

ODISHA ACT 5 OF 1938

THE ODISHA SMALL HOLDERS RELIEF ACT, 1938

(17th June 1938)

AN ACT TO PROVIDE FOR THE TEMPORARY RELIEF OF
SMALL HOLDERS IN THE PROVINCE OF ODISHA.

WHEREAS it is expedient to provide for the temporary relief of small holders in the Province of Orissa and for certain other purposes specified herein ;

It is hereby enacted as follows :—

Short title, extent
and duration.

1. (1) This Act may be called the Orissa Small Holders Relief Act, 1938.

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

(3) It shall remain in force up to and inclusive of the 30th June 1939.

Definitions.

2. In this Act unless there is anything repugnant in the subject or context—

(1) "bank" means a company carrying on the business of banking and—

(a) registered under any of the enactments relating to companies for the time being in force in the United Kingdom or in any of the British Dominions, or in any of the Colonies or Dependencies of the United Kingdom, or in British India or in any State in India, or

OA-5/38

**GOVERNMENT OF ORISSA.
LEGISLATIVE ASSEMBLY
DEPARTMENT.**

**THE ORISSA SMALL HOLDERS RELIEF
BILL, 1938**

(As passed in Assembly).



**PRESS OFFICER, GOVERNMENT PRESS,
ORISSA, CUTTACK,
1938.**

(b) incorporated by an Act of Parliament or by Royal Charter or Letters Patent or by any Act of the Indian Legislature;

(2) "company" means a company—

(a) registered under any of the enactments relating to companies for the time being in force in the United Kingdom or in any of the British Dominions, or in any of the Colonies or Dependencies of the United Kingdom, or in British India, or in any State in India, or

(b) incorporated by an Act of Parliament or by Royal Charter or Letters Patent or by any Act of the Indian Legislature,

and includes a life assurance company to which the Insurance Act, 1938, ^{Act IV of 1938.} will apply;

(3) "co-operative society" means a society registered or deemed to be registered under the Madras Co-operative Societies Act, 1932, or the Bihar and Orissa Co-operative Societies Act, 1935. ^{Madras Act VI of 1932. B. and O. Act VI of 1937.}

(4) "debt" means a sum repayable on account of an advance made to an agriculturist, whether of money or in kind, or under any transaction which is deemed by a Court to be in substance such as advance and includes interest accruing thereon, but it does not include—

(a) a sum due on account of rent or cess, or due to Government on account of land revenue or on account of what is recoverable by Government as an arrear of land revenue,

(b) a loan advanced by the Provincial Government under any law, or by a co-operative society, or by any local authority or a bank.

(5) "person" includes an undivided Hindu family.

(6) "small holder" means—

(a) an individual—

(i) who holds land not exceeding 6 acres of irrigated or wet land or 12 acres of other land, and

(ii) who cultivates land himself or through farm servants or who depends on agriculture;

(b) an undivided Hindu family—

(i) which holds land not exceeding the limits specified in clause (a) (i), and

(ii) at least one member of which personally cultivates land.

Explanation.—For the purposes of this clause, in the case of a person who holds irrigated or wet land as well as other land, one acre of irrigated or wet land shall be deemed to be equal to two acres of other land and vice versa.

Stay of decrees.

3. (1) Notwithstanding any law for the time being in force, all proceedings pending in a Civil Court at the date of the commencement of this Act or which may be instituted in a Civil Court during the period for which this Act remains in force, for the sale of land belonging to a small holder for the recovery of any debt under a decree shall, on the application of the small holder, be stayed:

Provided that such proceedings shall not be stayed, if the Court for reasons to be recorded in writing is of opinion on the application by the decree-holder that such stay will cause substantial loss to such decree-holder.

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(2) If the Court, on the application of the decree-holder, is of opinion that any rights of such decree-holder to the said land or to the proceeds of the sale of such land are likely to be prejudiced by reason of any proceedings taken under any law for the time being in force relating to the said land, the Court may direct that the proceedings in execution stayed under sub-section (1) shall continue.

Serving of decrees for maintenance.

4. Nothing in section 3 shall apply to any proceedings in execution of a decree for maintenance.

Stay of attachment and sale of dwelling houses, moveable property and standing crop.

5. Notwithstanding anything in any law for the time being in force, all proceedings in execution of decrees in respect of debts, pending at the date of the commencement of this Act or which may be instituted during the period for which this Act remains in force, for the attachment or sale of the following property belonging to a small holder shall, on the application of such small holder, be stayed, namely:—

(1) all moveable property,

(2) one dwelling house (with the materials and the sites thereof and the land immediately appurtenant thereto and necessary for its enjoyment) occupied by him, or

(3) standing crop.

Validity of private transfer of land or dwelling house belonging to a small holder.

6. Notwithstanding anything contained in any law for the time being in force, no private transfer of any land or dwelling house belonging to a small holder, the proceedings for the sale of which have been stayed under this Act or of any interest therein made by him after this Act comes into force, shall be valid except with the previous sanction of the Court

which ordered the stay under section 3 or section 5, as the case may be :

Provided that no such sanction shall be given unless the Court is of opinion—

- (a) that such transfer will enable the small holder to effect a composition in satisfaction of the debts due to all his creditors; or
- (b) (i) that substantial loss will be caused to such small holder if such transfer of such land or interest therein is not sanctioned, and
- (ii) that such transfer does not adversely affect the interest of any creditor of the small holder.

Court's decision to be final in certain cases.

7. If in any proceedings under this Act a question arises whether a person is a small holder, such question shall be decided by the Court concerned in proceedings under sections 3, 5 or 6, and the decision of the said Court shall, notwithstanding anything contained in any law for the time being in force, be final.

Revival of rights, liabilities and obligations after the expiry of the Act.

8. Any right, privilege, obligation, or liability acquired, accrued, or incurred under any enactment, decree or order of any Court, or any contract between the parties immediately before the commencement of this Act or which may be acquired, accrued or incurred during the period for which this Act remains in force, but the enforcement of which has been stayed by the provisions of this Act shall immediately on the expiration of this Act revive and be enforceable as if this Act had not been passed.

In computing the period of limitation for the enforcement of any such right, privilege, obligation or liability, the period

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during which the proceedings in respect thereof are stayed under this Act shall be excluded, notwithstanding anything contained in any law for the time being in force.

Power of
Government to
make rules.

9. The Provincial Government may, by notification, in the Official Gazette, make rules to carry out the purposes and objects of this Act.