

ORISSA ORDINANCE No. 1 OF 1970

THE ORISSA CO-OPERATIVE SOCIETIES (AMENDMENT)
ORDINANCE, 1970

[Promulgated by the Governor of Orissa on the 20th January 1970
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An

ORDINANCE

TO AMEND THE ORISSA CO-OPERATIVE SOCIETIES ACT, 1962

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 Co-operative Societies Act, 1962 in the manner hereinafter appearing;

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, the Governor of Orissa is pleased to make and promulgate the following Ordinance in the Twentieth Year of the Republic of India :—

Short title
and
commence-
ment.

1. (1) This Ordinance may be called the Orissa Co-operative Societies (Amendment) Ordinance, 1970,

(2) It shall come into force at once.

Amendment
of section 2,
Orissa Act 2
of 1963.

2. In section 2 of the Orissa Co-operative Societies Act, 1962 (hereinafter referred to as the principal Act)— Orissa Act 2 of 1963.

(a) after clause (b) the following new clauses shall be inserted,
namely :—

“(b-1) ‘Central Co-operative Bank’ shall have the same meaning as assigned under the Reserve Bank of India Act, 1934; 2 of 1934

(b-2) ‘Central society’ means a society not less than five members of which are societies;”

(b) after clause (c) the following new clause shall be inserted, namely :—

“(c-1) ‘Co-operative Bank’ shall have the same meaning as assigned under the Deposit Insurance Corporation Act, 1961;” 47 of 1961

Amendment
of section
12, Orissa
Act 2 of
1963.

3. In section 2 of the principal Act—

(a) for sub-section (2) the following sub-section shall be substituted, namely :—

“(2) Every proposal for such amendment shall be forwarded to the Registrar and if the Registrar is satisfied that the proposed amendment—

- (i) is not contrary to the provisions of this Act and the rules;
- (ii) does not conflict with co-operative principles;
- (iii) satisfies the requirements of sound business;
- (iv) will promote the economic interests of the members of the society;
- (v) is not inconsistent with the principles of social justice; and
- (vi) is well defined and does not in any way hamper the principal objects of the society.

he may register the amendment:

Provided that an amendment made with the prior approval of the Registrar shall be registered by him.”

(b) After sub-section (4), the following new sub-sections shall be inserted, namely :—

“(5) Where in the case of an apex society, Central Society, Co-operative Bank or Financing Bank or in the case of any other society assisted by the State or Central Government in any of the forms specified in sub-section (1) of section 31, the Registrar is of the opinion that an amendment of the bye-laws of any such society is necessary or desirable in the interest thereof, he may, in the prescribed manner, call upon the society to make such amendment within such period as he may specify in that behalf.

(6) If the society fails to make the amendment within the period aforesaid the Registrar may, after giving the society a reasonable opportunity of being heard, register the amendment and shall forward to the society a copy of the registered amendment together with a certificate signed by him; and such certificate shall be conclusive evidence that the amendment has been duly registered.”

Amendment
of section
13, Orissa
Act 2 of
1963.

4. To section 13 of the principal Act the following proviso shall be added, namely :—

“Provided that an amendment made with the prior approval of the Registrar shall come into operation with effect from the date on which the resolution in respect thereof is passed at the general meeting of the society.”

Amendment
of section 16,
Orissa Act 2
of 1963.

5. In section 16 of the principal Act for sub-section (2) the following sub-sections shall be substituted, namely :—

“(2) No society shall, without sufficient cause, refuse admission as a member to any person who is duly qualified therefor and the decision refusing admission shall be communicated by the society to the person concerned within three months from the date of the application for membership failing which the application shall be deemed to have been rejected.

(3) Notwithstanding anything contained in the preceding sub-sections no individual shall be eligible to be a member of an Apex Society or a Central Co-operative Bank.

(4) Any individual, who was continuing as a member of any society immediately prior to the date of coming into force of the Orissa Co-operative Societies (Amendment) Ordinance, 1970 and who is not otherwise eligible to be a member of such society in accordance with the provisions of sub-section (3), shall have to resign his membership within three months from such date, failing which he shall be deemed to have ceased from being a member and upon such resignation or cesser the society shall, subject to the provisions of sub-section (4) of section 23 refund his contribution to the share capital of the society.”

Amendment
of section 23,
Orissa Act 2
of 1963.

6. In section 23 of the principal Act after sub-section (3) the following new sub-section shall be inserted, namely:—

“(4) Notwithstanding anything contained in the preceding sub-sections where a person ceases to be a member of any society by reason of resignation or expulsion or by reason of incurring any disqualification provided under this Act or the rules or under the bye-laws of the society, the society may retire the shares of or the interest in the share capital held by such person on payment of the face value of such share or interest, so however that the total payment made by the society during any co-operative year on account of all such retirements shall not exceed ten per centum of the paid up share capital of the society as it stood at the close of the preceding co-operative year :

Provided that nothing in this sub-section shall affect the right of the society to forfeit the shares of or the interest in the share capital held by any expelled member in accordance with the bye-laws of the society.”

Amendment
of section 28,
Orissa Act 2
of 1963.

7. In section 28 of the principal Act for sub-section (4) the following sub-sections shall be substituted, namely:—

“(4) No individual shall, whether by himself or as a representative of a society, be eligible to become a member or President of the Committee of any society assisted by the State or Central Government in any of the forms specified in sub-section (1) of section 31 or of any Central Society, Apex Society or Co-operative Bank, if he—

(a) has completed two consecutive terms as a member of the Committee; or

(b) has held such office for a total period of nine years, by the date of filing of his nomination.

(5) No individual shall, at any time, whether by himself or as a representative of any society, hold office as a member of the Committees of—

- (a) more than two primary societies ;
- (b) more than one Central Society including a Central Co-operative Bank ;
- (c) more than one Apex Society.

(6) Any person holding office as a member or President of the Committee of any society, who would not have been eligible under sub-section (4) to hold such office had that sub-section been in force at the time when he became such member or President, as the case may be, shall have to resign his membership within three months from the date of coming into force of the Orissa Co-operative Societies (Amendment) Ordinance, 1970 failing which he shall be deemed to have ceased from such membership.

(7) If any person holds office on the aforesaid date as a member of the Committees of more than one society in contravention of sub-section (5) then, unless he resigns his membership from the required number of Committees so as to bring his membership within the limit specified in that sub-section within three months from the said date, the Registrar may, after giving him a reasonable opportunity of being heard, remove him from membership of all or any of the Committees.

(8) Nothing in sub-section (2) shall apply in respect of societies which are deemed to be registered under sub-section (1) of section 133 and nothing in sub-sections (4) and (5) shall apply to any person nominated by the State Government to the Committee of any society."

Amendment
of section 31,
Orissa Act 2
of 1963.

8. In section 31 of the principal Act in sub-section (1) for clause (a) the following clause shall be substituted, namely:—

"(a) has subscribed to the share capital of a society or has granted any assistance in cash or kind or in any other manner ; or "

Amendment
of section 78,
Orissa Act 2
of 1963.

9. Section 78 of the principal Act shall be renumbered as sub-section (1) thereof and after sub-section (1) as so renumbered the following new sub-section shall be inserted, namely:—

"(2) Land Development Banks may be established for advancing loans, other than short-term loans, for such purposes connected with land improvement, productivity of land and agricultural development as may be specified in the bye-laws of the respective Land Development Banks."

Amendment
of section
83-B, Orissa
Act 2 of
1963.

10. For section 83-B of the principal Act the following sections shall be substituted, namely :—

Applicants
for loan to
file affidavit.

"83-B.(1) When an application for a loan is made to any Land Development Bank the applicant shall file along with his application an affidavit duly sworn before a Magistrate which shall be in the form prescribed by the State Land Development Bank declaring that the lands proposed to be mortgaged are free from encumbrances and that the other facts stated therein are true to the best of his knowledge and belief.

Explanation—A charge created under section 34 shall not constitute an encumbrance for the purposes of this section.

(2) Only those applications which conform to the requirements of sub-section (1) shall, in accordance with the rules made in that behalf, be taken into consideration by the bank.

(3) If it is found that any such applicant has given any false information in the affidavit then, without prejudice to any other liability which he may be subject to the share money and the fees deposited by him with the land development bank shall be forfeited.

Order granting loan conclusive of certain matters.

83-C. A written order by the land development bank or any committee or other person authorised by this Act or the bye-laws of the bank to grant loans for any of the purposes specified in the bye-laws of the concerned bank, granting, either before or after the commencement of this Act, a loan for the benefit of the land or for any productive purpose specified therein shall, for the purposes of this Act, be conclusive of the following matters, namely :—

- (a) that the work described or the purpose for which the loan is granted is an improvement or productive purpose, as the case may be, within the meaning of the bye-laws of the society ;
- (b) that the person had, on the date of the order, a right to make such an improvement or to incur expenditure for productive purposes, as the case may be ; and
- (c) that the improvement is one benefiting the land specified and productive purpose concerns the land offered in security or any part thereof as may be relevant."

Amendment of section 85, Orissa Act 2 of 1963.

Priority of mortgage over certain claims.

11. For section 85 of the principal Act the following sections substituted, namely:—

"85. (1) Notwithstanding anything contained in any law for the time being in force but subject to any claim of the Government in respect of land revenue or any money recoverable as arrears of land revenue and to the provisions of sub-section (2), any debt or outstanding demand due to the State Land Development Bank or any land development bank on account of a mortgage executed by any member or past or deceased member in favour of such bank shall be a first charge upon the land so mortgaged.

(2) Any such mortgage as aforesaid shall also have priority over any claim of the Government arising from a loan under the Land Improvement Loans Act, 1883 or the Agriculturists, Loans Act, 1884, granted after the execution of the mortgage.

19 of 1883.
12 of 1884.

Mortgages executed by managers of Joint Hindu families.

85-A. (1) Mortgages executed in favour of a land development bank either before or after the commencement of this Act, by the manager of a Hindu Joint Family shall, notwithstanding any law to the contrary, be binding on all the members thereof, if the loan secured by the mortgagor was granted for any purpose of agricultural development of the land in accordance with the bye-laws of the bank.

(2) Where such mortgage is called in question on the ground that it was executed by the manager of a Hindu Joint Family for a

purpose not binding on the members thereof, whether majors or minors, the burden of proving the same shall, notwithstanding any law to the contrary, be on the party alleging it.

Section 8 of
Act 32 of
1956 to
apply to
mortgages.

85-B. Section 8 of the Hindu Minority and Guardianship Act, 32 of 1956, shall apply to mortgages in favour of a land development bank, subject to the modification that reference to the Court made 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."

Insertion of
new section
87-A, Orissa
Act 2 of
1963.

12. After section 87 of the principal Act the following new section shall be inserted, namely :—

Transfer of
mortgages.

"87-A. (1) Notwithstanding anything contained in this Act or in the relative mortgage bonds, the mortgages executed in favour of the State Land Development Bank by the individual members thereof shall be deemed to be mortgages executed in favour of the land development bank operating in the area where in the mortgaged properties are situate and the said members shall be deemed to be members and debtors of such land development bank with effect from the date on which the State Land Development Bank transfers the amounts due thereon, and the shares held by the members to the land development bank concerned.

(2) Notwithstanding anything contained in this Act or in the relative mortgage bonds, a mortgage executed in favour of a land development bank in respect of properties situate within the area of operation of another land development bank newly or subsequently established shall be deemed to be executed in favour of such other bank and the mortgagor shall be deemed to be a member and debtor of such other bank with effect from the date on which the former bank transfers the amounts due thereon and the shares held by the member to the later bank.

(3) All moneys due under a mortgage transferred under this section shall be payable to the land development bank to which the mortgage is transferred under sub-section (1) or sub-section (2) and such bank shall be entitled to receive money, to grant valid discharge and to sue on the mortgage or take any other proceedings for the recovery of money due thereunder."

Amendment
of section 90,
Orissa Act 2
of 1963.

13. In section 90 of the principal Act the proviso to sub-section (2) shall be deleted.

Amendment
of section 98,
Orissa Act 2
of 1963.

14. For section 98 of the principal Act the following sections shall be substituted, namely :—

"98. (1) Notwithstanding anything contained in the Indian Registration Act, 1908—

16 of 1908.

(a) it shall not be necessary to register a mortgage executed in favour of the State Land Development Bank or any land development bank where the concerned bank sends within such time and in such manner as may be prescribed a copy of the mortgage deed to the registering officer having jurisdiction, who shall file such copy in the book maintained under section 51 of the said Act; and

- (b) it shall not be necessary for any officer of the State Land Development Bank or any land development 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 the said Act.

(2) Where any instrument is so executed, the registering officer to whom such instrument is presented for registration or a copy of such instrument is sent for being filed may, if he thinks fit, refer to the officer who has executed the instrument for information respecting the same, and being satisfied of the execution thereof, shall register the instrument or, as the case may be, file the copy thereof.

Mortgage by
members of
Scheduled
Castes and
Tribes.

98-A. Notwithstanding anything contained in any other law for the time being in force it shall not be necessary for persons belonging to the Scheduled Tribes or Scheduled Castes for obtaining the permission of any authority as required by any such law for mortgaging any immovable property belonging to him in favour of any society including a land development bank."

Amendment
of section
109, Orissa
Act 2 of
1963

15. In section 109 of the principal Act—

(a) in sub-section (1)—

(i) for clause (b) the following clause shall be substituted, namely :—

"(b) an order of the Registrar made under sub-section (4) of section 12 refusing to register an amendment of the bye-laws of a society or an order made under sub-section (6) of that section registering an amendment of such bye-law;"

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

"(d) a decision of a society refusing to admit any person as a member of the society or expelling any member of the society or where an application for membership is deemed to have been rejected;"

(b) in sub-section (2) after the existing proviso the following new proviso shall be inserted, namely:—

"Provided further that in cases where an application for membership of any society is deemed to have been rejected the period of limitation as aforesaid shall run from the date of expiry of the period allowed to the society for communicating its decision to the applicant."

General
Amendment
Orissa Act
2 of 1963.

16. In the principal Act for expressions "State Land Mortgage Bank" and "land mortgage bank" wherever they occur the expressions "State Land Development Bank" and "land development bank" shall respectively be substituted.

Savings

17. (1) A reference to the State Land Mortgage Bank or a land mortgage bank in any law or instrument for the time being in force in the State shall, with effect from the date of commencement of this Ordinance, be construed as reference to the State Land Development Bank or, as the case may be, land development bank within the meaning of the principal Act.

(2) With effect from the date of commencement of this Ordinance and until such time as the names of the State Land Mortgage Bank or the land mortgage banks functioning in the State on the said date are changed into the State Land Development Bank or, as the case may be, land development banks, all acts done by them or mortgages and other documents executed by them or in their favour and all suits and other proceedings filed by or against them shall be deemed to have been done, executed or filed by or against them as the State Land Development Bank or, as the case may be, land development bank.

[No. 757-Legis.]

S. S. ANSARI

GOVERNOR OF ORISSA

Dated the 20th January 1970