ORISSA ORDINANCE No. 4 OF 1975

THE ORISSA MONEY-LENDERS (AMENDMENT) ORDINANCE, 1975

[*Promulgated by the Governor on the 22nd September 1975, published in an extraordinary issue of the* Orissa Gazette, *dated the 22nd September 1975*]

AN

ORDINANCE

TO AMEND THE ORISSA MONEY-LENDERS ACT, 1939

WHEREAS the Legislature of the State of Orissa is not in session;

AND WHEREAS the Governor of Orissa is satisfied that circumstances exist which render it necessary for him to take immediate action to amend the Orissa Money-Lenders Act, 1939 in the manner hereinafter appearing; Orissa Act 3 of 1939.

AND WHEREAS instructions from the President have been received to promulgate an Ordinance for the above purpose;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of Article 213 of the Constitution of India, the Governor of Orissa is pleased to make and promulgate the following Ordinance in the Twenty-sixth year of the Republic of India:—

Short title and commencement.

1. (*1*) This Ordinance may be called the Orissa Money-Lenders (Amendment) Ordinance, 1975.

(*2*) It shall come into force at once.

Orissa Act 3 of 1939 to be temporarily amended.

2. During the period of operation of this ordinance, the Orissa Money-Lenders Act, 1939 (hereinafter referred to as the principal Act) shall have effect subject to the amendments hereinafter specified. Orissa Act 3 of 1939.

Amendment of Section 2.

3. In section 2 of the principal Act,—

(*i*) for clause (*a*), the following clause shall be substituted, namely—

"(*a*) "bank" means—

(*i*) a banking company as defined in 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 as defined in the State Bank of India (Subsidiary Banks) Act, 1959; 38 of 1959

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

(*v*) the Industrial Development Bank of India, constituted under the Industrial Development Bank of India Act, 1964; 18 of 1964

(vi) the Agricultural Refinance Corporation, constituted under the Agricultural Refinance Corporation Act, 1963; 10 of 1963

(vii) the Life Insurance Corporation of India, constituted under the Life Insurance Corporation Act, 1956; 31 of 1956

(viii) the Industrial Finance Corporation of India, constituted under the Industrial Finance Corporation Act, 1948; 15 of 1948

(ix) the Orissa State Financial Corporation, constituted under the State Financial Corporation Act, 1951; 63 of 1951

(x) any other banking or financial institution notified in this behalf by the State Government;";

(ii) for clause (d), the following clause shall be substituted, namely:—

"(d) "company" means a company registered under the Companies Act, 1956;"; 1 of 1956

(iii) for clause (e), the following clause shall be substituted, namely:—

"(e) "co-operative society" means a society registered or deemed to have been registered under the Orissa Co-operative Societies Act, 1962 and includes a land development bank as defined in that Act;"; Orissa Act 2 of 1963.

(iv) after clause (f), the following new clause shall be inserted, namely:—

"(f-1) "debtor" means a person to whom a loan is advanced and includes his successor-in-interest or surety;";

(v) for clause (j), the following clause shall be substituted, namely:—

"(j) "money-lender" means a person whose business is that of advancing loans but does not include a bank or a co-operative society and the expression "money-lending" shall be construed accordingly;".

Amendment of section 4.

4. For section 4 of the principal Act including its marginal heading, the following sections shall be substituted, namely:—

No person to carry on money-lending without being registered.

"4. No person shall carry on the business of money-lending after the expiration of a period of two months from the date of coming into force of the Orissa Money-Lenders (Amendment) Ordinance, 1975 unless he is registered as a money-lender under this Act.

Register of money-lenders.

4 A. (1) Every Sub-Registrar shall maintain a register of money-lenders in such form and containing such particulars as may be prescribed.

(2) Such register shall be deemed to be a public document within the meaning of the Indian Evidence Act, 1872.". 1 of 1872

Amendment of section 5.

5. In section 5 of the principal Act, for sub-section (4), the following sub-section shall be substituted, namely:—

"(4) On receipt of an application under clause (a) of sub-section (2) the Sub-Registrar shall, except where a certificate previously granted to the applicant has been cancelled under this Act and the order of cancellation is in force or, as the case may be, the period for which the applicant has been disqualified to be registered as a money-lender has not expired, grant a registration certificate in the prescribed form to the applicant.".

Amendment of section 6.

6. For section 6 of the principal Act including the marginal heading thereof, the following section shall be substituted, namely:—

Duration and renewal of registration certificate.

"6. (1) A registration certificate granted under section 5 shall, unless sooner cancelled, remain in force for five years from the date on which it is granted and may be renewed from time to time for a period of five years at a time.

(2) The provisions contained in section 5 shall apply in relation to the renewal of a registration certificate, as they apply in relation to the grant of a registration certificate.".

Insertion of new Chapter II-A.

7. After section 7 of the principal Act, the following new Chapter shall be inserted, namely:—

"CHAPTER II-A

GENERAL PROVISIONS

Maximum rate of interest.

7A. No money-lender shall charge interest on any loan advanced by him at a rate exceeding—

(*a*) nine per cent per annum simple interest, where the loan is secured; and

(*b*) twelve per cent per annum simple interest, where the loan is not secured.

Inspection

7B. (1) Any Subdivisional Officer and any Tahasildar may, at any time, with such assistance as he thinks necessary, enter any premises within his jurisdiction in which any person carries on business as a money-lender and inspect the books, accounts, records, files, documents, safes, vaults and pledges in such premises.

(2) The Subdivisional Officer or the Tahasildar shall have the authority to require any person whose testimony he may require regarding any loan or any money-lending business, to appear before him or to produce or cause to be produced any document and to examine such person on oath.

Maximum amount recoverable on loans.

7C. No money-lender shall recover towards the interest in respect of any loan advanced by him, an amount in excess of the amount of the principal.

Discharge of loan on payment of double the amount of the principal.

7D. Any loan in respect of which the money-lender has realised from the debtor an amount equal to, or more than, twice the amount of the principal, shall stand discharged and the amount, if any, so realised in excess of twice the amount of the loan shall be refunded by the money-lender to the debtor.".

Amendment of section 17.

8. For section 17 of the principal Act, the following section shall be substituted, namely:—

"17. (1) Notwithstanding anything to the contrary contained in any law or anything having the force of law or in any contract, any possessory mortgage which is executed either before or after the commencement of this Act shall, unless discharged previously, shall stand discharged after the expiration of a period of seven years from the date of the mortgage.

(2) On the discharge of the mortgage as aforesaid, the mortgagee shall deliver to the mortgagor all documents in his possession or power relating to the mortgaged property and shall retransfer the property to the mortgagor and put him in possession thereof at his cost free from the mortgage and from all encumbrances created by him and those claiming under him within three months from the date of expiry of the aforesaid period of seven years:

Provided that in cases where the said period of seven years has expired prior to the date of coming into force of the Orissa Money-Lenders (Amendment) Ordinance, 1975, the delivery of documents and the delivery of possession of the property as aforesaid shall be effected within three months from the said date.".

Insertion of new section 18 A.

9. After section 18 of the principal Act, the following new section shall be inserted, namely:—

Power of the Subdivisional Officer & the Tahasildar to cancel registration certificate.

"18A. (1) If the Subdivisional Officer or the Tahasildar is satisfied that any registered money-lender carrying on the business of money-lending within his jurisdiction has charged interest at a rate higher than the rate specified in section 7-A, he may pass an order for cancellation of the certificate of registration granted to the money-lender and may disqualify him from being registered as a money-lender for such period not exceeding three years, as may be specified in the order:

Provided that no order cancelling the certificate of registration shall be passed without giving the money-lender a reasonable opportunity of being heard.

(2) An order passed under sub-section (1) shall forthwith be communicated to the concerned money-lender by the authority who has passed the order.

(3) Any person aggrieved by an order cancelling a certificate of registration may, within one month from the date of communication of the order prefer an appeal—

(*a*) if the order is passed by a Tahasildar, before the Subdivisional Officer; and

(*b*) if the order is passed by a Subdivisional Officer, before the Collector.

(4) On receipt of an appeal under sub-section (3), the appellate authority may stay the operation of the order appealed against.

(5) The Collector may transfer an appeal preferred under sub-section (3) to any officer subordinate to him who is above the rank of a Subdivisional Officer, for hearing and disposal.

(6) All orders passed under sub-section (1) shall, subject to the order passed in an appeal, if any, be final and shall not be called in question in any Court.

(7) An order passed under sub-section (1) shall, if it is not set aside in appeal, if any, be communicated by the authority passing the order to the concerned Sub-Registrar who shall thereupon make necessary corrections in the register of money-lenders maintained by him.

(8) The cancellation of the certificate of registration of a money-lender shall not affect his right to realise the loans advanced by him in accordance with the provisions of this Act prior to such cancellation, but he shall not be entitled to the refund of any fee paid in respect of such certificate.

Power of the Government to require money-lenders to produce records.

18B. (1) The State Government may, from time to time, by notification, require the money-lenders or money-lenders belonging to any class or carrying on business in any local area, to produce before such authority and by such date as may be specified in the said notification, all records relating to their business inlcuding documents evidencing advance of loans.

(2) The authority specified in the notification referred to in sub-section (1) shall scrutinise the documents with a view to determining if the transactions exceed the amount for which the money-lender has obtained the registration certificate and shall, after giving the money-lender a reasonable opportunity of being heard, pass an order declaring the particulars of transactions that are within the amount specified in the said certificate.

(3) The order referred to in sub-section (2) shall be published by affixture in the notice board of the authority passing the order and copies thereof shall also be sent to the Block Development Officer and the Tahasildar within whose local limits of jurisdiction the money-lender's principal place of business is situate for publication by affixture in the notice boards of their offices.

(4) If the authority referred to in sub-section (2) is satisfied that a money-lender has transacted business in excess of the amount specified in his registration certificate, he may issue an order cancelling the said certificate and may also disqualify him from being registered as a money-lender for such period not exceeding three years as may be specified in the order.

(5) Any person aggrieved by an order passed under sub-section (2) or sub-section (4) may, within one month from the date of communication of the said order, prefer an appeal before such authority as may be specified in the notification referred to in sub-section (1).

(6) An order passed under sub-section (2) or sub-section (4) shall, subject to the order passed in an appeal, if any, be final and shall not be called in question in any court.

(7) No court shall entertain any claim in respect of any loan advanced prior to the date of the order referred to in sub-section (2) unless the particulars thereof are contained in the said order and all suits in respect of such claims shall stand abated.

(8) An order passed under sub-section (4) shall, if it is not set aside in appeal, if any, be communicated by the authority passing the order to the concerned Sub-Registrar who shall thereupon make necessary corrections in the register of money-lenders maintained by him.

(9) Subject to the provisions of sub-section (7), the cancellation of the certificate of registration of a money-lender shall not affect his right to realise the loans advanced by him in accordance with the provisions of this Act prior to such cancellation, but he shall not be entitled to the refund of any fee paid in respect of such certificate.".

Amendment of section 19.

10. For section 19 of the principal Act, including the marginal heading thereof the following section shall be substituted, namely:—

Penalties.

"19. (1) Any money-lender who—

(*a*) carries on business as such without being registered as a money-lender; or

(*b*) receives interest at a rate higher than the rate specified in section 7A; or

(*c*) actually advances an amount less than the amount shown in his accounts, registers, pawn-tickets or other documents relating to the loan,

shall, on conviction, be punishable with imprisonment for a term which may extend to one year or with fine which may extend to one thousand rupees or with both.

(2) Any money-lender who, without sufficient cause, fails to put the mortgagor in possession of the property within the period of three months as specified in sub-section (2) of section 17 shall, on conviction, be punishable with imprisonment for a term which may extend to one year or with fine which may extend to one thousand rupees or with both.

(3) Any money-lender or his agent who contravenes any provision of this Act shall, on conviction, if such contravention is not punishable under sub-section (1) or sub-section (2), be punishable with fine which may extend to one thousand rupees.".

Amendment of section 26.

11. In section 26 of the principal Act, in clause (*a*) of sub-section (2), for the word and figure "section 4", the word, figure and letter "section 4-A" shall be substituted.

Moratorium on execution of decree against indigent debtors.

12. All proceedings in the execution of a decree obtained by a money-lender in respect of a loan advanced by him to an indigent debtor pending in a court of law on the date of coming into force of this Ordinance shall remain in abeyance for a period of two years from the said date and all applications for execution of any such decree filed after the said date but before the expiration of the said period of two years shall remain in abeyance for the remainder of that period.

Explanation—For the purposes of this section—

(*a*) "money-lender" shall mean a money-lender as defined in the Orissa Money Lenders Act, 1939; and Orissa Act 3 of 1939.

(*b*) "indigent debtor" shall mean a debtor who—

(*i*) owns land not exceeding two and a half acres and whose principal source of income is agriculture and allied occupations, or

(*ii*) is an agricultural labourer owning no land or land less than the extent referred to in sub-clause (*i*).

AKBAR ALI KHAN

Dated the 22nd September 1975

GOVERNOR OF ORISSA