

**The Jammu and Kashmir Prohibition on Conversion of Agricultural Land for
Nonagricultural Purposes Act,2010**
[XVI of 2010]
Department of Law
Civil Secretariat, Jammu

[Dated 28-04-2010]

Be it enacted by the Jammu and Kashmir State Legislature in the Sixtyfirst Year of the Republic of India as follows:-

CHAPTER I

PRELIMINARY

1.Short title and commencement.- (1) This Act may be called the Jammu and Kashmir Prohibition on Conversion of Agricultural Land for Nonagricultural Purposes Act,2010.

(2) It shall come into force with effect from such date as the Government may, by notification in the Government Gazette, appoint.

2. Definitions.- In this Act, unless the context otherwise requires,-

(a) ‘agriculture’ means the raising of any crop or garden produce or growing of trees on irrigated land or raising of orchards or pastures;

(b) ‘agriculturist’ means a landowner who cultivates land personally or jointly with the members of his family;

(c) ‘agricultural land’ means the land used for agriculture or which is occupied or has been let for agricultural purposes or for purposes subservient to agriculture;

(d) ‘commercial purpose’ means the use of any land or premises for any trade, commerce or business which shall include a shop, commercial establishment, show-room, cinema, petrol pump, godown or any other commercial activity (and shall also include the use thereof partly for residential and partly for commercial purposes);

(e) “competent authority” means the-

(i) Deputy Commissioner of the concerned district for grant of permission for conversion of agricultural land for residential purposes under section 7; and

(ii) Divisional Commissioner concerned for grant of permission for conversion of agricultural land for industrial, commercial and public utility purposes under section 7:

Provided that in case of districts of Leh and Kargil,

tehsils of Gurez and Karnah and inaccessible areas like Marwah, Warwan and other such areas as may be notified by the Government, the competent authority shall be the Tehsildar concerned for grant of permission for residential purposes and Deputy Commissioner concerned for other purposes.

(f) 'conversion' means change of land use from agriculture to nonagricultural purposes;

(g) 'family' shall have the same meaning as assigned to it under the personal law governing the parties;

(h) 'Government' means the Government of Jammu and Kashmir;

(i) 'industrial purpose' means the use of any land or premises or workshop or an open area for any industry, whether a small, medium or large scale unit or a tourism unit and shall include a brick kiln or a kiln but shall not include any premises used for a purpose as defined in clause (d);

(j) 'land' means land which is not occupied as the site of any building in a town or village and is occupied, or has been let, for agricultural purposes or for purposes subservient to agriculture or for pasture and includes.-

(i) the sites of buildings and other structures on such land,

(ii) orchards,

(ii) banjar land as recorded in the record of rights, and

(iv) private forests;

(k) 'landless labourer' means a person who is holding no land for agricultural purposes, whether as owner, or a tenant and earns his livelihood principally by manual labour on land and intends to take the profession of agriculture and is capable of cultivating the land personally.

(l) 'non-agricultural land' means land other than agricultural land;

(m) 'Orchards' means a compact area of land having fruit trees grown thereon or devoted to cultivation of fruit trees in such number that the main use to which the land is put is growing of fruits or fruit trees;

(n) 'public utility purpose' means use of any land for constructing public roads, schools, colleges, hostels, public guest houses, hospitals, diagnostic centres, nursing homes, religious places, public parks, or any other building or facility for the public utility or construction of group housing apartments, flats and colonies ;

(o) 'residential purpose' means use of any land or premises for dwelling of human beings but does not include use of land for construction of

group housing apartments, flats and colonies; and

(p) 'revenue officer' means the officer defined as such under section 6 of the Jammu and Kashmir Land Revenue Act, Samvat 1996; and

(q) 'State Land Use Board' means the Board constituted under section 5;

3. Act not to apply to certain lands.- Nothing in this Act shall apply to,-

(a) land owned by the Government;

(b) land owned by a local authority;

(c) land used for religious or charitable purposes;

(d) land used by the owner for household industries involving traditional occupation, not exceeding one kanal;

(e) land used for such other purpose as may be notified by the Government from time to time on the recommendations of the Land Use Board.

4. Act to override other laws.- The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Transfer of Property Act, Samvat 1977, the Jammu and Kashmir Land Revenue Act Svt. 1996, the Jammu and Kashmir Alienation of Land Act, Samvat 1995, the Jammu and Kashmir Tenancy Act, Samvat 1980, the Jammu and Kashmir Prohibition on Conversion of Land and Alienation of Orchards Act, 1975, the Jammu and Kashmir Land Revenue Act Samvat. 1996, the Jammu and Kashmir Agrarian Reforms Act, 1976 or any other law for the time being in force, or any custom or usage having the force of law or contract or judgment, decree or order of a Court or any authority.

CHAPTER II STATE LAND USE BOARD

5. Constitution of a Board.- (1) The Government shall, by notification in the Government Gazette, constitute a Board to be known as State Land Use Board, composition whereof shall be prescribed. (2) The said Board shall exercise such powers and perform such functions as may be prescribed in this behalf and in particular shall, from time to time,-

(a) take stock of present land use in the State and lay down broad guidelines for optimum utilization of land;

(b) formulate policies and lay down broad guidelines to protect good agricultural lands against degradation on account of soil erosion, water logging, loss of fertility, industrialization etc;

(c) review Revenue laws with particular reference to the problems relating to

consolidation of holding;

(d) review forest laws with particular reference to the problems relating to the degradation and protection of forest lands;

(e) identify problems and bottlenecks in bringing cultivable waste lands, fallow lands etc. under crop production;

(f) lay down broad guidelines for optimum utilization of land reclaimed through implementation of flood protection schemes;

(g) to create an informed public opinion in order to obtain their cooperation with regard to matters concerning better land and water management; and

(h) any other matter which the Board may consider necessary for implementations of the provisions of the Act.

CHAPTER III PROHIBITION ON CONVERSION

6. Prohibition on Conversion of Land use.- From the date of commencement of this Act, no person shall convert or put to use agricultural land for any non-agricultural purpose excepting with the written permission granted under section 7.

7. Permission for Conversion.- (1) Nothing in section 6 shall prevent the Government or the competent authority from permitting any person or any department of the Government or any other body or authority to convert, or change the use of, agricultural land for one or more of the following purposes:-
(a) residential purposes, to the extent of one kanal;
(b) industrial and commercial purposes; or
(c) public utility purposes: Provided that where the area of land for purposes of clauses (b) and (c) exceeds two kanals, no permission shall be granted without prior approval of the Government:

Provided further that the permission for conversion of land notified under the Jammu and Kashmir Development Act, 1970, or the Jammu and Kashmir Municipal Act, 2000, or the Jammu and Kashmir Municipal Corporation Act, 2000 shall be restricted to the notified usage of land in the respective Master Plan:

Provided also that no permission shall be granted for conversion of land which is,-

(i) recorded as irrigated land as per record of rights maintained by the Revenue Department;

(iii) an orchard;

(iv) used for cultivation of saffron;

(iv) falling within two hundred meters of any Railway Line, National Highway, State Highway or any other road maintained by the Government or any Local Authority;

(v) falling outside the radius of, one kilometer of outer limits of abadi deh of a village or, two kilometers of outer limits of a town or city, for residential purposes; and

(vi) falling within the radius of, one kilometer of outer limits of abadi deh of a village or, two kilometers of outer limits of a town or city, for purposes of establishment of an industrial unit:

Provided that the Government may, for reasons to be recorded in writing and after seeking the approval of the Cabinet, by notification, specify industrial units to which this restriction shall not apply.

(2) An application for conversion of agricultural land for nonagricultural purposes shall be made before the competent authority in the prescribed form alongwith such conversion fee as may be prescribed by the Government from time to time:

Provided that no fee shall be charged for conversion of agricultural land up to an extent of one kanal per family for construction of a dwelling house or cattle shed or store house for the bonafide use of the family.

(2) The competent authority shall either grant the permission or reject the same in full or part within 60 days after such request is received: Provided that in case such request is rejected, the reasons for such rejection shall be recorded in writing and communicated to the applicant.

(3) If no order is passed on such request by the competent authority within the prescribed time, the required permission shall be deemed to have been granted and the competent authority shall be liable to a fine of rupees ten thousand in addition to the disciplinary proceedings for such lapse. 8. Appeal against the order of competent authority.- Any person

aggrieved by an order of the competent authority, rejecting the grant of permission, may file an appeal before the –

(i) Financial Commissioner (Revenue) in case the competent authority be the Divisional Commissioner;

(ii) Divisional Commissioner concerned in case the competent authority be the Deputy Commissioner; and

(iii) Deputy Commissioner concerned in case the competent authority be the Tehsildar,

within sixty days of the receipt of such order by the applicant and the appellate authority may, after giving the appellant an opportunity of being heard, reverse, alter or confirm the order made by the competent authority and such order of the appellate authority shall be final and conclusive.

9. Monitoring of implementation of this Act.- (1) The Assistant Commissioner (Revenue) and Tehsildar Settlement shall be responsible for monitoring the implementation of this Act within their respective areas of jurisdiction.

(2) If any violation of the Act is noticed by, or reported to, the Assistant Commissioner (Revenue) or the Tehsildar, as the case may be, he shall file a complaint in the court of competent jurisdiction for prosecution of the offender under section 11 of this Act and take such measures as he thinks fit for restoration of the land for agricultural use.

(3) If, on noticing any violation of this Act, or on receiving any report under section 10, or on receiving any information from any other source, the Assistant Commissioner (Revenue) or the Tehsildar Settlement, as the case may be, fails to take action under sub-section (2), it shall be treated as a dereliction of duty on his part and he shall be liable to disciplinary action for such dereliction.

10. Report of violations.- (1) It shall be the duty of every Agriculture Extension Officer or such other officer as the Government may specify in this behalf to report violations of this Act in their respective areas of jurisdiction to the Assistant Commissioner (Revenue) concerned or the Tehsildar Settlement concerned.

(2) If the Agriculture Extension Officer or such other officer as specified under sub-section (1) fails to report violations of this Act to the concerned Assistant Commissioner (Revenue) or the Tehsildar Settlement, as the case may be, it shall be treated as a dereliction of duty on his part and he shall be liable to disciplinary action for such dereliction.

11. Penalty for unauthorized conversion.- (1) If any person converts the agricultural land for non-agricultural purposes or puts it to non-agricultural use without obtaining the prior permission of the competent authority as required under section 7, he shall be punished with imprisonment which may extend to one year or with fine which shall not be less than 10% of the market value of the such land as notified under the Stamp Act Samvat, 1977 or with both.

(2) In addition to the punishment of imprisonment or fine or both, he shall also be liable to restore such land to the agricultural use at his own expense.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, no court shall take cognizance of any offence under this section unless a complaint in this behalf is made by a Revenue Officer under sub-section (2) of section 9.

CHAPTER IV
PROHIBITION ON TRANSFER OF LAND

12. Prohibition on transfer of land to a non-agriculturist.- (1) Save as otherwise provided in this chapter, from the date of commencement of this Act no transfer of land by way of sale, gift, will, exchange, lease, mortgage with possession, creation of a tenancy or in any other manner shall be valid in favour of a person who is not an agriculturist.

Explanation.- For purposes of this sub-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;

(iii) transfer by way of lease of land or building in a municipal area; but shall include-

(a) a benami transaction in which land is transferred to an agriculturist for a consideration paid or provided by a nonagriculturist; and

(b) an 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 other than irrigated land by any person in favour of,-

(i) a landless labourer; or

(ii) a village artisan; or

(iii) a person for construction of a dwelling house, shop, or commercial establishment in any area in the State, subject to the condition that land to be transferred does not exceed-

(a) one kanal in case of dwelling house; and

(b) one-half of a kanal in case of shop or commercial establishment:

Provided that such person does not own any vacant land or a dwelling house in such area in the State;

(iv) the Government, or a statutory authority, Corporation or Board

established by or under a statute for which land is acquired by the Government under the Land Acquisition Act, 1990;

(v) a person who has become a non-agriculturist on account of acquisition of his land for any public purpose under the Land Acquisition Act, 1990.

13. Documents not to be Registered.- (1) No Registrar or the SubRegistrar appointed under the Registration Act, Samvat 1977 shall register any document pertaining to a transfer of land, which is in contravention of section 12:

Provided that the Registrar or the Sub-Registrar may register any transfer-

(i) where the lease is made in relation to a part or whole of a building;

or

(ii) 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 institution constituted or established under any law for the time being in force.

(2) Where-

(i) the Registrar or the Sub-Registrar, appointed under the Registration Act, Samvat 1977 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 section 12 ; or

(ii) a Revenue Officer 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 section 12, such Registrar, the Sub-Registrar or the Revenue Officer, as the case may be, shall make reference to the Collector of the District, in which the land or any part thereof is situate, and the Collector, on receipt of such reference or where the Revenue Officer happens to be the Collector of the District himself, he 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 section 12, 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 section 12 and he shall, within 90 days from the date of receipt of reference made to him or such longer period as the Divisional Commissioner may allow for reasons to be recorded in writing, record his decision thereon and intimate the findings to the Registrar, Sub-Registrar or the Revenue Officer concerned.

(3) Registrar and Sub-Registrar shall furnish every month a statement of documents registered during the month to the competent authority who shall on receipt of such statement verify if any provision of this Act has been contravened.

14. Appeal against the findings of Collector.- Any person aggrieved by the findings recorded by the Collector that a particular transfer of land is in

contravention of the provisions of section 12, may within a period of 30 days from the date on which the order recording such findings is made by the Collector file an appeal to the Divisional Commissioner concerned and the Divisional Commissioner may, after giving the parties an opportunity of being heard, reverse, alter or confirm the order made by the Collector and such order of the Divisional Commissioner shall be final and conclusive.

15. Revision.- The Financial Commissioner may either on a report of a Revenue Officer or on an application, call for the records of any proceedings which are pending before, or have been disposed of by, a Revenue Officer and in which no appeal lies thereto, for the purpose of satisfying himself as to the legality or propriety of such proceedings or order made therein and may pass such order in relation thereto as he may think fit:

Provided that no order shall be passed under this section which adversely affects any person unless such person has been given a reasonable opportunity of being heard.

16. Vesting of land in the State.- (1) Where the Collector of the District under sub-section (2) of section 13, in case an appeal is not made within the prescribed period or the Divisional Commissioner in appeal under section 14 or the Financial Commissioner in revision under sub-section 15 decides that the transfer of land is in contravention of the provisions of section 12, such transfer shall be void abinitio and the land involved in such transfer together with structures, buildings or other attachments, if any, shall vest in the Government free from all encumbrances.

(2) It shall be lawful for the Government to make use of the land which vests or may be vested in it under sub-section (1) for such purposes as it may deem fit to do so.

CHAPTER V UTILIZATION OF LAND

17. Power to take possession of any uncultivated land.- (1) If a Revenue Officer, 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 not been cultivated for the last more than one year and the land is, or can be made, fit for purposes of agricultural production, he may serve a notice on the owner of such land requiring him to cultivate the land within such period as may be specified in the notice.

(2) If the Revenue Officer is satisfied that the person on whom notice was served under sub-section (1) has failed to cultivate the land within the period specified therein, he shall submit a report therefor to the Collector concerned.

(3) On receipt of report from a Revenue Officer under sub-section (2), the Collector shall take possession of such land.

18. Lease by Collector.- The Collector may, after he has taken possession of any land under section 17, transfer the said land on lease basis to any person or a department of the Government on such terms and conditions as he may deem fit for the purposes of agricultural production:

Provided that the period of lease shall not be less than two years and not more than ten years.

19. Delivery of possession on termination of lease.- (1) Where on the expiry of the period of lease, the Collector is satisfied, after making such inquiry as he considers necessary, that the owner of the land is ready for, or capable of, cultivating such land and that the land ought to be returned to such owner, he shall, by order in writing, deliver the possession of land to him.

(2) If the Collector, after making such inquiry as he considers necessary, is satisfied that the owner of such land is not ready for, or capable of, cultivating such land, he may, by order in writing, either extend the term of lease by such period as he may deem fit or lease out the land in favour of any other person or a department of the Government on such terms and conditions as he may deem fit for the purposes of agricultural production.

20. Appeal.- (1) Any person aggrieved by the decision of the Collector in any matter under this Chapter may file an appeal to the Divisional Commissioner concerned within thirty days of the date of such decision. (2) The Divisional Commissioner may, after giving the parties an opportunity of being heard, reverse, alter or confirm the order made by the Collector and such order of the Divisional Commissioner shall be final and conclusive.

CHAPTER VI MISCELLANEOUS

21. Power to give directions:- For the purposes of giving effect to the provisions of this Act it shall be competent for the Government to issue such directions as it may deem fit to any officer, authority or person subordinate to the Government.

22. Bar of Jurisdiction:- Save as otherwise expressly provided in the Act, no Court shall entertain any suit, or other proceeding to set-aside or modify, or question the validity of any order or decision made or passed by any officer or authority under the Act or any rules made thereunder, or in respect of any other matter falling within its scope.

23. Protection of action taken in good faith:- No suit, prosecution or other legal proceedings shall be instituted against any person for anything which is in good faith done or intended to be done under this Act or under the rules made thereunder.

24. Power to remove difficulties:- If any difficulty arises in giving effect to the provisions of this Act, the Government may, by order in the Government Gazette, make such provisions not inconsistent with the purposes or provisions of this Act as appear to it to be necessary or expedient for removing the difficulty.

25. Power to make rules:- (1) The Government may, by notification in the Government Gazette, make rules for carrying out all or any of the purposes of this Act.

(2) Every rules made under this Act shall, immediately after it is made, be laid before the Legislative Assembly of the State if it is in the session and if it is not in session, in the session immediately following, for a total period of fourteen days which may be comprised in one session, or in two successive sessions, and if before the expiration of the session in which it is so laid or the session immediately following the Legislative Assembly agrees in making any modification in the rule or in the annulment of the rule, the rule shall from the date on which the modification or annulment is notified have effect only in such modified form or shall stand annulled as the case may be, so however, that any such modification or annulment shall be without prejudice to the validity of any thing previously done under that rule.