

THE GUJARAT LAND GRABBING (PROHIBITION) BILL, 2020

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THE GUJARAT LAND GRABBING (PROHIBITION) BILL, 2020.

GUJARAT BILL NO. 19 OF 2020.

A BILL

to prohibit land grabbing activities and connected matters in the State of Gujarat.

It is hereby enacted in the Seventy-first Year of the Republic of India as follow:-

- 1.** (1) This Act may be called the Gujarat Land Grabbing (Prohibition) Act, 2020.
- (2) It extends to the whole of the State of Gujarat.
- (3) It shall be deemed to have come into force on the 29th August, 2020.

**Short title,
extent and
commencement.**

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

- (a) "Committee" means a committee notified from time to time by the State Government under the chairmanship of District Collector for the purposes of this Act;
- (b) "Government" means the Government of Gujarat;
- (c) "land" includes rights in or over land, benefits to arise out of land and buildings, structures and other things attached to the earth or permanently fastened to anything attached to the earth;
- (d) "land grabber" means a person who commits land grabbing and includes any person who gives financial aid to any person for taking illegal possession of lands or for construction of unauthorized structures thereon, or who collects or attempts to collect from any occupiers of such lands rent, compensation and other charges by criminal intimidation, or who abets the doing of any of the above mentioned acts, and also includes the successors-in-interest;
- (e) "land grabbing" means every activity of land grabber to occupy or attempt to occupy with or without the use of force, threat, intimidation and deceit, any land (whether belonging to the Government, a Public Sector Undertaking, a local authority, a religious or charitable institution or any other private person) over which he or they have no ownership, title or physical possession, without any lawful entitlement and with a view to illegally taking possession of such land or creating illegal tenancies or lease or licence, agreements or transfer or sale or by constructing unauthorized structures thereon for sale or hire or use or occupation of such unauthorized structures and the term "grabbed land" shall be construed accordingly;
- (f) "person" includes a group or body of persons, an association or a company, or a religious or charitable institution or endowment, whether incorporated or not;

- (g) “prescribed” means prescribed by rules made under this Act;
- (h) ‘Special Court’ means a Special Court constituted under section 7;
- (i) “unauthorized structures” means any structure constructed, without express permission in writing of the competent authority, or except in accordance with any law for the time being in force in the area.

- 3.** The land grabbing in any form shall be prohibited and declared unlawful and any activity connected with or arising out of land grabbing shall be an offence punishable under this Act. **Land grabbing to be unlawful.**
- 4.** (1) No person shall commit or cause to be committed land grabbing, by himself or through any other person. **Prohibition on land grabbing.**
- (2) Any person who, on or after the commencement of this Act, continues to be in occupation, otherwise than as a lawful tenant, of a grabbed land belonging to the Government, local authority, religious or charitable institution or endowment or other private person, shall be guilty of an offence under this Act.
- (3) Whoever contravenes the provisions of sub-section (1) or sub-section (2) shall on conviction, be punished with imprisonment for a term which shall not be less than ten years but which may extend to fourteen years and with fine which may extend to *Jantri* value of such properties.
- 5.** Whoever, with a view to grabbing land in contravention of the provisions of this Act or in connection with any such land grabbing,- **Penalty for other offences in connection with land grabbing.**
- (a) sells or allots, or offers or advertises for sale or allotment, or has in his possession for the purpose of sale or allotment any land grabbed;
- (b) instigates or incites any person to commit land grabbing;
- (c) uses any land grabbed or causes or permits knowingly to be used for purposes, connected with sale or allotment; or

- (d) enters into an agreement for construction of any structure or buildings on such land;
- (e) causes or procures or attempts to procure any person to do any of above mentioned acts;

shall, on conviction, be punished with imprisonment for a term which shall not be less than ten years but which may extend to fourteen years and with fine which may extend to *Jantri* value of such properties.

Offences by companies.

6. (1) If the person contravening the provisions of this Act is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.

- (2) Notwithstanding anything in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or that the commission of the offence is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation:— For the purposes of this section:-

- (a) "Company" means anybody corporate and includes firm or other association of individuals; and
- (b) "Director" in relation to a firm, means a partner in the firm.

Constitution of Special Courts.

7. (1) The State Government may, with the concurrence of the Chief Justice of the High Court of Gujarat, by notification in the *Official Gazette*

constitute one or more Special Courts for such area or areas, or for such cases or class or group of cases, as may be specified in the notification.

(2) Where any question arises as to the jurisdiction of any Special Court, it shall be referred to the State Government, whose decision in the matter shall be final.

(3) A Special Court shall be presided over by a judge to be appointed by the State Government with the concurrence of the Chief Justice of the High Court of the Gujarat.

(4) The State Government may also appoint, with the concurrence of the Chief Justice of the High Court of Gujarat, Additional Judges to exercise jurisdiction of the Special Court.

(5) A person shall not be qualified for appointment as a Judge or an Additional Judge of a Special Court unless he immediately before such appointment, is or has been a Sessions Judge or a District Judge.

(6) The Government from time to time may, by notification in the *Official Gazette*, reconstitute the Special Courts constituted under sub-section (1) and may, at any time abolish such Special Courts by a like notification.

(7) A Judge of the Special Court shall hold office for a term of three years from the date on which he enters upon his office, or until the Special Court is reconstituted or abolished under sub-section (6), whichever is earlier.

8. The State Government shall appoint, for every Special Court, a person to be the Public Prosecutor.

**Public
Prosecutor.**

9. (1) The Special Court may, either *suo moto* or on application made by any person, or any officer authorized by District Collector, take cognizance of and try every case arising out of any alleged act of land grabbing or with respect to the ownership and title to, or lawful possession of, the land grabbed, whether before or after the commencement of this Act, and pass such orders (including orders by way of interim directions) as it deems fit.

**Procedure
and
powers of
Special
Courts.**

(2) Notwithstanding anything in the Code of Civil Procedure, 1908, any case in respect of an alleged act of land grabbing or the determination of question of title and ownership to, or lawful possession of any land grabbed under this Act, shall, subject to the provisions of this Act, be triable in the Special Court and the decision of Special Court shall be final. **V of 1908.**

(3) Notwithstanding anything in the Code of Civil Procedure 1908, the Special Court may follow its own procedure which shall not be inconsistent with the principles of natural justice and fair play and subject to the other provisions of this Act and of any rules made thereunder while deciding the Civil liability, **V of 1908.**

(4) Notwithstanding anything in the Code of Criminal Procedure, 1973, it shall be lawful for the Special Court to try all offences punishable under this Act. **2 of 1974.**

(5) The Special Court shall determine the order in which the civil and criminal liability against a land grabber be initiated. It shall be within the discretion of the Special Court whether or not to deliver its decision or order until both civil and criminal proceedings are completed. The evidence admitted during the criminal proceeding may be made use of while trying the civil liability. But additional evidence, if any, adduced in the civil proceedings shall not be considered by the Special Court while determining the criminal liability. Any person accused of land grabbing or the abetment thereof before the Special Court shall be a competent witness for the defence and may give evidence on oath in disproof of the charge made against him or any person charged together with him in the criminal proceeding:

Provided that he shall not be called as a witness except on his own request in writing or his failure to give evidence shall be made the subject of any comment by any of the parties or the special court or give rise to any presumption against himself or any person charged together with him at the same proceeding.

(6) Every case under sub-section (1) shall be disposed off finally by the

Special Court, as far as possible, within a period of six months from the date of institution of the case before it.

(7) Every finding of the Special Court with regard to any alleged act of land grabbing shall be conclusive proof of the fact of land grabbing and of the persons who committed such land grabbing, and every judgment of the Special Court with regard to the determination of title and ownership to, or lawful possession of, any land grabbed shall be binding on all persons having interest in such land.

(8) When an offence of land grabbing is proved, the Special Court may if it thinks fit, order that possession of the same be restored to that person after evicting by force, if necessary, any other person who may be in possession of the property.

(9) It shall be lawful for the Special Court to pass such order as it may deem fit to advance the cause of justice. It may award compensation in terms of money for wrongful possession of the land grabbed which shall not be less than an amount equivalent to the *Jantri* value of the land grabbed as on the date of the order and profits accrued from the land payable by the land grabber to the owner of the grabbed land and may direct re-delivery of the grabbed land to its rightful owner. The amount of compensation and profits, so awarded and costs of re-delivery, if any, shall be recovered as an arrear of land revenue in case the Government is the owner, or as a decree of a civil court, in any other case to be executed by the Special Court:

Provided that the Special Court shall, before passing an order under this sub-section, give to the land grabber an opportunity of making his representation or of adducing evidence, if any, in this regard, and consider such representation and evidence.

10. Save as expressly provided in this Act, the provisions of the Code of Civil Procedure, 1908 and the Code of Criminal Procedure, 1973, in so far as they are not inconsistent with the provisions of this Act, shall apply to the proceedings before the Special Court and for the purposes of the

Special Court to have powers of Civil Court and the Court of Sessions.

V of 1908.

2 of 1974.

Burden of proof.

provisions of the said enactments, Special Court shall be deemed to be a Civil Court, or as the case may be, a Court of Sessions and shall have all the powers of a Civil Court and a Court of Sessions and person conducting a prosecution before the Special Court shall be deemed to be an Assistant Public Prosecutor.

11. (1) Where in any proceedings under this Act, a land is alleged to have been grabbed, and such land is *prima facie* proved to be the land owned by the Government or by a private person, the Special Court shall presume that the person who is alleged to have grabbed the land is a land-grabber and the burden of proving that the land has not been grabbed by him shall be on such person.

(2) Where it is proved that a land grabber or any person on his behalf is or has at any time been, in possession of movable or immovable property which he cannot satisfactorily account for, or where his pecuniary resources are disproportionate to his known sources of income, the Court shall, unless contrary is proved, presume that such property or pecuniary resources have been acquired or derived by his activities as a land grabber.

Information to be recorded and investigation to be carried out by the police officer.

12. Notwithstanding anything contained in the Code of Criminal Procedure, 1973,-

(a) no information about the commission of an offence under this Act, shall be recorded by a police officer without the prior approval of the District Collector in consultation with the Committee notified by the Government;

(b) no investigation of an offence under the provision of this Act shall be carried out by a police officer below the rank of the Deputy Superintendent of Police, or for the areas where the Commissioner of Police is appointed by the State Government, by a police officer not below the rank of the Assistant Commissioner of Police.

Persons acting under the Act to be public servants.

13. Every person acting under the provisions of this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

**Protection
of action
taken in
good faith.**

14. No suit, prosecution or other legal proceeding shall lie against any officer or employee of the special Court or any officer of the Government for anything which is in good faith done or intended to be done under this Act or the rules made thereunder.

15. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or custom, usage or agreement or decree or order of a court or any other tribunal or authority.

**Act to
override
other laws.**

16. (1) The State Government may, by notification in the *Official Gazette*, make rules to carry out the purposes of this Act.

**Power to
make
rules.**

(2) All rules made under this section shall be laid for not less than thirty days before the State Legislature as soon as possible after they are made, and shall be subject to such modifications as the legislature may make during the session in which they are so laid or the session immediately following.

17. Any transaction relating to an alienation of a land grabbed or any part thereof by way of sale, lease, gift, exchange, settlement, surrender, usufructuary mortgage or otherwise, or any partition effected or a trust created in respect of such land, which has taken place whether before or after the commencement of this Act shall, except to the extent ordered by the Special Court be null and void.

**Prohibition of
alienation of
lands grabbed.**

18. (1) If any difficulty arises in giving effect to the provisions of this Act, the State Government may, by order published in the *Official Gazette*, make such provisions not inconsistent with the provisions of this Act, as appears to be necessary or expedient for removing the difficulty:

**Power of State
Government to
remove
difficulties.**

Provided that no order under sub-section (1) shall be made after the expiry of two years from the date of commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before the State Legislature.

**Guj. Ord.
10 of
2020.**

19. (1) The Gujarat Land Grabbing (Prohibition) Ordinance, 2020 is

**Repeal and
saving.**

hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the said Act.

STATEMENT OF OBJECTS AND REASONS

It has come to the notice of the Government that there are attempts on the part of certain lawless persons operating individually or in groups to grab either by force, or by deceit or otherwise lands belonging to the Government, a local authority, a religious or charitable institution or endowment as well as private individuals. The land grabbers are setting up fictitious claims and indulging in large scale and fraudulent sales of land through unscrupulous real estate dealers or otherwise. As public order is adversely affected by such unlawful activities of land grabbers in the State.

Hence, the State Government of Gujarat with a view to prohibiting the activities of land grabbing and to provide for matters connected therewith has proposed to bring the Gujarat Land Grabbing (Prohibition) Act, 2020 into force. Apart from declaring land grabbing as unlawful, the State Government proposes to prohibit land grabbing. Therefore, it is proposed to provide for penalty for offences in connection with land grabbing to effectively implement this Act and for the purpose of providing speedy enquiry into an alleged act of land grabbing and trial of cases in respect of the ownership and title to, or lawful possession of the land grabbed by constituting a Special Court. It is felt that the State Government shall be able to curb the illegal land grabbing by enforcing the proposed legislation.

As the Gujarat Legislative Assembly was not in session at that time, the Gujarat Land Grabbing (Prohibition) Ordinance, 2020 was promulgated to achieve the aforesaid objects.

The Bill seeks to replace the said Ordinance by an Act of the State Legislature.

The following notes on *clauses* explain, in brief, the important provisions of the Bill:-

Clause 1.-This clause provides for short title, extent and commencement of the Act.

Clause 2.- This clause defines certain terms used in the Bill.

Clauses 3 and 4.- These clauses provide that the land grabbing in any form shall be prohibited and shall be declared unlawful and any activity connected with or arising out of land grabbing shall be an offence punishable under the Act; it also provide for punishment for continuing to be in occupation, otherwise than as a lawful tenant, of a grabbed land belonging to the Government, local authority, religious or charitable institution or endowment or other private person.

Clause 5.- This clause provides for penalty for the offences as specified therein committed in connection with land grabbing.

Clause 6.- This clause provides for the offences committed by the company.

Clause 7.- This clause provides for the constitution of the Special Courts with the concurrence of the Chief Justice of the High Court of Gujarat.

Clause 8.- This clause provides for the appointment of the public prosecutor for the special court.

Clause 9.- This clause provides for the procedure to be followed and the powers to be exercised by the Special Court.

Clause 10.- This clause provides that the Special Court shall be deemed to be a Civil Court or a Court of Sessions and shall have all the powers of a Civil Court and a Court of Sessions and person conducting a prosecution before the Special Court shall be deemed to be an Assistant Public Prosecutor.

Clause 11.- This clause provides for the burden of proof would lie on the person who is alleged to have grabbed the land.

Clause 12.-This clause provide for the Information to be recorded and investigation to be carried out by the police officer.

Clause 13.-This clause provides that every person acting under the provisions of this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

Clause 14.-This clause provides for the protection of action taken in good faith.

Clause 15.-This clause provides that the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or custom, usage or agreement or decree or order of a court or any other tribunal or authority.

Clause 16.- This clause provides for the power of State Government to make rules under this Act.

Clause 17.- This clause provides for the alienation of the lands grabbed.

Clause 18.- This clause empowers the State Government to remove difficulties arising within a period of two years in giving effect to the provisions of the Act.

KAUSHIK PATEL,

FINANCIAL MEMORANDUM

Clause 7 of the Bill seeks to empower the State Government, with the concurrence of the Chief Justice of the High Court of Gujarat, to constitute one or more Special Courts for such area or areas, or for such cases or class or group of cases as also *clause 8* of the Bill provides for the appointment of the Public Prosecutor. Hence, the Bill, if enacted and brought into force would involve expenditure from the Consolidated Fund of the State. However, at present, it is not possible to ascertain the exact amount of grant to be made available for such purpose.

KAUSHIK PATEL,

MEMORANDUM REGARDING DELEGATED LEGISLATION

This Bill provides for delegation of legislative powers in the following respects:-

Clause 7.- (i) Sub-clause (1) of this clause empowers the State Government to constitute, by notification in the *Official Gazette*, one or more Special Courts for such area or areas, or for such cases or class or group of cases, as may be specified in the notification, with the concurrence of the Chief Justice of the High Court of Gujarat.

(ii) sub-clause (6) of this clause empowers the State Government to reconstitute, by notification in the *Official Gazette*, the special Courts constituted under sub-clause (1) and also empowers to abolish at any time such Special Courts.

Clause 16. – Sub-clause (1) of this clause empowers the State Government to make, by notification in the *Official Gazette*, rules for carrying out the purposes of the Act.

Clause 18. – Sub-clause (1) of this clause empowers the State Government to make an order published in *Official Gazette*, to remove any difficulty if arisen in giving effect to the provisions of this Act within a period of two years.

The delegation of legislative power, as aforesaid, is necessary and is of a normal character.

Dated the 16th September, 2020.

KAUSHIK PATEL.

GUJARAT LEGISLATURE SECRETARIAT

GUJARAT BILL NO. 19 OF 2020.

A BILL

*to prohibit land grabbing activities and
connected matters in the State of Gujarat.*

**[SHRI KAUSHIK PATEL ,
MINISTER FOR REVENUE]**

**(As published in the Gujarat Government
Gazette 16th September, 2020)**

D.M.PATEL,
Secretary,
Gujarat Legislative Assembly.