



PARLIAMENT OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF
SRI LANKA

MORTGAGE (AMENDMENT)
ACT, No. 3 OF 1990

[Certified on 6th March 1990]

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L.D.—O. 63/89.

AN ACT TO AMEND THE MORTGAGE ACT

BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows:—

1. This Act may be cited as the Mortgage (Amendment) Act, No. 3 of 1990.

Short title.

2. Section 46 of the Mortgage Act (hereinafter referred to as the "principal enactment") is hereby repealed and the following section substituted therefor:—

Replacement of section 46 of Chapter 89

'Property liable to sale in execution of decree.

46. No decree in any hypothecary action upon any mortgage of land which is created after the coming into force of this section, and no decree in any action for the recovery of any moneys due upon any such mortgage, shall order any property, whatsoever, other than the mortgaged property to be sold for the recovery of any money found to be due under the mortgage, and no property whatsoever, other than the mortgaged property, shall be sold or be liable to be sold in execution of any such decree.

In this section "action for the recovery of moneys due upon a mortgage" includes any action for the recovery of any debt secured by a mortgage whether the cause of action sued upon arises by reason of the mortgage or otherwise.'

3. The following new section is inserted immediately after section 47 and shall have effect as section 47A of the principal enactment:—

Insertion of new section 47A in the principal enactment.

'Effect of the execution of a separate instrument at the execution of the mortgage bond.

47A. (1) Where at the time of the execution of a mortgage bond in favour of a lending institution for the payment of a loan, the principal of which exceeds one hundred and fifty thousand rupees the mortgagor executes a separate instrument, attested by the notary attesting the bond and by the witnesses to the bond containing—

- (a) a special declaration on the part of the mortgagor that he renounces the benefit of section 46 and that the effect of such renunciation has been explained to him by the notary; and
- (b) an endorsement signed by the notary to the effect that he has explained to the mortgagor the effect of such renunciation,

then, in addition to the mortgaged property, any other property belonging to the mortgagor shall, subject to the provisions of subsection (2), be liable to be ordered to be sold and to be sold under the decree in an action upon the mortgage, and the provisions of section 218 of the Civil Procedure Code (Chapter 101) shall, *mutatis mutandis*, apply to the seizure and sale of such other property.

(2) In any case referred to in subsection (1), no process shall issue for the seizure and sale of any property of the mortgagor, other than the mortgaged property, until the mortgaged property is sold and the proceeds thereof applied in satisfaction of the decree.

(3) Where the separate instrument referred to in subsection (1) is to be executed by any mortgagor, it shall be the duty of the notary to explain to the mortgagor, that the instrument provides for the renunciation of the benefit of section 46 and that the effect of such renunciation is that, in addition to the mortgaged property, other property of the mortgagor is liable to be sold in execution of a decree in an action upon the mortgage.

(4) No stamp duty shall be payable upon the further instrument referred to in this section.

(5) Where the mortgage is created by an instrument referred to in section 69 which is attested by an officer of a lending institution, then for the purpose of the application of the provisions of subsection (1) and subsection (3) of this section, any reference in those provisions to the notary attesting the mortgage bond shall be deemed to be a reference to such officer.

(6) Nothing in this section shall apply to any action upon a mortgage created before the coming into force of this section.

(7) For the purpose of this section "lending institution" means—

(a) a licensed Commercial Bank within the meaning of the Banking Act, No. 30 of 1988 ;

- (b) the State Mortgage and Investment Bank established by the State Mortgage and Investment Bank Act, No. 13 of 1975 ;
- (c) the National Development Bank established by the National Development Bank of Sri Lanka Act, No. 2 of 1979 ;
- (d) the National Savings Bank established by the National Savings Bank Act, No. 30 of 1971 ; and
- (e) the Development Finance Corporation of Ceylon established by the Development Finance Corporation of Ceylon Act (Chapter 165).'

4. The following new Part is inserted immediately after section 62 and shall have effect as Part IIA of the principal enactment :—

Insertion
of new
Part IIA
in the
principal
enactment.

“PART IIA

SPECIAL PROVISIONS FOR RECOVERY WHERE PARATE EXECUTION OF IMMOVABLE PROPERTY IS EMPOWERED

Provisions
of this
Part
to be in
addition to
provisions
of certain
other laws.

62A. The provisions of this Part shall be in addition to and not in derogation of the provisions of any laws which empower certain banks and other institutions to exercise the powers of parate execution for the purpose of recovery of loans granted by them on the security of immovable property, in the event of default.

Possession.

62B. (1) Where bank or an institution is empowered to authorise any person to enter into possession of or to maintain and to manage the property mortgaged and such person is unable or apprehends that he will be unable to take possession of that land because of any obstruction or resistance which has been or is likely to be offered, such officer shall, on his making an application in that behalf to the Magistrate's Court having jurisdiction over the place where that land is situated, be entitled to an order of that court directing the Fiscal to deliver possession of the land to him.

(2) Where an order under subsection (1) is issued to the Fiscal by a Magistrate's Court he shall forthwith execute such order and shall in writing report to that Court the manner in which the order was executed.

(3) For the purpose of executing an order issued by a Magistrate's Court under subsection (1), the Fiscal or any person acting under his direction may use such force as may be necessary to enter the land to which that order relates and to eject any person in occupation of that land and to deliver possession of that land to the officer who is authorized to take possession of that land, for or on behalf of the bank or institution.

Delivery of possession in certain circumstances.

62c. Where after sale by public auction and the delivery of a certificate of sale to the purchaser of the property mortgaged, the purchaser is unable to take effective possession of it, he shall on application to the District Court of Colombo or the District Court having jurisdiction over the place where the property is situate, and on production of the certificate of sale be entitled to an order for the delivery of possession of the property.

Application to be in accordance with Chapter XXIV of the Civil Procedure Code.

62d. Every application under section 62c shall be made, and shall be disposed of, by way of summary procedure in accordance with the provisions of Chapter XXIV of the Civil Procedure Code ; and on all documents filed for the purpose of each such application and on all proceedings held thereon, stamp duties and other charges shall be payable at the respective rates payable under any written law for the time being in force, on application for, and proceedings connected with or incidental to, the execution of a decree of a District Court for the delivery of possession of any immovable property of the same value as the property to which such application relates.

Safeguarding of rights of a person having an independent title.

62e. Where any immovable property sold in pursuance of the law empowering the mortgagee to sell, is in the possession or occupation of a person under a possession or indent of the debtor or under a title created by the debtor prior to the mortgage by an instrument duly executed and duly registered prior to the mortgage, the right of such person shall have priority over the

rights of the purchaser, and the purchaser shall not be entitled to an order for delivery of possession of such immovable property.

62F. Where any immovable property sold in pursuance of the preceding provisions is in the occupancy of the debtor or of some person on his behalf or of some person claiming under a title created by the debtor subsequent to the mortgage of the property to the bank or institution the District Court shall order delivery to be made by putting the purchaser, or any person whom he may appoint to receive possession on his behalf in possession of the property.

Right of a debtor whose title was created subsequent to the mortgage of the property.

62G. (1) Where any immovable property sold in pursuance of the law empowering the mortgagee to sell, is in the occupancy of a tenant or other person entitled to occupy the same by virtue of an agreement entered into before the date of execution of the mortgage, but which transaction has not been duly registered, the following provisions shall apply :—

Where immovable property sold is in the occupation of a tenant or other persons entitled to occupy such property.

- (a) (i) if the mortgagee has given the tenant or person in occupation notice of the execution of the mortgage in his favour with full particulars such as the name of the land and the volume and folio in which the bond is registered within a month of its execution, and the tenant or other person in occupation fails within one month of the receipt of such notice to register a document substantially in the Form No. 6 set out in the First Schedule to this Act in the same volume and folio as in the notice, then the court shall order delivery of possession to be made by putting in possession the purchaser or any person whom he may appoint to receive possession on his behalf ;

(ii) where as a consequence of a purchaser or other person being put into possession under subparagraph (i), a tenant or person in occupation is dispossessed, he shall be entitled to such compensation as the court may think reasonable, regard being had to the period of tenancy or occupancy and the compensation so ordered shall be paid by the purchaser to the tenant or person in occupation only after the purchaser has received possession ;

(b) (i) if the mortgagee has given the tenant or person in occupation notice of the execution of the mortgage in his favour with full particulars such as the name of the land and the volume and the folio in which the bond is registered within a month of its execution and the tenant or other person in occupation duly registered within one month of the receipt of notice by him a document substantially in the Form No. 6 set out in the First Schedule to this Act in the same volume and folio as in the notice referred to, and forthwith notifies the mortgagee of this fact in writing, the District Court shall order delivery of possession to be made by fixing a notice that the sale has taken place in the Sinhala, Tamil and English languages in some conspicuous place on the land and proclaiming to the tenant or person in occu-

pation in such manner as the court may direct, at some convenient place, that the interests of the debtor have been transferred to the purchaser. The cost of such proclamation shall be fixed by the court and shall be prepaid by the purchaser ;

(ii) if the tenant or person entitled to occupy consents to accept a sum of money as compensation in lieu of his tenancy rights or right to occupy, then the Court shall order delivery of possession to be made by putting the purchaser or any person whom he may appoint to receive possession on his behalf, only after such compensation has been deposited in court by the purchaser ;

(iii) the quantum of compensation, where the property is business or residential premises shall be the equivalent of five years rent, and in the case of other property, the compensation shall be such amount as the court deems reasonable, in all the circumstances of the case.

62H. Every order under section 62F shall be deemed to be an order for delivery of possession under section 287 of the Civil Procedure Code, and every order made under section 62G shall be deemed to be an order for delivery of possession under section 288 of the same Code and may be enforced in a like manner as an order so made.”

Order under section 62F to be an order made under section 287 of the Civil Procedure Code.

Amendment of the First Schedule to the principal enactment.

5. The First Schedule to the principal enactment is hereby amended by the addition at the end thereof, of the following:—

“FORM 6

APPLICATION FOR REGISTRATION OF AN INSTRUMENT RELATING TO A RIGHT TO OCCUPY LAND

To the Registrar of Lands

I (name in full and address) apply under section of the Mortgage Act for the registration in or incontinuation of the folios specified at 'A' below of my right to occupy the land, by virtue of an agreement, particulars of which are given at B' below:

A. Volume:

Folio:

Volume:

Folio:

B. My right to occupy is by virtue of deed/instrument dated executed by the owner thereof or by virtue of an oral tenancy agreement with the owner.

The registration fee of Rs. is enclosed in stamps.

Signature of Applicant or * Agent.

* Agent means an Agent authorised in writing, by the Applicant.”.

Sinhala text to prevail in case of inconsistency.

6. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.