

¹[CHAPTER VIII-A

ACQUISITION OF CESSED PROPERTIES FOR CO-OPERATIVE SOCIETIES OF OCCUPIERS

Application
of Chapter
VIII-A to
certain
buildings.

103A. This Chapter shall come into force on and from the commencement of the Maharashtra Housing and Area Development (Second Amendment) Act, 1986, and shall apply to all the cessed buildings which are erected before the 1st day of September 1940 and are classified as belonging to Category A under sub-section (1) of section 84 :

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²[Provided that, nothing in this Chapter shall apply to any cessed building belonging to Category A if, on the date of commencement of the Maharashtra Housing and Area Development (Second Amendment) Act, 1986, out of the total number of occupiers of such building, fifty per cent. or more occupiers are using the tenements or premises in their possession for commercial or non-residential purpose.]

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Explanation.—For the purposes of this section, any such building where a floor or any part of a building is constructed subsequently and such floor or part is not separable, shall be deemed to be a building belonging to Category A.

Acquisition
of cessed
property for
co-operative
societies of
occupiers.

103B. (1) Notwithstanding anything contained in any of the provisions of Chapter VIII or any other law for the time being in force or in any agreement, contracts, judgment, decree or order of any Court or Tribunal to the contrary, a co-operative society formed or proposed to be formed under the provisions of the Maharashtra Co-operative Societies Act, 1960, by not less than seventy per cent. of the occupiers in a cessed building may by written application request the Board to move the State Government to acquire the land together with the existing building thereon ³[or where the owner of the building does not own the land underneath or appurtenant to such building but holds it as a lessee or licensee, or licensee, or where any person holds the building or the land underneath or appurtenant to such building or both under a lease or licence, then to acquire the right or interest of such owner or person in or over, such building or land or both as lessee or licensee together with the existing building thereon](hereinafter in this Chapter referred to as "the land"), in the interest of its better preservation or for reconstruction of a new building in lieu of the old one and intimate their willingness to pay the amount of such acquisition as may be determined under the provisions of this Chapter and to carry out the necessary structural and other repairs or, wherever necessary, to reconstruct a new building, as the case may be, at their own cost.

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⁴[*Explanation I.*—In this section the expression, seventy per cent. of the occupiers' means the seventy per cent. of the occupiers on the date of commencement of the Maharashtra Housing and Area Development (Second Amendment) Act, 1986, and include their successors in interest or new tenants inducted in place of such occupiers, but does not include the owner or the occupiers inducted by virtue of creation of any additional tenancies or licences by the owner after the date of commencement of the aforesaid Act.]

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Explanation II.—For the purposes of this sub-section, any suit or proceeding for recovery or possession of tenement or premises or part thereof, initiated against the occupier in any court or before any authority whether, before or after making an application under this sub-section, shall not affect the right of such occupier to join or to continue as a member of the co-operative society of the occupiers of the building, but his membership of such co-operative society shall be subject to the final decision in such suit or proceeding :

¹ Chapter VIII-A was inserted by Mah. 21 of 1986, s. 5.

²This proviso shall be deemed always to have been inserted by Mah. 12 of 1989, s. 12.

³This portion shall be deemed always to have been inserted, *ibid.*, s. 13(a).

⁴These *Explanations* shall be deemed always to have been inserted, *ibid.*, 13(b).

Provided that, if in the meantime before the final decision in such suit or proceeding, the acquisition proceedings under this Chapter are completed and the land is conveyed to the co-operative society of the occupiers under sub-section (7), the claim for possession made in such suit or proceeding, at any stage where it is pending on the date of execution of such conveyance, shall abate.]

(2) On receipt of the application made under sub-section (1), the Board shall after due verification and scrutiny, approve the proposal if it considers that it is in the interest of better preservation of the building or to be necessary for reconstruction of a new building and shall direct the co-operative society, whether registered or proposed, to deposit with the Board within the period specified by it that behalf thirty per cent. of the approximate amount that would be required to be paid to the owner if the land is acquired and give intimation in that behalf to the owner.

¹[(2A) Where after the date of application made under sub-section (1),—

(a) any owner has undertaken the work of any repairs to the building ;
or

(b) the percentage of the occupiers who had initially agreed to become members of the co-operative society formed under sub-section (1) is reduced to less than seventy per cent., of the occupiers as a result of some members opting out, or due to the number of additional tenancies or licences created in the building thereafter or due to any other reason whatsoever,

then the power of Board to approve the proposal shall not be affected, and notwithstanding anything contained in sub-section (1), the Board shall approve the proposal and direct the co-operative society to deposit the approximate amount as required under sub-section (2).]

(3) On receipt of the amount of deposit as provided in sub-section (2), the Board shall submit to the State Government a proposal to acquire the land for the aforesaid purpose.

(4) If on receipt of an acquisition proposal under sub-section (3), the State Government is satisfied about the reasonableness of the proposal, it may approve the proposal and communicate its approval to the Board.

(5) On receipt of the Government approval, the Board shall forward acquisition proposal to Land Acquisition Officer for initiating and acquisition proceedings in accordance with the provisions of sub-sections (3), (4) and (5) of section 93 and section 96 of this Act :

Provided that, where any proceedings for acquisition of land are so initiated the notice to be published under sub-section (3) of section 93 in respect thereof need not contain any statement regarding provision of any alternative accommodation to occupiers in such land :

²[Provided further that, where the proposal involves acquisition of the right or interest of the lessee or licensee in or over the building or land as referred to in sub-section (1), then such building or land on its transfer by the Authority to the co-operative society under sub-section (7), shall be held by the co-operative society on lease or licence, as the case may be, subject, however, to the following conditions, namely :—

(i) where there is a subsisting lease or licence, on the same terms and conditions on which the lessee or licensee held it, and

(ii) where the lease or licence has been determined or where the lessee

¹ Sub-section (2A) shall be deemed always to have been inserted, Mah. 12 of 1989, s. 13(c).

² This proviso shall be deemed always to have been inserted, *ibid.*, s. 13 (d).

or licensee has committed breach of the terms and conditions of the lease or licence, as the case may be, on the fresh terms and conditions, particularly in regard to the period of lease or licence and rent as may be stipulated by the owner of the land.]

¹[(5A) Where acquisition proceedings have been initiated as provided in sub-section (5) and a notification under sub-section (5) of section 93 is published, the Collector shall take and hand over possession of the land to the Board in accordance with the provisions of sub-section (6) of section 93.]

(6) After the land is vested absolutely in the Board on behalf of the Authority free from all encumbrances and the amount to be paid to the owner is determined, the Board shall require the society to get itself registered if it is not registered till then and to deposit the remainder of the amount to be paid to the owner with the Land Acquisition Officer. The Board shall simultaneously pass on the amount deposited by the co-operative society with it to the Land Acquisition Officer. The Land Acquisition Officer shall thereupon make the payment of the amount for acquisition or deposit the same in the court as provided in section 46.

(7) Subject to the provisions of sub-section (6), the Authority shall convey the land acquired under this section to the co-operative society of the occupiers thereof with its right, title and interest therein and execute without undue delay the necessary documents in that behalf.

Prohibition
on transfer of
land or
building by
society.

103C. (1) After the land is transferred to the co-operative society under sub-section (7) of section 103B, the society shall use the same for the purpose for which it was used before its acquisition by carrying out structural repairs to building thereon or reconstruction of new building in lieu of existing building, as the case may be, as provided in this Chapter and for no other purpose.

(2) Save as otherwise expressly provided in this Chapter and notwithstanding anything contained in any law for the time being in force, no co-operative society shall transfer such land or building or interest therein, or no member or tenant of the co-operative society shall transfer his interest in any tenement by sale, gift, exchange, leave and licence, assignment or lease; and any such transfer by way of sale, gift, exchange, leave and licence, assignment or lease by the co-operative society of any land vesting in it by under the provisions of this Chapter or transfer by the member or tenant of his interest as aforesaid shall be void.

(3) If the co-operative society contravenes the provision of sub-section (1) or enters into any transaction which is void under sub-section (2), or if the society is not functioning, it shall be lawful for the Authority to resume such land and building from such society after making full payment to the society of the amount of the acquisition which the society has paid for such land and building and upon such resumption to transfer the same to any other co-operative society of the occupants of the tenements in the transit camp provided by the Authority, on payment of the acquisition price which was paid by the co-operative society for whom the land was acquired.

(4) (a) Any person who enters into any transaction which is void under sub-section (2) shall—

(i) if he is a member of the co-operative society, cease to be such member and be evicted;

(ii) if he is a tenant, then notwithstanding anything contained in the Rent Act, be evicted.

(b) Any person claiming through such member or tenant shall also be liable to be evicted.

¹ Sub-section (5A) was inserted by Mah. 12 of 1989, s. 13 (e).

(5) The Competent Authority appointed under section 65 shall be the Competent Authority for the purposes of eviction of persons referred to in sub-section (4) and shall follow the same procedure as prescribed in section 66 for such eviction as if the premises were Authority premises and thereupon the provisions of Chapter VI shall *mutatis mutandis* apply in respect of orders passed by the Competent Authority as they apply to the orders passed under Chapter VI

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103 D. Notwithstanding anything contained in the Maharashtra Co-operative Societies Act, 1960, the requirement of minimum number of members specified therein for formation of a co-operative society shall not apply to a co-operative society of occupiers formed under this Chapter.

Relaxation in
requirement
of minimum
number of
membership
of co-
operative
societies
under this
Chapter.

103 E. (1) The occupiers of tenements in the building acquired for the co-operative society who do not become the members of the co-operative society shall, subject to the provisions of the first proviso, be entitled to continue in their tenements as tenants of the co-operative society after the building has been conveyed to the co-operative society on the same terms and conditions on which they were occupying them from the owner of the building :

Non-member
occupiers
entitled to
continue in
tenements of
co-operative
society.

Provided that, notwithstanding anything contained in the Rent Act, or any other law for the time being in force or any agreement, contract, judgement, decree or order of any Court or Tribunal to the contrary the co-operative societies shall be entitled to recover, in addition to rent, from such occupiers and such occupiers shall be liable to share and pay proportionately towards any expenditure that may be incurred by the society on structural repairs of the buildings or towards the service charges and additional amenities or facilities provided in the building :

Provided further that, if the owner himself is one of the occupiers in the building and he does not become the member of the co-operative society, he may, subject to the provisions of the first proviso and sub-section (2) to (7), continue to occupy the premises occupied by him on payment of standard rent, if any fixed, or where no standard rent is fixed on such other rent and on such other terms and conditions as may be mutually agreed between the owner and the co-operative society.

(2) Where in a co-operative society the owner referred to in the second proviso to sub-section (1) becomes a tenant and he considers that the rent demanded by the co-operative society is excessive, such owner may apply to the Court of Small Causes, Bombay for fixing the standard rent of his tenement, but such owner shall, notwithstanding anything contained in the Rent Act, or any other law for the time being in force, continue to pay to the society, the rent demanded by it and failure of such owner to pay to the society such rent, the Court shall not proceed to fix the standard rent under this sub-section until such owner pays to the society such rent.

Explanation.—For the purposes of this sub-section, the expression "standard rent" includes the increase in rent permitted under the provisions of the Rent Act.

(3) Where the Court has fixed the standard rent under sub-section (2) and it finds that the rent demanded by the co-operative society from such owner is unreasonably excessive the Court may order payment of simple interest at the rate of six per cent. per annum on the amount of difference between the standard rent and the rent demanded and received by the co-operative society from such owner.

Explanation.—For the purposes of this sub-section where a difference between the standard rent and the rent demanded by the co-operative society is more than twenty-five per cent. the rent demanded by the co-operative society shall be deemed to be unreasonably excessive.

(4) Any amount in excess of the standard rent fixed by the Court under sub-section (2) or standard rent referred to in sub-section (6), received by the co-operative society shall, at the option of such owner, be adjusted towards the payment of future rent by such owner or refunded to him.

(5) An application under sub-section (2) may be made jointly by all or any of the owners interested in respect of the tenements situated in the same building.

(6) No Court shall upon an application or in any suit or proceeding fix the standard rent of any tenement under sub-section (2) or entertain any plea that the rent is excessive, if the standard rent in respect of the same tenement has been duly fixed by a competent court on the merits of the case, without any fraud or collusion or an error of the fact, and there has been no structural alteration or change in the amenities or in respect of any other factors which are relevant to the fixation of the standard rent.

(7) The decision of the Court under sub-section (2) or (3) shall be final and conclusive and shall not be called in question in any Court.

Application of Rent Act to buildings of co-operative society. **103F.** Save as otherwise expressly provided in this Chapter and notwithstanding anything contained in section 5 of this Act, the provisions of the Rent Act shall apply to the premises in the land and buildings owned by the co-operative societies formed and registered in pursuance of the provisions of this Chapter.

Certain occupiers to be accommodated in transit camps. **103G.** The occupiers of any building who have not joined the co-operative society may, if they so desire but subject to the availability of tenements with the Board, be accommodated by the Board in tenements in transit camps constructed by the Board on economic rent and on such other terms and conditions as may be determined by the Board.

Application of provisions of section 100. **103H.** The provisions of section 100 regarding relaxation or modifications of the provisions of the laws referred to therein shall apply *mutatis mutandis* to the reconstruction proposal or proposals undertaken by co-operative societies under this Chapter and the State Government may, by general or special order, relax or modify the provisions of such laws in respect of such co-operative societies or society :

Provided that, in no case where such relaxation or modification is made, the floor space index shall exceed two or the consumed floor space index, whichever is higher.

Reconstruction of new building by cooperative society. **103I.** (1) In preparing the plans and estimates of the building to be reconstructed it shall be the duty of the co-operative society to see that all the occupiers in the building proposed to be demolished who have joined the co-operative society shall, as far as practicable, be provided in the reconstructed building accommodation with a floor area equivalent to their floor areas in the old building, but in no case exceeding seventy square metres of plinth area to any occupier.

(2) Where the co-operative society proposes to carry out structural repairs to the building and the building or any part thereof is required to be vacated, or to reconstruct a building and the building is required to be demolished, the occupiers thereof, on being called upon by a notice in writing by the co-operative society, shall vacate the tenements in their occupation within the period specified in such notice, and upon failure of the occupiers to so vacate the tenement, the co-operative society may request the Board to take or cause to be taken necessary steps to evict such occupiers from the buildings and on receipt of such request the Board may take or cause to be taken necessary steps to get the building or part thereof, as the case may be, vacated and the Board shall exercise in this behalf the powers under clause (a) of section 77 and where an occupier to whom the Board has served a notice to vacate the premises in his occupation fails to vacate the same within the period specified in such notice, the Board may use or caused to be used such force as may reasonably, be necessary therefor.

(3) The co-operative society shall, notwithstanding anything contained in any other law, reserve and allot, in the new building such percentage as is specified in the Third Schedule to this Act of the surplus area in the new building determined on the basis of the difference between the floor space index availed of by it while reconstructing the building and the floor space index that had been utilised in the construction of the old building, for housing such dishoused occupier from other cessed demolished buildings as may be nominated by the Board and upon such nominations, the nominated occupiers shall be accepted by the co-operative society as its members in accordance with its bye-laws, and shall not dispose of tenements covered by such reserved surplus area to others. If any tenements are rendered surplus because of any of the occupiers in the old building not joining the co-operative society the percentage as is specified in the Third Schedule to this Act of the surplus area to be made available to the Board in the new building for allotment to other dishoused occupier shall be determined on the basis of the difference between the total floor area constructed in the new building and the area to be occupied therein by the participating occupiers in the old building. Such surplus tenement to be allotted to dishoused occupiers from the other cessed buildings which are demolished and who are nominated by the Board shall be allotted to them by the co-operative society after receiving from them such amount as may be determined by the State Government.

(4) The co-operative society may allocate the area for officers, shops, commercial tenements, or any other non-residential use in the new building only to the extent of the area occupied in the old building for the said purposes.

(5) The list of occupiers in the old building as also the area of the tenement therein shall be certified by the Board after such consultation with the co-operative society and the occupiers of the tenements concerned, as may be necessary. The area of the tenement shall be determined having regard to the provisions of the Development Control Rules applicable in the area and after taking into account any specific area or part thereof as might be permitted by Government for the purpose. The Board shall inform the occupiers about the area so determined.

(6) If there is a dispute as to who is the lawful occupier of the tenements in the old building, the parties shall be directed to get the disputes determined by the competent court of law. Allotment of a transit accommodation to a person actually in occupation of such tenement or in a tenement in a building shall not be deemed to have decided the issue and such allotment shall be without prejudice to the respective rights of the dispute parties.

(7) Any occupier aggrieved by the determination of the area of a tenement may, within thirty days from the date of receipt of the communication in that behalf, prefer an appeal to an officer specified by the Authority for the purpose. The decision of such appellate officer shall be final and conclusive and shall not be called in question in any Court.

Protections
to occupiers
or allottees.

103J. If the co-operative society unauthorisedly allots to any person any tenement which is to be allotted under the foregoing provisions to a dishoused person from the building reconstructed or to a dishoused person from the other cessed demolished buildings by nomination by the Board, such unauthorised allotment shall, notwithstanding anything contained in any law for the time being in force, be treated as invalid for all purposes and the Authority shall be competent to evict such unauthorised allottee by taking action under section 66 of this Act as if the premises so allotted were Authority premises and allot such premises to the person to whom they should have been allotted.

Board for
purposes of
this Chapter.

103K. (1) ¹[The Mumbai Repairs and Reconstruction Board] established under section 18 of this Act shall be the Board for the purposes of carrying out the purposes of this Chapter.

(2) Subject to the superintendence, direction and control of the Authority, the Board shall exercise such of the powers and perform such of the duties and functions conferred on it under Chapter VIII as may be necessary for the performance of its duties and functions under this Chapter.

Overriding
effect of
Chapter
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103L. The provisions of this Chapter shall have effect notwithstanding anything inconsistent therewith contained in any other provisions of this Act, or any other law for the time being in force or in any agreement, contract, judgement, decree or order of any Court or Tribunal.

Power to
remove
difficulties.

103M. If any difficulty arises in giving effect to the provisions of this Chapter, during the period of two years from the date of commencement of the Maharashtra Housing and Area Development (Second Amendment) Act, 1986, the State Government may, as occasion arises, by order do anything not inconsistent with such provisions, which appears to it to be necessary or expedient for the purposes of removing the difficulty.]

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