

THE WEST KHANDESH MEHWASSI ESTATES (PROPRIETARY RIGHTS ABOLITION, ETC.) REGULATION, 1961

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MAHARASHTRA REGULATION No. I OF 1962

[THE WEST KHANDESH MEHWASSI ESTATES (PROPRIETARY RIGHTS ABOLITION, ETC.) REGULATION, 1961.]

[24th February 1962.]

A regulation to provide for the conferment of occupancy rights on inferior holders and tenants of holders of Mehwassi estates in the Dhulia District for the abolition of certain proprietary rights of such holders in those estates; and for purposes connected with the matters aforesaid.

WHEREAS it necessary for the peace and good Government of the Mehwassi estates which are Scheduled areas in the Dhulia District in the State of Maharashtra to provide for the conferment of occupancy rights on inferior holders and tenants of the holders of those estates, for the abolition of certain proprietary rights of such holders in those Estates; and for purposes connected with the matters aforesaid ;

Now, therefore, in exercise of the powers conferred by sub-paragraph (2) of paragraph 5 of the Fifth Schedule to the Constitution of India the Governor of Maharashtra, with the assent of the President, is hereby pleased to make the following Regulation namely:—

1. Short title, extent and commencement.— (1) This Regulation may be called the West Khandesh Mehwassi Estates (Proprietary Rights Abolition, etc.) Regulation, 1961.

(2) It extent to the territory of the Mehawassi Estate in the Dhulia District of the State of Maharashtra.

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

2. Definitions.— In this Regulation, unless the context otherwise requires—

(1) “appointed day” means the date on which this Regulation comes into force ;

(2) “Code” means the Bombay Land Revenue Code, 1879 (Bom. V of 1879) ;

(3) “Collector” includes an Assistant or Deputy Collector performing the duties and exercising the powers of the Collector under the Code, or any other officer appointed by the State Government to perform the functions and exercise the powers of the Collector under this Regulation ;

(4) “forest land” means unassessed waste land having tree growth, which is situate within the limits of a Mehwassi estate, and which the Collector with the previous sanction of the State Government may classify as forest land ;

(5) “inferior holder” means a person who is not a permanent tenant, but who is—

(a) a person other than a Mehwassi, who has a heritable and transferable right in the Mehwassi land held by him, whether such right has been acquired by himself (or his predecessor-in-title) by purchase or otherwise, or

(b) a person who holds any Mehwassi land from a Mehwassi and who (or whose predecessor-in-title) has acquired a heritable right in that land on payment of *Nazarana* to the Mehwassi ;

(6) “Mamlatdar” includes a Mahalkari, and any other officer whom the State Government may appoint to perform the duties of a Mamlatdar under this Regulation ;

(7) “Mehwassi estates” means the villages referred to in Schedule I to the West Khandesh Mehwassi Estate Regulation, 1949 (Bombay Reg. I of 1949) but excluding those villages, which by virtue of section 3 of the Bombay Reorganisation Act, 1960 (XI of 1960) now form part of the State of Gujarat; and a “Mehawassi” means a holder of any such estate and “Mehwassi land” means land comprised in the territory of any such estate ;

(8) “*nazarana*” means a sum of money, or other consideration charged and received by a Mehwassi from any person for conferring on such person a permanent and heritable right in Mehwassi land ;

(9) “notified day” means a day which the State Government may, for purposes of section 6 notify in the *Official Gazette* ;

(10) “permanent tenant” means a person who, not being an inferior holder, holds any Mehwassi land from a Mehwassi as a permanent tenant, within the meaning of that term as defined by clause (10) of section 2 of the Bombay Tenancy and Agricultural Lands Act, 1948 (Bom. LXVII of 1948), and includes a person—

(i) who on the appointed day holds as tenant any Mehwassi land from a Mehwassi, and

(ii) who immediately before the appointed day, was holding (or who and whose predecessors-in-title were holding) for a continuous period of twelve years or more (or for such periods as aggregate to a total continuous period of twelve years or more), the same Mehwassi land or any other Mehwassi land as tenant, from the same Mehwassi ;

(11) “prescribed” means prescribed by rules made under this Regulation;

(12) “tenant” means a person who holds any Mehwassi land from a Mehwassi or an inferior holder as tenant, within the meaning of that term as defined in the Bombay Tenancy and Agriculture Lands Act, 1948 (Bom. LXVII of 1948), but does not including a permanent tenant ;

(13) words and expressions used but not defined in this Regulation, shall have the meaning assigned to them in the Bombay Land Revenue Code, 1879 (Bom. V of 1879), and the Bombay Tenancy and Agricultural Lands Act, 1948 (LXVII of 1948).

3. Preparation of list of permanent tenants of Mehwassi lands.— (1) As soon as may be after the appointed day, the Mamlatdar shall cause a list of permanent tenants to be prepared for entry in the Record of Rights in accordance with Chapter XA of the Code.

(2) The list so prepared shall be published in the prescribed manner, and if within a period of three months from the date of such publication no application is made to the Mamlatdar by the Mehwassi or any other person interested in disputing the correctness or omission of any entry, such list shall be final.

(3) If an application is made to the Mamlatdar under sub-section (2) disputing the correctness or the omission of any entry, the Mamlatdar shall decide the dispute under section 70 of the Bombay Tenancy and Agricultural Lands Act, 1948 (Bom. LXVII of 1948) and such decision shall, subject to appeal or revision under that Act, be final.

4. Dispute as to inferior holder.— If any question arises, whether a person is or is not an inferior holder, the Collector shall after holding a formal inquiry decide such question.

5. Inferior holders of Mehwassi lands to be occupants.— Notwithstanding anything contained in any agreement, custom, usage, decree or order of a court, or in any law for the time being in force, in the case of Mehwassi land which is in the possession of an inferior holder and is being cultivated personally by such inferior holder, on and after the appointed day,—

(a) any right or interest of the Mehwassi in that land as superior holder thereof, shall be deemed to be extinguished; and

(b) the inferior holder shall be primarily liable to the State Government for the payment of land revenue in respect of such land, and shall also be entitled to all the rights and be liable for all the obligations as an occupant thereof under the Code and the rules made thereunder, as if the land were unalienated land.

6. Permanent tenants and tenants of Mehwassi lands to be occupants and conditions therefor.— (1) Notwithstanding anything contained in any agreement, custom, usage decree or order

of a court, or in any law for the time being in force, in the case of any Mehwasssi and which is in the possession of a permanent tenant or a tenant or a sub-tenant of a permanent tenant and is being cultivated personally by such permanent tenant or as the case may be, tenant or sub-tenant, on and after the notified day—

(a) any right or interest of the Mehwasssi in that land as superior holder thereof, shall be deemed to be extinguished; and

(b) the permanent tenant or, as the case may be, tenant or such sub-tenant.

(i) shall be deemed to have purchased so much of the land as he is entitled to retain in his possession under sub-section (2), and

(ii) shall be primarily liable to the State Government for the payment of land revenue in respect of the land so retained, and

(iii) shall subject to the provisions of sub-sections (3) to (10) (both inclusive), be entitled to all the rights and be liable for all the obligations of an occupant in respect of the land so retained, under the Code and the rules made thereunder, as if the land were unalienated land.

(2) The permanent tenant or tenant or sub-tenant of a permanent tenant in possession of any Mehwasssi land cultivating such land personally—

(a) who does not hold any other land, shall be entitled to retain possession of the land to the extent of the ceiling area;

(b) who holds any other land less than the ceiling area shall be entitled to retain possession of so much of the land as would bring his total holding to the extent of the ceiling area; and

(c) who holds any other land equal to or more than the ceiling area, shall not be entitled to retain possession of any of the land.

(3)(a) The permanent tenant shall be liable to pay to the Mehwasssi as purchase price a sum equal to three times the amount of the full assessment of the land so retained; and

(b) the tenant shall be liable to pay as purchase price a sum equal to six times the amount of the full assessment of the land so retained to the Mehwasssi, or the inferior holder, from whom such land is held;

(c) the sub-tenant of a permanent tenant shall be liable to pay as purchase price a sum equal to three times the amount of such assessment of the land so retained to the permanent tenant and three times such assessment to the Mehwasssi, within the period, and the manner specified in sub-section (4).

(4) (a) A permanent tenant shall deposit with the Mamlatdar within one year from the notified day in a lump sum the amount of the purchase price payable under sub-section (3):

Provided that, if the Mamlatdar is satisfied that the permanent tenant has for any reason beyond his control failed to make such payment within the period aforesaid the Mamlatdar may extend the period by a further period not exceeding one year.

(b) A Tenant or such sub-tenant of a permanent tenant shall deposit with the Mamlatdar, the purchase price payable under sub-section (3)—

(i) either in lump sum, within one year from the notified day, or

(ii) in three equal annual instalments with simple interest at 4^{1/2} per cent. per annum, on or before such dates as the Mamlatdar may fix.

(c) If a tenant or such sub-tenant is unable to deposit the purchase price in lump sum within one year, he may deposit with the Mamlatdar within that period an amount equal to one-third of the purchase price and apply for facility to pay the purchase price in instalments under sub-clause (ii) of clause (b) and the Mamlatdar shall give him such facility.

(d) Where a tenant or such sub-tenant is in arrears of one instalment, he may within three months from the date of the default apply to the Mamlatdar to condone the default. If the Mamlatdar is satisfied

that the tenant or as the case may be, the sub-tenant was unable to pay the instalment for sufficient reason, he may allow further time for the payment of the amount in arrears, and may for that purpose increase the number of instalments to four.

(5) During any period for which payment of rent is suspended or remitted under section 13 of the Bombay Tenancy and Agricultural Lands Act, 1948 (Bom. LXVII of 1948), the permanent tenant or as the case may be, the tenant or sub-tenant of a permanent tenant shall not be bound to pay the purchase price in lump sum or the amount of any instalment or interest thereon (if any).

(6) Until the deposit of the entire amount of the purchase price if paid in lump sum, or until the year in which the first instalment thereof becomes payable the permanent tenant, or, as the case may be, the tenant or sub-tenant shall be liable to pay rent of the said land to the Mehwassi or the permanent tenant, as the case may be.

(7) (a) If the permanent tenant or, as the case may be, the tenant or sub-tenant fails to deposit the amount of the purchase price within the period specified in sub-section (4) or commits default in depositing any instalment the amount of the purchase price remaining unpaid and any interest outstanding shall be recovered as an arrear of land revenue.

(b) The amount recovered under clause (a) shall be deposited with the Mamlatdar.

(8) Any amount deposited under sub-section (4) or (7) shall be paid to the Mehwassi or, as the case may be, the inferior holder or permanent tenant.

(9) On the deposit of the entire amount of the purchase price in accordance with sub-section (1) or (7), the Mamlatdar shall issue a certificate of purchase in the prescribed form to the permanent tenant or as the case may be, the tenant or sub-tenant in respect of the land. Such certificate shall be conclusive evidence of purchase.

(10) If the purchase price is not paid in accordance with sub-section (4), or is not recovered within a period of one year from the date on which it became recoverable as an arrear of land revenue then,—

(a) the purchase shall be ineffective,

(b) the land shall be at the disposal of the Collector under section 32 P of the Bombay Tenancy and Agricultural Lands Act, 1948 (Bom. LXVII of 1948).

(c) any amount deposited by the permanent tenant or tenant towards the purchase price of the said land shall be refunded to him, and

(d) the Mehwassi shall be entitled to recover from the permanent tenant or, as the case may be, the tenant holding land from him, and the inferior holder shall be entitled to recover from the tenant holding land from him and the permanent tenant from his sub-tenant the rent of the said land, and the rent so recoverable shall be deducted from the amount, if any to be refunded to the tenant or sub-tenant.

Explanation.— For the purpose of this section, “land” means land which is used for agricultural purposes, or which is so used but is left fallow and includes the sites of farm buildings and buildings, appurtenant to such land.

7. Disposal of balance of lands after purchase by permanent tenant or tenant or sub-tenant.— Out of the Mehwassi land in possession of a permanent tenant or tenant or sub-tenant, land which such permanent tenant or tenant or sub-tenant is not deemed to have purchased under clause (a) of sub-section (1) of section 6 shall stand surrendered to the Mehwassi under section 15 of the Bombay Tenancy and Agricultural Lands Act, 1948 (Bom. LXXII of 1948). As if it were land surrendered to him by the permanent tenant or, as the case may be, tenant or sub-tenant and shall be liable to be disposed of in manner laid down in the said section 15.

8. Tenancies created after the notified day.— (1) In respect of any tenancy of any land (other than Mehwasssi land deemed to have been purchased under section (6), created, after the notified day, notwithstanding any agreement or usage to the contrary, a tenant cultivating personally shall be entitled within one year from the commencement of such tenancy to purchase rent the landlord the land held by him or such part thereof as would raise the holding of the tenant to the ceiling area.)

(2) A tenant desirous of exercising the right conferred on him under sub-section (1) shall give intimation thereof to the landlord and the Mamlatdar in the prescribed manner within the period specified in that sub-section.

(3) The provisions of sections 6 and 7 in so far as they may be applicable shall apply to the purchase of the land by a tenant under sub-section (1).

9. All public roads, etc., situate in Mehwasssi Estate to vest in Government.— All public roads, lanes and paths, the bridges, ditches, dikes and fences, on or beside, the same the beds of rivers, streams, nallas, lakes, wells and tanks, and all canals, and water courses, and all standing and flowing water, and all unbuilt village site lands, all waste lands and all uncultivated lands (excluding forest lands and lands used for building or other non-agricultural purposes) which are situate within the limits of any Mehwasssi estate shall, except in so far as any rights of any person other than the Mehwasssi may be established in or over the same, and except as may otherwise be provided by any law for the time being in force, vest in, and shall be deemed to be, with all rights in or over the same or appertaining thereto the property of the State Government and all rights held by a Mehwasssi in such property shall be deemed to have been extinguished, and it shall be lawful for the Collector, subject to the general or special orders of the State Government, to dispose of them as he deems fit, subject always to the rights of way and other rights of the public or of individuals legally subsisting.

Explanation.— For the purposes of this section, land shall be deemed to be uncultivated if it has not been cultivated for a continuous period of three years immediately before the appointed day.

10. Compensation to Mehwasssi in respect of property vesting in Government under section 9.— If any Mehwasssi proves to the satisfaction of the Collector that he had immediately before the appointed day any right or interest in any property referred to in section 9, he shall be entitled to compensation as follows:—

(a) If the property in question is waste land, or uncultivated but cultivable land, the amount of compensation shall not exceed three times the assessment of the land:

Provided that, if the land has not been assessed the amount of compensation shall not exceed such amount of assessment as would be leviable in the same village on the same extent, of similar land used for the same purpose ;

(b) if the property in question is land over which the public has been enjoying or has acquired a right of way or any individual has an easement, and such right of way or assessment subsists immediately before the appointed day the amount of compensation shall not exceed the annual assessment leviable in the village for uncultivated land in accordance with the rules made under the Code, or if such rules do not provide for the levy of such assessment the compensation shall be the market value of the right or interest held by the claimant;

(c) If there be any trees or structures on the land, the compensation shall be the market value of such trees or structures, as the case may be.

Explanation.— For the purpose of this section “market value” shall mean the value as estimated in accordance with the provisions of section 23 and section 24 of the Land Acquisition Act, 1894 (I of 1894) in so far as the said provisions may be applicable.

11. Method of awarding compensation.— (1) Any Mehwasssi entitled to compensation under section 10 may make an application therefor to the Collector in the prescribed form, within prescribed period.

(2) The Collector shall, after holding a formal inquiry, determine the amount of such compensation and the apportionment, if necessary, among the co-sharers entitled to it, and shall make an award accordingly.

12. Method of awarding compensation to persons other than Mehwasssi.— (1) If any person, other than a Mehwasssi is aggrieved by any of the provisions of this Regulation as abolishing, extinguishing or modifying any of his rights to, or interest in any property, and if compensation of such abolition, extinguishment or modification has not been provided for in the other provisions of this Regulation such person may make an application for compensation to the Collector in the prescribed form, within the prescribed period.

(2) The Collector shall, after holding a formal inquiry, make an award determining the amount of compensation in the manner, and according to the method, provided in sections 23 and 24 of the Land Acquisition Act, 1894 (I of 1894).

13. Form of award and previous approval in certain cases.— (1) Every award made under section 11 or 12 shall be in the form prescribed in section 26 of the Land Acquisition Act, 1894 (I of 1894).

(2) Where the officer making an award under section 11 or 12 is a Collector under this Regulation but not a Collector appointed under section 8 of the Code, and the amount of the award exceeds five thousand rupees, the award shall not be made without previous approval of—

(a) The Collector appointed under section 8 of the Code, if the award does not exceed twenty-five thousand rupees, or

(b) the commissions, if the award exceeds twenty-five thousand rupees.

(3) Where the officer making such award is a Collector appointed under section 8 of the Code, and the amount of such award exceeds twenty-five thousand rupees, then such award shall not be made without the previous approval of the Commissioner.

14. Appeal against award.— (1) Any person aggrieved by a decision of the Collector under section 4 or by the award of Collector made under section 10 or 11, may appeal to the Maharashtra Revenue Tribunal constituted under the Bombay Revenue Tribunal Act, 1957 (Bom. XXXI of 1958).

(2) The Maharashtra Revenue Tribunal shall after giving notice to the appellant and the State Government, decide the appeal and record its decision.

(3) In deciding an appeal under sub-section (1), the Maharashtra Revenue Tribunal shall exercise all the powers which a Court has, and follow the same procedure which a Court follows, in deciding appeals from a decree or order of an original Court under the Code of Civil Procedure, 1908 (V of 1908).

15. Limitation for appeals.— Every appeal made under this Regulation to the Maharashtra Revenue Tribunal shall be filed within a period of sixty days from the date of the decision or as the case may be, the award of the Collector. The provisions of sections 4, 5, 12 and 14 of the Indian Limitation Act, 1908 (IX of 1908), shall apply to the filing of such appeal.

16. Court-fees.— Notwithstanding anything contained in the Bombay Court-fees Act, 1959 (Bom. XXXVI of 1959) every appeal made under this Regulation to the Maharashtra Revenue Tribunal shall bear a court-fees stamp of such value as may be prescribed.

17. Finality of award and decision of Maharashtra Revenue Tribunal.— The decision of the Collector under section 4, and an award made by Collector under section 11 or 12, subject to an appeal to the Maharashtra Revenue Tribunal, and the decision of the Maharashtra Revenue Tribunal on the appeal, shall be final and conclusive, and shall not be questioned in any suit or proceeding in any Court.

18. Inquiries and proceedings to be judicial proceedings.— All inquiries and proceedings before the Collector and the Maharashtra Revenue Tribunal under this Regulation, shall be deemed to be judicial proceedings within the meaning of sections 193, 219 and 228 of the Indian Penal Code (XLV of 1860).

19. Amount of compensation to be payable in transferable bonds.— The amount of compensation payable under the provisions of this Regulation shall be payable in transferable bonds which shall carry interest at the rate of *three per cent. Per annum* from the date of the issue of such bonds, and which shall be repayable during a period of twenty years from the date of the issue of such bonds by equated annual instalments of principal and interest. The bonds shall be of such denominations, and shall be in such forms, as may be prescribed.

20. Mehwasssi to deliver records to authorised officers.— (1) Whenever an officer authorised by the State Government in this behalf so directs, a Mehwasssi shall deliver to him or such other officer as may be specified in the direction, the records relating to the Mehwasssi Estate, maintained by him.

(2) If the Mehwasssi fails without reasonable cause to deliver any such records, he shall, on conviction, be punished with fine which may extend to two hundred rupees. In the case of continuing failure to deliver any such records, he shall be punished with an additional fine which may extend to twenty-five rupees for every day during which such failure continues after conviction for the first such failure.

21. Rules.—The State Government may make rules for the purpose of carrying out the provisions of this Regulation. Such rules shall be subject to the condition of previous publication and shall, when finally made, be published in the *official Gazette*.

22. Provisions of Bom. LXVII of 1948 to govern relations of landlord and tenants.— Nothing in this Regulation shall in any way be deemed to affect the application of any of the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948 (Bom. LXVII of 1948) to any Mehwasssi land or the mutual rights and obligations of a landlord of such land and his tenants, save in so far as the said provisions are in any way in consistent with the express provisions of this Regulations.