

Regd. No. NE 907



The Mizoram Gazette

EXTRA ORDINARY

Published by Authority

VOL. XI Aizawl, Thursday 23.9.82 Asvina 1 SE 1904 Issue No. 56

NOTIFICATIONS

No. DCA/R-46/82/22 the 15th September 1982, In pursuance of paragraph 11 of the Sixth Schedule to the Constitution of India, the following Act, made by the Lakher District Council under paragraph 3 of the said Schedule and assented to by Administrator of Mizoram, is hereby published for general information.

J.W. Sundara Raj
Secretary to the Govt. of Mizoram

LAKHER DISTRICT COUNCIL ACT NO 1 OF 1982

The Lakher Autonomous District (Inheritance of Property) Act, 1982 (Received the assent of the Administrator of Mizoram on the 6th Sept., 1982).

THE LAKHER AUTONOMOUS DISTRICT (Inheritance of Property) BILL. 1982.

A

Bill

to provide for the regulation of inheritance of property.

PREAMBLE;— Whereas it is expedient to provide for the regulation of inheritance of property by means of will;

It is hereby enacted in the Thirty-third Year of the Republic of India as follows :-

1. SHORT TITLE, EXTENT AND COMMENCEMENT:-

- 1) This Act may be called the Lakher Autonomous District (Inheritance of Property) Act, 1982.
- 2) It extends to the whole of the Lakher Autonomous District.
- 3) It shall come into force at once.

2. SAVING OF CERTAIN RIGHTS:-

Nothing herein contained shall be deemed to affect the laws of inheritance among those other than the Schedule Tribes.

3. DEFINITION:-

In this Act, unless the context otherwise requires:-

- i) "Administrator" means the administrator of the Union territory of Mizoram appointed by the President of India under article 239 of the Constitution;
- ii) "District" means Lakher Autonomous District.
- iii) "District Council" means the Lakher Autonomous District Council.
- iv) "District Council Court" means the District council court for the Lakher Autonomous district constituted under the provisions of the Lakher Autonomous District (Administration of Justice) Rules, 1981;
- v) "Prescribed" means prescribed by rules under this Act.
- vi) "Probate" means the copy of a will certified under the seal of a Court of competent jurisdiction with a grant of administration to the estate of the testator;
- vii) "Property" includes movable and immovable property;
- viii) "Subordinate District Council Court" means a Subordinate District Council Court constituted under the provisions of the Lakher Autonomous District (Administration of Justice) Rules 1981'
- ix) "Will" means a testamentary instrument.

COMPETENCE OF TESTATOR

- 1) Every person of sound mind not below the age of 18, may dispose of by will his or her property which he or she could alienate during his or her life. Where a person has left no will, or the will left by him or her does not cover all of his or her property, the whole property or the property not covered by the will, as the case may be, shall devolve in accordance with the customary laws for the time being in force in the District.

- 2) A will is liable to be, revoked or altered by the maker of it at any time when he is competent to dispose of his property by will

5. PROCEDURE AND CONDITION:-

- 1) If any person leaves more than one will, the one bearing the latest date shall be deemed to be final.
- 2) The Testator of will may or may not disclose the content of will to the witness or legatee.
- 3) The Testator shall execute the will only when he is of sound mind;
- 4) A will shall be taken to have effect from the death of the testator.

6. WITNESS

- 1) A witness to a will shall be of sound mind and no person below the age of 21 and who is not of sound mind shall be competent to be a witness to the execution of will.
- 2) The Execution of a will shall be in the presence of not less than two witnesses.

7. ATTESTATION

- 1) The Testator of a will must give his or her signature in the presence of witness. If however, he or she is unable to write, the left or the right thumb impression respectively must be given instead.
- 2) The Witness to a will must also give their signature in the presence of testator. If, however, a witness is unable to write, the left or the right thumb impression respectively must be given instead.
- 3) Each witness to a will must give his or her signature or thumb impression, as the case may be, in the presence of the other witness.

8. INVALIDITY:-

- 1) Any will not attested in accordance with the provisions of this Act shall be void.
- 2) Any will or any part of a will, the making of which has been caused by fraud or coercion or by such importunity as takes away the free agency of the testator, is void.

9. PROBATE ONLY TO APPOINTED EXECUTOR:-

Probate shall be granted only to an executor appointed by the will.

10. EFFECT OF PROBATE:-

Probate of a will when granted establishes the will from the death of the testator, and renders valid all intermediate acts of the executor as such.

11. JURISDICTION OF SUBORDINATE DISTRICT COUNCIL COURT:-

The Subordinate, District Council Court shall have jurisdiction in granting and revoking probate in all cases.

12. GRANT OF PROBATE:-

The subordinate district Council Court shall have the like powers and authority in relation to the granting of probate and all matters connected therewith, as are by law vested in it in relation to any civil suit or proceeding pending therein.

13. PRODUCTION OF TESTAMENTARY PAPERS.—

(1) The Subordinate

and bring into Court any paper or writing being or purporting to be testamentary, which may be shown to be in the possession or under the control of such person.

(2) If it is not shown that any such paper or writing is in the possession or under the control of such person, but there is reason to believe that, he has the knowledge of any such paper or writing, the Court may direct such person to attend for the purpose of being examined respecting the same.

(3) Such person shall be bound to answer truly such questions as may be put to him by the Court, and if so order to produce and bring in such paper or writing, and shall be subject to the like punishment under the Indian Penal Code, in case of default in not attending or in not answering such questions or not bringing in such paper or writing, as he would have been subject to in case he had been a party to a suit and had made such default.

(4) The cost of the proceedings shall be in the discretion of the Court.

14. INTERFERENCE OF COURT FOR PROTECTION OF PROPERTY.—

Until probate is granted of the will of deceased person, the Subordinate District Council Court within whose jurisdiction any part of the property of the deceased person is situated, is authorised and required to interfere for the protection of such property at the instance of any person claiming to be interested therein and in all other cases where the Court considers that the property incurs any loss or damage, and for that purpose, if it thinks fit, to appoint an Officer to take and keep possession of the property.

15. WHEN PROBATE MAY BE GRANTED.— Probate of the will to the estate of a deceased person may be granted by a Subordinate District Council Court under the seal of the Court, if it appears by a petition of the person applying for the same that the testator at the time of his decease had a fixed place of abode or any property moveable or immovable, within the jurisdiction of the Court.

16. CONCLUSIVENESS OF PROBATE.— Probate shall have effect over all the property and estate, movable or immovable of the deceased throughout the District and shall be conclusive as to the representative title against all debtors of the deceased, and all persons holding property which belongs to him and shall afford full indemnity to all debtors paying their debts and all persons delivering up such property to the person to whom such probate has been granted.

17. PETITION FOR PROBATE.— Application for probate with the will annexed, shall be made by a petition distinctly written in the language generally used in proceedings before the Court in which the application is made and stating,—

- (a) the time of the testator's death,
- (b) that the writing annexed is his last will and testament,
- (c) that it was duly executed,
- (d) the amount of the assets which are likely to come to the petitioner's hand,

- (e) that the petitioner is the executor named in the will,
- (f) that the deceased at the time of his death had a fixed place of abode or had some property situated within the jurisdiction of the Court.

18. POWER OF THE SUBORDINATE DISTRICT COUNCIL COURT.-

- (1) In all cases the Subordinate District Council Court may, if it thinks proper,
 - (a) examine the petitioner in person upon oath or affirmation;
 - (b) require further evidence of the due execution of the will;
 - (c) issue citations calling upon all persons claiming to have any interest in the estate of the deceased to come and see the proceedings before the grant of probate.
- (2) The citation shall be fixed in some conspicuous part of the Court house and also in the office of the Executive Committee of the District Council and otherwise published or made known in such manner as the Court, issuing the same, may direct.

19. TIME FOR GRANT OF PROBATE.- No probate of a will shall be granted until after the expiration of seven clear day from the day of the testator's death.

20. FILING OF ORIGINAL WILLS OF WHICH PROBATE WITH WILLS ANNEXED GRANTED.- (1) The Subordinate District Council Court shall file and preserve all original wills of which probate with the wills annexed may be granted by it among records of the Court until some public registry for wills is established.

- (2) The District Council shall make rules for the preservation and inspection of the wills so filed.

21. APPEALS FROM ORDERS OF SUBORDINATE DISTRICT COUNCIL COURTS.

Every order made by a Subordinate District Council Court by virtue of the powers hereby conferred upon it shall be subject to appeal to the District Council Court in accordance with the provisions of the Lakher Autonomous District (Administration of Justice) Rules, 1981, applicable to appeals.

22. SURRENDER OF REVOKED PROBATE:— (1) When a grant of a probate is revoked or annulled under this Act, the person to whom the grant was made shall forthwith deliver up probate to the Court which made the grant.

- (2) If such person wilfully and without reasonable cause omits so to deliver up the probate he shall be punishable with fine which may extend to Rs. 500/- (Rupees five hundred) only or with imprisonment for a term which may extend to three months or with both.

23. **PAYMENT TO EXECUTOR BEFORE PROBATE REVOKED:—**

When a grant of a probate is revoked, all payments bonafide made to any executor under such grant before the revocation thereof shall, notwithstanding such revocation, be a legal discharge to the person making the same, and the executor who has acted under such revoked grant may retain and reimburse himself in respect of any payment made by him which the person to whom the probate may afterwards be granted might have lawfully made.

24. **POWER TO MAKE RULES —** Subject to the prior approval of the Administrator, the Executive Committee may make rules for carrying out the purpose of this Act.

25. **REPEAL AND SAVING --** (1) The Pawi-Lakher Autonomous Region (Inheritance of Property) Act, 1959 is hereby repealed.

(2) Notwithstanding such repeal all actions taken, orders made or directions given under the Act so repealed shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to be taken, made or given under the corresponding provision of this Act and subsequent actions, if any, with regard to any such action, order or direction shall be in accordance with the provisions of this Act.

I do hereby certify that the above bill, namely, the Lakher Autonomous District (Inheritance of Property) Act 1982 was passed by the Lakher District Council in its Meeting held on the 19th July, 1982.

A N D

in authentication thereof, I give my Signature this day, second of August, 1982.

Roma,
Chairman,
Lakher District Council,
Saiha.

Dated Saiha,
the 2nd August, 1982.

I assent to the above Bill.

Published & Printed by the Controller, Printing & Stationery, Mizoram
Printed at the Mizoram Govt. Press, Aizawl, C—550.