the produce of the mortgaged land including the standing crops thereon.

(2) On receipt of such application, the Registrar or any person authorized by him in this behalf may, notwithstanding anything contained in the Transfer of Property Act, 1882, take such action as is necessary to distrain and sell such produce:

IV of 1882.

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

(3) The distraint shall not be excessive and the value to the property distrained shall be, as nearly as possible, equal to the amount due and the expenses of the distraint and the cost of the sale. Any mistake, defect or irregularity in this respect shall not invalidate a distraint or sale made under this Act.

Distraint how to be affected.

11. (1) Before or at the time when a distraint is made under section 10, the distrainer shall serve or cause to be served upon the defaulter a written notice of demand specifying the amount for which the distraint is made.

(2) The notice of demand shall be dated and signed by the distrainer and shall be served upon the defaulter by delivering a copy thereof to him or to some adult male member of his family at his usual place of abode or to his authorized agent, or, if such service cannot be effected, by affixing a copy thereof on some conspicuous part of his place of abode and of his land.

Sale of property distrained.

12. (1) If, within fifteen days from the date of service of the notice of demand referred to in section 11, the defaulter does not pay the amount for which the destraint is effected, the distrainer may sell by auction the distrained property or such part thereof as may in his opinion be necessary to satisfy the demand together with the expenses of the distraint and the cost of the sale.

(2) From the proceeds of the sale, a deduction shall be made at a rate not exceeding one anna in the rupee on account of the cost of the sale.

(3) From the balance shall be deducted the expenses incurred by the distrainer on account of the distraint.

(4) The remainder, if any, shall be applied to the discharge of the amount for which the distraint was made.

(5) The surplus, if any, shall be delivered to the person whose property has been sold and he shall be given a receipt for the amount discharged from the proceeds of the sale.

Rules under Chapter III.

13. The Provincial Government may, by notification, make rules not inconsistent with the provisions of this Chapter-

(a) for the manner of effecting distraint and calculating the expenses thereof;

(b) for the custody, preservation and sale of the distrained property;

(c) for the investigation of claims by persons other than the defaulter to any right or interest in the distrained property and for the postponement of the sale pending such investigation;

(d) for the immediate sale of perishable article; and

(e) generally for carrying out the provisions of this Chapter.

CHAPTER IV.

SALE OF MORTGAGED PROPERTY.

Power of sale when and how to be exercised.

14. (1) Notwithstanding anything contained in the Transfer of Property Act, 1882, or the Trustees and Mortgagees' Powers Act, 1866, the managing committee or any person authorized by it in this behalf shall, in case of default of payment of the mortgage money or any part thereof, have power, in addition to any other remedy available to the bank, to bring the mortgaged property to sale without the intervention of the Court.

IV of 1882. XXVIII of 1866.

(2) No such power shall be exercised unless and until-

(a) the managing committee has previously authorized the exercise thereof after hearing the objections, if any, of the mortgagor or mortgagors;

(b) notice in writing requiring payment of such mortgage money or part thereof has been served upon-

(i) the mortgagor or each of the mortgagors,

(ii) any person who has any interest or charge upon the mortgaged property or in or upon the right to redeem the same so far as known to the managing committee,

(iii) any surety for the payment of the mortgage debt or any part thereof, and

(iv) any creditor of the mortgagor who has in a suit for the administration of his estate obtained a decree for sale of the mortgaged property; and

(C) default has been made in payment of such mortgage money or part thereof for three months after service of the notice.

Application for sale and manner of sale.

15. (1) In exercise of the power conferred by sub-section (1) of section 14, the managing committee or any person authorized by it in this behalf may apply to the sale officer appointed for the purpose under section 25 to sell the mortgaged property or any part thereof and such officer shall, after giving notice in writing to all the persons referred to in sub-section (2) of section 14 and to the Collector of the district in which the property is situated if the property consists of an estate or share of an estate or of a village or share of a village, sell such property in the manner prescribed.

(2) Such sale shall be by public auction and shall be held in the village in which the mortgaged property or any part thereof is situated or at the nearest place of public resort if the sale officer is of opinion that the property is likely to be sold to better advantage there.

Application to set aside sale.

16. (1) When any mortgaged property has been sold under section 15, the mortgagor or any person having a right or interest therein affected by the sale may, at any time within thirty days from the date of sale, apply to the sale officer to have the sale set aside on his depositing with such officer or in the Provincial Mortgage Bank-

(a) for payment to the managing committee the amount specified in the proclamation of sale together with subsequent interest and the costs, if any, incurred by the managing committee in bringing the property to sale; and

(b) for payment to the purchaser, a sum equal to five per cent of the purchase money.

(2) If such deposit is made, the sale officer shall make an order setting aside the sale.

Government's right of pre-emption.

17. When the mortgaged property brought to sale under section 15 consists of an estate or share in an estate or a village or share in a village, the Provincial Government acting through the Collector may, within thirty days from the date of sale, claim to take it at the sum last bid on their depositing with the sale officer for payment to the Provincial Mortgage Bank the full amount of the last bid:

Provided that the Collector shall not exercise his discretion in the case if the co-sharer owing the largest share in such village or estate desires to purchase the property brought to sale.

Confirmation of sale.

18. If no application is made under sub-section (1) of section 16, or if such application is made and disallowed, or if the Provincial Government do not exercise the right of preemption under section 17, the principal officer of the co-operative department in the district shall make an order confirming the sale and on such confirmation the sale shall become absolute.

Disposal of sale-proceeds.

19. (1) The proceeds of every sale under this Chapter shall be applied by the sale officer-

first, in payment of all costs, charges and expenses properly incurred by him as incidental to the sale or any attempted sale;

secondly, in payment of all interest due on account of the mortgage in consequence whereof the mortgaged property was sold; and

thirdly, in payment of the principal money due on account of the mortgage.

(2) The residue, if any, shall be paid by the sale officer to the person proving himself interested in the property sold, or if there are more such persons than one, then to such persons according to their respective interests therein, or upon their joint receipt.

(3) Any person dissatisfied with the decision of the sale officer in regard to the distribution of such residue may, within thirty days from the communication to him of such decision, institute a suit in a Court to establish the right that he claims.

(4) The sale officer shall not dispose of such residue until thirty days have elapsed from the communication of his decision to all the persons concerned, or if a suit has been instituted within the said period of thirty days by any such person, until the suit is decided, or otherwise than in accordance with the decision of the Court therein.

Explanation. - In sub-sections (3) and (4), "Court" means the Civil Court which would have jurisdiction to entertain a suit to enforce the mortgage and within the limits of whose jurisdiction the property sold or any part thereof is situated.

Grant of certificate to purchaser.

20. Where a sale of mortgaged property has become absolute, the principal officer of the co-operative department in the district shall grant a certificate specifying the property sold, the name of the person who at the time of the sale is declared to be the purchaser, and the date on which the sale became absolute.

Delivery of property to purchaser.

21. (1) If the mortgaged property sold is in the occupancy of the mortgagor or of some person on his behalf or of some person claiming under a title other than a lease for a period not exceeding five years created by the mortgagor subsequent to the mortgage in favour of the Provincial Mortgage Bank and a certificate in respect thereof has been granted under section 20, the officer granting the certificate shall, on the application of the purchaser, order delivery to be made by putting such purchaser or any person whom he may appoint to receive delivery on his behalf, in possession of the property.

(2) If the property sold is in the occupancy of a tenant or other person entitled to occupy the same and a certificate in respect thereof has been granted under section 20, the officer granting the certificate shall, on the application of the purchaser, and after notice to such tenant or other person, order delivery to be made by affixing a copy of the certificate of

sale in some conspicuous place on the property and proclaiming to the occupant by beat of drum or other customary mode at some convenient place that the interest of the mortgagor has been transferred to the purchaser.

(3) In regard to the cases dealt with in sub-sections (1) and (2), the provisions of rules 97 to 103 of Order XXI of the First Schedule to the Code of Civil Procedure, 1908, shall, *mutatis mutandis* and so far as may be, apply. V of 1908.

Right of banks to purchase.

22. It shall be competent to the Provincial Mortgage Bank to purchase the mortgaged property sold under this Chapter:

Provided that the property so purchased shall be disposed of by such bank by sale within such period as may be fixed by the Trustee.

Appointment and powers of receiver.

23. (1) Notwithstanding anything contained in section 7, the managing committee may, in circumstances in which the power of sale conferred by section 14 may be exercised, appoint in writing a receiver of the produce and income of the mortgaged property or any part thereof and such receiver shall be entitled either to take possession of the property or collect its produce and income, as the case may be, to retain out of any money realized by him his expenses of management including his remuneration, if any, as fixed by the managing committee, and to apply the balance in accordance with the provisions of sub-section (8) of section 69-A of the Transfer of Property Act, 1882. IV of 1882.

(2) A receiver appointed under sub-section (1) may, for sufficient cause and on application made by the mortgagor, be removed by the managing committee.

(3) A vacancy in the office of the receiver may be filled up by the managing committee.

(4) Nothing in this section shall empower the managing committee to appoint a receiver where the mortgaged property is already in possession of a receiver appointed by a Civil Court.

Title of purchaser not impeachable for irregularities.

24. When a sale has been made in professed exercise of a power of sale under section 14 and has been confirmed under section 18, the title of the purchaser shall not be impeachable on the ground that no case has arisen to authorize the sale or that due notice was not given or that the power was otherwise improperly or irregularly exercised, but any person damnified by an unauthorized or improper or irregular exercise of the power shall have his remedy in damages against the Provincial Mortgage Bank.

Appointment of sale officers.

25. The Registrar may appoint sale officers for the purpose of conducting sales under this Chapter.

Rules under Chapter IV.

26. The Provincial Government may, by notification, make rules not inconsistent with the provisions of this Chapter-

(a) for the due proclamation and conduct of the sale;

(b) for the recovery of the expenses of proclamation and sale;

(c) for the deposit of the purchase money;

(d) for the resale of the property, if the purchase money is not deposited; and

(e) generally for carrying out the provisions of this Chapter.

CHAPTER V.

MISCELLANEOUS.

Requirement when property mortgaged is destroyed or security is rendered insufficient, etc.

27. If any property mortgaged to the Provincial Mortgage Bank is wholly or partially destroyed or the security is rendered insufficient and the mortgagor, having been given a reasonable opportunity by the managing committee of providing further security enough to render the whole security sufficient or of repaying such portion of the loan as may be determined by the managing committee, has failed, to provide such security or to repay such portion of the loan, the whole of the loan shall be deemed to fall due at once and the managing committee shall be entitled to take action against the mortgagor under section 10 or section 14 for the recovery thereof.

Explanation. - A security shall be deemed insufficient within the meaning of this section unless the value of the mortgaged property exceeds the amount for the time being due on the mortgage by such proportion as may be specified in the by-laws of the Provincial Mortgage Bank.

Power of managing committee and Trustee to direct distraint and sale.

28. (1) If the managing committee fails to take action against a defaulter under section 10, section 14, section 23 or section 27, the Trustee may take such action.

(2) If such action is taken by the Trustee, the provisions of this Act and of any rules or regulations made thereunder shall apply in respect thereto as if all references to the Provincial Mortgage Bank or to its managing committee in the said provisions were references to the Trustee.

Restriction on mortgagor's power to lease mortgaged property.

29. Notwithstanding anything contained in the Transfer of Property Act, 1882, or any other enactment for the time being in force, no mortgagor of property mortgaged to the Provincial Mortgage Bank shall IV of 1882.

lease any such property after the execution of the mortgage for a period exceeding five years.

Mortgage not to be questioned on insolvency of mortgagor.

30. Notwithstanding anything contained in the Provincial Insolvency Act, 1920, a mortgage executed in favour of the Provincial Mortgage Bank shall not be called in question on the ground that it was not executed in good faith for valuable consideration or on the ground that it was executed in order to give the Provincial Mortgage Bank a preference over the other creditors of the mortgagor. V of 1920.

Priority of mortgage over claims under Land Improvement Loans Act, 1883.

31. A mortgage executed in favour of the Provincial Mortgage Bank after the commencement of this Act shall have priority over any claim of the Government arising from a loan under the Land Improvement Loans Act, 1883, granted after the execution of the mortgage. XIX of 1883.

Right of mortgage bank to pay prior debts of mortgagor.

32. If a mortgage is executed in favour of the Provincial Mortgage Bank for payment of prior debts of the mortgagor, the Bank may, notwithstanding anything contained in sections 83 and 84 of the Transfer of Property Act, 1882, by notice in writing, require any person to whom any such debt is due to receive payment of such debt or part thereof from the bank at its registered office within such period as may be specified in the notice. If such person fails to receive such notice or such payment, such debt or part thereof, as the case may be, shall cease to carry interest from the expiration of the period specified in the notice: IV of 1882.

Provided that if there is a dispute as regards the amount of any such debt, the person to whom such debt is due shall be bound to receive payment of the amount offered by the Provincial Mortgage Bank towards the debt, but such receipt shall not prejudice the right, if any, of such person to recover the balance claimed by him.

Exemption of officers of bank from personal appearance before registering officers.

33. (1) Notwithstanding anything contained in the Indian Registration Act, 1908, it shall not be necessary for any Director, Secretary or other officer of the Provincial Mortgage Bank to appear in person or by agent at any registration office in any proceedings connected with the registration of any instrument executed by him in his official capacity or to sign as provided in section 58 of that Act. XVI of 1908.

(2) If any instrument so executed is presented to a registering officer for registration, such officer may, if he thinks fit, refer to such Director, Secretary or other officer for information respecting the same, and, on being satisfied of the execution thereof, shall register the instrument.

Mortgages executed by managers of joint Hindu families.

34. If a mortgage executed if favour of the Provincial Mortgage 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 thereof, whether major or minor, the burden of proving the same shall, notwithstanding any law to the contrary, lie on the party raising it.

Explanation.- For the purpose of this section, the following items shall not be regarded as purposes not binding on a member of the joint Hindu family, namely:-

(a) the improvement of agricultural land or of the methods of cultivation; and
(b) the purchase of land.

Service of notice.

35. Whenever under the provisions of this Act a notice is required to be given to any person in writing, it shall be sufficient to send such notice by registered post.

Application of Provisions of Transfer of Property Act, 1882, to notices.

36. The provisions of sections 102 and 103 of the Transfer of Property Act, 1882, and of any rules made under section 104 thereof for carrying out the purposes of the said sections shall apply, so far as may be, in respect of all notices to be served under this Act.

IV of 1882.

Officers of banks and sale officers not to bid at sales.

37. At any sale of movable or immovable property held under this Act in order to recover any money due to the Provincial Mortgage Bank, no Director, Secretary or other officer of such bank or its branch bank (except on behalf of the bank of which he is a Director or Secretary or an officer) and no sale officer or other person having any duty to perform in connection with such sale, shall either directly or indirectly, bid for or acquire or attempt to acquire any interest in such property.

Delegation of Powers by managing committee.

38. The managing committee may, if it thinks fit, delegate all or any of its powers under this Act to an executive committee constituted by it consisting of two or more of its members of whom one shall be the Registrar or his nominee, not below the rank of Assistant Registrar.

Managing Committee's power of making regulations.

39. Notwithstanding anything contained in the Bihar and Orissa Co-operative Societies Act, 1935, or the Madras Co-operative Societies Act, 1932, of the rules made thereunder, the managing committee with the concurrence of the Trustee may make regulations not inconsistent with this Act or the rules made thereunder-

Bihar and Orissa Act VI of 1935. Madras Act VI of 1932.

(a) for the form in which applications for loans should be made and for the valuation of the properties offered as security for such loans;

(b) for the investment of moneys realized from the mortgagors;

(c) generally for the purpose of safeguarding the interest of the parties concerned and for carrying out the purposes of this Act; and

(d) for supervising and seeing to the application of the loan for the purposes of the mortgage.

Amendment of section 89 of the Indian Registration Act, 1908.

40. After sub-section (4) of section 89 of the Indian Registration Act, 1908, the following sub-section shall be inserted, namely:- XVI of 1908.

> "(5) A copy of every certificate of sale granted under section 20 of the Orissa Co-operative Land Mortgage Bank Act, 1938, shall be sent to the registering officer within the local limits of whose jurisdiction the whole or any part of the immovable property comprised in such certificate is situate, and such registering officer shall file the copy in his Book No.1."