

7. The President of the Union may make any rules and issue any orders which may be necessary for carrying this Act into effect, and which are consistent therewith. Power to make rules.

8. Where any Government establishment is employed in such supervision as aforesaid, the President of the Union shall be the sole judge of the cost attributable to such employment, and his decision thereon shall not be questioned in any Court of law or otherwise. Exemption from jurisdiction of Courts.

THE LAND ALIENATION ACT.

[BURMA ACT XII, 1939.] (19th August, 1939.)

PRELIMINARY.

1. (1) This Act may be called the Land Alienation Act, 1939. Short title, extent and commencement.
 (2) It shall come into force on such date¹ as the President of the Union may, by notification, specify in this behalf.
2. (1) Nothing in this Act shall apply to transfers of land— Saving in respect of certain transfers.
 (a) under the Land Acquisition Act ;
 (b) by or to Government ;
 (c) by or to co-operative societies engaged in the provision of agricultural credit or the marketing of agricultural produce ;
 (d) by or to credit institutions controlled or organised by Government and prescribed as such ;
 (e) made in good faith for a religious, charitable or public purpose ;
 (f) resulting from inheritance ;
 (g) made between joint owners of the land ;
 (h) made in execution of an order or decree of a civil Court passed before the commencement of this Act ;
 (i) by the mortgagor of the land to the mortgagee in cases where the mortgage was entered into and registered under the Registration Act before the commencement of this Act.
- (2) Nothing in this Act shall apply to the mortgage of land by a vendee to a vendor as security for payment of the price or part of the price of the land or to the subsequent retransfer of the land by the vendee to the vendor in satisfaction of the mortgage-debt : Provided that the mortgage was entered into at the time of the sale and that both the deed of sale and the deed of mortgage were registered under the Registration Act within one month of their execution.

¹ This Act was brought into force with effect from the 19th August, 1939 ; see Notification No. 47, *Burma Gazette* Part I, dated the 18th August, 1939.

(3) Nothing in this Act shall apply to a transfer of land made with the permission of the Collector by an agriculturist to a non-agriculturist for the purpose of erecting thereon buildings required for trade or industry :

Provided that the Collector may declare any transfer under clause (e) of sub-section (1) or sub-section (3) null and void if it is proved to his satisfaction that the land is used for any purpose other than that for which it was transferred.

Definitions. 3. In this Act, unless there is anything repugnant in the subject or context—

- (1) "agriculturist" means a person—
- (a) who is engaged or has habitually been engaged in the cultivation of land with his own hands as his principal means of subsistence ; or
 - (b) who satisfies both the following conditions, namely—
 - (i) that he superintends personally and throughout the working periods of the year the actual cultivation of land, and
 - (ii) that he derives the major part of his income either from such superintendence or from the cultivation of land with his own hands or jointly from such superintendence and such cultivation.

Explanation (1).—An agriculturist who, with the intention of changing his status as such in order to enable him to sell land to a non-agriculturist, temporarily ceases to be an agriculturist or is prevented from being an agriculturist by age or bodily infirmity or by necessary absence in the military service of the Government, does not thereby cease to be an agriculturist for the purposes of this Act.

Explanation (2).—The wife or the minor son or the minor daughter of an agriculturist shall be deemed to be an agriculturist for the purposes of this Act ;

(2) "land" means land which is not in a town or village and is occupied or let for agricultural purposes or for purposes subservient to agriculture and includes—

- (a) the sites of buildings and other structures on such agricultural land ;
- (b) rights to rents or profits of an estate or holding ;
- (c) rights of a usufructuary mortgagor or mortgagee ;
- (d) any right to water enjoyed by the owner or occupier of land as such ; and
- (e) any right of occupation under any law in force ;

- (3) "non-agriculturist" means a person who is not an agriculturist ;
- (4) "permanent alienation" includes sales, exchanges and gifts ;
- (5) "prescribed" means prescribed by this Act or by rules made under this Act ;

(6) "Revenue Officer" means any person whom the President of the Union may appoint to do anything required by this Act to be done by a Revenue Officer: provided that, except in the case of a *Myoök*¹ in charge of a subdivision, and except for special reasons to be recorded in writing, no person who is lower in rank than an Extra Assistant Commissioner² or Superintendent of Land Records shall be appointed a Revenue Officer under this Act.

PERMANENT ALIENATION OF LAND.

4. (1) Notwithstanding the provisions of any other law, no permanent alienation of land shall be made by or on behalf of an agriculturist to a non-agriculturist. Prohibition and modification of permanent alienation.

(2) If the Collector is satisfied that any land has been alienated in contravention of sub-section (1) he shall pass an order converting the alienation into a usufructuary mortgage on such terms and for such period not exceeding 15 years as he shall decide, and shall direct the parties to pay a fine not exceeding one-third of the value of the land as fixed in the deed by which the land was alienated. Both parties to the alienation shall be jointly and severally liable for the payment of such fine:

Provided that, if it is proved to the satisfaction of the Collector that the alienation was due to a *bona fide* mistake on the part of one party as to the status of himself or of the other party, he may declare that the alienation shall have no effect and may also place the alienor in possession of the land on repayment by him to the alienee of the purchase money within thirty days from the date of publication of the declaration or of service thereof on the alienor. In default of such repayment, the alienation shall take effect as a usufructuary mortgage under clause (a) of sub-section (1) of section 5 for such term not exceeding 15 years and on such conditions as the Collector may prescribe.

TEMPORARY ALIENATIONS OF LAND.

5. (1) If an agriculturist mortgages his land and the mortgagee is not an agriculturist, the mortgage shall be made in one of the following forms:— Forms of mortgage permitted in certain cases.

- (a) in the form of a usufructuary mortgage by which the mortgagor delivers possession of the land to the mortgagee and authorizes him to retain such possession and to receive the rents and profits of the land in lieu of interest and towards payment of the principal, on condition that after the expiry of the term agreed on, or (if no term is agreed on, or if the term agreed on exceed fifteen years) after the expiry of fifteen years, the land shall be re-delivered to the mortgagor; or
- (b) in the form of a mortgage without possession, subject to the condition that, if the mortgagor fails to pay principal and interest according to his contract, the mortgagee may apply to the civil

¹ Now an officer of the Burma Civil Service (Junior Branch).

² Now an officer of the Burma Civil Service (Senior Branch).

Court to place him in possession for such term not exceeding fifteen years as the Court may consider to be equitable, the mortgage to be treated as a usufructuary mortgage for the term of the mortgagee's possession and for such mortgage-debt as may be due to the mortgagee: provided that the interest shall be simple interest at such rate and for such period as the Court may think reasonable; or

- (c) in any other form not inconsistent with the provisions of this Act which the President of the Union may prescribe generally or for particular areas: provided that the period of possession allowed to the mortgagee shall not exceed fifteen years.

(2) The Court, if it allows the application of a mortgagee under clause (b) of sub-section (1), shall have power to eject the mortgagor, and as against the mortgagor to place the mortgagee in possession.

Provisions
applying to
permitted
mortgages.

6. In the case of mortgages made under section 5--

- (1) no interest shall accrue during the period for which the mortgagee is in possession of the land or in receipt of rent;
- (2) at the end of such period of possession the mortgage-debt shall be deemed to be extinguished;
- (3) the mortgagor may redeem his land at any time during the currency of the mortgage on payment of the mortgage-debt, or in the case of a mortgage under sub-section (1) of section 5 of such proportion of the mortgage-debt as the civil Court may determine;
- (4) any covenant of personal liability to repay the mortgage-debt in a usufructuary mortgage shall be null and void, notwithstanding the provisions of any law to the contrary; and
- (5) if a mortgagor proves to the satisfaction of the Court that he has paid the mortgage-debt or such proportion thereof as the Court has determined, or deposits with the Court the amount of such mortgage-debt or of such proportion thereof as the Court has determined, the redemption of the land shall be deemed to have taken place, a certificate to that effect shall be given by the Court to the mortgagor on request, and the Court shall have power to eject the mortgagee or any person whom he may have put in possession and as against them to place the mortgagor in possession.

Conditions in
permitted
mortgages.

7. (1) In a mortgage made under section 5, the following conditions may be added by agreement between the parties:—

- (a) a condition fixing the time of the agricultural year at which a mortgagor redeeming his land may resume possession thereof;

(b) conditions limiting the right of a mortgagor or mortgagee in possession to cut, sell or mortgage trees or to do any act affecting the permanent value of the land ; and

(c) any condition which the President of the Union may prescribe either generally or for particular areas.

(2) In mortgages made under section 5, any condition not permitted by or under this Act shall be null and void.

8. If an agriculturist makes a mortgage of his land in any manner or form not permitted by or under this Act, the Collector shall have authority to direct the parties to revise or alter the terms of the mortgage in accordance with the requirements of the Act. In default of agreement between the parties, the Collector shall have authority to revise or alter the terms of the mortgage so as to bring it into accord with such form of mortgage as is permitted by or under this Act and as the mortgagee appears to him to be equitably entitled to claim. Power to revise mortgage made in form not permitted.

9. Any agriculturist may grant a lease of his land for any term not exceeding 10 years, and any lease made by an agriculturist for a longer term than 10 years shall be deemed to be a lease for a period of 10 years. Limit to period of lease by an agriculturist.

10. If a mortgagee or lessee, holding possession under a mortgage made under section 5 or under a lease made under section 9, remains in possession after the expiry of the term for which he is entitled to hold under his mortgage or lease, the Collector may, of his own motion or on the application of the person entitled to possession, eject such mortgagee or lessee and place in possession the person so entitled. Power of Collector to eject mortgagees, lessees or farmers.

PROVISIONS RELATING TO MINIMUM AREAS.

11. The President of the Union may divide agricultural land into suitable classes and localities and prescribe in respect of each class of land in each locality the minimum area which he considers necessary for the maintenance in reasonable comfort of a family of reasonable size working the land as proprietors. Prescription of minimum areas.

12. Where an agriculturist owns solely or jointly with others land not exceeding such minimum area as may have been prescribed under section 11, the whole of such land shall be exempt from attachment by any civil Court or Revenue Officer unless that attachment is on account of a sum due to Government and recoverable as an arrear of land-revenue, or to a co-operative Society of which he is a member. Protection against attachment of minimum area.

13. Where an agriculturist owns solely or jointly with others land exceeding such minimum area as may have been prescribed under section 11, the prescribed minimum area shall be exempted from attachment by order of a civil Court or Revenue Officer unless the attachment is on account of a sum Protection against attachment of land with in minimum area.

due to Government and recoverable as an arrear of land-revenue, or to a co-operative society of which he is a member.

GENERAL PROVISIONS.

Alienations of or charges on produce of land held by agriculturists limited to one year.

14. No agreement whereby an agriculturist purports to alienate or charge the produce of his land, or any part of or share in such produce, for more than one year shall take effect for more than one year from the date of the agreement.

Execution sale of land belonging to agriculturists forbidden.

15. No land belonging to an agriculturist shall be sold to a non-agriculturist in execution of any decree or order of any civil Court or Revenue Officer.

Certain restrictions to leases or mortgages made in execution of decree or order of civil Court or Revenue Officer.

16. Notwithstanding anything contained in any other enactment for the time being in force, no land belonging to an agriculturist shall be decreed or ordered by any civil Court or Revenue Officer to be leased for a period exceeding 10 years or mortgaged except in one of the forms permitted by section 5.

Jurisdiction of civil Courts forbidden.

17. A civil Court shall not have jurisdiction in any matter which the President of the Union or a Revenue Officer is expressly empowered by this Act to dispose of.

Civil Court to send copy of certain decrees or orders to Collector.

18. (1) Notwithstanding anything contained in the Code of Civil Procedure or any other Act for the time being in force, every civil Court which passes a decree or order involving a permanent alienation or a mortgage or a lease of his land by an agriculturist to a non-agriculturist shall send to the Collector a copy of such decree or order.

Action to be taken by Collector when decree or order is passed contrary to the Act.

(2) (a) When it appears to the Collector that any civil Court has passed a decree or order contrary to any of the provisions of this Act, the Collector may apply for the revision of such decree or order to the Court to which an appeal would ordinarily lie, or, in any other case to the High Court.

(b) Such application shall be made within three months of the date upon which the Collector is informed of such decree or order.

(c) If the Court finds that such decree or order is contrary to any of the provisions of this Act, it shall alter it so as to make it consistent with this Act.

(3) When any appellate Court other than the High Court passes an order rejecting such application, the Collector may, within three months after the date upon which he is informed of such order, apply to the High Court for revision thereof.

(4) Every civil Court which passes an order on any application made under this section shall within seven days send a copy thereof to the Collector.

(5) No Court-fee shall be leviable on such applications and the provisions of the Code of Civil Procedure as regards appeals shall apply, so far as may be, to the procedure of the Court on receipt of such application :

Provided that no appearance by or on behalf of the Collector shall be necessary for the disposal of the application.

19. The powers conferred by this Act upon a Collector may be exercised by a Revenue Officer, not below the rank of Subdivisional Officer, authorized by the President of the Union in this behalf.

Exercise of powers of Collector.

20. The President of the Union may, by notification in the Gazette, exempt any district or part of a district or any person or class of persons from the operation of this Act or of any of the provisions thereof.

Power of President to exclude local areas or persons.

21. (1) The President of the Union may, by notification in the Gazette, require or permit the registration of agriculturists in any area specified in the notification.

Registration of agriculturists.

(2) The fact that a person is so registered shall be conclusive proof that he was an agriculturist at the date of the registration.

22. (1) The President of the Union may make rules for carrying into effect the purposes of this Act.

Rule making power.

(2) In particular, and without prejudice to the generality of the foregoing power, the President of the Union may make rules—

- (a) prescribing the officers to whom applications may be made and the manner in which such applications shall be made and disposed of ;
- (b) prescribing the matters in which, and the officers by whom, powers of appeal or revision in respect of orders passed under this Act may be exercised, the procedure and the periods of limitation for such appeals and revisions ;
- (c) prescribing the credit institutions controlled or organized by Government ;
- (d) prescribing the form of mortgage for the purpose of the proviso to sub-section (2) of section 2 ;
- (e) prescribing additional forms in which mortgages may be made under section 5 ;
- (f) prescribing additional conditions which may be added by agreement in permitted mortgages under section 7 ;
- (g) prescribing the minimum areas under section 11 ;
- (h) prescribing the procedure for the registration of agriculturists under section 21 and the manner in which such registration shall be effected.

23. All rules under this Act shall be made after previous publication and be published in the Gazette.

Publication of rules.