



The Punjab Cooperative Land Mortgage Bank Act, 1957

Act 26 of 1957

Keyword(s):

Land, Mortgage Bank, Primary Land Mortgage Bank, The State Bank, Trustee

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THE PUNJAB COOPERATIVE LAND MORTGAGE
BANK ACT, 1957

PUNJAB ACT No. 26 OF 1957

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THE PUNJAB COOPERATIVE LAND MORTGAGE
BANKS ACT, 1957

Punjab Act No. 26 of 1957

[Received the assent of the President on the 11th September, 1957, and was first published for general information in the Punjab Government Gazette (Extraordinary), dated the 18th September, 1957.]

AN
ACT

to supplement the provisions of the Punjab Cooperative Societies Act, 1954, in order to facilitate the working of co-operative land mortgage banks in the State of Punjab with a view of providing for the grant of long-term loans to 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.

BE it enacted by the Legislature of the State of Punjab in the Eighth Year of the Republic of India as follows :—

CHAPTER I
PRELIMINARY.

1. (1) This Act may be called the Punjab Co-operative Land Mortgage Banks Act, 1957.

Short title,
extent and
commencement

(2) It extends to the whole of the State of Punjab.

(3) It shall come into force on such date as the State Government may by notification appoint.

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

Definitions.

(a) "Board" means the board of directors of the State Bank ;

(b) "Committee" means in relation to a Primary Land Mortgage Bank, the governing body of the Bank to whom the management of its affairs is entrusted ;

- (c) "Land" shall have the meaning assigned to in clause (l) of section 4 of the Punjab Tenancy Act, 1887 (No. XVI of 1887);
- (d) "Mortgage Bank" means a Primary Land Mortgage Bank or State Bank registered or deemed to be registered under the Punjab Co-operative Societies Act, 1954;
- (e) "prescribed" means prescribed by rules made under this Act ;
- (f) "Primary Land Mortgage Bank" means a Co-operative Land Mortgage Bank registered or deemed to be registered under the Punjab Co-operative Societies Act, 1954, and affiliated as a member to the State Bank ;
- (g) "Registrar" means the person appointed by the State Government to be Registrar of Co-operative Societies for the State of Punjab, or any person appointed by the State Government to assist the Registrar, under section 3 of the Punjab Co-operative Societies Act, 1954;
- (h) "the State Bank" means the Punjab State Co-operative Land Mortgage Bank Limited to be established for the purpose of this Act;
- (i) "Trustee" means the trustee referred to in section 3.

CHAPTER II.

TRUSTEE.

3. The Registrar shall be the Trustee for the purpose of securing the fulfilment of the obligations of the State Bank to the holders of debentures issued by the State Bank.

Appointment
of Trustee.

4. The mortgages and other assets transferred by the Primary Land Mortgage Banks to the State Bank shall vest in the Trustee from the date of such transfer.

Vesting of property in Trustee.

5. The holders of the debentures shall have a first charge on all such mortgages and assets, on the amount paid under such mortgages and remaining in the hands of the State Bank or of the Trustee, and on the other properties of the State Bank.

Debenture holders have first charge on mortgages, etc.

6. The powers and functions of the Trustee shall be governed by the instrument of trust executed between the State Bank and the Trustee, as modified from time to time by mutual agreement between the State Bank and the Trustee.

Powers and functions of the Trustee.

CHAPTER III. DEBENTURES.

7. With the previous sanction of the Trustee, the State Bank may issue debentures of one or more denominations for such periods as it may deem expedient on the security of the mortgage and other assets transferred or deemed under the provisions of section 25 to have been transferred by the Primary Land Mortgage Banks to the State Bank or on the security of all or any of the assets and properties of the State Bank.

Issue of debentures by the Board.

8. Such debentures may contain a term fixing a period not exceeding ten years from the date of issue during which they shall be irredeemable, or reserving to the Board the right to call in at any time any of the debentures in advance of the date fixed for redemption, after giving to the debenture-holder concerned, not less than three month's notice, in writing.

Redeemable period of debentures.

9. The total amount due on the debentures issued by the Board and outstanding at any time shall not exceed the aggregate of the amounts due on the mortgages, the value of the other assets, transferred or deemed under the provisions of section 25 to have been transferred by the Primary Land Mortgage Banks to the State Bank and subsisting

Maximum limit of debentures.

at such time and the amounts paid under the mortgages aforesaid and remaining in the hands of the Board or of the Trustee at that time.

Guarantee by
State Govern-
ment of principal
and interest
of debentures
issued under
section 7.

10. The principal of, and interest on, the debentures issued under section 7 shall carry the guarantee of the State Government subject to such conditions as it may deem fit to impose.

Power of
Board to
make regu-
lations.

11. The Board may, subject to the approval of the Trustee and of the State Government, make regulations, not inconsistent with the provisions of this Chapter—

- (i) for fixing the period of debentures and the rate of interest payable thereon;
- (ii) for calling in debentures after giving notice to debenture-holders;
- (iii) for the issue of new debentures in place of debentures damaged or destroyed;
- (iv) for converting one class of debentures into another bearing a different rate of interest; and
- (v) generally for carrying out the provisions of this Chapter.

CHAPTER IV.

DISTRAINT AND SALE OF PRODUCE.

Distrait
when to
made. be

12. (1) If two consecutive instalments payable under a mortgage executed in favour of, or transferred or deemed under section 25 to be transferred to, the State Bank or any part of such instalments has remained unpaid for more than three months from the date on which it fell due, the Board may, in addition to any other remedy available to the said Bank, apply to the Registrar for the recovery of such instalments or part by distrait and sale of the produce of the mortgaged land including the standing crops thereon provided that such crops belong to the mortgagor or martgagors, as the case may be.

(b) The sale officer shall not distribute such residue until thirty days have elapsed from 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 disposed of or otherwise than in accordance with the decision of the court therein.

Explanation.—In this subsection ‘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 is situated.

19. Where a sale of mortgaged property has become absolute, the sale officer shall grant a certificate specifying the property sold and the name of the person who at the time of the sale is declared to be purchaser. Such certificate shall bear date, the day on which the sale became absolute.

Certificate
to purchaser.

20. (1) Where the mortgaged property sold is in the occupation 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 State Bank and a certificate in respect thereof has been granted under section 19, the Court 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.

Delivery
property
purchaser. of
to

(2) Where the property sold is in the occupation of a tenant or other person entitled to occupy the same and a certificate in respect thereof has been granted under section 19, the Court 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 subsection (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.

Explanation.—In this section, 'Court' shall have the same meaning as in section 18.

Right of
the Mort-
gage Bank
to purchase
the mort-
gaged prop-
erty at
sale.

21. Notwithstanding anything contained in any law for the time being in force, including a law imposing a ceiling on agricultural holdings, it shall be lawful for the Mortgage Bank to purchase any mortgaged, property sold under this Chapter, and the property so purchased shall be disposed of by such Bank by sale within such period as may be fixed by the Trustee.

Appoint-
ment of
receiver
and his
powers.

22. (1) The Board may, on its own motion, or in the case of mortgages executed in favour of the Primary Land Mortgage Bank, on the application of such Banks and under circumstances in which the power of sale conferred by section 15 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 realised by him, his expenses of management including his remuneration, if any, as fixed by the Board, and to apply the balance in accordance with the provisions of subsection (8) of section 69-A of the Transfer of Property Act, 1882.

(2) A receiver appointed under subsection (1) may, for sufficient cause and on application made by the mortgagor, be removed by the Board.

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

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

23. When a sale purported to have been made in the power of sale given by section 15 has been confirmed under subsection (3) of section 17, the title of the purchaser shall not be impeachable on the ground that no case had arisen to authorise 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 unauthorised or improper or irregular exercise of the power shall have his remedy in damages against the Mortgage Bank.

Title of purchaser not to be impeached on the ground of irregularity, etc.)

24. The State Government may appoint a sale officer not below the rank of a gazetted officer for the purpose of conducting sales under this Chapter.

Appointment of sale officers.

CHAPTER VI.

(MISCELLANEOUS)

25. The mortgages executed in favour of, and all other assets transferred to, Primary Land Mortgage Bank by the members thereof shall, with effect from the date of such execution or transfer, be deemed to have been transferred by such Primary Land Mortgage Bank to the State Bank.

Motgages executed in favour and other assets of Primary Land Mortgage Bank to stand transferred to State Bank.

26. (1) The Board or Trustee may direct the Committee of a Primary Land Mortgage Bank to take action against a defaulter under section 12, or section 15 and if the Committee neglects or fails to do so the Board or the Trustee may take such action.

Power of Board or of Trustee to direct, distraint and produce and the sale of the mortgaged property, etc.

(2) (a) Where such action is taken by the Board, the provisions of this Act and of any rules or regulations made thereunder shall apply in respect thereto as if all references to the Primary Land Mortgage Bank and to its Committee in the said provisions were references to the State Bank and the Board respectively.

(b) Where 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 Primary Land Mortgage Bank or to its Committee in the said provisions were references to the Trustee.

Mortgagor's
power to
lease.

27. Notwithstanding anything contained in the Transfer of Property Act, or any other law for the time being in force the duration of any lease, executed, by a mortgagor, of property mortgaged to a Primary Land Mortgage Bank or the State Bank after the execution of the mortgage shall in no case exceed five years.

Mortgage not to be questioned on insolvency of mortgagor

28. Notwithstanding anything contained in the Provincial Insolvency Act, 1920 a mortgage executed in favour of a 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 Mortgage Bank a preference over the other creditors of the mortgagor.

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

29. A mortgage executed in favour of a 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.

Right of Mortgage Bank to pay prior debts of mortgagor.

30. Where a mortgage is executed in favour of a Mortgage Bank for payment of prior debts of the mortgagor, the Bank may, notwithstanding the provisions of 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 any 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 :

Provided that where 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 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.

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(2) On receipt of such application the Registrar may, notwithstanding anything contained in the Transfer of Property Act, 1882, or any other law for the time being in force, take such action as is necessary to distrain and sell such produce :

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

(3) The distress shall not be excessive; the value of 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.

13. (1) Before or at the time when a distraint is made under section 12, the distrainer shall serve or cause to be served upon the defaulter a written demand specifying the amount for which the distraint is made.

Distraint
how to be
effected.

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

14. (1) If, within fifteen days from the date of service of the demand referred to in section 13, the defaulter does not pay the amount for which the distraint was effected, the distrainer may sell in 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 costs of the sale.

Sale
property
distrained. of

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

CHAPER V

SALE OF MORTGAGED PROPERTY.

Power of
sale when
to be
exercised.

15. (1) Notwithstanding anything contained in the Transfer of Property Act, 1882, or any other law for the time being in force, where a power of sale without the intervention of the Court is expressly conferred on the State Bank by the mortgage deed, the Board or any person authorised by such Board 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 State Bank. to bring the mortgaged property to sale without the intervention of the Court.

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

(a) the Board has previously authorised the exercise of the power conferred by subsection (1), after hearing and deciding the objections, if any, of the mortgagor or any other person having any interest in the mortgaged property;

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

(i) the mortgagor or each of the mortgagors,

(ii) any person who has any interest in or charge upon the property mortgaged or in or upon the right to redeem the same ;

- (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;
- (c) default has been made in payment of such mortgage money or part for six months after such service; and
- (d) the Registrar, in case where the amount claimed by the State Bank is disputed has certified that the amount claimed, or lesser amount is due from the mortgagor.

16. (1) In exercise of the power of sale conferred by section 15, the Board or any person duly authorised by the Board, may apply to the sale officer appointed in that behalf under section 24 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 section 15, sell such property in the manner prescribed subject to any previous charge on the basis of a registered deed.

Applica-
tion
sale
manner
sale.

for
and
of

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

(3) the Registrar may set aside a sale on the application of the mortgagor or any other person interested in the mortgaged property, presented to him within 30 days of the sale, if in his opinion there has been an illegality or material irregularity in conducting the sale.

(4) On the sale being set aside by the Registrar under sub-section (3), a fresh sale shall be conducted in accordance with the provisions of this Chapter.

Applica-
tion to set
aside sale
on deposit
and confir-
mation of
sale in de-
fault or on
dismissal of
such appli-
cation.

17. (1) When a mortgaged property has been sold under this Chapter, 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 Board to have the sale set aside on his depositing at the office of the State Bank—

- (a) for payment to the said Bank the amount specified in the proclamation of sale together with subsequent interest and the costs, if any, incurred by the Bank in bringing the property to sale; and
- (b) for payment to the purchaser, a sum equal to two per cent of the purchase money.

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

(3) Where no application is made under subsection (1) or where such application is made and disallowed, the Board shall apply to the Registrar to make an order confirming the sale and on such officer confirming the sale, it shall become absolute.

Distribu-
tion of
the pro-
ceeds of
sale.

18. (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 incident to the sale or any attempted sale determined in the prescribed manner; *secondly*, in the payment of all interest due on account of the mortgage in consequence whereof the mortgaged property was sold; *thirdly*, in payment of the principal money due on account of the mortgage; and lastly, the residue if any, shall be paid 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.

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

31. (1) Subject to such restrictions, limitations and conditions as may be prescribed, the Registrar and persons subordinate to the Registrar who are authorised by him in this behalf by general or special order in writing or officers of Co-operative Banks, which are registered or deemed to be registered under the Punjab Co-operative Societies Act, 1954, as the State Government may, by notification in the Official Gazette, authorise in this behalf, shall have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (V of 1908), when trying a suit, in respect of the following matters, namely :—

Power to
summon
witnesses
and
requisition
documents.

- (a) enforcing the attendance of any person and examining him on oath or affirmation;
- (b) compelling the production of documents; and
- (c) issuing commissions for the examination of witnesses.

(2) Any of the officers or persons authorised by or under subsection (1) may require any person present before him to furnish any information or to produce any document then and there in his possession or power.

(3) Any officer or person before whom any document is produced under subsection (1) or subsection (2) shall have power to take, or to authorise the taking of, such copies of the document or of any entries therein as such officer or person may consider necessary. Copies so taken shall, when certified in such manner as may be prescribed, be admissible in evidence for any purpose in the same manner and to the same extent as the original document or the entries therein, as the case may be.

(4) (a) Any person who wilfully or without reasonable excuse disobeys any summons, requisition or order issued under subsection (1) or subsection (2) shall be punishable with fine which may extend to fifty rupees, and in the case of a continuing disobedience with an additional fine which may extend to five rupees for every day during which such disobedience continues after conviction for the last such disobedience.

(b) No court inferior to that of a Magistrate First Class, shall try any offence under clause (a)

(c) Every offence under clause (a) shall, for the purposes of the Code of Criminal Procedure (V of 1898), be deemed to be non-cognizable.

(d) No prosecution shall be instituted under clause (a) without the previous sanction of the Registrar, who will accord such sanction only after giving the party concerned an opportunity to be heard.

Registration of documents executed on behalf of a Mortgage Bank,

32. (1) Notwithstanding anything contained in the Indian Registration Act, 1898, it shall not be necessary for any Director, Secretary or other officer of a Mortgage Bank to appear in person or by agent at any registration office in any proceeding 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.

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

Power of a Primary Land Mortgage Bank to receive moneys and grant valid discharges notwithstanding assignment of mortgage deeds to the State Bank.

33. Notwithstanding that a mortgage in favour of a Primary Land Mortgage Bank has been transferred, or is deemed under the provisions of section 25 to have been transferred, to the State Bank,—

(a) all moneys due under the mortgage shall, in the absence of any specific direction to the contrary issued by the Board or Trustee and communicated to the mortgagor, be payable to the Primary Land Mortgage Bank and such payment shall be as valid as if the mortgage had not been so transferred; and

(b) the Primary Land Mortgage Bank shall, in the absence of any specific direction to

the contrary issued by the Board or Trustee and communicated to such Bank be entitled to sue on the mortgage or take any other proceeding for the recovery of the moneys due under the mortgage.

34. Where a mortgage executed in favour of a Mortgage Bank is called in question on the ground that it was executed by a person governed by custom and the manager of a joint Hindu family for a purpose not binding on the reversioners and the members thereof, whether major or minor, the burden of proving the same shall, notwithstanding any law to the contrary, be on the party raising it.

Special provisions for mortgages executed by Managers of Hindu Family. Joint Family.

35. Any Primary Land Mortgage Bank or the State Bank may grant copies of any document obtained and kept by it in the course of its business or of any entries in such documents; and any copy so granted shall, when certified in such manner as may be prescribed, be admissible in evidence for any purpose in the same manner and to the same extent as the original document, or the entries therein, as the case may be.

Proof of documents or in documents. entries in documents.

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

Service of notice under Act. of the

37. At any sale of movable or immovable property held under the provisions of this Act in order to recover any money due to a Mortgage Bank, no Director, Secretary or other officer of such Bank (except on behalf of the Bank of which he is Director, or Secretary or 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.

Officers of Mortgage Banks and Sale Officers not to bid at sale.

38. The Board may, if it thinks fit, delegate all or any of its powers under sections 12, 15, 22 and 26 to an executive committee constituted by it and consisting of two or more of its members.

Delegation of certain powers by Board

Power of
Government
to make rules.

39. (1) The State Government may make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for—

- (i) the manner of effecting distraint;
- (ii) the custody, preservation and the sale of distrained property ;
- (iii) the investigation of claims by persons other than the defaulters, to any right or interest in the distrained property, and the postponement of the sale pending such investigation ;
- (iv) immediate sale of perishable articles;
- (v) the due proclamation and the conduct of sale ;
- (vi) the recovery of the expenses of the proclamation sale ;
- (vii) the deposit of the purchase money ;
- (viii) the resale of the property, if the purchase money is not deposited.

Power of
Board to
make re-
gulations.

40. Notwithstanding anything contained in the Punjab Co-operative Societies Act, 1954, or the rules made thereunder; the Board shall have a general power of supervision over the Primary Land Mortgage Banks, and may make regulations not inconsistent with this Act or the rules made thereunder—

- (a) for the inspection of the account books and proceedings of Primary Land Mortgage Banks ;
- (b) for the submission of returns and reports by Primary Land Mortgage Banks in respect of their transactions;
- (c) for the periodical settlement of accounts between Primary Land Mortgage Banks and the State Bank and for the payment of the amounts recovered by Primary Land Mortgage Banks on mortgages transferred to the State Bank ;
- (d) prescribing the form in which applications to Primary Land Mortgage Banks for

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loans should be made and for the valuation of the properties offered as security for such loans ;

- (e) for the investment of moneys realized from the mortgagors; and
- (f) generally for the purpose of safeguarding the interest of the parties concerned and for carrying out the purposes of this Act.

41. The provisions of sections 2, 12, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23, 24, 25, 31, 34, 35, 36 and 37 shall apply *mutatis mutandis* to all Primary Land Mortgage Banks established for the purposes of this Act.

Primary
Land
Mortgage
Banks.