

## LOCAL SELF GOVERNMENT DEPARTMENT

### Notification

Simla-2, the 21st October, 1971

No.1-10/71-L,S,G,-In exercise of the powers conferred by sections 255 and 273 of the Himachal Pradesh Municipal Act, 1968, the Governor of Himachal Pradesh is pleased to make the following rules entitled as the Alienation of Municipal Properties Rules, 1971, the same having been previously published in the official Gazette.

### RULES

1. Short title and commencement.-

(1) These rules may be called the Alienation of Municipal Properties Rules. 1971

(2) They shall come into force with immediate effect.

2. Definitions.-In these rules, unless the context otherwise requires:

(a) "Committee" means a Municipal Committee or a Notified Area Committee established by or under the Himachal Pradesh Municipal Act, 1968, or a Municipal Corporation established by or under the Capital of Himachal Pradesh (Development and Regulation) Act, 1968.

(b) "Municipality" means Municipal Committee or Notified Area Committee or Municipal Corporation.

(c) (1) "Nazul land" means Government land situated within the area of a Municipality, land vested in or in possession of municipality must therefore be either (a) nazul or (b) acquired by purchase. The presumption is that the land is nazul unless it can be shown that it has been acquired by purchase.

**Note.-***It* can not be presumed that a public street is nazul in the absence of evidence in the nazul register or other revenue record or of any other documentary proof. If the question arises whether a public street is nazul or not each case shall be considered on the merits, and in accordance with the evidence.

(2) (a) "Nazul" includes (inter alia) any immovable property belonging to the Government within the limits of a municipality and not definitely assigned to the charge of a department other than the Revenue Department.

Provided that:

(i). The definition not apply to lands ,in new colony towns, that is to say to lands in any place which had not been constituted a municipality before the colony was started.

- (ii) Nor will it apply to lands comprised in any extension made subsequent to a colony being started) of the limits of existing municipalities and in colony tracts.
    - (iii) Nor will it apply to any unalienated lands in towns of the older colonies, unless such lands were 'situated within the limits of a municipality prior to the commencement of colonization operations.
  - (b) The sale proceeds of will be credited to Government and classified under the Head "XLVI-Miscellaneous.
  - (c) "State. Government" means the Government of Himachal Pradesh.
  - (d) words and expressions used but not defined in these rules shall have the meaning assigned to them in the Act.
3. Procedure for alienation of municipal properties –
- (1) Any municipality proposing to alienate permanently or for a term exceeding ten years any land or immovable property of which it is the owner shall apply to the Deputy Commissioner for sanction.
  - (2) An application under rule (1) shall be accompanied by a plan of the properties to be alienated together with a statement in the form appended to these rules.
  - (3) The Deputy Commissioner shall record an order on the application-
    - (i) Sanctioning it (subject to such conditions, if any, as he thinks fit), or
    - (ii) refusing to sanction it, provided that no sale by auction shall be valid until has been confirmed by the Deputy Commissioner.
  - (4) When the Deputy Commissioner has accorded sanction to a sale by auction, the statement aforesaid shall in due course be resubmitted to him with the details regarding the action which are shown in the form printed on the reverse of the statement and the Deputy Commissioner shall thereof either confirm the sale or refuse to confirm it. If the Deputy Commissioner refuses to confirm the sale, the same shall be void.
  - (5) Any orders passed by the Deputy Commissioner under rules and 4 shall subject to the provisiOO1S of section 252 of the Himachal Pradesh Municipal Act, 1968, be final.

## APPENDIX

### STATEMENT OF MUNICIPAL PROPERTY PROPOSED TO BE ALIENATED

Description, details and situation of the property	The original cost price of the property, if any	Estimated present value of the property	Reasons for alienation	Estimated sale price of the consideration for which the property is to be alienated	Orders of the Deputy Commissioner	Conditions, if any of the sale of alienation
1	2	3	4	5	6	7

## REVERSE

### STATEMENT OF MUNICIPAL PROPERTY SOLD

Description, of the property	Hour, date and place of sale	Name of the officer conducting the sale	Name of bidders	Amount of bid	Sale price	Orders of Deputy Commissioner
1	2	3	4	5	6	7

4. Register of nazul properties to be maintained.-Every municipality in charge of nazul properties of Government shall maintain a register in Form R-I prescribed by rule XU of the Punjab Municipal Account Code, 1930, and if the amount of such properties is large shall also maintain a large scale map with index showing the position of such properties.
5. Lease of nazul properties.-(I) The municipality may lease nazul properties in its charge provided that the previous sanction shall be obtained-;
  - (i) of the Deputy Commissioner, when either the term of the lease exceeds one year but does not exceed two years, or when the lease money is more than Rs. 250 but not more than Rs 500 per annum;
  - (ii) of the State Government when either the term of the lease exceeds two years, or when the lease money is more than Rs. 500 per annum;

6. Sale of nazul properties.-No municipality shall sell nazul properties of Government in its charge without the previous sanction of Government. Application for such sanction should be submitted to Government through the Deputy Commissioner in the form appended to this rule, accompanied when necessary by a rough plan. When the sale has been completed the same statement should be re-submitted to Government, for confirmation of the sale, with the result of the sale detailed on the reverse, provided that if the property is sold by auction and the price realised is not less than 75 per cent of the price accepted by Government, when the proposals for sale were submitted for sanction, the sale may be confirmed by the Deputy Commissioner without further reference to the Government.

STATEMENT OF NAZUL PROPERTY PROPOSED TO BE SOLD IN THE MUNICIPALITY

Serial Number of the property in the nazul register	Description, details and situation of property and how & when it became nazul	Present income, if any from the property	Estimated present value of the property	Reason for which sale is proposed	Special condition, if any of sale	Remarks and reserve price proposed by Dy. Commissioner	Orders of Govt.
1	2	3	4	5	6	7	8

REVERSE

STATEMENT OF SALE OF NAZUL PROPERTY FORWARDED FOR CONFIRMATION BY THE STATE GOVERNMENT

Serial Number of the property in the Nazul register	Name of property to correspond with the name given in col. 2 on the reverse	Hour, date and place of sale and name of the officer who conducted the sale	Name of bidders	Amount of bids	Remarks of the Deputy Commissioner	Orders of Government
1	2	3	4	5	6	7

The following principles should be observed by local officers while making recommendations regarding the action of Government in cases of encroachments on nazul land vested in local bodies. These instructions distinguish between encroachments of more than 20 years and less than 30 years, respectively, since the legal position of the Government is different in the two cases :

- (a) In the case of encroachments which date back more than 20 years and less than 30 years Government has liberty of action:-
  - (i) In cases where the land encroached upon should clearly be restored to its original purposes, and Government can make no other use of it ; Government should lodge a civil suit, provided that the local body agrees in writing to pay to Government the cost of litigation whether the suit be successful or not. If the local body declines to give an undertaking to this effect no action need be taken
  - (ii) In case, where it is not necessary to restore the land to its original use, the action of Government will be determined by expediency and its own interests. If a compromise cannot be reached with the encroacher either for purchase or lease of the land encroached upon a civil suit should be lodged, provided that a suit is likely to be successful and that the value of the land is sufficient to compensate for the trouble and odium involved. The costs of the suit will be paid by Government and the sale proceeds or income of the land will be credited to Government.
- (b) In the case of encroachment which dates back less than 30 years. Government should take direct action only after the reasonable opportunity has been given to the local body to take action. When an encroachment is discovered, the local body should be given full information in regard to it, and should be asked to state within a specified time which ordinarily should not exceed six months, firstly whether it considers it necessary that the land encroached upon should be restored to the former use so that it may continue to vest in the local body, and secondly if it so considers, whether it is prepared to lodge a civil suit against the encroacher within a specified time which should ordinarily not exceed 12 months. At the same time the local body should be informed

that if it does not desire the restoration of the property to its former use, or if it is not prepared to lodge a civil suit for the he purpose within the time specified, Government as owner of the land will regard itself as free to take such action as it may consider proper

- (c) If the reply of the local body is to the effect that h does not consider it necessary to restore the land encroached upon to its former Use, the action of Government will be determined by the considerations mentioned in sub-para (a)(ii) of this paragraph. If a civil suit is lodged, State Government will meet the cost of litigation, and will take the benefits consequent on a successful issue.
- (d) If the local body, refuses or fails to lodge a civil suit within the period prescribed, then the action of Government will be determined by the same considerations as are indicated above, but it will not, except in special cases, be prepared to take action where the land encroached upon should be restored to its original purpose

7. Municipal Rest-house.-Every municipality in charge of a Rest house shall be bound to frame rules with regard to its occupation and rents etc. be realized therefore. These rules shall be subject to the approval of the State Government.

8. State Government properties for management.-

- (1) Every municipality to which any property of State Government has been transferred for management shall keep a *pro forma* of the income derived from such property including any grant received from State Government in respect thereof and of the expenditure thereon and shall be responsible for the annual repairs required, for such property and for special repairs to the amount of the balance, if any, of income over expenditure since the property was transferred as shown in the *pro forma* account
- (2) No municipality to whom any property of Government has been transferred for management shall cause any repairs or alterations to such property to be carried out in style differing from that of the original work without the consent of the State Government, in the Public Works Department.

- (3) No municipality in whom any land of Government vests or to whom any land of Government has been transferred for management shall cause or suffer any buildings of a permanent nature to be constructed on such land or shall cause or suffer such land to be diverted permanently from its existing use without the consent of the State Government.

*Note.*-The planting of garden on Government lands on which such gardens did not exist when the lands were made over to the local body, amounts to permanent diversion from the existing use, and, therefore, the consent of State Government to such diversion is necessary.

9. Rules to be general.- These rules shall be general for all Municipalities.
10. Repeal Savings.-Any rules corresponding to these rules in force immediately before the commencement of these rules and applicable to the municipalities to whom these rules apply etc hereby repealed:

Provided that an order made or action taken under the rules so repealed shall be deemed to have been made or taken under the corresponding provisions of these rules.

(R.H.P. Extraordinary, dated the 9th November, 1971, p. 1359-1365)

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