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# SIKKIM

## GOVERNMENT



## GAZETTE

EXTRAORDINARY  
PUBLISHED BY AUTHORITY

Gangtok

Friday 3<sup>rd</sup> February, 2006

No. 23

GOVERNMENT OF SIKKIM  
LAW DEPARTMENT  
GANGTOK

No. 18/LD/2006.

Dated: 31.01.2006.

### NOTIFICATION

The following Act of the Sikkim Legislative Assembly having received the assent of the Governor on 18th day of January, 2006 is hereby published for general information:-

#### THE SIKKIM REGULATION OF TRANSFER OF LAND ACT, 2005 (ACT NO. 18 OF 2005)

#### AN ACT

to make provision for the regulation of transfer of lands, covering wider section of the population in the State and other matters connected therewith.

Whereas the old laws on transfer of land catered to certain section of the population in the State;

And whereas it has been considered expedient to have law regulating transfer of land covering wider sections of the population in the State and strengthen the existing law further.

**Be** it enacted by the Legislature of Sikkim in the Fifty-sixth Year of the Republic of India as follows: -

- Short title, extent, and commencement**
- (1) This Act may be called the Sikkim Regulation of Transfer of Land Act, 2005.
  - (2) It extends to the whole of Sikkim.
  - (3) It shall come into force on such date as the State Government may by notification in the Official Gazette appoint.
- Definition**
- (a) "agriculturist" means a landowner who cultivates land personally in a holding situated in Sikkim.
- Explanation (1)-*  
"to cultivate personally" with its grammatical variations and cognate expression means:-
- (i) by one's own account,
  - (ii) by one's own labour,
  - (iii) by the labour of any member of one's family, or
  - (iv) under the personal supervision of oneself or any member of ones family by hired labour or by servant on wages payable either in cash or kind.
- Explanation (2)-*  
in the case of a joint family the land shall be deemed to have been cultivated personally, if it is cultivated by any member of such family.

(b) "Family" means husband, wife, children and includes his parents, grandparents, brothers and unmarried, widowed, separated or divorced sisters.

**Prohibition  
of transfer  
of land to non-  
agriculturist**

3 (1). Save as otherwise provided in any other law, rule or order and as provided hereunder, no transfer of land belonging to any person, by way of sale, gift, exchange, mortgaged or sublet with possession shall be valid in favour of a person who is not an agriculturist.

*Explanation.-*

For the purpose of this section the expression "transfer of land" shall not include -

- (i) transfer by way of inheritance,
- (ii) transfer by way of gift made or will executed in favour of any or all legal heirs of the donor or the testator as the case may be but shall include -
  - (a) a benami transaction in which land is transferred to an agriculturist for a consideration paid or provided by a non-agriculturist and
  - (b) authorization made by the owner by way of special or general power of attorney or by an agreement with the intention to put a non-agriculturist in possession of the land and allow him to deal with the land in the like manner as if he is a real owner of that land.
- (2) Nothing in sub-section (1) shall be deemed to prohibit the transfer of land by any person in favour of -
  - (a) a person who has become non-agriculturist on account of acquisition of his land for any public purpose under Land Acquisition Act, 1894 or such other law with the permission of the State Government or
  - (b) a non-agriculturist with the permission of the State Government for the following purposes to such limit as may be prescribed -
    - (i) For Agricultural purpose or (ii) Horticultural purpose or for both purposes (iii) for construction of or setting up of Hotel, (iv) Restaurant, Industry or (v) Factory or such other enterprise generating economic activity or, (vi) medical or (vii) educational institution etc. (viii) or for such purposes as may be considered by the authority:

Provided that a person who is a non-agriculturist but purchases land either under clause (a) or (b) of the sub-section (2) with the permission granted under the said clauses of sub-section (2) shall irrespective of such purchase of land continue to be a non-agriculturist for the purpose of this Act:

Provided further that a non-agriculturist who purchases land under the above clauses and in whose case permission to purchase land is granted under clause (a) and (b) of the sub-section (2) shall put the land to such use for which the permission has been granted within a period of two years or for further such period not exceeding one year as may be allowed by the State Government for reasons to be recorded in writing to be counted from the date on which the said deed of land is registered and if he fails to do so or diverts the use of the land or transfers by way of sale, gift or otherwise, the land so purchased shall vest in the State Government in the manner prescribed free from all encumbrances.

(3) No Registrar or Sub-Registrar appointed under the relevant provision of law shall register any document pertaining to a transfer of land, which is in contravention of sub-section (1): Provided that Registrar or the Sub-Registrar may register any transfer where the mortgage is made for procuring the loans for construction or improvements over the land either from the Government or from any other financial institutions constituted or established under any law for the time being in force or recognized by the State Government.

(4) Where the Registrar or the Sub-Registrar appointed under the relevant law before whom any document pertaining to transfer of land is presented for registration comes to know or has reason to believe that the transfer of land is in contravention of sub-section (1) or a Revenue Officer or a Sub-Registrar either on an application made to him or on receipt of

any information from any source comes to know or has reason to believe that any land has been transferred or is being transferred in contravention of the provisions of sub-section (1), such Sub-Registrar, or the Revenue Officer as the case may be shall make a reference to the Collector of the district in which the said land or any part thereof is situated and the Collector on receipt of such reference has reason to believe that any land has been transferred or is being transferred in contravention of the provisions of the sub-section (1) shall after affording to the persons who are parties to the transfer a reasonable opportunity of being heard and holding an enquiry determine whether the transfer of land is or is not in contravention of sub-section (1) and shall within 90 (ninety) days from the date of receipt of reference made to him or such longer period as the authority may allow for reasons to be recorded in writing, record his decision thereon and intimate the findings to the Registrar.

(5) The person aggrieved by the findings recorded by the Collector that a particular transfer of land is in contravention of the provisions of sub-section (1), may, within a period of 30 (thirty) days from the date on which the order recording such findings is made by the Collector file an appeal to the Registrar, to whom such Collector is subordinate, and the Registrar may, after giving the parties an opportunity of being heard and calling for records of the case from the Collector, reverse, alter or confirm the order made by the Collector and the order made by the Registrar shall be final and conclusive.

(6) The State Government may, either on a report of a Sub-Registrar or Revenue Officer or of its own motion, call for the records of any proceedings which are pending before, or have been disposed of, by any Revenue Officer or Sub-Registrar, may for the purpose of satisfying itself as to the legality or propriety of such proceedings or order made therein and may pass such order in relation thereto as it may think fit.

(7) No order shall be passed under this sub-section, which adversely affects any person unless such person has been given a reasonable opportunity of being heard.

(8) Where the Collector of the district sub-section (4) or the Registrar under sub-section (5) or the State Government under sub-section (6) decides that the transfer of land is in contravention of the provisions of sub-section (1), such transfer shall be void ab-initio and the land involved in such transfer together with structures buildings or other attachments if any, shall in the prescribed manner vest in the State Government free from all encumbrances.

(9) It shall be lawful for the State Government to make use of the land, which is vested or may be vested in it under sub-section (8) for such purpose as it may deem fit.

**Power to  
make rules**

4. The State Government may make rules for carrying out the purposes of this Act and in particular for any of the matters required to be prescribed under any of the foregoing provisions of this Act.

**Saving**

5. Notwithstanding the provisions contained in this Act the old law of Revenue Order No. 1 dated 17th May, 1917 and the Govt. of Sikkim, Land Revenue Department, O.O. No. 105/LR dated Gangtok the 25th February, 1961 shall, however, continue to be validly operative in respect of its enforcement and the present Act shall be in addition and to supplement the aforesaid old laws.

**By Order.**

**R.K. Purkayastha (SSJS)  
L.R.-cum-Secretary,  
Law Department  
Government of Sikkim,  
Gangtok.**

**File No. 16 (82) LD/ 2006**